

**STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of the Alleged Violations
of Article 15 of the Environmental
Conservation Law ("ECL") and Part 673 of
Title 6 of the Official Compilation of
Codes, Rules and Regulations of the
State of New York ("6 NYCRR"),

**RULING ON MOTION TO
AMEND PLEADINGS**

DEC Case No.
CO3-20070201-2

- by -

**VILLAGE OF FLORIDA, TOWN OF
CHESTER, and COUNTY OF ORANGE,**

Respondents.

Appearances of Counsel:

- Alison H. Crocker, Deputy Commissioner and General Counsel (Robyn M. Adair of counsel), for the Department of Environmental Conservation
- Bernard I. Kunert, for respondent Village of Florida (no submissions)
- Benjamin Ostrer, Town Attorney, for respondent Town of Chester (no submissions)
- David L. Darwin, County Attorney, for respondent County of Orange (no submissions)

PROCEEDINGS

Staff of the Department of Environmental Conservation ("Department") commenced this administrative enforcement proceeding by service of a notice of hearing and complaint dated April 27, 2007. In its complaint, Department staff alleges that respondents Village of Florida, Town of Chester and County of Orange own a structure know as the Glenmere Lake Dam (State Dam ID No. 179-0460) located at the north end of Glenmere Lake in the Town of Chester. The complaint further alleges that respondents failed to operate and maintain the dam in a safe condition in violation of Environmental Conservation Law ("ECL") § 15-0507, and that respondents conducted repairs on the dam without a

permit in violation of ECL 15-0503(1) and 6 NYCRR 608.9.

Respondents each filed answers. The Village's answer is dated May 10, 2007, the Town's answer is dated May 7, 2007, and the County's answer is dated May 25, 2007.

On September 12, 2007, Department staff filed the present notice of motion and motion to supplement or amend pleadings. In its motion, Department staff seeks leave, pursuant to 6 NYCRR 622.5(b), to amend its complaint to add the Town of Warwick as an additional party to this proceeding.

Also, on September 12, 2007, Department staff served its motion upon respondents by certified mail. Thus, respondents had until September 24, 2007 to file a response.¹ No submissions have been received on the motion.

DISCUSSION

Under the Department Uniform Enforcement Hearing Procedures (6 NYCRR part 622 ["Part 622"]), a party may amend its pleading once without permission at any time before the period for responding expires (see 6 NYCRR 622.5[a]). Thereafter, consistent with the CPLR, a party may amend its pleading at any time prior to the final decision of the Commissioner by permission of the Administrative Law Judge ("ALJ") or the Commissioner, and absent prejudice to the ability of any other party to respond (see 6 NYCRR 622.5[b]). Where, as here, no ALJ has been assigned to the case, the motion is made to the Chief ALJ (see 6 NYCRR 622.6[c][1]).

Pursuant to the CPLR, a party may amend its pleading at any time by leave of court or by stipulation of all parties (see CPLR 3025[b]). Leave to amend shall be freely given upon such terms as may be just, including the granting of continuances (see id.).

¹ In its notice of motion, staff indicated that respondents had five days to respond to the motion (see 6 NYCRR 622.6[c][3]). However, under the Department's Uniform Enforcement Hearing Procedures, where, as here, a motion is served upon respondents by ordinary mail, five days are added to the prescribed response period (see 6 NYCRR 622.6[b][2][i]). Because the tenth day fell on a Saturday, respondents had until Monday, September 24, 2007, to serve a response (see 6 NYCRR 622.6[b][1] [incorporating by reference General Construction Law § 20]).

Except where otherwise prescribed by law or order of the court, an answer or reply to an amended pleading is required if an answer or reply is required to the pleading being amended (see CPLR 3025[d]). Service of such an answer or reply shall be made within twenty days after service of the amended pleading to which it responds (see id.). Pursuant to Part 622, a respondent has twenty days after receipt of the amended pleading to serve an answer (see 6 NYCRR 622.4[a]).

On this motion, Department staff seeks leave to amend its complaint to add the Town of Warwick as a respondent. Department staff states that based upon tax maps obtained from respondent Orange County, the Town of Warwick may be a part owner of the subject dam (see ECL 15-0507[1]).

No party filed submissions opposing Department staff's motion. Thus, no prejudice is argued, nor is any prejudice apparent. The motion, which was made prior to the filing of a statement of readiness for adjudicatory hearing or any other motion practice, is brought on sufficiently early in pleading stage to allow each party an adequate opportunity to respond to staff's allegations. Accordingly, Department staff's motion should be granted.

RULING

Department staff's motion for leave to amend the complaint in the above captioned proceeding to add the Town of Warwick as an additional party is granted. Department staff shall serve the amended complaint upon all parties pursuant to 6 NYCRR 622.3(a)(3). All parties shall have twenty (20) days after receipt of the amended complaint to file an answer, unless such time to answer is extended by Department staff or by a ruling of the ALJ.

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

Dated: September 26, 2007
Albany, New York

cc: (via FIRST CLASS MAIL)

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