

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

In the Matter of the Alleged Violations
of Articles 17, 27 and 71 of the
Environmental Conservation Law, and Part
360 of Title 6 of the Official
Compilation of Codes, Rules and
Regulations of the State of New York,

**RULING ON MOTION TO
AMEND PLEADINGS**

DEC Case No.
R3-20041028-14

- by -

RAYMOND S. HANABURGH,

Respondent.

Appearances of Counsel:

- Alison H. Crocker, Deputy Commissioner and General Counsel (Steven Goverman, Assistant Regional Attorney, Region 3), for the Department of Environmental Conservation
- Raymond S. Hanaburgh, respondent pro se (no submissions)
- Jacobowitz and Gubits, LLP (J. Benjamin Gailey of counsel), for intervenor Town of Warwick (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 July 6, 2005. In that complaint, Department staff alleged that respondent Raymond S. Hanaburgh operated a solid waste management facility located at 107 Penaluna Road, Town of Warwick, in violation of various solid waste management laws and regulations, and water pollution control laws. The violations were based upon allegations that respondent processed and stored wood wastes at the site.

After an adjudicatory hearing, Administrative Law Judge ("ALJ") P. Nicholas Garlick issued a ruling holding respondent liable for operating a solid waste management facility without appropriate Departmental approval in violation of Environmental Conservation Law ("ECL") § 27-0707 and section 360-1.7(a)(1)(i)

of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR") (see Ruling on Liability and Party Status, Sept. 29, 2006). The ALJ further held that Department staff failed to prove the water pollution control law violation. The ALJ directed that a hearing be held on the issue of penalty and appropriate remedial relief. Intervenor Town of Warwick was joined as a party for the penalty phase of the proceeding.

The matter was subsequently reassigned to the undersigned ALJ, and a hearing convened on April 19, 2007, on the issue of penalty and appropriate remediation. During the hearing, respondent stated that he had sold the subject property to a third party. The proceeding was adjourned to allow staff to investigate the current ownership status of the site.

On September 18, 2007, Department staff moved to amend its complaint in this matter to add Ryanco, LLC as a respondent, and for permission to serve the amended complaint upon Ryanco. Attached to staff's motion is a proposed amended complaint. No submissions were received in response to Department staff's motion.

DISCUSSION

Under the Department's 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 ALJ or the Commissioner, and absent prejudice to the ability of any other party to respond (see 6 NYCRR 622.5[b]).

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.).

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 Ryanco, LLC as a respondent. Department staff states that it conducted a title search and determined that the property was conveyed to Ryanco by deed dated February 13, 2007. Staff further asserts that, on information and belief, Ryanco did not participate in the deposition and storage of the solid waste at the site. However, by purchasing the site, staff alleges that Ryanco has become the owner and operator of an unpermitted solid waste management facility and a necessary party to this proceeding with respect to the injunctive relief sought in the complaint.

Department staff also notes that consistent with ALJ Garlick's ruling on liability, staff has withdrawn the cause of action alleging that respondent Hanaburgh violated water quality standards.

No party filed submissions opposing Department staff's motion. Thus, no prejudice is argued, nor is any prejudice apparent. The motion is being made during an adjournment in the proceeding and no hearings are presently scheduled. Accordingly, respondent Hanaburgh and Ryanco will have ample opportunity to respond to the amended complaint if staff's motion is granted. Accordingly, Department staff's motion should be granted.

RULING

Department staff's motion for leave to amend the complaint in the above captioned proceeding as proposed is granted, and Ryanco, LLC is added as an additional respondent to this proceeding. Department staff shall serve the amended complaint upon all parties pursuant to 6 NYCRR 622.3(a)(3). All respondents 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: October 29, 2007
 Albany, New York

TO: (via Certified Mail)

Mr. Raymond S. Hanaburgh
P.O. Box 181
Highland Mills, NY 10930

J. Benjamin Gailey, Esq.
Jacobowitz and Gubits, LLP
158 Orange Avenue
P.O. Box 367
Walden, NY 12586-0367

(via Regular Mail)

Steven Goverman, Esq.
Assistant Regional Attorney
New York State Department of Environmental Conservation
Region 3
21 South Putt Corners Road
New Paltz, NY 12561-1696