

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

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In the Matter of the Alleged Violations of Articles 71 and 24 of the Environmental Conservation Law and Part 663 of Title 6 of the Official Compilation of Codes, Rules and Regulation of the State of New York,

**RULING**

DEC File No:  
R8-2018-0529-51

-by-

**JOSEPH JOYCE,**

Respondent.

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Procedural History

Staff of the Department of Environmental Conservation (Department) commenced this administrative enforcement proceeding against respondent Joseph Joyce by service of a notice of hearing and complaint dated June 22, 2020. By its complaint, Department staff alleges that respondent violated the terms of an Order on Consent (Consent Order), dated August 26, 2019, by failing to complete the requirements of the Schedule of Compliance established under the Consent Order. The Consent Order addressed alleged violations of freshwater wetlands law and regulations at a property (site) owned by respondent located at the intersection of Indian Falls Road and Main Road in the Town of Pembroke, Genesee County.

Respondent's counsel, James M. Wujcik, Esq., of Dadd, Nelson, Wilkinson & Wujcik, filed an answer, dated September 11, 2020, wherein respondent denied violating the Consent Order and raised an affirmative defense.

Department staff served a request for production of documents (disclosure demand), dated June 14, 2021, on Mr. Wujcik. By email, dated July 13, 2021, staff advised Mr. Wujcik that respondent's response to the disclosure demand was past due and staff extended the response date to July 20, 2021.

Department staff served a motion to compel disclosure (motion), dated July 23, 2021, on Mr. Wujcik. The motion papers include a notice of motion and an affirmation (Tinsley affirmation) of Dusty Renee Tinsley, Esq., with attached exhibits. By its motion, staff requests a ruling of the ALJ directing respondent to respond to the disclosure demand within ten days of service of such ruling and, in the event that respondent fails to timely respond, precluding respondent from introducing all evidence that is responsive to the disclosure demand. This office received hardcopy of proof of service of the motion on September 3, 2021.

To date, respondent has not filed a response to the motion. Accordingly, the motion is unopposed.

### Discussion

As set forth under 6 NYCRR 622.7(a)(1), the scope of disclosure in DEC enforcement proceedings is as broad as that provided for under CPLR article 31. In accordance with 6 NYCRR 622.7(b)(1), where production of documents is sought, the requested documents must be furnished within 20 days of the receipt of the disclosure demand unless a motion for a protective order is made. If a party fails to comply with a disclosure demand without having made a timely objection, the proponent of the disclosure demand may apply to the ALJ to compel disclosure (6 NYCRR 622.7[c][2]). If, after having been directed by the ALJ to produce the material demanded, a party fails to comply with a disclosure demand, the ALJ or the Commissioner may exclude the material from consideration and may draw an adverse inference regarding the non-producing party with respect to the material that the party did not produce (6 NYCRR 622.7[c][3]).

The motion papers establish that respondent failed to respond to staff's disclosure demand either by the production of responsive documents or by raising objections to the demands. Staff's disclosure demand was received by respondent on June 19, 2021 (Tinsley affirmation ¶ 8; exhibit 8). Respondent did not object or respond to the disclosure demand within 20 days (Tinsley affirmation ¶¶ 11-14<sup>1</sup>; exhibit 9). Staff sought to gain respondent's compliance with the disclosure demand by extending the response date to July 20, 2021, thereby extending the response date to 31 days from the date that respondent received the disclosure demand (Tinsley affirmation ¶ 14; exhibit 9). Respondent again failed to respond, either by providing the material demanded or by objecting to the disclosure demand (Tinsley affirmation ¶¶ 15, 18).

I conclude that Department staff has established that respondent failed to timely respond to the disclosure demand and that staff made a good faith effort to resolve the dispute without resort to a motion (*see* 6 NYCRR 622.7[c][2]). Accordingly, staff is entitled to a ruling directing respondent to comply with the disclosure demand. I deny, without prejudice, that portion of staff's motion that seeks to impose sanctions against respondent in the event that respondent fails to comply with this ruling (*see Kumar v Kumar*, 63 AD3d 1246, 1248 [3d Dept 2009] [holding that "the remedy of preclusion is reserved for those instances where the offending party's lack of cooperation with disclosure was willful, deliberate, and contumacious" (internal quotation marks and citations omitted)]).

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<sup>1</sup> The Tinsley affirmation states that respondent had only ten days to respond to the disclosure demand. The regulations, however, state that requested documents must be furnished within 20 days of receipt of a disclosure demand unless a motion for a protective order is made (*see* 6 NYCRR 622.7[b][1]). I note that the former regulations governing disclosure had provided ten days to respond to a disclosure demand (*see* former 6 NYCRR 622.7[b][1]).

Ruling

Department staff's motion to compel disclosure is granted in part and denied in part. Respondent is hereby ordered to respond to staff's disclosure demand within 20 days of the date of this ruling. Staff's request for sanctions is denied, without prejudice to renew.

/s/

Richard A. Sherman  
Administrative Law Judge

Dated: Albany, New York  
February 7, 2022