

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CIVIL DIVISION
No. 480-7-10 Wncv

STATE OF VERMONT AGENCY OF
NATURAL RESOURCES,
Plaintiff,

v.

PARKWAY CLEANERS et al.,
Defendants.

RULING ON THE STATE'S MOTION TO CLARIFY AND FOR DISCOVERY

Following Mr. Daniels' death, his daughter, Ms. Julie Lyford, was appointed executor of his estate and, in that capacity, was substituted as the defendant in this case. Prior to Mr. Daniels' death, he and the State agreed that he would implement the Supplemental Site Investigation Workplan prepared by GZA GeoEnvironmental, Inc., although there was some dispute as to the timeline for completion of that work.¹ Before that work began, he died. According to the State, since her substitution, Ms. Lyford has refused to implement the Workplan or otherwise cooperate with the State. The State has filed a motion to "clarify" the judgment order—by adopting the Workplan as an expression of its current requirements—and for the production of specific discovery that Ms. Lyford so far has refused to voluntarily produce (geared toward financial ability to comply with her cleanup obligations). It also asks the court to authorize her deposition following that production.

Ms. Lyford opposes the motion to clarify for one reason only. She claims that when Mr. Daniels died, the State's sole path forward was to perform the cleanup itself and file a claim against his estate in the New Hampshire probate case. She cannot, she argues, be ordered to do anything in this case, however, related to the cleanup. This matter was resolved in the State's favor when the court substituted her as a defendant in this case on October 5, 2021, and denied her motion to dismiss. It will not revisit the issue again.

Ms. Lyford opposes the motion for discovery also for one reason only, that the State did not formally promulgate its requests under the discovery rules. Rather, it informally made the requests (repeatedly), which were ignored, and then proceeded directly to seek an order from the court. Ms. Lyford does not challenge the substance of the requests, and they appear entirely reasonable considering the circumstances and the history of this case.

Regardless that Rule 69 generally requires post-judgment discovery to be pursued under the ordinary discovery rules—and the better practice clearly would have been to have

¹ The State's preferred timeline is in the record, although it concedes that it may need to be amended.

done that here—the court declines to require the State to go back to the drawing board now. Ms. Lyford’s general opposition to the State’s requests is clear enough, and further delay is unwarranted.

Order

For the foregoing reasons, the State’s motion to clarify and for discovery is granted as follows:

(a) The court adopts the Supplemental Site Investigation Workplan prepared by GZA GeoEnvironmental as the specific expression of the current requirements of the more general terms of the judgment.

(b) The parties shall confer in good faith within 10 days as to the reasonable timeline for completion of the Workplan. If they are unable to agree, Ms. Lyford shall promptly file an objection to the State’s proposal that explains in detail (a) why the State’s timeline is not practically feasible and (2) why her counterproposal is the most advanced timeline reasonable.

(c) Mr. Lyford shall respond to the State’s discovery requests, as set forth in its Motion to Clarify at 13–14, according to the rules.

(d) The State has leave to depose Ms. Lyford thereafter.

SO ORDERED this 18th day of March, 2022



Robert A. Mello
Superior Judge