

Department of Environmental Management
Administrative Adjudication Division
State of Rhode Island

IN RE: THOMAS J. HEBERT

Notice of Violation No. C90-0200
July 14, 1992

ORDER ON RESPONDENT'S MOTION TO COMPEL PRODUCTION

This matter is before the hearing officer on the Motion to Produce filed by Respondent in the above-entitled matter. From the body of said Motion, it is clear that it is in the nature of a Motion to Compel Production pursuant to Super.R.Civ.P. 34 and will be treated as such.

The original Motion to Produce was filed with AAD on April 15, 1992. On April 22, 1992, the Division filed its response to Respondent's request for production. Thereafter, Respondent filed the instant Motion requesting the hearing officer to compel the Division to comply with Super.R.Civ.P. Rule 34.

Respondent's original Motion contains three numbered requests. I will address number Three (No. 3) first. In that request, Respondent seeks "... copies of any and all reports, evaluations, memoranda, studies or documents in the possession of the Department pertaining to or serving as a basis for the charges brought by the Department against Thomas J. Hebert and Melody Hebert."

In response, the Division stated that "... the Division will produce and make available for copying all documents which relate to file No. C90-200." The response further indicates that a fee for copying will be charged.

Rule 12.00(a) of the Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters ("AAD") provides that parties to administrative proceedings are encouraged to engage in discovery as practiced in the Superior Court of this state. A statement of interpretation, in accord with R.I.G.L. § 42-35-2(a)(3) was formulated by the Director and is on file in the AAD Offices.

Super.R.Civ.P. Rule 34(a)(1) states in pertinent part:

Subject to the provisions of Rule 30(b), any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on his or her behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and any other data compilations from which intelligence can be perceived, with or without the use of detection devices) or to inspect and copy, test, or sample any tangible thing which constitutes or contains matters within the scope of Rule 26(b) and which are in the possession, custody, or control of the party upon whom the request is served.

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

In this matter, the Division made an appropriate response to request number three (No. 3) of Respondent's motion to produce under Rule 12.00 of the Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters ("AAD").

Under number one (No. 1) of Respondent's Motion to Produce, Respondent requested "... the names, educational background, addresses and experience of any and all witnesses intended to be called by the department at the Administrative Hearing." Under number two (No. 2) of Respondent's Motion to Produce, Respondent requested "... the names, addresses and employment of any person involved in or directed by the Department to conduct or participate in the investigation of the charges presently brought by the Department against Thomas J. Hebert and

Melody Hebert." The information that Respondent has requested in his Motion to Produce under both numbers one and two (Nos. 1 and 2) are appropriately the subject of Super.R.Civ.P. 33.

Therefore, it is hereby

ORDERED

1. That the Motion to Produce which was filed on May 29, 1992 shall be treated as a Motion to Compel Production.
2. The Motion to Compel is denied as to paragraph 3 of its original Motion to Produce.
3. With regard to paragraphs 1 and 2 of Respondent's original Motion to Produce, they are denied without prejudice to accord Respondent an opportunity to seek the requested information pursuant to Super.R.Civ.P. 33.

Entered as an Administrative Order this 19th day of July, 1992.

Kathleen M. Lanphear
Chief Hearing Officer