

CAUSE NO. 2016-DWR-0112

STATE WATER RESOURCES	§	BEFORE THE STATE
DEPARTMENT,	§	
Claimant	§	
	§	
v.	§	OFFICE OF
	§	
CHEM-STAT, A DIVISION OF	§	
POLYCHEM ORGANICS, INC.	§	
Respondent	§	ADMINISTRATIVE HEARINGS

ORDER NO. 2
ORDER REGARDING PARTIES' MOTIONS TO COMPEL DISCOVERY

Claimant and Respondent each filed timely motions to compel discovery. The ALJ rules on each party's motion.

Claimant's Motion

Claimant moved to compel Respondent to respond to the following discovery request:

Interrogatory No. 6. What is the total amount of dissolved hydrofluoropeptides that Chemex proposes to release into the Kingsdale River on a daily basis, a weekly basis, and a monthly basis? State your answer in metric tons.

Respondent objected and refused to answer, stating:

Chemex objects to the interrogatory as multifarious and declines to answer on the grounds that the information is a protected trade secret.

RULING: Claimant's motion to compel is granted. Respondent's objections are overruled. Chem-Stat will respond in full by 5:00 p.m. within ten days of the date of this order.

Respondent's Motion

Respondent moved to compel Claimant's expert witness, George Tanaka, to respond to the following question during his deposition:

Q: So, Mr. Tanaka, what instructions did the attorney, Mr. Larkin, give you when the two of you were preparing for this deposition?

Attorney for Staff: Objection. He will not answer that question.

Q: Let me ask this another way: did Mr. Larkin tell you to give false information about the Department's procedures?

Attorney for Staff: Objection. Attorney-client privilege.

Respondent argued in its motion that Chem-Stat was entitled to ask questions about any information held by an adverse expert witness, particularly if the information revealed the solicitation of false testimony. Staff responded that because Mr. Tanaka is an employee of the Department, counsel for Staff is also the attorney for Mr. Tanaka. Staff asserted that any information relating to communications between Mr. Larkin and Mr. Tanaka testimony is protected by the attorney-client privilege.

RULING: Respondent's motion to compel is denied. Staff's objection is sustained. Mr. Tanaka need not respond to the question.

Dated: April 15, 2017

Administrative Law Judge