

In the matter of the alleged violation(s) of the New York State Environmental Conservation Law (ECL) Articles 3, 17 and 23, Title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (NYCRR), and permits issued pursuant to Environmental Conservation Law Article 17, Title 8 and Article 23, Title 13; and the application for ECL Article 23 modification permit; by

**BATH PETROLEUM STORAGE, INC.,
E.I.L. PETROLEUM, INC., and
ROBERT V. H. WEINBERG**

**RULING ON
MOTION FOR MORE
DEFINITE STATEMENT**

DEC Case No: R8-1088-97-01
and
ECL Article 23-1301 Permit Hearing

PROCEEDINGS

By motion dated April 1, 2004, respondent Robert V. H. Weinberg (“Respondent Weinberg”) moved for a more definite statement of the allegations in the complaint against him in this matter (referred to herein as the “2003 Amended Complaint”). In the 2003 Amended Complaint, staff of the New York State Department of Environmental Conservation (“Department Staff”) sought to impose liability upon Respondent Weinberg for alleged violations of Articles 3, 17, and 23 of the Environmental Conservation Law (“ECL”), as well as violations of a State Pollutant Discharge Elimination (“SPDES”) permit issued to E.I.L. Petroleum, Inc. (“EIL”).

EIL is a corporation engaged in the international and domestic bulk purchase and sale of liquefied petroleum gases (“LPG”). Bath Petroleum Storage, Inc. (“BPSI”), a wholly-owned subsidiary of EIL, operates an LPG gas storage facility (the “Facility”) in Bath, New York. This action was commenced in March 1997 by service of a Notice of Hearing and Complaint upon BPSI and EIL (hereinafter the “Corporate Respondents”).

According to the 2003 Amended Complaint, Respondent Weinberg is the president, director and sole stockholder of EIL, and the president of BPSI. The 2003 Amended Complaint alleges further that BPSI and EIL are solely owned by Respondent Weinberg, and that he exercises direct control over their operations. 2003 Amended Complaint, ¶ 6.

In a ruling dated March 27, 2000, Administrative Law Judge (“ALJ”) Helene G.

Goldberger granted Department Staff's motion to amend the complaint to add Respondent Weinberg as a respondent. Matter of E.I.L. Petroleum, Inc., 2000 WL 33340964, * 6 (Ruling, Mar. 27, 2000). Following motion practice, Department Staff was directed to serve the 2003 Amended Complaint upon Respondent Weinberg. Matter of Bath Petroleum Storage, Inc., 2003 WL 22456078, *3 (Ruling, October 23, 2003). Department Staff did so, and Respondent Weinberg moved to dismiss, asserting that service was defective and that he was not afforded a hearing within a reasonable time. In addition, Respondent Weinberg argued that all of the claims in the 2003 Amended Complaint were barred by the applicable statute of limitations, and that the allegations that sought to impose joint and several liability must be stricken.

The motion to dismiss was denied in a ruling dated March 18, 2004.¹ Respondent Weinberg moved for leave to appeal from that ruling, and also filed this motion for a more definite statement pursuant to Section 622.4(e) of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR").

Section 622.10(d)(7) provides that "[t]here will be no adjournment of the hearing while an appeal is pending except by permission of the ALJ or the commissioner." Accordingly, although the Commissioner has not yet determined whether to entertain Respondent Weinberg's appeal, for the reasons that follow, the motion for a more definite statement is denied. Pursuant to the scheduling order incorporated as part of this ruling, Respondent Weinberg is directed to serve an answer to the 2003 Amended Complaint. Following the completion of discovery, the hearing with respect to the enforcement component of this matter will commence.²

POSITIONS OF THE PARTIES

Respondent Weinberg argues that the allegations in the 2003 Amended Complaint regarding his "direct control" of the activities of the Corporate Respondents "are so vague and non-specific that it is impossible for him to form a response." Motion, p. 1. Respondent Weinberg asserts that the allegations in the 2003 Amended Complaint concern violations that arose out of operations at an industrial facility, and that those allegations are devoid of any indication that he "conducted or directly ordered the conduct" which would expose him to liability for acts of the corporation. Motion, p. 2. The motion papers reiterate the arguments raised in Respondent Weinberg's motion to dismiss with respect to derivative liability, or piercing the corporate veil, contending that the 2003 Amended Complaint's allegation that "upon information and belief [Respondent Weinberg] exercises direct control" over the Facility's operations is insufficient to state a cause of action against him for personal liability for the violations alleged.

Department Staff maintains that the motion is untimely, citing to Section 622.4(e) of 6

¹ Matter of Bath Petroleum Storage, Inc., 2004 WL 598983 (Ruling, March 18, 2004).

² The permit and enforcement matters were joined in a July 26, 2002 ruling on Department Staff's motion to consolidate. Matter of Bath Petroleum Storage, Inc., 2002 WL 1824983, *11 (Ruling, July 26, 2002).

NYCRR, because the motion was not made within ten days of the date when service was effected upon Respondent Weinberg. Department Staff points out that the motion was made over four months after the date when Respondent Weinberg received the 2003 Amended Complaint, and thus did not comply with the regulation, which requires that a motion for a more definitive statement be made within ten days of service being completed.

Department Staff argues further that Respondent Weinberg has been “informed and fully engaged in all significant aspects of these proceedings.” Department Staff’s Reply, p. 2. According to Department Staff, it is disingenuous for Respondent Weinberg to maintain that he is unable to understand the allegations in the 2003 Amended Complaint, given his involvement in this matter. Department Staff asserts that the 2003 Amended Complaint satisfies the standards set forth in Section 622.3 with respect to the requirements for a valid complaint in an enforcement action, and that the specifics of the claims against Respondent Weinberg will be the subject of discovery and the subsequent hearing.

DISCUSSION

Section 622.3(a)(1)(i) through (iii) states that “[t]he complaint must contain: (i) a statement of the legal authority and jurisdiction under which the proceeding is to be held; (ii) a reference to the particular sections of the statutes, rules and regulations involved; and (iii) a concise statement of the matters asserted.” The 2003 Amended Complaint satisfies this provision, and accordingly, the motion for a more definite statement is denied. Moreover, Respondent Weinberg’s failure to file the motion within the time period set forth in Section 622.4(e) is further grounds for denial, although the merits are briefly discussed below.

As articulated in the ruling on the motion to dismiss in this matter, Department Staff’s claims with respect to Respondent Weinberg’s individual liability will be the subject of a hearing. Department Staff will bear the burden of proof with respect to this issue. Matter of Adelman, 1998 WL 1670845, *2 (Ruling, July 30, 1998), considered a motion for a more definite statement, and concluded that “[t]he regulations require only a concise, which means terse or succinct, statement of the matters asserted. Elaboration is not required, only notice sufficient to respond”

In this case, the 2003 Amended Complaint provides sufficient detail for Respondent Weinberg to prepare a defense. The causes of action are specific with respect to the violations alleged and the statutory and regulatory provisions implicated, and further specifics with respect to Department Staff’s contentions concerning Respondent Weinberg’s “direct control” are an appropriate subject for discovery.

Moreover, the cases cited by Respondent Weinberg in support of the motion are factually inapposite. For example, State v. Markowitz, 273 A.D. 637 (3rd Dept. 2000), lv. denied, 95 N.Y.2d 770 (2000), was decided after an appeal from jury trial, not on a motion for a more definite statement. Discovery is the appropriate avenue for Respondent Weinberg to obtain more detail from Department Staff with respect to the allegations in the 2003 Amended Complaint.

See Matter of Adelman, at *3 (finding that motion was “really a discovery request of the Department about the basis for the allegations in the Complaint,” and denying motion for a more definite statement).

SCHEDULING ORDER

1. Respondent Weinberg shall serve his answer to the 2003 Amended Complaint on or before May 21, 2004.
2. Respondent Weinberg shall respond to Department Staff’s document demands on or before June 18, 2004.
3. The deadline to complete discovery is July 12, 2004. On that same date, the parties will serve a list of the witnesses each party intends to call at the hearing on this matter, as well as a statement of the witnesses’ qualifications.
4. Department Staff will file a statement of readiness, pursuant to Section 622.9, upon the completion of discovery and any further settlement discussions.

Maria E. Villa
Administrative Law Judge

Dated: April 28, 2004
Albany, New York

c: Administrative Law Judge Daniel P. O’Connell

TO: Service List