

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

RE: TURNQUIST LUMBER CO., INC.
AAD NO. 91-050/FWE NOV. C91-0088

DECISION & ORDER ON RESPONDENT'S MOTION TO COMPEL

This matter is before the Hearing Officer on the Respondent's Motion to Compel concerning its interrogatories Nos. 4, 5, 6, 7, 8, 9, 10, 19, 20 and 21. The Division of Freshwater Wetlands ("Division") filed a timely objection to said Motion. Neither party requested oral argument and the Hearing Officer determined that none was warranted.

Respondent asserts that interrogatories 4, 5, 6 and 7 seek the "facts" upon which Division based certain allegations, and that Division's response that its allegations were based upon its "site inspection, observations and measurements..." fails to specify the actual facts.

Division argues that the facts which form the basis of its allegations are the actual inspections, observations and measurements, and that more specificity should only be required via testimony at the adjudicatory hearing.

Respondent alleges that Division's objection to Interrogatories Nos. 8 and 9 is frivolous, and that Division has not answered Interrogatory No. 10 as fully as possible.

Division objected to interrogatories Nos. 8 and 9 on the grounds that the information requested has been provided in its Prehearing Memorandum and Division argues that to require it to answer No. 10 more fully would subvert the Prehearing Order and constitute a duplication of information.

Respondent argues that Division's responses to interrogatories Nos. 19, 20 and 21 did not refer to the dates specified in said interrogatories; and that if Division intends to infer said facts from observations on the dates specified in said answers, it should so state.

Section 12.00(a) of the Administrative Rules of Practice and Procedure for the Administrative Adjudicative Division for Environmental Matters provides that parties to an Administrative Proceeding are encouraged to engage in voluntary discovery as practiced in the Superior Courts of this State.

Rule 33 of the Superior Court Rules of Civil Procedure governs the availability and the scope and limitations on the use of Interrogatories. It is provided in 33(b) that interrogatories may relate to any matters which can be inquired into under Rule 26(b).

Rule 26(b)(1) specifies that a deponent may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defenses thereto.

Interrogatories are required to be answered separately and fully in writing under oath; however, with said answers a party may serve specific written objections to particular interrogatories, stating the grounds on which they are based.

A review of the Rules demonstrates that all unprivileged matters relevant to the action are discoverable except for the limitations set forth in said rules. The scope of discovery contemplated by the Rules is undoubtedly very broad, and interrogatories may be utilized to flush out the substance of the facts and opinions to which the Division's experts will testify and a summary of the expert's ground for each opinion. Mutual Fire, Marine & Inland Insurance Company v. Jenckes Machine Co. 4 Fed. R. Serv. 3d (D.R.I. 1986).

Answers to interrogatories must be responsive, full, complete and unevasive; and insofar as practical, they should be complete within themselves. The Respondent has asked Division to set forth the "facts" upon which it based its allegations and Respondent is entitled to have Division supply this information in its answers. Although there are limits on the extent to which a party can be required to hunt out information in order to answer interrogatories, the Division in the instant matter should be able to provide the requested facts without undue labor and expense. Accordingly, Division must specify more fully the facts in the site inspection, observations and measurements upon which it based its allegations as requested by Respondent in Nos. 4, 5, 6 and 7.

Respondent's Interrogatories Nos. 8, 9 and 10 request information concerning Division's prospective witnesses and the qualifications and areas of expertise of Division's

experts. AAD Rule 12.00(a) provides that parties are encouraged to engage in voluntary discovery as practiced in the Superior Court of this state. One of the purposes of interrogatories is to flush out such information as part of the discovery process. However, parties to adjudicatory hearings before the AAD are required to exchange such information as part of the Prehearing procedure. AAD Rule 15.00(A)2 provides that all parties shall prepare and exchange certain information concerning prospective witnesses and the proposed areas of expertise for expert witnesses prior to the initial prehearing conference.

The information sought by Respondent was supplied initially by Division in its prehearing documents and supplemented thereafter by specific reference in its answers. Whether a particular answer is sufficient because documents other than the answers supply the necessary facts depends upon the circumstances of the case. Division has complied with the mandates of the AAD Rules, and answers presented via prehearing memoranda should certainly be considered adequate at AAD hearings.

The Division's answers to Respondent's questions concerning Division's expert witnesses' qualifications and their testimony before other tribunals was sufficient to comply with the Rules since Division supplied all information that could be reasonably expected. Division responded

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directly and without evasion in accordance with information that it possesses after due inquiry. Parties should not be required to hunt out information which would not be available without undue labor and expense.

Interrogatories Nos. 19, 20 and 21 requested information concerning the state of the freshwater wetlands on certain specific dates. Division's responses make reference to dates other than those specified in the questions. Division's answers are insufficient since no written explanation was supplied for said differences in dates.

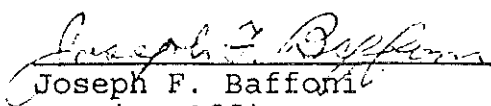
Wherefore, it is hereby

ORDERED

1. Respondent's Motion to compel is GRANTED as to Interrogatories Nos. 4, 5, 6, 7, 19, 20 and 21 and Division will respond thereto on or before December 6, 1993.

2. Respondent's motion to compel is DENIED as to Interrogatories Nos. 8, 9 and 10.

Entered as an Administrative Order this 10th day of November, 1993.



Joseph F. Baffoni
Hearing Officer
Department of Environmental Management
Administrative Adjudication Division
One Capitol Hill, Third Floor
Providence, Rhode Island 02908

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CERTIFICATION

I hereby certify that I caused a true copy of the within order to be forwarded, via regular mail, postage prepaid to Arthur M. Read II, Esq., Gorham & Gorham, 58 Weybosset Street, Providence, Rhode Island 02908 and via interoffice mail to Genevieve Martin, Esq., Office Legal Services, 9 Hayes Street, Providence, RI 02908 on this 10th day of November, 1993.

