STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
625 BROADWAY
ALBANY, NEW YORK 12233-1010

In the Matter

-of-

Alleged Violations of Article 27 of the Environmental Conservation Law of the State of New York and Part 360 of Title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York

-by-

BRIAN F. CONLON and BCD TIRE CHIP MANUFACTURING, INC.,

Respondents.

INTERIM DECISION AND RULINGS OF THE COMMISSIONER ON MOTIONS TO RECUSE THE COMMISSIONER AND THE ADMINISTRATIVE LAW JUDGE, AND RELATED MOTIONS

June 1, 2018

INTERIM DECISION AND RULINGS OF THE COMMISSIONER
ON MOTIONS TO RECUSE THE COMMISSIONER AND THE ADMINISTRATIVE LAW JUDGE, AND RELATED MOTIONS

Staff of the New York State Department of Environmental Conservation (Department or DEC) commenced this enforcement proceeding with the service of a complaint dated July 6, 2016 (2016 Complaint) against Brian F. Conlon and BCD Tire Chip Manufacturing, Inc. (respondents).

Department staff alleged that respondents violated the terms and conditions of a beneficial use determination (BUD) that the Department had issued to them on March 16, 2004 (BUD #783-4-47) (see 2016 Complaint ¶¶ 53-58). The BUD was for the use of tire derived aggregate (TDA) as a subbase for an indoor/outdoor riding area located on a site, formerly known as the Brookhaven Farm riding arena, in the Town of Glenville, Schenectady County, New York (site). Department staff further alleged that respondents' violation of the BUD rendered the TDA a solid waste, that the placement of TDA at the site constituted the illegal disposal of a solid waste, that the site was a noncompliant waste tire stockpile, and that respondents had failed to obtain a Part 360 permit for their activities at the site (see 2016 Complaint ¶¶ 60-68).

Mr. Conlon, on behalf of respondents, filed an answer dated July 20, 2016, which included nineteen discovery requests. Subsequently, by email dated July 27, 2016, Mr. Conlon identified four other items and requested additional information.

By letter dated July 27, 2016, Chief Administrative Law Judge James T. McClymonds assigned Administrative Law Judge (ALJ) Daniel P. O'Connell to this matter.

During the course of this proceeding, respondent Conlon has filed what he has denominated as "appeals" from various rulings of the ALJ, including appeals relating to the recusal of the ALJ and the Commissioner. In addition, respondents have filed other submissions with the Office of the Commissioner critical of the actions of Department staff in this and other matters relating to him.

The governing regulations at 6 NYCRR part 622 (Uniform Enforcement Hearing Procedures) provide that during the course of a hearing, certain rulings may be appealed to the Commissioner on an expedited basis, including:

> "(i) any ruling in which the ALJ has denied a motion for recusal; [and]
> (ii) by seeking leave to file an expedited appeal, any other ruling of the ALJ where it is demonstrated that the failure to decide such an appeal on an expedited basis would be unduly prejudicial to one of the parties, or would result in significant inefficiency in the hearing process. In all such causes, the commissioner's determination to entertain the appeal is discretionary."

6 NYCRR 622.10(d)(2).

Pursuant to the regulations, I may review any ruling of the ALJ on an expedited basis upon my own initiative or upon a determination by the ALJ that the ruling should be appealable (see 6 NYCRR 622.10[d][4]). Based upon my review of the submissions of the parties, and as discussed below, the ALJ's ruling denying respondents' motion for recusal is affirmed on appeal. Respondents' motion for my recusal, as well as respondents' other motions pending before me, are hereby denied. In addition, based on an investigation by the Department's Office of Employee Relations, respondents' charges that Department staff wrongfully modified a consent order are rejected.

Motions for Recusal of the Commissioner and the Administrative Law Judge

On September 9, 2016, respondent Conlon sent a letter to ALJ O'Connell (September 2016 Respondents Letter) by which respondents filed three motions:

(1) a motion to recuse the Commissioner from ruling on this matter;
(2) a motion to recuse all administrative law judges in the State of New York from ruling on this matter; and
(3) a motion requesting that the venue for this proceeding be moved to "an appropriate Federal Court setting" (September 2016 Respondents Letter, at unnumbered page 1).

Respondents argued that the administrative system in New York "can not provide me with a fair trial and due process of law" (id. at unnumbered page 1) and questioned the impartiality of the administrative process and of the State ALJs (id. at unnumbered pages 1-2). Respondent Conlon alleged that many DEC employees "may be determined to have committed civil and criminal crimes," and that the ALJ and the Commissioner by ruling on this matter "may implicate themselves" (id. at unnumbered page 2). Respondent Conlon provided a chronological review of events at a BCD facility that was the subject of a prior enforcement proceeding, as well as events dealing with the site that is the subject of the pending matter, in support of his allegations of illegal and improper activity by Department staff and his argument in favor of recusal of the ALJ and the Commissioner (see generally September 2016 Respondents Letter).

On September 25, 2016, respondent Conlon filed supplemental information in support of respondents' three motions, which he submitted to ALJ O'Connell, in addition to other New York State personnel and to me. He reiterated his position that respondents could not be provided with a fair trial in the Department's administrative law system and again criticized the actions of Department staff. In a subsequent e-mail to the ALJ and me dated October 5, 2016, respondent Conlon questioned the fairness of the proceeding and noted that "[t]he Commissioner is in control of the prosecutor and DEC staff, [and] the ALJ" (email dated October 5, 2016, item no. 4).

The ALJ, in rulings dated October 19, 2016 (October 19, 2016 ALJ Rulings), addressed respondents' motions for recusal, among other matters. The ALJ in the October 19, 2016 Rulings denied respondents' motion to recuse him as the ALJ in this matter (see id. at 5-6) and determined that any motion to recuse all other New York State ALJs was premature (id. at 5). With respect to the motion seeking the Commissioner's recusal, the ALJ noted that I had

received a copy of respondents' motion as well as Department staff's reply and that I would be addressing the request for my recusal (see id.).

By letter dated November 9, 2016 to me and other State government personnel (November 9, 2016 Respondents letter), respondent Conlon filed an appeal with my office from the October 19, 2016 ALJ Rulings with respect to the ALJ's denial of respondents' motion to recuse the ALJ (November 9, 2016 Respondents letter, at 1).[1] On that appeal, respondent Conlon included additional arguments relating to his request for my recusal and for a change of venue. Respondent Conlon reiterated his argument that he cannot receive a fair trial in this proceeding. He set forth a chronology of various staff actions in this proceeding which he states occurred since I became Commissioner, questioned the impartiality of the Office of the New York State Attorney General and the Office of the Governor, and contended that I may be aware, or in charge, of the actions that Department staff has undertaken in this enforcement action (see November 9, 2016 Respondents letter at unnumbered pages 4-5, 7-8).

On November 23, 2016, Department staff filed a reply to respondents' appeal from the October 19, 2016 ALJ Rulings as to the ALJ's recusal (November 23, 2016 Department staff reply). Department staff also addressed respondents' request for my recusal and, as discussed in the following sections, respondents' request for a change in venue and for reversal of a prior DEC enforcement order. Department staff opposed the motions for recusal on the ground that respondents had not demonstrated that the presiding ALJ or the Commissioner had prejudged this matter, had a personal interest in this matter "or has any connection to this matter as an agency prosecutor" (November 23, 2016 Department staff reply at 2). Department staff also contended that the additional arguments that respondents raised on the appeal were not properly before me and, further, were not relevant to the recusal requests (see id. at 3). Respondent Conlon responded to Department staff's reply by letter dated November 30, 2016.

As previously noted, any ruling on which an ALJ has denied a motion for recusal may be appealed to the Commissioner on an expedited basis (see 6 NYCRR 622.10[d][2][i]). The participation of an independent, unbiased adjudicator in the resolution of disputes is an essential element of due process of law, guaranteed by both the federal and New York State Constitutions. The State Administrative Procedure Act (SAPA) also requires that administrative adjudicatory proceedings be conducted in an impartial manner (see SAPA § 303). SAPA further provides for recusal of the presiding hearing officers, including the Commissioner and the ALJ:

> "Upon the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of a presiding officer, the agency shall determine the matter as part of the record in the case, and its determination shall be a matter subject to judicial review at the conclusion of the adjudicatory proceeding" (id.).

The courts, as well as the agency's administrative precedent (see, e.g., Matter of Crossroads Ventures, LLC, Ruling of the Commissioner on the Motion to Recuse the Commissioner, April 29, 2009), have provided further guidance concerning the grounds for disqualification of a Commissioner or an ALJ. A Commissioner or an ALJ would be

[1] Respondent Conlon has reiterated his request for the ALJ's recusal in subsequent submissions (see, e.g., emails dated July 6, 2017 and July 7, 2017 to ALJ O'Connell).

disqualified from presiding in an adjudicatory proceeding where the Commissioner or ALJ suffers a personal bias, prejudice, or other disqualifying factor. These factors include a Commissioner's or ALJ's prejudgment of the facts of a particular case (see Matter of 1616 Second Ave. Rest., Inc. v New York State Liq. Auth., 75 NY2d 158, 162 [1990]), or a financial or personal interest in or relationship to one of the parties in the matter (see Matter of Beer Garden, Inc. v New York State Liq. Auth., 79 NY2d 266, 278 [1992] [applying Judiciary Law § 14 to a commissioner exercising a quasi-judicial function in an administrative adjudicatory proceeding]).

A Commissioner or ALJ would also be disqualified where he or she previously served as the agency prosecutor in the case, whether actively or merely functionally (see id. at 278-279; see also Matter of General Motors Corp. - Delco Prods. Div. v Rosa, 82 NY2d 183, 188-189 [1993]). Absent one of the above grounds for disqualification, whether recusal is warranted falls within the discretion of the decision maker (see Matter of Murphy, 82 NY2d 491, 495 [1993]; People v Moreno, 70 NY2d 403, 405-406 [1987]).

Mere familiarity with the facts without prejudgment does not require disqualification (see Matter of 1616 Second Ave. Rest., 75 NY2d, at 162), nor does a predisposition on questions of law or policy, or advance knowledge of general conditions in the regulated field (see id.). Commissioners and ALJs are expected to be familiar with the subjects of the regulations they administer, and to be committed to the goals of the agency in which they are employed (see id.). Moreover, the mere circumstance that an agency official is employed by the agency, without more, is not a ground for disqualification (see Matter of Whalen v Slocum, 84 AD2d 956 [1981]).

Upon my review of respondents' appeal, motions and other submissions, respondent Conlon fails to identify any ground for the ALJ's or my disqualification in this case, nor does any such ground exist. Furthermore, to the extent that respondent Conlon is suggesting that any communications have occurred between me and Department staff with respect to this proceeding that would be in violation of the ex parte rule (see 6 NYCRR 622.16) and, therefore, a basis for recusal, no such communications have taken place and any suggestion that such communications occurred is incorrect.[2]

Moreover, even assuming without deciding that the ALJ's ruling on respondents' motion to recuse all other New York State ALJs is properly before me on this appeal, the motion is both speculative and irrelevant as no ALJ, other than ALJ O'Connell, is presiding over this proceeding. Respondents have not advanced any argument that would support recusal of ALJs who are not assigned to this proceeding.

Accordingly, the October 19, 2016 ALJ Rulings denying the motion to recuse the ALJ is affirmed, and respondents' motion to recuse the Commissioner is denied.

[2] Furthermore, respondent Conlon's contention that I may have participated in one of the pretrial conferences in this matter (see Respondent Conlon's email dated October 24, 2016) is simply wrong. I have not participated in those conferences nor have I provided any advice to involved Department staff in this proceeding.

Request for Transfer of Venue

Respondents also moved in the September 2016 Respondents Letter for a change of venue. Respondents contended that, to receive a fair trial, "the venue will have to be moved to a Federal Court" (see September 2016 Respondents Letter, at unnumbered page 12). In a subsequent September 25, 2016 submission, respondent Conlon requested that I forward the DEC's administrative complaint against respondents "to a US Court venue so I can receive a fair trial" (September 25, 2016 letter from Respondent Conlon to Commissioner Seggos and other State personnel, at unnumbered page 6).

The ALJ denied this request (see Rulings dated September 8, 2016, at 8 [referencing an earlier denial letter dated August 10, 2016]). As noted by the ALJ, respondents did not identify any legal authority that would authorize the transfer of this matter to a federal venue (see id.). Nor have respondents identified any such legal authority in the motion papers before me. Department staff also notes that respondents failed to identify any authority that allows for a change of venue of this proceeding to a federal court (see November 23, 2016 Department staff reply at 3).

The allegations here involve respondents' violations of a Department-issued beneficial use determination and are within the jurisdiction of the Department's administrative hearings subject to 6 NYCRR part 622 (see 6 NYCRR 622.1[a]; see also ECL 3-0301). To the extent that respondents seek review of the ALJ's denial of the motion to change venue, such review is only by leave of the Commissioner, which is hereby denied (see 6 NYCRR 622.10[d][2][ii]). Moreover, even assuming without deciding that respondents' request to the Commissioner to change venue is properly before me, the request is denied.

November 1, 2010 Consent Order

On January 10, 2017, the ALJ conducted a preliminary hearing to develop a factual record relating to the limits on site inspections of the site, the circumstances relating to the obtaining of an April 2016 administrative search warrant, service of the copy of the April 2016 administrative search warrant, and circumstances relating to a search of the site (Preliminary Hearing). On July 5, 2017, the ALJ issued his rulings on the issues raised at the Preliminary Hearing (July 2017 Rulings).

In the July 2017 Rulings, the ALJ discussed respondents' allegations regarding alleged wrongful alteration by Department staff of a November 1, 2010 consent order (see July 2017 Rulings at 4-8). Respondent Conlon stated that he had, following a telephone conversation with Department staff, inserted the word "not" on the third page of the proposed consent order in the language relating to site access, by which addition respondent Conlon would receive advance notice prior to any onsite access (see July 2017 Rulings at 5). Respondent Conlon acknowledged that he did not advise Department staff of his modification to the language of the consent order (which was effected by respondent Conlon retyping of the third page) when he delivered the signed consent order to Department staff (see id. at 5, 7). He contended that staff subsequently replaced the retyped third page of the consent order with the word "not" excised (id. at 6-7). During the arguments over the alleged alteration of the consent order, Department staff counsel

agreed that an investigation should be conducted with respect to this allegation (see Hearing Transcript, January 10, 2017, at 56).

In the July 2017 Rulings, the ALJ expressed his concerns regarding any alteration of the consent order by both parties but noted that the authority to investigate the matter did not lie with the Office of Hearings and Mediation Services (see July 2017 Rulings at 8). Moreover, the ALJ concluded that any changes to the November 1, 2010 consent order were irrelevant to the present matter because staff was not seeking to enforce any terms or conditions of the consent order in this enforcement proceeding (see id. at 8-9). Accordingly, the ALJ adhered to a prior ruling that the November 1, 2010 consent order was not relevant to this matter (see id.).

Subsequently, on December 12, 2017, Thomas S. Berkman, the Department's Deputy Commissioner and General Counsel, provided Assistant Commissioner for Hearings and Mediation Services Louis A. Alexander (Assistant Commissioner) and me with a memorandum dated August 14, 2017 from Mark Cadrette, the director of the Department's Office of Employee Relations (OER). The OER director stated that, following an investigation, OER "found no credible evidence to support allegations of wrong doing by Department staff," and the investigation was closed on June 7, 2017. The OER director further advised that his office, following the July 2017 Rulings:

> "carefully reviewed the Preliminary Hearing Ruling, conducted a subsequent review of the evidence including a second review of the transcript from the January 10, 2017 Preliminary Hearing. It is our opinion that the Preliminary Hearing Ruling does not provide any basis to change our conclusion that [respondents'] claims were unsubstantiated and that the matter was appropriately investigated and closed."

By letter dated December 14, 2017, the Assistant Commissioner circulated the OER memorandum to the parties. Respondents were authorized to respond to the memorandum and by letter dated December 18, 2017, Department staff requested and was granted an opportunity to reply to respondents' response. Respondents' response was received on January 17, 2018 and Department staff's reply on January 22, 2018. Respondents then filed an unauthorized further submission dated January 23, 2018, as well as two additional emails dated January 24, 2018 and January 25, 2018. For purposes of this interim decision and rulings, I am considering respondents' further submission and the two additional emails and receiving those documents into the hearing record.

Respondent Conlon, in his papers, rejected the findings set forth in the OER memorandum, maintained that the consent order was altered by Department staff, and criticized the thoroughness of the investigation. In its reply, Department staff argued, among other things, that the November 1, 2010 consent order was not relevant to this proceeding, that respondent Conlon's accusations at the Preliminary Hearing consisted simply of unsworn statements, that 6 NYCRR 622.11(a)(1) ("[b]efore testifying, each witness must be sworn or make an affirmation") should have been applied, and that the ALJ should have taken the results of the investigation into account prior to issuing the July 2017 Rulings. Department staff noted that the OER investigation involved interviewing DEC staff in Region 4 and in Central Office "as well as gathering evidence, including obtaining the exhibits from, and a copy of the written stenographic

transcript of, the January 10, 2017 Preliminary Hearing" (Department Staff Reply dated January 22, 2018 at unnumbered page 3).

Suffice it to say, the November 1, 2010 consent order is not relevant to this enforcement proceeding. The violations alleged in the 2016 Complaint are different from the violations resolved by the November 1, 2010 consent order. As noted by the ALJ, Department staff "does not seek to enforce *any* of the terms and conditions outlined in the November 1, 2010 consent order and associated compliance schedule as part of this administrative enforcement matter" (July 2017 Rulings at 9 [emphasis in original]). I concur with Department staff's arguments and with the ALJ's determinations that the document is not relevant to this proceeding (see July 2017 Rulings at 8; Rulings of the ALJ dated September 8, 2016 at 3-4; see also Department Staff Reply dated January 22, 2018 at unnumbered page 2 [November 1, 2010 consent order as irrelevant to the present proceeding]). [3]

Nevertheless, in light of the concerns raised regarding the integrity of the November 1, 2010 consent order, the accusations that respondents raised have been investigated. Department staff counsel's statement at the Preliminary Hearing that an investigation should be conducted was appropriate and proper due to the serious nature of respondents' charges. I note that the ALJ reached his conclusions based on his evaluation of what was available at the time of the Preliminary Hearing.

As stated by the OER director's memorandum, an investigation was conducted prior to and after the issuance of the July 2017 Rulings. The investigation found that respondents' claims were unsubstantiated and no credible evidence supported the accusations concerning the November 1, 2010 consent order. Based on the OER investigation, I reject respondents' accusations of staff wrongdoing in this matter. Consequently, any mention or conclusion of wrongdoing on the part of staff is unsupported and will not be given any consideration in the record of this proceeding.

Furthermore, in the papers before me, respondent Conlon has made various criticisms of staff representing the Department in this enforcement proceeding as well as the ALJ. These criticisms are gratuitous and unfounded. I would assure respondents that there will be a full and fair opportunity to address the allegations contained in the 2016 Complaint in the context of the administrative hearing process and it would be productive if the focus were directed towards the substance of the 2016 Complaint.[4]

[3] No party to this proceeding timely filed a motion for leave to appeal from the July 5, 2017 Rulings.

[4] In its January 22, 2018 reply, Department staff raises several objections regarding the sufficiency of the notice of the Preliminary Hearing and its conduct. However, Department staff did not raise its objections before the ALJ, nor has it sought leave to appeal from the ALJ's July 2017 Rulings. Accordingly, staff's objections are waived and are not presently before me. In any event, inasmuch as issues regarding the November 1, 2010 consent order are irrelevant to this proceeding, the objections are academic.

Dismissal of Prior Commissioner Decision and Order

Respondents also have moved "to reverse Commissioner Martens' . . . Decision and Order made March 26, 2013 [2013 Commissioner Martens Order]" (November 9, 2016 Respondents letter at 1). Department staff, in response to respondents' motion, noted that respondents failed to identify any authority that would allow me to reverse the decision of the State Supreme Court which upheld the 2013 Commissioner Martens Order that addressed environmental violations at another of respondents' facilities (see November 23, 2016 Department staff reply at 3-4). Respondent Conlon, by letter dated November 30, 2016 (November 30, 2016 Respondents letter), indicated that he is not asking me to reverse the decision of the State Supreme Court Judge, acknowledging that I cannot reverse that decision (see November 30, 2016 Respondents letter at 2). He is however asking for the reversal of the 2013 Commissioner Martens Order and the underlying summary report of ALJ Nicholas Garlick (see id.).[5]

The 2013 Commissioner Martens Order addressed allegations that respondent BCD Tire Chip Manufacturing, Inc. (BCD) stored, without a permit, 1,000 or more waste tires in the form of tire derived aggregate (TDA) at its facility located at 16 William Street, Hagaman, New York, in violation of 6 NYCRR 360-13.1(b). The subject of that proceeding involved environmental violations at a different location than the location at issue here. In that earlier proceeding, the Commissioner held that the TDA at BCD's facility constituted waste tires. Because the TDA stockpiled at BCD's facility was derived from more than 1,000 waste tires, BCD was required to obtain a permit for its facility, which it had not done. The Commissioner assessed a civil penalty and directed that respondent BCD remove the TDA from the site. The 2013 Commissioner Martens Order was later upheld on judicial review (see Matter of BCD Tire Chip Manufacturing, Inc. v New York State Dept. of Envtl. Conservation, 40 Misc.3d 1210[A], 975 NYS2d 708, 2013 Slip Op 51089[U] [Sup Ct, Fulton County 2013]).

A Commissioner's order, issued pursuant to 6 NYCRR 622.18, represents a final action of the agency. Following its issuance, no express authority in Part 622 or the Environmental Conservation Law (ECL) provides for the Department to suspend or reconsider the order, or to entertain other post-order motion practice. Although Part 622 authorizes the reopening of the hearing record, this only relates to the period prior to the issuance of a final decision (see 6 NYCRR 622.18[d]). Notwithstanding the foregoing, the Department has recognized its inherent authority to reopen a hearing or otherwise reconsider a final decision (see, e.g., Matter of Pierce, Commissioner Ruling on Motion for Reconsideration, June 9, 1995 [addressing the basis for that authority]). That authority is only exercised in limited circumstances, none of which, based on the arguments that respondents present, apply here.

Furthermore, respondent BCD, as noted, challenged the 2013 Commissioner Martens Order through a combined special proceeding pursuant to CPLR article 78 and an action for declaratory judgment pursuant to CPLR 3001. The court dismissed respondent BCD's petition and dismissed the judicial proceeding. Respondents' effort to circumvent the judicial process by now seeking reconsideration of the 2013 Commissioner Martens Order, notwithstanding the

[5] Respondent Conlon has reiterated this request in other submissions (see, e.g., Respondents letter dated December 19, 2016).

Supreme Court decision, is rejected. Accordingly, to the extent respondents seek reconsideration of the 2013 Commissioner Martens Order, the request is denied.

Motion to Dismiss the 2016 Complaint

It was the parties' understanding that the November 9, 2016 respondents letter also included a motion to dismiss the 2016 Complaint and this understanding was subsequently raised with the ALJ. Although respondents had not requested permission to expand the scope of the November 9, 2016 letter to include any new motions, the ALJ considered the letter as including a motion by respondents to dismiss the 2016 Complaint (see November 9, 2016 Respondents letter, at 1 [item 4]). The ALJ denied the motion, determining that staff's complaint was sufficiently specific to apprise respondents of the charges alleged against them. The ALJ further stated that the "complaint states the relevant regulatory provisions alleged to have been violated, and describes the alleged violations with sufficient particularity to allow respondents to prepare defenses" (Memorandum and Ruling concerning Respondents' Recusal Motion dated December 12, 2016, at 3 [December 12, 2016 Ruling]).

Respondent Conlon filed a motion dated December 19, 2016 for leave to appeal from the December 12, 2016 Ruling insofar as it denied the request to dismiss the 2016 Complaint.[6] Respondents' motion for leave to appeal is denied. Respondents will have the opportunity to contest Department staff's allegations contained in the 2016 Complaint in the administrative hearing.

Motion for a Protective Order

On December 19, 2016, ALJ O'Connell issued a ruling (December 19, 2016 Ruling) that addressed Department staff's motion for a protective order with respect to various items in respondents' discovery request. The ALJ reviewed each discovery request at issue (see December 19, 2016 Ruling at 3-5), and granted staff's motion in part. On December 22, 2016, respondent Conlon filed a motion for leave to appeal[7] from the December 19, 2016 Ruling, contending that each of respondents' discovery requests should have been granted. Nothing in the papers submitted on this motion warrant my granting leave to appeal, and the motion for leave is denied.

[6] Respondents entitled the motion as a "request to appeal" which would be a motion for leave in this circumstance.

[7] Again, respondents entitled the motion as a "request to appeal" which would be a motion for leave in this circumstance.

I hereby direct the ALJ to proceed with the administrative hearing on this matter as expeditiously as possible. If no settlement is reached between the parties that resolves this matter, I will be reviewing the administrative hearing record following the hearing, including but not limited to the ALJ's hearing report, and will then issue my final determination.

For the New York State Department
of Environmental Conservation

By: _____/s/_____
Basil Seggos
Commissioner

Dated: June 1, 2018
Albany, New York