

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violations
of Articles 15, 17 and 24 of the New York
State Environmental Conservation Law, and
Parts 608 and 663 of Title 6 of the
Official Compilation of Codes, Rules and
Regulations of the State of New York (6
NYCRR),

by

ANTHONY COSTA,
TERRYANN GAGLIARDI,
KATHLEEN A. KRIEG,
ALFRED GALPINE,
CLOVER DRAINAGE, INC. and
JOHN IPPOLITO TRUCKING & EXCAVATION,
INC.,

RULING ON MOTION TO
COMPEL DISCOVERY AND
SCHEDULING

DEC# R2-20050622-187
R2-20050622-188 and
R2-20060718-296

May 7, 2008

Respondents.

SUMMARY

This ruling: (1) grants respondents Kathleen A. Krieg's and Alfred Galpine's motion to compel discovery; and (2) sets a schedule for concluding the hearing on civil penalty amount and possible remediation in this matter.

PROCEDURAL HISTORY

This is the fifth ruling in these two consolidated administrative enforcement cases involving unpermitted activities behind two homes located at 123 and 131 Keating Street, Staten Island. For a detailed procedural history of this matter, please refer to the four prior rulings. The caption has been amended to reflect the consolidation of the cases.

In summary, the first ruling (dated July 28, 2006) addressed DEC Staff's first motion for order without hearing and found DEC Staff had proven 24 of 71 alleged violations against seven respondents for actions at the site. DEC Staff subsequently dropped the 47 unproven violations. The second ruling (dated December 13, 2006) determined that a question of fact existed as to whether or not Terry Ann Gagliardi had been served with the October 3, 2005 complaint. DEC Staff subsequently re-served her. The third ruling (dated April 6, 2007) denied Ms. Gagliardi's

request for additional time to answer and determined her liable for eight violations alleged in the October 3, 2005 complaint. The fourth ruling (dated December 11, 2007) addressed DEC Staff's second complaint for violations occurring after the first complaint and found DEC Staff had proven seventeen of the twenty four violations alleged.

Following my Ruling on Motions dated December 11, 2007, counsel for respondents Krieg and Galpine served its first notice for discovery and inspection on December 17, 2007. This notice contained four discovery demands of DEC Staff.

Several conversations occurred between DEC Staff and counsel for the respondents regarding these discovery demands and several requests for extension of time to serve a response were agreed to.

By letter dated March 18, 2008, DEC Staff withdrew the unproven violations alleged in the second complaint and requested that an administrative hearing be convened on the civil penalty amount and remediation at the site on the violations proved in both the first and second complaint.

By papers dated March 18, 2008, DEC Staff counsel responded by objecting to the first two discovery demands on the grounds that the requests were vague, ambiguous, and sought documents which are neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

By papers dated March 27, 2008, counsel for respondents Krieg and Galpine moved to compel discovery on its first two discovery demands.

By affirmation dated April 7, 2008, DEC Staff counsel opposed respondents' motion to compel.

By papers dated April 15, 2008, counsels for respondents Krieg and Galpine filed two unauthorized reply affirmations.

By letter dated April 17, 2008, DEC Staff requested that the reply affirmations be ignored because they were filed without the permission of the ALJ, in contravention of 6 NYCRR 622.6(c)(3)).

By papers dated April 21, 2008, respondent Anthony Costa supported the motion of the respondents Krieg and Galpine. In his papers, Mr. Costa requested the ALJ to help him obtain counsel in this matter and that the ALJ order an investigation

into the alleged illegal discharges in the area of the violations.

DISCUSSION

This ruling addresses the discovery dispute and sets a schedule for moving this case toward completion.

Discovery Dispute

Counsel for respondents Krieg and Galpine have moved to compel DEC Staff to respond to the following discovery demands:

1. Copies of any and all citations or notices of violations issued by DEC to Staten Island University Hospital along with copies of any and all correspondence, reports, memoranda or similar document related to said hospital.
2. Copies of any and all reports, inspection reports or written determinations by DEC, or anyone working of DEC's behalf or at its direction, regarding the discharge of any material in violation of DEC rules and regulations by Staten Island University Hospital.

DEC Staff objects to these discovery demands on the grounds that the requests were vague, ambiguous, and sought documents which are neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

While this information may or may not be relevant to the civil penalty amount, it certainly could be relevant to the remediation the Commissioner may ultimately order for this site.

If the respondents are able to prove (as they allege) that odors emanated from filled area, and that those odors were caused by the illegal discharge of medical and/or hazardous waste, and that this waste came from Staten Island University Hospital, and that waste continues in the filled wetland areas, this information will be extremely relevant with respect to the type of remediation that may be ordered. Because this discovery request is aimed at establishing these allegations of the respondents, the discovery demands are neither vague nor ambiguous and may lead to admissible evidence related to the remediation of the site.

RULING: Respondents motion to compel is granted and DEC Staff is directed to respond within 20 days.

Mr. Costa's Submission

By papers dated April 21, 2008, respondent Anthony Costa supported the motion of the respondents Krieg and Galpine. In his papers, Mr. Costa continues to assert that the filled wetland area was where the Staten Island University Hospital, and possibly others, illegally discharged waste and that exposure to this waste could be the cause of his wife's multiple illnesses. He argues that there is now buried hospital waste where remediation may be ordered. He states he is able to prove that a "mini-Love Canal" exists in the filled area and that he can identify the responsible parties. He concludes that DEC Staff turned a blind eye to this contamination.

Mr. Costa makes two requests in his letter that need to be addressed. First, Mr. Costa states that, due to his incarceration, he does not have funds to secure legal representation and asks for assistance from DEC and the Office of Hearings and Mediation Services. Neither DEC nor the Office of Hearings provides counsel to respondents or other parties in administrative hearings. These hearings are civil in nature. Mr. Costa's request for assistance in obtaining counsel is denied. Second, Mr. Costa requests that a scientific investigation be performed to verify contamination in the filled area and to explore whether contaminants continue to enter the area. Again, Mr. Costa's request is denied, because I do not have the authority order such an investigation.

Scheduling

In its letter of March 18, 2008, DEC Staff withdrew the unproven allegations and stated it was ready for a hearing on the civil penalty amount and remediation at the site. Before the hearing can be convened several steps must be completed. Accordingly, pursuant to 6 NYCRR 622.10, I establish the following schedule.

Discovery

As discussed above, DEC Staff shall respond to respondents Krieg and Galpine's discovery demand within twenty days. In addition, all parties shall make their final discovery demands no later than May 30, 2008. Any discovery demands made after May 30, 2008 shall be made only with the approval of the ALJ and, when requesting the ALJ's approval, any party seeking late

discovery shall explicitly explain why such discovery demand was not more timely made.

DEC Staff Submission

On or before, June 6, 2008, DEC Staff shall submit to the ALJ, with copies to all parties, the following information:

(1) The identity of all witnesses it plans to call at the administrative hearing and a brief summary of these witnesses expected testimony. DEC Staff shall also estimate the length of time its direct case will take.

(2) DEC Staff shall identify two series of possible dates for the administrative hearing. One series of dates shall be in July and the other in August, 2008. DEC Staff will also identify the hearing location and make any necessary arrangements.

(3) DEC Staff shall explicitly state the amount of civil penalty sought from each respondent as well as any proposed remediation to be completed at the site.

The purpose of this submission is not to bind DEC Staff, but rather to place the respondents on notice of information important to this matter.

Next Steps

Following DEC Staff's submission, the parties will have until June 16, 2008 to object to DEC Staff's proposed hearing dates. Following this, I will issue a notice of hearing, setting forth the date, time, and place for the administrative hearing.

/s/

May 7, 2008
Albany, New York

P. Nicholas Garlick
Administrative Law Judge

John K. Urda, Esq.
Assistant Regional Attorney
NYSDEC Region 2
47-40 21st Street
Long Island City, NY 11101-5407

Peter Sullivan, Esq.
Sullivan Gardner, PC
475 Park Avenue
New York, NY 10016
Attorney for Alfred Galpine and Kathleen A. Krieg-Galpine

Mr. Alfred Galpine
131 Keating Street
Staten Island, NY 10309

Ms. Kathleen A. Krieg-Galpine
131 Keating Street
Staten Island, NY 10309

Mr. Anthony Costa
Reg. No. 35257-054
L.S.C.I. Allenwood,
P.O. Box 1000
White Deer, PA 17887

Ms. Terryann Gagliardi
123 Keating Street
Staten Island, NY 10309

Mr. Thomas J. Kearns
Clover Drainage, Inc.
129 Whitman Avenue
Staten Island, NY 10308

John Ippolito
John Ippolito Trucking and Excavating, Inc.
87 Delaware Avenue
Staten Island, NY 10304