

STATE OF NEW YORK:
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violation of Article 9 of the
Environmental Conservation Law ("ECL"), and Title 6, Part
196.1 of the Official Compilation of Codes Rules and
Regulations of the State of New York ("6 NYCRR") by:

DEC Case No.
R520050613-505

JAMES W. MCCULLEY

Respondent.

**Respondent's Brief In Opposition to the Motions
for Clarification and Reconsideration of Former
Commissioner Grannis' May 19, 2009, Decision and Order**

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Respondent will not waste more paper or Commissioner Joseph Martens' time rearguing the law and facts of this case. Respondent relies on, reiterates, restates and reasserts each and every legal argument and factual point he has raised in the above-captioned proceeding since its commencement on or about June 10, 2005, as though set forth fully and at length herein, and by the foregoing reference same is hereby incorporated in, and made a part of, this brief in opposition to Department of Environmental Conservation ("DEC") Staff, The Adirondack Council, Inc. and Adirondack Park Agency's motions for clarification and reconsideration of former Commissioner Pete Grannis' May 19, 2009, decision and order rendered in this administrative enforcement proceeding (hereinafter referred to as the "Order").

In addition, in opposition to said motions for clarification and reconsideration respondent relies on and refers Chief Administrative Law Judge James T. McClymonds and Commissioner Joseph Martens to the evidence, including testimony, and other facts set forth or established on the record in the three-day evidentiary fact-finding hearing held from November 13, 2007, to November 15, 2007, in the above-captioned proceeding. By the foregoing reference to the record of the evidentiary fact-finding hearing, same is hereby incorporated in, and made a part of, this brief in opposition to DEC Staff, The Adirondack Council, Inc. and Adirondack Park Agency's motions for clarification and reconsideration of the Order.

The Order in all aspects is correct on the law and facts. It should not be reconsidered, revised, modified, or altered in any way, shape or form. Moreover, the well-established principles of law prohibit such action even if the Order was somehow defective or erroneous. Accordingly, respondent demands that the Order and each and every part

thereof, remain unaltered and the motions for clarification and reconsideration filed by DEC Staff, The Adirondack Council, Inc. and Adirondack Park Agency be denied in their entirety.

The motions for clarification and reconsideration, coupled with the Ruling of the Acting Commissioner, purportedly dated December 30, 2010,¹ allowing said movants to proceed with the submission of their arguments, have made this particular administrative proceeding to be a spectacle of lawlessness and abuse of process. Furthermore, they have utterly compromised the integrity and public perception of the Office of Hearings and Mediation Services and DEC Staff. This is of no concern to respondent. But, nonetheless, the conduct of DEC Staff, former Acting Commissioner Peter Iwanowicz, the Office of Hearings and Mediation Services and Adirondack Park Agency after the rendering of the Order has given credence to respondent's allegations of official misconduct that he asserted in his federal lawsuit, which was settled in his favor.

Please be advised that in the event the Order is altered or revised in any way, or a new decision and order is rendered that effectively alters or modifies the Order, respondent will not recognize such decision just as DEC refused to recognize the Essex County Court decision, dated March 23, 2005, issued by Judge Andrew Halloran, which reversed the conviction of Mr. McCulley and found Old Mountain Road to be an existing town road. However, please understand that while respondent will refuse to recognize any such decision handed down, he also intends to challenge it by way an Article 78

1

Respondent still questions whether former Acting Commissioner Iwanowicz actually signed his ruling on December 30, 2010. The ruling was not released until more than two weeks later. Respondent maintains his demand for sufficient proof that the ruling was signed by former Acting Commissioner Iwanowicz on December 30, 2010.

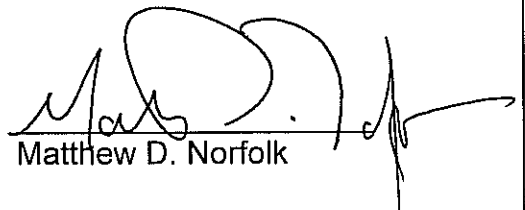
proceeding.

It is unfortunate that I have been driven to write with such a harsh and corrosive tone as I have in this opposing brief. But, this proceeding no longer warrants the submission of conventional legal writing. The DEC leaders have allowed DEC Staff, Adirondack Park Agency and relentless environmental lobbyists to make a mockery of the DEC administrative enforcement process.

WHEREFORE, respondent requests denial of the motions for clarification and reconsideration filed by DEC Staff, The Adirondack Council, Inc. and Adirondack Park Agency in their entirety, together with such other and further relief as Commissioner Martens deems appropriate, including attorneys' fees and expenses.

Dated: March 18, 2011
Lake Placid, New York

Briggs Norfolk LLP

By: 
Matthew D. Norfolk

Attorneys for Respondent