

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Request by an Interested Party to Revoke, Suspend or Modify General Permit No. GP-5-04-004,

- by -

RULING

DEC Permit No.
GP-5-04-004

ROBERT S. RISMAN, JR.,

Interested Party.

By letter dated March 29, 2005, Robert S. Risman, Jr., seeks a determination whether an administrative hearing is available to challenge a denial by staff of the Department of Environmental Conservation ("Department") of his request, as an interested party under 6 NYCRR 621.14(a), that General Permit No. GP-5-04-004 be modified, revoked or suspended. Under the circumstances of this matter, I determine that no administrative hearing is available to Mr. Risman to challenge Department's staff's denial of his section 621.14(a) request.

PROCEEDINGS

The Department issued General Permit No. GP-5-04-004 to Mr. George McGowan ("permittee"), authorizing the installation of a culvert on certain property in Lake George, Warren County, New York. By letter dated March 11, 2005, Mr. Risman, as an interested party and not a holder of the subject permit, requested that the Department correct, revoke, suspend or modify the permit, in accordance with 6 NYCRR 621.14, on grounds detailed in the letter.

By letter dated March 23, 2005, Thomas W. Hall, Regional Permit Administrator, Division of Environmental Permits, Region 5, denied Mr. Risman's request. Mr. Hall found no evidence in Mr. Risman's submission that provided a basis for modifying, suspending, or revoking the authorization issued to permittee.

Mr. Risman subsequently sent a letter dated March 25, 2005, to Mr. Hall seeking "official verification" that Mr. Hall's March 23, 2005 determination constituted a final determination by the Department. Department staff referred Mr. Risman to the Department's Office of Hearings and Mediation Services. Accordingly, Mr. Risman sent a letter dated March 29, 2005, to

the Chief Administrative Law Judge, requesting a determination whether Mr. Hall's March 23, 2005 determination is final and whether all administrative remedies have been exhausted.

On March 31, 2005, I sent a letter to Mr. Risman and Department staff's counsel, Chris Lacombe, Esq., Regional Attorney, Region 5, in which I interpreted Mr. Risman's March 29 letter as seeking a determination whether an administrative hearing is available to challenge Department staff's denial of his request, as an interested party, pursuant to 6 NYCRR 621.14. I also authorized the submission of a response by Department staff. Department staff filed its response by letter dated April 5, 2005. I subsequently received a reply from Mr. Risman, dated April 13, 2005, which although unauthorized, I have nonetheless considered.

DISCUSSION

Section 621.14(a) of 6 NYCRR provides procedures for any interested party, other than Department staff or a permittee, to petition the Department for modification, suspension or revocation of any permit issued by the Department.* Under those procedures, Department staff makes the threshold determination whether modification, suspension, or revocation request is justified. If Department staff decides that the interested party's request is not justified, staff issues a written response giving its reasons for the denial.

The decision to deny an interested party's petition is solely within Department staff's authority, and no further administrative review is available to challenge the merits of staff's decision. Section 621.14(a) expressly provides that "[d]enials of requests for modification are not subject to public notice, comment or hearings." With respect to denials of third-party requests for suspension or revocation of a permit, Commissioner's decisions have interpreted the regulations as similarly foreclosing any further administrative review (see Matter of Olympic Regional Dev. Auth., Decision of the Commissioner, June 28, 2002; Matter of Monroe County [Mill Seat Solid Waste Landfill], Commissioner's Ruling, April 14, 1993, at 1).

* Section 621.14(a) also authorizes Department staff to modify, suspend or revoke a permit upon its own initiative. The procedures for permit modification upon a permittee's initiative are provided for at 6 NYCRR 621.13.

Only where Department staff makes the threshold determination that an interested party's petition raises facts or reasons that might warrant permit modification, suspension or revocation will further administrative proceedings be conducted. Those proceedings may lead to adjudicatory hearing procedures under 6 NYCRR part 624, in which an interested party may seek to intervene, so long as certain statutory and regulatory standards are met. Even if such further administrative procedures are invoked, however, the decision to refer the matter for adjudicatory hearings does not lie with the interested party (see 6 NYCRR 621.14[d]).

As noted by the Commissioner, the purpose behind the threshold screening of interested party petitions is two-fold (see Matter of Village of Garden City, Interim Decision of the Commissioner, May 30, 1989, at 2). First, the screening assures that a permittee, which has previously demonstrated compliance with all applicable law, rules and regulations and, thus, obtained a permit, will not have to defend against "an endless stream of [non-meritorious] permit modification requests" (id.). Second, the screening process provides notice to the permittee of those alleged facts staff contends justify permit modification (see id.).

Here, Department staff denied Mr. Risman's petition and issued a written response giving the reasons for its denial. Accordingly, under the Department's regulations, administrative hearing procedures are not available to Mr. Risman to further challenge the merits of staff's denial.

Mr. Risman also fails to identify any statutory ground that would otherwise mandate an administrative hearing under the circumstances presented here. Under the State Administrative Procedure Act ("SAPA"), the allowance or denial of applications to intervene in administrative proceedings rests generally in the discretion of the agency (see Matter of Village of Pleasantville v Lisa's Cocktail Lounge, Inc., 33 NY2d 618, 619 [1973]). Moreover, nothing in ECL article 70 requires that the Department afford an interested party an adjudicatory hearing to challenge the denial of a petition for modification, suspension or revocation of a permit (see ECL 70-0115; ECL 70-0119).

Finally, because no administrative adjudicatory proceedings are available to Mr. Risman to challenge Department staff's determination to deny his request, I have had no occasion to review or otherwise pass upon the merits of Mr. Risman's arguments.

RULING

For the reasons stated above, no administrative adjudicatory proceedings are available to Mr. Risman to challenge Department staff's decision to deny his petition, as an interested party pursuant to 6 NYCRR 621.14(a), for modification, suspension or revocation of General Permit No. GP-5-04-004.

/s/
James T. McClymonds
Chief Administrative Law Judge

Dated: Albany, New York
April 20, 2005

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