

# BRIGGS NORFOLK LLP

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January 19, 2011

Via Facsimile and First Class Mail

James T. McClymonds  
Chief Administrative Law Judge  
N.Y.S. Department of Environmental Conservation  
Office of Hearings and Mediation Services, 1<sup>st</sup> Floor  
625 Broadway  
Albany, New York 12233-9037

Re: JAMES W. MCCULLEY; DEC Case No. R5-20050613-505

Dear Judge McClymonds:

I hope this letter finds you doing well. It has been a long time since we have corresponded on this never ending enforcement proceeding. Unfortunately, because the intervenors and DEC Staff take issue as to how you and Commissioner Grannis decided in favor of Mr. McCulley, we must press on.

I am in receipt of your letter, dated January 14, 2011, with a copy of the Acting Commissioner Ruling signed by Peter M. Iwanowicz and dated December 30, 2010 enclosed. We received your letter and the signed copy of the Ruling on January 18, 2011.

On behalf of Mr. McCulley we hereby make a request that there an be an inquiry made to confirm that Mr. Iwanowicz, indeed, signed the December 30, 2010 Ruling of the Acting Commissioner while he still held the position of Acting Commissioner. Specifically, we request a sworn affidavit from Mr. Iwanowicz stating that he signed the Ruling on December 30, 2010. By copy hereof, we make the same request to Commissioner Martens. If Mr. Iwanowicz signed the Ruling when he was no longer the Acting Commissioner it is null and void.

Thank you for your attention to our request. We look forward to hearing from you.

Sincerely,

Briggs Norfolk LLP

By: 

Matthew D. Norfolk

James T. McClymonds  
Chief Administrative Law Judge  
N.Y.S. Department of Environmental Conservation  
January 19, 2011  
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cc: Mr. Joseph Martens, Commissioner (Via Facsimile and First Class Mail)  
Mr. James W. McCulley (Via Email Only)  
John S. Banta, Esq. (Via Facsimile and First Class Mail)  
Marc S. Gerstman, Esq. (Via Facsimile and First Class Mail)  
Randall C. Young, Esq. (Via Facsimile and First Class Mail)  
Mr. Peter M. Iwanowicz (Via First Class Mail Only)