UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASTE ACTION PROJECT, Plaintiff, v. DRAPER VALLEY HOLDINGS, LLC, Defendant.	Case No. C12-1870RSL ORDER REGARDING MOTIONS TO COMPEL PRODUCTION

This matter comes before the Court on "Plaintiff's First Motion to Compel" (Dkt. # 19) and "Plaintiff's Motion to Compel Document Production from Perdue Foods, LLC" (Dkt. # 26). Plaintiff sued defendant Draper Valley Holdings, LLC, for alleged violations of the Clean Water Act related to discharges from its poultry slaughterhouse in Mount Vernon, Washington, between March 2008 and June 2012. At the time the complaint was filed, Draper Valley was owned by Coleman Natural Foods, which in turn was owned by Perdue Foods, LLC (or a related entity). In December 2012, Draper Valley's discharge permit was transferred to Perdue.

In April 2013, plaintiff issued requests for production to Draper Valley seeking Perdue's audited financial statements and tax returns for 2011 through the present. Draper Valley objected, arguing that because Perdue is not a party to this action, its financial situation is irrelevant. When plaintiff filed a motion to compel production, Draper Valley for the first time argued that it did not have possession, custody, or control over the documents and they would

have to be sought directly from Perdue. Four days after Draper Valley filed its opposition, plaintiff served a Rule 45 subpoena on Perdue seeking the same documents. The subpoena was issued by this court, served on Perdue's registered agent in Washington, and demanded production here in Seattle. The financial records sought were located in Maryland.

Having reviewed the memoranda, declarations, and exhibits submitted by the parties, the Court finds as follows:

(1) Perdue's financial records are relevant to a determination of the economic impact of any penalty that might be assessed in this action and may also contain information regarding the profitability of Draper Valley during the alleged period of noncompliance. See Idaho Conservation League v. Atlanta Gold Corp., 879 F. Supp.2d 1148, 1167 (D. Idaho 2012). Because the liability and penalty phases of this litigation are proceeding concurrently, discovery regarding these issues is not, as Perdue would have it, premature.

(2) Draper Valley has waived all objections other than relevance and shall produce the requested documents as discussed below.[1]

(3) The Court has considered Perdue's overbreadth and confidentiality objections. Although the requests for production are appropriately tailored to obtain information regarding the economic benefits of non-compliance and the economic impact of potential penalties, Perdue's financial documents are not publicly available and are arguably entitled to some protection from public disclosure. Draper Valley's production of the requested financial statements and tax returns shall, therefore, be subject to the protections set forth in the Stipulated Protective Order (Dkt. # 14) entered in this case on August 30, 2013. The documents – and the information contained therein – shall be used only for prosecuting, defending, or attempting to settle this litigation.

[1] Because compliance with the subpoena served on Draper Valley is being compelled, the Court need not resolve the procedural irregularities surrounding the subpoena served on Perdue.

For all of the foregoing reasons, plaintiff's motion to compel production from Draper Valley (Dkt. # 19) is GRANTED. Plaintiff's motion to compel production from Perdue (Dkt. # 26) is DENIED as moot.

Dated this 23rd day of January, 2014.

Robert S. Lasnik
United States District Judge