

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violations of Article 15 of the New York State Environmental Conservation Law (ECL) and Title 6 Part 608 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR),

- by -

**RULING ON
MOTION TO AMEND
COMPLAINT**
DEC Case No.
R6-20180827-28

RICHARD J. WALLENHORST, II,

Respondent.

Appearances of Counsel:

- Thomas Berkman, Deputy Commissioner and General Counsel (Shannon C. McGlew, Esq., Assistant Regional Attorney, of counsel), for staff of the Department of Environmental Conservation
- Michael T. Pattison, Esq. for respondent

Staff of the Department of Environmental Conservation (Department) commenced this administrative enforcement proceeding by service of a March 3, 2021, notice of hearing and complaint upon respondent Richard J. Wallenhorst, II (respondent). The notice of hearing and complaint was personally served on respondent on March 6, 2021, pursuant to 6 NYCRR 622.3(a)(3) (*see* Affidavit of Service of April L. Sears, sworn to January 14, 2022).

The complaint alleges that respondent is liable for violations of ECL 15-0501 and 6 NYCRR 608.2(a) for disturbing the bed and banks of the St. Lawrence River without a permit and ECL 15-0505 and 6 NYCRR 608.5 for placing fill in the St. Lawrence River without a permit, at a property owned by respondent located on Pregent Road, Wellesley Island, Town of Orleans, New York (Jefferson County) (Tax Map Parcel ID: 6.138-1-29). Respondent served an answer, dated April 9, 2021, to the complaint.

By letter dated January 19, 2022, Department staff requested permission to amend the complaint to correct some drafting errors and revise the relief requested. Attached to the motion is the amended complaint staff proposes to serve (*see* Appendix A, attached hereto [listing documents submitted on motion]). Respondent has not opposed staff's motion to amend. By letter dated February 9, 2022, the matter was assigned to me.

DISCUSSION

Under the Department's Uniform Enforcement Hearing Procedures (6 NYCRR part 622 [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, including the granting of continuances (*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.*). Pursuant to Part 622, respondent has twenty days after receipt of the amended pleading to serve an answer (*see* 6 NYCRR 622.4[a]).

On this motion, Department staff seeks leave to amend its complaint to correct some drafting errors and amend the relief requested. Staff asserts that respondent will not be prejudiced if its motion is granted because the amendments do not change the theory of the case or add additional violations. In addition, respondent will have the opportunity to answer the amended complaint, if the motion is granted.

As noted above, respondent has not opposed Department staff's motion. Staff's motion, which was made prior to the filing of a statement of readiness for adjudicatory hearing or any other motion practice, is brought on sufficiently early in the pleading stage to allow respondent an adequate opportunity to respond to staff's 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 respondent Richard J. Wallenhorst, II pursuant to 6 NYCRR 622.6(a)(1). Respondent 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: February 15, 2022
Albany, New York

APPENDIX A

Richard J. Wallenhorst, II
DEC File No. R6-20180827-28
Motion to Amend Complaint

- A. Cover letter, dated January 19, 2022, addressed to Deputy Commissioner Louis Alexander, for the Department's Office of Hearings and Mediation Services, attaching staff's motion papers
- B. Notice of Motion to Amend Complaint, dated January 19, 2022
- C. Motion to Amend Complaint, dated January 19, 2022
- D. Affirmation In Support of Motion to Amend Complaint of Shannon C. McGlew, Esq., dated January 19, 2022, attaching Exhibits 1, 2, 3, 4, and 5:
 - 1. Cover letter, Notice of Hearing, and Complaint, dated March 3, 2021
 - 2. Affidavit of Service of April L. Sears, sworn to January 14, 2022, with USPS tracking attached
 - 3. Answer, dated April 9, 2021
 - 4. Amended Complaint, with tracked changes
 - 5. Amended Complaint, clean
- E. Affidavit of Service of April L. Sears, sworn to January 27, 2022 (motion papers)