

RULS - AD - 1984 - 490

10/26/84

• Letter to Judge re communication with Department of  
Environmental Protection

pg. 3

WINNE, BANTA, RIZZI, HETHERINGTON & BASRALIAN

COUNSELLORS AT LAW

25 EAST SALEM STREET

P.O. Box 647

HACKENSACK, NEW JERSEY 07602

TELECOPIER (201) 487-8529

(201) 487-3800

RECEIVED

OCT 30 1984

BRUCE F. BANTA (1932-1983)  
JOSEPH A. RIZZI\*\*  
PETER G. BANTA\*  
ROBERT A. HETHERINGTON, III  
JOSEPH L. BASRALIAN  
EDWARD H. MILLER, JR.  
DONALD A. KLEIN  
ROBERT M. JACOBS  
ANDREW P. NAPOLITANO  
RAYMOND R. WISS+

V. ANNE GLYNN MACKOUL+  
GARY M. LUKS  
KEVIN P. COOKE  
CYNTHIA D. SANTOMAURO  
ADOLPH A. ROMEI  
KENNETH R. MEYER  
MAUREEN R. CHESSON  
BRIAN T. KEANE  
CORINNE M. MULLEN

JUDGE SERPENTELLI'S CHAMBERS  
OF COUNSEL

WALTER G. WINNE  
(1889-1972)

NEWFOUNDLAND, N.J. OFFICE  
(201) 697-4020

NEW YORK OFFICE  
2 VETERANS PARKWAY  
PEARL RIVER, NEW YORK 10965  
(914) 735-2115

\*MANAGING PARTNER  
+MEMBER NEW YORK BAR

October 26, 1984

Honorable Eugene D. Serpentelli  
Superior Court of New Jersey  
Ocean County Court House  
CN-2191  
Toms River, New Jersey 08754

Re: Allan-Deane Corporation et al.  
v. Township of Bedminster et al.

Dear Judge Serpentelli:

We received for the first time today a copy of Mr. Meiser's October 4, 1984 ex parte communication with Mr. Chalofsky of the Department of Environmental Protection and Mr. Chalofsky's response to such communication. We most strenuously object to Mr. Meiser's letter, especially in light of the directive at the last Case Management Conference that the parties to this proceeding not communicate with DEP in such a manner as might adversely affect any of the proposed sewage treatment proposals. Mr. Meiser has done precisely this in providing information to DEP which was inaccurate and incomplete. Had Dobbs been copied on Mr. Meiser's October 4, 1984 letter, he would have been able to correct this misinformation.

Mr. Meiser, for example, describes Dobbs' proposal as a "Rotating Biological Disk tertiary treatment plan with denitrification facilities." No mention is made of the critical fact that the Dobbs' proposal involves subsurface discharge, rather than discharge into the Raritan River. Indeed, in his response, relying on this misinformation, Mr. Chalofsky states that if a separate

RUIS - AD - 1984 - 490

Honorable Eugene D. Serpentelli  
October 26, 1984  
Page 2

plant (i.e., Dobbs') is considered, its effluent limitation "would have to meet the water quality of the receiving stream." Mr. Chalofsky today confirmed to us that he was told that the Dobbs' proposal involves "spray irrigation" -- which is patently not true. The misinformation as to the nature of the Dobbs' proposal is critical, especially in light of Mr. Chalofsky's statement that enhancement of water quality "is foremost in any decision related to the provision of sewerage facilities." Dr. Hordon documents, in his report, numerous plants similar to Dobbs, which have been approved by DEP. I have myself participated this year in two closings involving just such plants -- both approved by DEP.

Also, it was inappropriate for Mr. Meiser to proffer as a hypothetical an E.D.C. expansion which "satisfies DEP's water quality standards" when he had in hand a report from the Township's own expert (Mr. Ferrara) demonstrating that this would not be the case.

While objecting to the ex parte nature and incompleteness of Mr. Meiser's communication, we would note our agreement with a number of the statements made in his letter. We agree that the parties to the proposed settlement have recognized (we submit, as a result of the persistent efforts of Mr. Dobbs) that it would be impossible to accommodate [the Township's] fair share "unless there was an increase in sewage capacity within the Township" and that:

It has become apparent that the issues of rezoning and sewage expansion in Bedminster are inextricably linked together. Any rezoning of the Township which attempts to provide a realistic opportunity for low and moderate income housing will in large measure be an academic exercise if there is not also expansion of the sewage capacity in some form.

It should be noted that Mr. Chalofsky is not responsible for technical review of sewage treatment facilities. Rather, as recognized in his letter and as confirmed by us, his comments were addressed to the general planning policies of DEP -- the desire generally to provide service through municipally owned and operated facilities.

In light of the response which Mr. Meiser has received to his inquiries, the question arises as to the status of the Township's present compliance package. It appears from Mr. Chalofsky's letter


Honorable Eugene D. Serpentelli  
October 26, 1984  
Page 3

that DEP would entertain an expansion of the E.D.C. facility only after a determination that expansion of the Bedminster plant is not feasible. Presumably, this means more than the fact that the Township prefers not to expand the facility. Before the Court proceeds with the compliance hearing, I think it must hear from the Township as to its intentions on this score.

For the reasons outlined to the Court in the past, we believe that the Dobbs sewage plan, inaccurately characterized in Mr. Meiser's letter, is preferable, from both a timing and environmental standpoint, to expansion of either the Bedminster plant or the E.D.C. plant, both of which present substantial problems. However, if the Court determines that expansion of the Bedminster plant should be considered, Dobbs is prepared to financially contribute to such an expansion, assuming service to his site. Moreover, in such case, Mr. Dobbs is willing to proceed on a parallel track with his sewage proposal, which could be abandoned in the unlikely event of prior Bedminster plant approval or which alternatively could be completed and turned over to the Township.

In sum, Mr. Meiser's letter only highlights the essential and critical aspect of the sewage issue, which was brought to the Court's attention not by the Township, not by the Master, not by the Public Advocate, but by Dobbs. A review of the January 8, 1984 letter from Mr. Coppola, relied on by Mr. Raymond in his January 10, 1984 report for the conclusion that sewage capacity existed to service hundreds of the low and moderate sites proposed by the Township - a conclusion now conceded, after the specific critiques by Dobbs' experts, to be erroneous - demonstrates this fact. In light of the substantial role played by Mr. Dobbs on this and other issues, and in light of the failure of the Township's proposal in any case to meet Mt. Laurel II requirements, the information provided in Mr. Meiser's letter does not go to the issue of whether Mr. Dobbs is entitled to a builder's remedy. Rather it goes to the issue of how Dobbs' buider's remedy should be implemented.

Very respectfully,

  
Joseph L. Basralian

cc: All Counsel  
George Raymond