STATE OF NEW YORK : DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Alleged Violations of part 360 of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York by

ROSE BEUTEL,

Respondent.

RULING ON MOTION FOR RECONSIDERATION

VISTA Index No. R620040802-52

April 3, 2006

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On January 30, 2006, I issued a ruling denying the motion by the Department of Environmental Conservation (DEC) Staff for an order without hearing against Rose Beutel (Respondent) concerning a site in Jefferson County at which approximately 30,000 waste tires are stored. The ruling identified certain facts that were deemed to be established for all purposes in the hearing, but stated that DEC Staff's motion papers did not demonstrate that Respondent currently owns the site. The ruling noted that "[t]he questions of who currently controls owns the Site and who currently controls the Site are important with regard to provisions of the order that DEC Staff is asking the Commissioner to issue" (Ruling, at 11). The ruling stated, "A hearing will be scheduled concerning the issue of Respondent's current relation to the Site and any terms of the proposed penalty or remedial actions that may be affected by this issue" (Ruling, at 13). A hearing is scheduled for April 10, 2006.

Subsequent correspondence and communications

After receiving the January 30, 2006 ruling, DEC Staff served a discovery demand upon Respondent, and Respondent provided a response that included documents concerning ownership of the Site. These documents were sent to DEC Staff by Ann Beutel, Rose Beutel's daughter, acting as the authorized representative for Rose Beutel in this matter.

On March 13, 2006, Randall C. Young, Esq., Assistant Regional Attorney, DEC Region 6, submitted a motion for reconsideration of the ruling. In support of the motion, he provided an affirmation and copies of some of the documents provided by Respondent. The affirmation states, among other things, that as of March 13, 2006, the deed that shows Rose Beutel and her husband William Beutel as owners of the Site was the last recorded deed for the parcel. The affirmation also states that Supreme Court, Jefferson County ordered Wayne Jahada

to vacate the site and that as of October 27, 2005, Respondent was exercising control over the property.

On March 17, 2006, Ann Beutel sent a letter asking that the hearing on April 10, 2006 proceed, and transmitting to me a copy of the documents she had sent to DEC Staff. Her letter also described her family's involvement with the Site and their interactions with Mr. Jahada concerning his lease for and activities on the Site. The letter stated, "My mother finally regained control of the property on October 27, 2005. We were not able to immediately get the yard up and running as we had planned because of the destruction that Mr. Jahada had done on the last day that he was on the property." The letter acknowledged that "as the property owner we have an obligation to remedy this situation" but argued that Mr. Jahada's actions have complicated Respondent's ability to do so. Among the documents was a February 7, 2005 DEC Order on Consent issued to Watertown Iron and Metal, Inc. and signed by Mr. Jahada as president of that company (see latter part of Exhibit O, attached with March 17 letter).

A conference phone call among Ann Beutel, Mr. Young and me took place on March 27, 2006. I asked whether DEC Staff intended to respond to Ms. Beutel's March 17, 2006 letter and he stated that DEC Staff did not intend to reply. I noted that Respondent's reply could be seen as Respondent's own motion for reconsideration. The parties discussed numerous aspects of the site cleanup and the parties' respective interactions with Mr. Jahada. I stated that the hearing remained scheduled for April 10, 2006 and that I would make a ruling on the motion for reconsideration (the present ruling). I noted that it appeared to me, based upon the recent correspondence and the conference call, that it was likely that the hearing would still be necessary and that disputes existed between the parties that could affect what would be in an order of the Commissioner regarding the site. I also recommended that the parties discuss between themselves whether they could agree to settle the matter because, based upon their statements in the conference call, this appeared to me to be a possibility.

On March 28, 2006, Mr. Young wrote to me noting that, as of the time of the conference call, DEC Staff had not intended to reply to Ann Beutel's March 17, 2006 letter, but that during the call I had indicated the letter could be treated as a cross-motion for reconsideration. Mr. Young's letter stated that DEC Staff will withdraw its allegations except for the allegation that Respondent violated and continues to violate 6 NYCRR 360-

13.1(b) by storing more than 1,000 waste tires without a permit.[1] DEC Staff argued that no possible issue exists with regard to Respondent's liability for this violation, by virtue of her owning and controlling the property on which at least 30,000 waste tires are piled. DEC Staff argued that her position that her former tenant might have made it more difficult to remove some unspecified number of tires, and had left an unspecified number of additional tires, did not create an issue subject to adjudication.

Also on March 28, 2006, Ann Beutel sent me a letter by fax stating that she had sent to DEC Staff a "proposal to remedy the issue of the thirty thousand tires located outside of the bermed area." She stated that she had spoken with Mr. Young and had expressed concern that Mr. Jahada had not fulfilled his consent order and had left tires in the yard. Ms. Beutel stated that she had asked DEC Staff to make an additional inspection of the area in question, but that DEC Staff had refused to do so.

Discussion

There is no longer a question regarding who presently owns and controls the Site. The issue identified in the January 30, 2006 ruling was based on that question, but was not limited to that question. The issue was "Respondent's current relation to the Site and any terms of the proposed penalty or remedial actions that may be affected by this issue."

Since the date of the motion, the situation regarding control of the Site (although not ownership), and possibly some Site conditions relevant to this matter, have apparently changed. In addition, both parties have provided documents that were not in the record when I made the January 30, 2006 ruling on the motion for order without hearing. DEC Staff has also withdrawn its allegations except to allege that Respondent violated and continues to violate 6 NYCRR 360-13.1(b) by storing more than 1,000 waste tires without a permit.

A recent ruling on a motion for reconsideration in another case involving an alleged non-compliant waste tire stock pile

[1] The motion for order without hearing also alleged operational violations including the size and arrangement of tire stockpiles, lack of required fire protection measures, and failure to submit certain application materials and reports (see January 30, 2006 ruling).

discussed when reconsideration of a ruling is appropriate (Matter of Pasquale Izzo, et al., Ruling of the Administrative Law Judge, March 28, 2006). As stated in that ruling, reconsideration is appropriate only where the decision maker overlooked or misapprehended the facts or the law, or for some reason mistakenly arrived at an earlier decision. Reconsideration may, however, be used to clarify the underlying decision (Izzo, page 2 - 3).

Neither DEC Staff's motion for reconsideration, nor Respondent's March 17, 2006 correspondence, identify something that I overlooked or misapprehended in the record as it existed as of January 30, 2006, but they identify information and arguments that may need to be taken into account by the Commissioner in arriving at an order in this case. The disputes do not related to Respondent's liability for the alleged violation identified in DEC Staff's March 28, 2006 letter, but do relate to the proposed penalty and remedial actions.

Contrary to DEC Staff's assertion in its March 28, 2006 letter, the Commissioner's authority under Environmental Conservation Law (ECL) 27-1907 with regard to waste tire stockpiles does not deprive Respondent of the right to a hearing regarding the terms of the compliance schedule.

The motion for order without hearing is dated March 11, 2005, over a year ago. This motion requests that the Commissioner order Respondent to begin removing tires no later than June 1, 2005 (two thousand five), with no less than 100 tons of tires being removed in each seven calendar day period. The proposed penalty includes a $3,000 payable penalty but also includes a penalty based upon the amount of tires DEC Staff might need to remove if Respondent fails to comply with the proposed remedial schedule. Due to the passage of time, it is clearly impossible for Respondent to comply with the schedule requested by the motion for order without hearing. There is not a basis in the record, as it stands at present, for me to recommend a new date or schedule. Although the Commissioner might choose to leave it in DEC Staff's discretion to set a compliance schedule, DEC Staff does not automatically have the authority to do so.

The motion papers and DEC Staff's correspondence did not disclose that an order on consent had been issued to Watertown Iron and Metal in February, 2005 concerning at least a portion of the Site. Although Rose Beutel apparently now has control over the Site and Mr. Jahada has vacated the Site, at least some of Mr. Jahada's activities at the Site (and/or those of Watertown Iron and Metal) appear to be relevant to the penalty and remedial

schedule that might be imposed on Respondent in this case. Ann Beutel has made assertions about damage Mr. Jahada did while vacating the Site, and materials he left at the Site, that she argues have complicated Rose Beutel's ability to remove the tires. At least some of this information may be relevant to penalties and a remedial schedule, and would need to be in the record as testimony and/or exhibits in order for the Commissioner to take it into account. It would be more efficient to allow the parties to present their cases, in order to avoid a situation in which I make a recommendation based upon the existing record and it is remanded to me by the Commissioner for additional information she believes is necessary in order to make a decision (see, Matter of Helen and Penelope Agramonte, Decision and Order of the Acting Commissioner, July 19, 2005).

Ruling: Respondent's March 17, 2006 correspondence is considered to be a cross-motion for reconsideration. Both DEC Staff's motion and Respondent's cross-motion are granted to the extent of clarifying the issue that remains in dispute. This issue is what penalty, if any, and remedial actions should be in the order the Commissioner would issue to Respondent Rose Beutel in this matter.

_____/s/_____
April 3, 2006 Susan J. DuBois
Albany, New York Administrative Law Judge

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