

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

Summary of
July 20, 2021
Conference
and
Scheduling Order

-by-

Brian F. Conlon and
BCD Tire Chip Manufacturing, Inc.,
Respondents.

July 20, 2021

Proceedings

As scheduled, a conference convened at 10:00 a.m. on Tuesday, July 20, 2021, to discuss the status of the captioned matter. Mr. Conlon appeared on behalf of the respondents, and Mr. Jeffery appeared for Department staff. The conference was conducted using the Webex videoconference platform. The conference was recorded, and I provided the parties with the link to the audiovisual recording shortly after the conference concluded.

On behalf of Department staff, Mr. Jeffery said that responses to a set of discover demands dated November 10, 2016 are pending. Staff seeks responses from Mr. Conlon. During the conference, Mr. Conlon said that he no longer has any responsive documents due to the passage of time. Attached to a subsequent email, Mr. Jeffery provided Mr. Conlon and me with a copy of the November 10, 2016 discovery demands.

Referring to the terms and conditions of the Beneficial Use Determination (BUD) and provisions of the Environmental Conservation Law, Mr. Conlon explained why the charges alleged in the complaint should be dismissed. In a subsequent email, Mr. Conlon provided copies of his and other BUDs related to chipped tires, as well as a copy of his email dated August 19, 2018. The August 19, 2018 email concerns Mr. Conlon's motion to dismiss Staff's July 6, 2016 complaint.

During the conference, Mr. Conlon asked me to forward Department staff's copy of the November 1, 2010 Order on Consent to the FBI for a forensic investigation to determine its authenticity. I denied this request and stated further that the Commissioner's June 1, 2018 Interim Decision and Rulings address this issue (at 5-7).

I asked the parties to confer with their respective witnesses to determine their availability to convene the hearing on October 7 and 8, 2021.

Mr. Conlon said that he would be calling members of Department staff as witnesses. I inquired whether Mr. Conlon would be asking me for subpoenas because he is not an attorney (*see* 6 NYCRR 622.10[b][1][iv] and [v]), and he responded affirmatively.

Scheduling Order

By Wednesday, **August 4, 2021**, Mr. Conlon will advise whether he will respond to any of staff's November 10, 2016 discovery demands and, if so, to which ones. If Mr. Conlon will respond, his

responses are due to Department staff by Friday, **August 20, 2021**. I do **not** need to receive any responses to staff's discovery demands.

By **August 31, 2021**, the parties' representatives will advise whether they and their respective witnesses will be available for the adjudicatory enforcement hearing at 10:00 a.m. on Thursday, October 7, 2021. If necessary, the hearing will continue on Friday, October 8, 2021. The hearing will be in-person, and will convene at the Department's Central Office located at 625 Broadway, Albany, New York 12233. The conference room for the hearing will be determined.

By Friday, **September 3, 2021**, Mr. Conlon will provide me with a list of the names of the people for whom he seeks subpoenas. For each individual, Mr. Conlon will provide a brief summary of the scope of that person's testimony, and explain how the testimony is relevant to the charges outlined in the July 6, 2016 complaint.

By Friday, **September 3, 2021**, Department staff will identify staff's witnesses.

Staff's objections related to the people for whom Mr. Conlon seeks subpoenas are due by Wednesday, **September 8, 2021**. Mr. Conlon's response to Staff's objections is due by Monday, **September 13, 2021**.

/s/

Daniel P. O'Connell
Administrative Law Judge
daniel.oconnell@dec.ny.gov

Dated: July 20, 2021
Albany, New York