

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),

RULING ON MOTION TO
COMPEL DISCOVERY

by

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

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

July 3, 2008

Respondents.

SUMMARY

This ruling denies the motion to compel discovery brought by Respondent Anthony Costa for documents that Staff of the Department of Environmental Conservation (DEC Staff) states it does not possess.

PROCEDURAL HISTORY

This is the sixth 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 five prior rulings.

By papers dated May 23, 2008, Respondent Anthony Costa moved for discovery and production of documents from DEC Staff. While the document is entitled "motion" it is really a discovery demand. Included with his motion was a document entitled "Affidavit", but this document lacked a signature.

By papers dated June 6, 2008, DEC Staff responded that it had no documents in its custody or control responsive to the specific discovery requests made by Mr. Costa.

By letter dated June 16, 2008, DEC Staff informed the

parties and the ALJ that it had conducted a search for any additional records or recollection on the part of relevant DEC Staff members in this matter and found none.

By papers dated June 18, 2008, Mr. Costa moved to compel DEC Staff to provide the discovery requested in his May 23, 2008 papers.

By papers dated June 24, 2008, DEC Staff counsel filed an affirmation in opposition to Mr. Costa's motion.

DISCUSSION

Mr. Costa's May 23, 2008 discovery demand requested documents in nine specific categories. DEC Staff's June 6, 2008 response and June 16, 2008 letter to the nine discovery demands stated that it had no documents responsive to the discovery demands in its possession, custody or control.

Mr. Costa, in his June 18, 2008 motion to compel, restates his allegation that illegal discharges from Staten Island University Hospital occurred for decades in the area where the unpermitted filling occurred on his wife's property. He further alleges that DEC Staff may be covering up its involvement in aiding and abetting the Hospital in this discharge. No proof of this allegation is provided.

DEC Staff, in its affirmation in opposition to the motion, restates that it has no documents in its custody or control responsive to the specific discovery requests made by Mr. Costa. DEC Staff continues that Mr. Costa's allegations are unsubstantiated and improperly raised in this action, which is now solely concerned with the penalty determination.

RULING

Mr. Costa's motion to compel discovery is denied. DEC Staff counsel states that it does not have documents in its custody or control responsive to this demand. Because there are no documents to compel disclosure of, the motion is moot and, therefore, denied.

July 3, 2008
Albany, New York

_____/s/
P. Nicholas Garlick
Administrative Law Judge

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