

**New York State Department of Environmental Conservation  
Office of Hearings and Mediation Services, 1<sup>st</sup> Floor**

625 Broadway, Albany, New York 12233-1550

**Phone:** (518) 402-9003 • **Fax:** (518) 402-9037

**Website:** [www.dec.ny.gov](http://www.dec.ny.gov)



Peter M. Iwanowicz  
Acting Commissioner

December 17, 2010

Daniel and Kathy Aquilante  
60 West 17<sup>th</sup> Road  
Broad Channel, New York 11693-1302

Jeffrey M. Aquilante, Esq.  
Attorney at Law  
155 Beach 95<sup>th</sup> St.  
Rockaway Beach, New York 11693

Udo Drescher, Esq.  
Assistant Regional Attorney  
1 Hunter's Point Plaza  
47-40 21st Street  
Long Island City, NY 11101-5407

Re: Matter of DEC v. Aquilante  
DEC File No. R2-20070213-73

Dear Mr. & Mrs. Aquilante and Msrs. Aquilante and Drescher:

We are in receipt of the Department's motion for order without hearing and the respondent's pleadings in opposition. After review, the motion is denied. A contested motion for order without hearing brought pursuant to 6 NYCRR 622.12 shall be granted if, "... upon all of the papers and proof filed, the cause of action or defense is established sufficiently to warrant granting summary judgment under the CPLR in favor of any party." Civil Practice Law and Rules (CPLR) 3212 allows for the granting of summary judgment when no issue of fact remains. The motion may be granted only upon a showing that the cause of action or defense is established sufficiently to warrant the Court as a matter of law to direct judgment in favor of a party. (CPLR 3212) CPLR 3212 states that "...the motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact.

It is well established that the Court should consider the granting of such a motion a drastic and severe remedy that should be granted when there is no doubt as to the existence of a triable issue of fact (*Moskowitz v. Garlock*, 23 AD 2d 943, 259 N.Y.S. 2d 1003). In order to prevail upon a motion for summary judgment, the movant must first make a showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case. *Winegrad v. New York Univ. Med. Center*, 64 N.Y.2d 851, 853, 487 N.Y.S.2d 316, 476 N.E.2d 642. A question of fact remains. The motion is denied.

I have scheduled a conference call for December 30, 2010 at 10:00 a.m. to schedule a hearing date. My office will place the call to Mr. Jeffrey Aquilante and Mr. Drescher. If that date and/or time is not convenient, please send me an email with your availability. My email address is [mtmcbri@gw.dec.state.ny.us](mailto:mtmcbri@gw.dec.state.ny.us).

Very truly yours,

/s/

Molly T. McBride  
Administrative Law Judge