

STATE OF NEW YORK : DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

JAMAICA RECYCLING, INC.,  
MICHAEL BELLINO, and  
STEPHEN BELLINO,  
individually and as officers of  
Jamaica Recycling, Inc.,

Respondents

RULING ON MOTION  
TO VACATE

DEC File Nos.  
R2-0136-97-08  
R2-0204-97-10  
R2-0287-97-12  
R2-1999-1105-162 and  
R2-20030709-171

April 20, 2004

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This ruling is in response to the April 9, 2004 motion by the Department of Environmental Conservation (DEC) Staff to vacate the ruling I made on March 8, 2004. The March 8, 2004 ruling was in response to the January 23, 2004 motion by Jamaica Recycling, Inc., Michael Bellino and Stephen Bellino (Respondents) to have a hearing scheduled expeditiously in this matter. The March 8, 2004 ruling stated that a hearing would be scheduled in this case, taking into account the schedules of the parties. The ruling also asked the parties to provide information on their schedules in April and May, 2004, and estimates of how long the hearing might take. On March 10, 2004, Respondents provided the requested scheduling information.

On March 17, 2004, DEC Staff moved for leave to appeal the ruling pursuant to section 622.10(d)(2)(ii) of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR). That section allows for parties to seek leave to file with the Commissioner expedited appeals of rulings of the Administrative Law Judge (ALJ) under circumstances identified in that section. The Commissioner's decision to entertain such appeals is discretionary.

Respondents replied to the motion on March 25, 2004. The response did not oppose Staff's request for leave to appeal, but proposed an alternative hearing process under which the hearing would be bifurcated. An initial hearing would be held during the next two months to address limited operational issues and the remainder of the hearing, including issues associated with the amount of a possible penalty, could occur later after DEC Staff had additional time to prepare. On March 26, 2004, DEC Staff submitted a letter stating that, without compromising or negating its previous arguments now before the Commissioner, DEC Staff could be available for the hearing on specified dates in May 2004.

On April 2, 2004, Louis A. Alexander, Assistant Commissioner for Hearings and Mediation Services, wrote to the parties stating that the Commissioner had directed him to arrange a conference phone call with the parties, Chief ALJ James T. McClymonds and ALJ

Susan J. DuBois to attempt to reach a consensus on hearing dates and procedures. The conference phone call took place on April 7, 2004. Assistant Commissioner Alexander, Chief ALJ McClymonds, ALJ DuBois, counsel for Respondents James P. Rigano, Esq., DEC Regional Attorney Louis P. Oliva, Esq., and Assistant Regional Attorney John Nehila, Esq. participated in the conference phone call.

During the conference call, Mr. Nehila stated that DEC Staff would agree to start the hearing on the dates identified in DEC Staff's letter, but would also request that I vacate the March 8, 2004 ruling. Neither party wished to proceed with a bifurcated hearing. April 9, 2004 was identified as the date for DEC Staff to move to vacate the March 8, 2004 ruling, with April 14, 2004 as the date for Respondents to reply to the motion for vacatur. There was discussion of what dates were available for the hearing on the calendars of the parties and the ALJ.

On April 9, 2004, DEC Staff submitted a motion to vacate the March 8, 2004 ruling. The motion stated that an ALJ has authority to rule on a vacatur motion and discussed provisions of 6 NYCRR Part 622 and the Civil Practice Law and Rules that govern or provide guidance on the procedures and grounds for such motions. DEC Staff argued that, in view of the agreement on hearing dates, Respondents would not be prejudiced by vacatur of the ruling. DEC Staff also stated that the ruling is essentially moot but for the impact that it may have on future DEC enforcement efforts, which would cause Staff to continue pursuing its appeal if the ruling is not vacated, leading to an inefficient expenditure of time.

Respondents replied on April 14, 2004, stating that DEC Staff had not shown why the ruling should be vacated. Respondents also stated that very recently, Jamaica Recycling had a new business development that reduced the company's need for an expedited hearing and that also might lead to settlement of the enforcement action. Respondents did not describe the nature of the new business development. Respondents asked that the ruling not be vacated, that DEC Staff be required to proceed with its appeal, and, based on the new business development, that the hearing not proceed in May 2004. Respondents did not propose any new dates or the approximate length of an adjournment.

DEC Staff replied to the April 14, 2004 letter on April 15, 2004. This reply stated that Respondents had presented a proposal earlier in the week and that DEC Staff had responded by making a new settlement offer but had indicated that if an agreement was not reached by April 30, 2004, DEC Staff would not agree to postpone the May hearing dates. DEC Staff said it intended to proceed with the hearing on May 10, absent a ruling from the ALJ to the contrary, if the matter is not settled by April 30, 2004. DEC Staff noted that the reply was made without compromising or negating its previous arguments.

Ruling: Since hearing dates have now been agreed upon by the parties, Respondents January 23, 2004 motion that a hearing be scheduled expeditiously is moot. In addition, based upon Respondents' April 14, 2004 assertion that the new business development reduced the company's need for an expedited hearing, the circumstances that led to the motion appear to

have changed significantly and Respondents have dropped their request that the hearing take place soon. The March 8, 2004 ruling in this matter is therefore vacated.

During the conference call and on April 8, 2004 the following dates were identified as being available on the schedules of the parties and the ALJ: May 10 through 13, May 20, and May 24, 2004. The hearing will take place in the DEC Region 2 Office, 47-40 21<sup>st</sup> Street, Long Island City, New York, beginning at 10:30 AM on each of those dates. I am requesting that DEC Staff reserve a conference room at the regional office on those dates and arrange for preparation of the transcript. I also request that DEC Staff notify me if the matter is settled.

Albany, New York  
April 20, 2004

\_\_\_\_\_/s/\_\_\_\_\_  
Susan J. DuBois  
Administrative Law Judge

To: James P. Rigano, Esq.  
John Nehila, Esq.