

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of the Alleged Violation of
Articles 17 and 27 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

- by -

DEC No.
R620020617

JEFFERSON COUNTY,

Respondent.

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Proceedings

By notice of hearing and complaint dated December 18, 2007, the Department staff commenced this enforcement proceeding against the respondent, Jefferson County. The complaint alleges various violations of Articles 17 and 27 of the Environmental Conservation Law (ECL) and Part 360 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) pertaining to the County's operation of its solid waste transfer station located in Pamela, New York and construction work for a new county highway - County Route 202.

The respondent served an answer dated January 14, 2008.¹ The Department staff served two discovery requests upon the respondent dated February 8 and February 22, 2008, respectively. According to the Department staff, the County has failed to meet the due dates of March 7 and March 14, 2008, and despite the Jefferson County Attorney's assurances, the documents have not been produced. By notice of motion dated April 2, 2008, Regional Attorney Randall C. Young moved for an order to compel production of the records sought in the February discovery demands. Although the staff's motion was personally served upon the County on April 2, 2008 as of April 15, 2008, this office has not received any response to the staff's motion. Novak Affidavit of Service, ¶ 2.

¹ According to the cover letter accompanying the answer, the Department staff agreed to extend the time for the County's answer.

Discussion

Section 622.7 of 6 NYCRR sets forth the rules governing discovery in DEC enforcement matters. Section 622.7(b) of 6 NYCRR provides that the parties may employ any disclosure device contained in Article 31 of the CPLR subject to the exceptions provided in 6 NYCRR § 622.7(b)(2) with respect to deposition and written interrogatories and in (c) regarding bills of particular. The regulation also provides that documents requested in a notice for production and inspection "must be furnished within 10 days of receipt of the discovery request unless a motion for a protective order is made."

Pursuant to Mr. Young's affirmation of April 2, 2008 in support of this motion, Department staff served its discovery demands on February 8 and 22, 2008, respectively. Young Aff., ¶¶ 5,6. However, as of the date of Mr. Young's affidavit, the records had not been furnished and neither had the County moved for a protective order in accordance with 6 NYCRR § 622.7(c).² The County has failed to comply with staff's discovery demands without having made a timely objection and accordingly, staff's motion to compel discovery is appropriate. 6 NYCRR § 622.7(2).

Conclusion

Based upon the County's failure to comply with the Department staff's discovery demands, I direct the County to furnish the records sought by Department staff in its February 8 and 22, 2008 demands by no later than April 21, 2008. In the event that the County fails to comply with this ruling, I am authorized to preclude the County's use of this material in future proceedings in this matter. 6 NYCRR § 622.7(c)(3). In addition, the regulations allow the "administrative law judge or the Commissioner to draw the inference that the material demanded is unfavorable to the noncomplying party's position." 6 NYCRR § 622.7(c)(3).

Dated: Albany, New York
April 15, 2008

/s/
Helene G. Goldberger

² At this point, such a motion would be untimely as the regulation provides that it must be filed within 10 days of the discovery demand.

Administrative Law Judge

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