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NEW YORK STATE:  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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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.

Modifications to the  
October 21, 2016  
Scheduling Order

DEC Case No.:  
CO4-20150520-119

November 29, 2016

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**Proceedings**

In response to the Department's July 6, 2016 complaint, Mr. Conlon filed an answer dated July 20, 2016. Among other things, the July 20, 2016 answer included 19 discovery requests. By letter dated July 27, 2016, Department staff requested an extension of time to respond to the discovery demands in order to file motions pursuant to 6 NYCRR 622.7. Over Mr. Conlon's objection, I suspended the time prescribed in the regulations for filing motions with respect to discover until after the pre-hearing conference, which had been scheduled for August 10, 2016.

With a letter dated October 24, 2016, I circulated a Scheduling Order for Discovery dated October 21, 2016. Among other things, the scheduling order set the following two dates. By November 23, 2016 at 3:30 p.m., the parties were required to file motions for protective orders. The scheduling order provided for electronic filing. By November 30, 2016, the parties are required to file hard copies of responses to non-disputed discover demands.

With a cover letter dated November 23, 2016, Department staff filed a motion for protective order, and served Mr. Conlon by certified mail, return receipt requested. In addition, Department staff provided Mr. Conlon with a copy of the reply to the appeal from the October 19, 2016 ruling concerning the recusal motion.

By letter dated November 28, 2016, Department staff requested an extension of the deadline for service of discovery responses from November 30, 2016 to December 7, 2016. In an email dated November 29, 2016, Mr. Conlon objected.

Subsequently by email dated November 29, 2016, Mr. Conlon said that he received the November 23, 2016 motion for protective order on November 29, 2016. In his November 29, 2016 email, Mr. Conlon objected to the manner in which staff served the November 23, 2016

motion, and noted that the established practice was to serve papers electronically given the costs associated with making hard copies and distributing them by mail. Mr. Conlon observed that he lost six days to respond with this method of service. Mr. Conlon asserted that this delay has prejudiced him, and requested that I strike the Department's November 23, 2016 motion. According to the October 21, 2016 scheduling order responses to protective orders are due by December 9, 2016.

### **Rulings**

The following rulings modify the October 21, 2016 scheduling order.

#### **I. November 23, 2016 Motion for Protective Order**

The September 8, 2016 ruling (at 3) permitted the service of motions and the exchange of other filings via electronic means, except for motions served upon the Commissioner. The October 21, 2016 scheduling order contemplated that the parties would serve motions for protective orders by electronic means.

I deny Mr. Conlon's request to strike the Department's November 23, 2016 motion for protective order. However, I will extend the time to respond by six days from December 9, 2016 to December 15, 2016. Service of any response must be by email.

#### **II. Responses to Non-disputed Discovery Demands**

I deny Department staff's request to extend the time to respond to the non-disputed discovery demands from November 30, 2016 to December 7, 2016. Rather, I will grant a short extension to Friday, December 2, 2016.

Department staff has been aware of Mr. Conlon's discovery requests since July 20, 2016. I have previously granted one extension. I appreciate that a new attorney has been assigned to the matter. However, based on the November 23, 2016 motion for protective order, the non-disputed discovery requests are limited to Nos. 10, 11, 12, and 19. The remaining discovery requests filed by Mr. Conlon are the subject of the November 23, 2016 motion.

The October 21, 2016 scheduling order requires the production of hard copies. Department staff shall provide hard copies to Mr. Conlon by overnight delivery.

#### **III. The Department's November 23, 2016 Reply**

With the Department's November 23, 2016 motion for protective order, Department staff also included a copy of the reply to Mr. Conlon's appeal from the October 19, 2016 ruling concerning the recusal motion. In his November 29, 2016 email, Mr. Conlon requested that I

strike the Department's November 23, 2016 reply because he received it by mail, rather than electronically.

I deny this request. Service of the Department's November 23, 2016 reply to the appeal from the October 21, 2016 ruling by mail does not prejudice Mr. Conlon. Because the motion is before the Commissioner, all submissions must be in hard copy. In addition, the parties were not authorized to file any other submissions concerning the recusal motion.

\_\_\_\_\_/s/\_\_\_\_\_  
Daniel P. O'Connell  
Administrative Law Judge

Dated: Albany, New York  
November 29, 2016

To: Brian F. Conlon  
305 Bolt Road  
Scotia, New York 12302  
Email: [tiremanbri@aol.com](mailto:tiremanbri@aol.com)

Kenson Jeffrey, Esq.  
Senior Attorney  
Office of General Counsel  
New York State Department of Environmental Conservation  
625 Broadway, 14<sup>th</sup> Floor  
Albany, New York 12233-1550  
Email: [kenson.jeffrey@dec.ny.gov](mailto:kenson.jeffrey@dec.ny.gov)