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STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In the Matter of the Application of
ENVIRONMENTAL WORKING GROUP,

Petitioner,

For a Judgment Pursuant
to CPLR Article 78

-against-

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION, and
ANDREW M. CUOMO, AS GOVERNOR OF THE
STATE OF NEW YORK AND AS HEAD OF THE
EXECUTIVE DEPARTMENT AND EXECUTIVE
CHAMBER,

Respondents.

NOTICE OF PETITION

INDEX NO. 5159-12

DATE OF FILING:

Albany County Clerk
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PLEASE TAKE NOTICE that, upon the annexed petition and exhibits thereto, and annexed memorandum of law, an application will be made by the Petitioner at the Albany County Courthouse, 16 Eagle Street, Albany, New York, at 9:30 a.m. on the 26TH day of October, 2012, or at such other time and place as the assigned justice shall determine, for a judgment pursuant to CPLR Article 78:

A. Declaring null and void:

(1) the April 11, 2012 decision of respondent DEC that partially denied Petitioner's March 6, 2012 request for access to records pursuant to FOIL;

(2) the May 16, 2012 decision of respondent DEC that denied Petitioner's appeal of that decision;

(3) the April 10, 2012 decisions of respondent Andrew M. Cuomo's Records Access Officer that partially denied Petitioner's March 6, 2012 request for access to records pursuant to FOIL; and

(4) the June 1, 2012 decision of the respondent Andrew M. Cuomo's FOIL Appeals Officer that denied Petitioner's appeal of that decision;

B. Declaring that records were withheld by the respondents;

C. Ordering respondents to produce all of:

(1) the records identified by Petitioner in Petition ¶¶ 45-46;

(2) the records requested in Petitioner's follow-up FOIL requests described at Petition ¶¶ 54-55, to the extent that they are not covered by the items identified in Petition ¶¶ 45-46; and

(3) the records identified by Petitioner in Petition ¶ 73;

D. Ordering respondents to conduct diligent searches for additional records that are responsive to Petitioner's March 6, 2012 FOIL requests;

E. Declaring that Petitioner is entitled to a hearing on whether additional responsive records exist and are within the Respondents' control, schedule such a hearing before the Court, and order production of all such additional responsive records identified in the hearing;

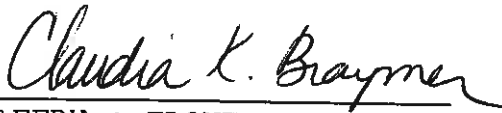
F. Awarding Petitioner its attorneys fees and other litigation expenses pursuant to Public Officers Law § 89(4)(c) and the Equal Access to Justice Act, CPLR Article 86;

G. Awarding Petitioner the costs and disbursements of this proceeding; and

H. Granting such other and further relief as may seem just and proper to the Court.

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR § 7804(c), any answering papers must be served at least five (5) days before the return date.

Dated: September 17, 2012


CAFFRY & FLOWER
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