

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
ADMINISTRATIVE ADJUDICATION DIVISION

IN RE: Peter Marte  
Notice of Violation No. C90-0182

DECISION AND ORDER ON RESPONDENT'S MOTION TO COMPEL

This matter came before Hearing Officer McMahon on December 18, 1992 pursuant to Respondent's Motion to Compel Request for Production of Documents (sic) and the Objection filed by the Division of Freshwater Wetlands ("Division"). Said Objection incorporated by reference its Objection to Request for Production which was previously filed in this matter.

DECISION AND ORDER

Under Rule 12.00 of the Administrative Rules of Practice and Procedure for the Department of Environmental Management Division of Administrative Adjudication Division for Environmental Matters ("AAD Rules"), parties are encouraged to engage in voluntary discovery as practiced in the Rhode Island Superior Court. The Director of the Department of Environmental Management has formulated a clarification of this rule entitled, "Rule 12 Discovery - Statement of Interpretation" ("Statement"), issued May 1, 1991, wherein she incorporated by reference the provisions of Rule 34 of the Superior Court Rules of Civil Procedure ("Court Rules"). In said Statement, the Director specifically provided that any party may request the production of documents "in conformance with and governed by"

Peter Marte  
Notice of Violation No. C90-0182  
Page 2

Rule 34 and, further, that any Division so requested "shall produce and make available for copying" those records and documents sought in compliance with Rule 34.

A review of the provisions of Rule 34 and, with references therein, of Rule 26(b), presents the following standard for production of documents: the requesting party is entitled to any document, not privileged and not subject to the qualified privilege for work product set forth in Rule 26(b)(2) of the Court Rules, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the examining party or to the claim or defense of any other party, and which is in the possession, custody or control of the party upon whom the request is served.

Under Rule 34(b), the party upon whom the request is served is obligated to comply with the request within twenty (20) days after service thereof unless he or she serves upon the requesting party an objection to the request, specifying the portion of the request objected to and the grounds therefor, complying however, with the portions of the request to which there is no objection.

In this matter, the Division made an appropriate response to requests number one (No. 1), number two (No. 2) and number five (No. 5) of the Request for Production of Documents Propounded to the Department of Environmental Management by

Respondent, Peter Marte ("Request") by offering to make all documents relating to this matter available for copying in accordance with Rule 12.00 of the AAD Rules.

Additionally, the Division made an appropriate response to requests number three (No. 3) and number four (No. 4), indicating that the documents sought were not within the possession, custody or control of the Division and thus are not subject to production under Rule 34(a)(1) of the Court Rules.

As for Respondent's requests number six (No. 6) and number seven (No. 7), the Division is correct that copies are available at the Office of the Secretary of State. To facilitate matters, however, I have directed the Clerk of the AAD to send a copy of the AAD Rules to Respondent's counsel. The Wetlands Regulations cited in paragraph No. 7 may also be obtained through the Division of Freshwater Wetlands.

Respondent's request number eight (No. 8) and the Division's response is less clear cut. To resolve this matter, I ask that Respondent's counsel schedule a telephone conference call with Attorney Solomon and this Hearing Officer during the week of January 4, 1993.

Wherefore it is hereby

**ORDERED**

1. That Respondent's Motion to Compel is denied as to paragraphs No. 1, No. 2, No. 3, No. 4, No. 5, No. 6 and No. 7 of its original Request for Production.

Peter Marte  
Notice of Violation No. C90-0182  
Page 4

2. That action is deferred as to paragraph No. 8 of the original Request pending a conference call with the parties on the matter.

Entered as an Administrative Order this 30th day of  
December, 1992.

*Mary F. McMahon*

Mary F. McMahon  
Hearing Officer  
Department of Environmental Management  
Administrative Adjudication Division  
One Capitol Hill, Third Floor  
Providence, RI 02908

CERTIFICATION

I hereby certify that I caused a true copy of the within Decision and Order on Respondent's Motion to Compel to be forwarded via regular mail, postage prepaid to Jeffrey C. Blake, Esq., and Frederick G. Cass, Esq., 333 Westminster Street, Providence, RI 02903 and via interoffice mail to Patricia C. Solomon, Esq., Office of Legal Services, 9 Hayes Street, Providence, RI 02908 on this 30th day of December, 1992.

*Tracy Shields*