

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

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In the Matter of the Proposed Revocation  
of DEC Permit No. 3-5512-00054-00004  
Based Upon Alleged Violations

**RULING ON MOTION TO  
COMPEL DISCOVERY**

- by -

DEC Case No.  
3-5512-00054-00009

**KARTA CORPORATION,**

Respondent.

**TARRYTOWN R&T CORPORATION,**

Intervenor.

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Appearances of Counsel:

- Alison H. Crocker, Deputy Commissioner and General Counsel (Michael S. Caruso, of counsel), for staff of the Department of Environmental Conservation.
- Michele Marianna Bonsignore, for respondent Karta Corporation
- Stephan Wislocki, for intervenor Tarrytown R&T Corporation

Staff of the Department of Environmental Conservation ("Department") moves for a ruling compelling respondent Karta Corporation and intervenor Tarrytown R&T Corporation ("TRAT") to respond to discovery demands detailed in the Department's motion. For the reasons that follow, Department staff's motion is granted.

Proceedings

Department staff commenced this administrative enforcement proceeding against respondent Karta by service of a May 29, 2007 notice of intent to revoke Karta's May 3, 2006 permit for a solid waste management facility located at 1011-1017 Lower South Street, Peekskill, New York (DEC Permit No. 3-5512-00054-00004). Department staff seeks to revoke the permit based upon alleged violations of the conditions of the permit, as well as violations of 6 NYCRR part 360 ("Part 360"), which implements Environmental Conservation Law ("ECL") article 27.

At a hearing held on October 3, 2007, before the undersigned presiding Administrative Law Judge ("ALJ"), TRAT's petition to intervene was granted in part, allowing TRAT limited intervenor status (see ALJ Ruling on Motion to Intervene, Oct. 17, 2007). After the Commissioner denied Department staff's motion for leave to appeal from the October 17, 2007 ALJ ruling, the proceeding was adjourned pending reassignment of staff counsel and further discovery.

Department staff served its discovery demands on Karta's and TRAT's counsel on May 2, 2008. As mutually agreed upon by the parties in conference with the ALJ, the original deadline for response to the discovery requests was June 6, 2008. Two extensions were consented to by the parties and approved by the ALJ, with the final deadline being June 30, 2008. No further extensions were requested or granted.

Department staff provided Karta and TRAT with responses to their respective discovery demands on June 30, 2008. Karta and TRAT filed no responses to Department staff's demands on or after the June 30, 2008 deadline.

Department staff sent a letter dated July 15, 2008 to Karta and TRAT's counsel extending the response deadline to July 22, 2008. Karta's counsel indicated that discovery responses would be provided by July 24, 2008. TRAT's counsel did not respond to staff's letter. Karta provided no discovery responses on or after July 24, 2008.

On August 6, 2008, Department staff served the present motion to compel discovery on Karta and TRAT. No responses to staff's motion have been filed. On August 28, 2008, I conducted a conference call with the parties to ascertain the status of discovery. During the conference call, Karta's and TRAT's counsel offered no good cause for their failure to respond to the Department's discovery demands or the motion to compel.

#### Discussion

Pursuant to the Department's Uniform Enforcement Hearing Procedures (6 NYCRR part 622 ["Part 622"]), the scope of discovery is as broad as that provided for under article 31 of the CPLR (see 6 NYCRR 622.7[a]). Except as expressly provided for in the regulations, parties may employ any disclosure device authorized by CPLR article 31 (see 6 NYCRR 622.7[b]).

A party against whom discovery is demanded may make a motion to the ALJ for a protective order in general conformance

with CPLR 3103 (see 6 NYCRR 622.7[c][1]). If a party fails to comply with a discovery demand without having made a timely objection, the proponent of the discovery demand may apply to the ALJ to compel disclosure (see 6 NYCRR 622.7[c][2]). The ALJ may direct that any party failing to comply with discovery after being directed to do so by the ALJ suffer preclusion from the hearing of the material demanded (see 6 NYCRR 622.7[c][3]). A failure to comply with the ALJ's direction will allow the ALJ or the Commissioner to draw the inference that the material demanded is unfavorable to the noncomplying party's position (see id.).

The Department's May 2, 2008 discovery demands were authorized by CPLR article 31 and Part 622, and duly served upon Karta and TRAT. Neither Karta nor TRAT raised a timely objection to the Department's demands or moved for a protective order. Neither Karta nor TRAT responded to the Department's demands, nor have they provided any good cause for their failure to respond to the discovery demands or the motion to compel, notwithstanding Department staff's good faith efforts to resolve the dispute without resort to a motion.

#### Ruling

Accordingly, Department staff's motion to compel discovery is granted. Karta and TRAT are hereby directed to respond to Department staff's May 2, 2008 discovery demands by close of business on Tuesday, September 30, 2008.

**Take notice that** if Karta or TRAT fails to comply with this ruling, the material demanded in Department staff's May 2, 2008 discovery demands shall be precluded from the hearing, and the assigned ALJ and the Commissioner shall draw the inference that the material demanded is unfavorable to Karta's or TRAT's position, pursuant to 6 NYCRR 622.7(c)(3).

/s/

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James T. McClymonds  
Chief Administrative Law Judge

Dated: September 10, 2008  
Albany, New York

TO: Attached Service List (via email and regular mail)