

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

In the Matter of the Alleged Violations of Article 19 of the New York State Environmental Conservation Law (ECL) and Title 6, Part 618, of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR),

- by -

**RULING
ON
MOTION TO AMEND
THE COMPLAINT**

**LINDENHURST AUTO SERVICE CENTER, L.L.C.,
MICHAEL GARIB and HOBIE GARIB
(NYSDMV Facility #7105139),**

DEC Case No.
CO1-20140815-162

Respondents.

Appearances of Counsel:

-- Thomas S. Berkman, Deputy Commissioner and General Counsel (Caitlin Stephen of counsel), for staff of the Department of Environmental Conservation

-- No appearances for respondents

Proceedings

By notice of hearing and complaint, staff of the New York State Department of Environmental Conservation (DEC or Department) commenced this enforcement proceeding against respondents Lindenhurst Auto Service Center, L.L.C., Michael Garib and Hobie Garib (respondents) for alleged violations of ECL article 19 and 6 NYCRR part 618. Respondents were served with the notice of hearing and complaint in February 2017.

By notice of motion dated May 15, 2017, Department staff moved for leave to amend staff's complaint to correct information contained in a paragraph of the complaint. Respondents were served with a copy of staff's cover letter, notice of motion and motion for leave to amend the complaint with the proposed amended complaint attached, and the affirmation of Caitlin E. Stephen, Esq., all dated May 15, 2017. Respondents have not responded to staff's motion.

DISCUSSION

Under the Department's Uniform Enforcement Hearing Procedures (6 NYCRR 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 Administrative Law Judge (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 (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.).

As noted above, respondents have not opposed staff's motion or otherwise argued that respondents would be prejudiced by the amendment of the complaint. Respondents will have the opportunity to respond to the amended complaint. Accordingly, Department staff's motion should be granted.

RULING

Department staff's motion for leave to amend the complaint in the above captioned proceeding is granted.

Department staff shall serve the amended complaint upon respondents Lindenhurst Auto Service Center, L.L.C., Michael Garib and Hobie Garib pursuant to 6 NYCRR 622.3(a)(3). 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/

Michael S. Caruso
Administrative Law Judge

Dated: June 6, 2017
Albany, New York

To: Attached Service List (via first class mail)