



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. ECE 5467-11

AGENCY DKT. NO. PEA090002-0805-
09-0002.1

**NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION –
COASTAL AND LAND USE
COMPLIANCE AND ENFORCEMENT,**

Petitioner,

v.

GEORGE AND LORI COBLENTZ,

Respondents.

Robert J. Kinney, Deputy Attorney General, for petitioner (John J. Hoffman,
Acting Attorney General of New Jersey, attorney)

George and Lori Coblentz, respondents, appearing pro se

Record Closed: January 13, 2016

Decided: February 10, 2016

BEFORE JOHN SCHUSTER III, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

In this matter the New Jersey Department of Environment Protection (DEP) seeks Summary Decision against George and Lori Coblentz (respondents) for violations of the Freshwater Wetlands Protection Act (FWPA), N.J.S.A. 13:9B-1 et. seq. The Motion for Summary Decision was filed with the Office of Administrative Law (OAL) on October 26, 2015. Service of process was achieved no later than December 1, 2015 by mailing copies of the motion papers to respondents' last New Jersey address as well as forwarding addresses in Florida. Respondents have not submitted opposing papers or otherwise answered the DEP's motion. In addition respondents have not advised this court of any change in address from their New Jersey residence.

FINDING OF FACT

- The property in question, commonly known as 1720 Harding Highway, Franklin Township (Newfield), New Jersey, was owned by respondents in January 2009.
- At that time the property was observed by DEP Inspector Ginger Benckert who saw forested clearing at the site.
- Later that month Inspector Banckert and other DEP inspectors returned to the site to observe the soils and take test borings to determine if wetlands existed on the site. She also observed the vegetation naturally existing on the site.
- Using the protocols set forth in the 1989 Federal Manual for Delineating and Identifying Jurisdictional Wetlands and reviewing the United States Department of Agriculture Soil Survey of Gloucester County, New Jersey and her observations of permanent or periodic inundation and present vegetation Inspector Benckert concluded the presence of freshwater wetlands in the disturbed area.

- Upon doing field measurements, Inspector Benckert calculated the cleared area consisted of 104,000 square feet of freshwater wetlands and 28,500 square feet of freshwater wetlands transition area totaling 3.04 acres.
- The DEP issued a civil administrative penalty to respondents of \$65,000 by applying the factors set forth in N.J.A.C. 7:7A-16.8 for failing to obtain a permit prior to conducting regulated activities.

LEGAL ANALYSIS

It is well established that if there is no genuine issue as to any material fact, a moving party is entitled to prevail as a matter of law. Brill v. The Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995). The purpose of summary decision is to avoid unnecessary hearings and their concomitant burden on public resources. Under the Brill standard, a full evidentiary hearing should be avoided “when the evidence is so one-sided that one party must prevail as a matter of law.” On a summary decision motion, however, the movant must show that there is no genuine issue of material fact, and all inferences of doubt are drawn against the movant. Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 74-75 (1954). Nevertheless, if the opposing party offers only facts which are immaterial or insubstantial in nature, these circumstances should not defeat a motion for summary judgment. Id. at 75. Although the pleadings may raise a factual issue, the question before the judge is whether those facts are “material” to the legal issues to be tried. In this matter the DEP has established a prima facie case that respondents violated the Freshwater Wetlands Protection Act and the civil penalty imposed on respondents was reasonable and established by applying regulatory principles.

CONCLUSION

I **CONCLUDE** the DEP has established respondents violated the Freshwater Wetlands Protection Act by clearing a wetlands area and wetlands transition area

without first obtaining a permit to do so. I also **CONCLUDE** DEP appropriately applied the factors established in N.J.A.C. 7:7A-16.8 in determining the civil administrative penalty for not obtaining a permit prior to conducting regulated activities.

ORDER

For the reasons set forth herein I **ORDER** respondents be assessed a civil administrative penalty in the amount of \$65,000 on this finding of liability for violations of the Freshwater Wetlands Protection Act and the regulations established thereunder.

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.

February 10, 2016

DATE



JOHN SCHUSTER III, ALJ

Date Received at Agency:

Date Mailed to Parties:

/cb