



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION DISMISSAL**

OAL DKT. NO. ECE 01901-17  
AGENCY DKT. NO. PEA 160001-  
NJN986649929

**NEW JERSEY DEPARTMENT OF ENVIRONMENTAL  
PROTECTION, BUREAU OF HAZARDOUS  
WASTE ENFORCEMENT,**

Petitioner,

**v.**

**BRIAN SANTORA,**

Respondent.

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**Andrew Reese**, Deputy Attorney General, for petitioner (Christopher Porrino,  
Attorney General of New Jersey, attorney)

**William S. Cappuccio**, Esq., for respondent, Brian Santora

Record Closed: September 13, 2017

Decided: October 11, 2017

BEFORE **JOHN S. KENNEDY**, ALJ:

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Respondent appeals, New Jersey Department of Environmental Protection, Bureau of Hazardous Waste Enforcement's Administrative Order and Notice of Civil Administrative Penalty Assessment (AONOCAPA). He filed a timely appeal and the

matter was transmitted to the Office of Administrative Law (OAL) as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13, and filed on February 7, 2017. Status conferences were conducted on May 3, 2017 and June 14, 2017, but respondent's attorney had been unable to determine if respondent would proceed as all his attempts to contact appellant had been unsuccessful. On September 13, 2017, a hearing was conducted but respondent failed to appear at the hearing. His attorney appeared and sought to be relieved as counsel. Petitioner made an oral motion to dismiss due to appellant's abandonment.

### **FACTUAL DISCUSSION**

Respondent is the owner of property located on South First Road in the City of Hammonton, Atlantic County. On April 21, 2016, petitioner served upon respondent an AONOCAPA as a result of a property inspection performed by NJ DEP on February 29, 2016. During the inspection, it was discovered that respondent was storing several dozen drums of unknown material on site. Many of the containers were not properly labeled and others may have been storing material that may have been different from the name listed on the product label. Numerous drums of petroleum and approximately thirty-five containers of chemicals were observed. As a result of the inspection, respondent was ordered to remove the waste and was assessed a fine of \$50,000. Respondent filed a timely appeal and retained an attorney.

On May 5, 2017, a hearing was scheduled for September 13, 2017. On July 14, 2017, petitioner sent the department's first set of interrogatories and document that it demands to respondent. On August 4, 2017 petitioner sent correspondence expressing concern that respondent had not answered interrogatories and document demands. Petitioner and respondent's attorney appeared for the September 13, 2017 hearing but respondent failed to appear. Respondent's attorney advised that he last spoke to his client on May 19, 2017. He sent correspondence to his client on July 7, 2017, July 18, 2017, July 24, 2017 and September 8, 2017, requesting that respondent contact him. All the letters were sent regular and certified mail and each notified respondent of the September 13, 2017 hearing date and that his appeal would be dismissed if he failed to appear. The mail was not returned. Respondent's attorney also attempted to contact

respondent at his parents' residence but has had no contact with him despite his mother advising that she would have respondent call his attorney. DAG Reese received emails from respondent on September 1, 2017 and again on September 6, 2017. Reese advised respondent to contact his attorney and in response to the September 6, 2017 email, DAG Reese advised respondent of the September 13, 2017 hearing date.

Based on the foregoing, I **FIND** as **FACT** that respondent has not been in contact with his representative despite being sent multiple messages and letters via email, regular mail and certified mail. I further **FIND** as **FACT** that respondent had adequate notice of the September 13, 2017 hearing and that his appeal would be dismissed if he failed to appear.

### **LEGAL ANALYSIS AND CONCLUSIONS**

Pursuant to N.J.A.C. 1:1-14.14(a), an Administrative Law Judge "may grant or deny a motion, suppress a claim or defense, or take other case-appropriate action against a party who unreasonably fails to comply with any order of an ALJ or with any requirements of the Uniform Administrative Procedure Rules." Navarro v. The B. Manischewitz Co., LLC, OAL No. 1884-99, 2001 WL 34604601, \*2 (N.J. Adm. January 22, 2001) (citing N.J.A.C. 1:1-14.14(a)); see also Statlend v. Dept. of Community Affairs, Sandy Recovery Division, OAL No. CAF 10794-14, 20114 WL 5834274 (N.J. Adm. October 10, 2014) (dismissing appeal where appellant failed to pursue appeal and contact number was "no longer in service").

Respondent has not shown any interest in pursuing this matter since May 2017. The OAL regulations and case precedent demonstrate that an appeal will be dismissed with prejudice when an appellant shows no intention of pursuing his or her appeal. See Navarro and Statlend, supra. Here, respondent has not responded to his counsel's attempts to contact him via email or certified and regular mail, nor has appellant attempted to contact counsel on his own. Respondent has not been in contact with his counsel for over four months. Therefore, I **CONCLUDE** that appellant has abandoned his appeal and respondent's motion to dismiss the appeal is **GRANTED**.

**ORDER**

Based on the foregoing, it is hereby **ORDERED** that the motion to dismiss this matter is **GRANTED**. It is further **ORDERED** that the AONOCAPA with a total penalty assessment of \$50,000 shall be **AFFIRMED** and respondent is also liable to complete remediation of the Site.

I hereby **FILE** my initial decision with the **COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Environmental Protection does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, OFFICE OF LEGAL AFFAIRS, DEPARTMENT OF ENVIRONMENTAL PROTECTION, 401 East State Street, 4th Floor, West Wing, PO Box 402, Trenton, New Jersey 08625-0402**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

10/11/17  
DATE

  
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JOHN S. KENNEDY, ALJ

Date Received at Agency:

Mailed to Parties:

JSK/jw/lam

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