

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violations of Articles 17 and 71 of the Environmental Conservation Law ("ECL"), Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR"), and Article 12 of the Navigation Law,

**RULING OF THE CHIEF
ADMINISTRATIVE LAW
JUDGE**

DEC File No.
3-410667

- by -

March 14, 2012

**FISHKILL PROPERTY, LLC., BOTTINI
STATION HOLDINGS, LLC., MARK
BOTTINI, ANTHONY BOTTINI, and BRIAN
BOTTINI,**

Respondents.

Appearances of Counsel:

-- Steven C. Russo, Deputy Commissioner and General Counsel (Scott W. Caruso of counsel), for staff of the Department of Environmental Conservation

-- Daniels & Porco, LLP (S. David Devaprasad and Heather N. Justice of counsel), for respondent Fishkill Property, LLC

-- Wichler and Gobetz, P.C. (Kenneth Gobetz of counsel), for respondents Bottini Station Holdings, LLC, Mark Bottini, Anthony Bottini, and Brian Bottini

RULING OF THE CHIEF ADMINISTRATIVE LAW JUDGE ON MOTIONS

In accordance with the decision of the Chief Administrative Law Judge issued in Matter of Route 52 Property, LLC, et al. (and seven other proceedings) dated March 14, 2012, it is hereby ORDERED that:

I. Department staff's motion, insofar as it seeks to exclude statements of settlement negotiations contained in respondent Fishkill Property, LLC's March 28, 2011, answer, is granted in part. Department staff's motion to exclude is otherwise denied.

II. Respondent Fishkill Property, LLC's March 28, 2011, answer is redacted as follows:

A. Page 6, paragraph 44: All text following "(AST Site Owners)" through the end of the paragraph is struck;

B. Pages 6-7, paragraph 45: All text following "(Discussion Period)" through the end of the paragraph is struck;

C. Page 7: Paragraph 47 is struck in its entirety;

D. Page 8, paragraph 51: All text following "discussions regarding resolution of the compliance issues" through the end of the paragraph is struck;

E. Page 9, paragraph 57: The second sentence beginning "The Department further" and ending "to be posted." is struck in its entirety;

F. Page 10: Paragraph 61 is struck in its entirety;

G. Page 11: Paragraph 63 is struck in its entirety; and

H. Page 11, paragraph 66: In the first sentence, the clause "as part of its" through "certain liability releases," is struck.

III. Department staff's motion, insofar as it seeks to strike affirmative defenses pleaded in respondent Fishkill Property, LLC's March 28, 2011, answer, is granted in part and respondent's first, second, fourth, fifth, sixth, seventh, eighth, tenth, and eleventh affirmative defenses are dismissed. Department staff's motion to strike affirmative defenses is otherwise denied.

IV. Department staff's motion, insofar as it seeks clarification of affirmative defenses pleaded in respondent Fishkill 82 Property, LLC's March 28, 2011, answer, is denied.

V. Department staff's motion, insofar as it seeks to exclude statements of settlement negotiations contained in the April 4, 2011, answer jointly filed by respondents Bottini Station Holdings, LLC, Mark Bottini, Anthony Bottini, and Brian Bottini (Bottini respondents) is granted in part. Department staff's motion to exclude is otherwise denied.

VI. The Bottini respondents' April 4, 2011, answer is redacted as follows:

- A. Page 6, paragraph 44: All text following "(AST Site Owners)" through the end of the paragraph is struck;
- B. Pages 6-7, paragraph 45: All text following "(Discussion Period)" through the end of the paragraph is struck;
- C. Page 7: Paragraph 47 is struck in its entirety;
- D. Page 8, paragraph 51: All text following "discussions regarding resolution of the compliance issues" through the end of the paragraph is struck;
- E. Page 9, paragraph 57: The second sentence beginning "The Department further" and ending "to be posted." is struck in its entirety;
- F. Page 10: Paragraph 61 is struck in its entirety;
- G. Page 11: Paragraph 63 is struck in its entirety; and
- H. Page 11, paragraph 66: In the first sentence, the clause "as part of its" through "certain liability releases," is struck.

VII. Department staff's motion, insofar as it seeks to strike affirmative defenses pleaded in the Bottini respondents' joint answer dated April 4, 2011, is granted in part. Respondents' second, fourth, fifth, sixth, seventh, eighth, tenth, and eleventh affirmative defenses are dismissed. The first affirmative defense pleaded by respondents Bottini Station Holdings, LLC, Anthony Bottini, and Brian Bottini is dismissed. Department staff's motion to strike affirmative defenses is otherwise denied.

VIII. Department staff's motion, insofar as it seeks clarification of affirmative defenses pleaded in the Bottini respondents' April 4, 2011, answer, is denied.

_____/s/_____
James T. McClymonds
Chief Administrative Law Judge

Dated: March 14, 2012
Albany, New York