



# State of New Jersey

Department of Environmental Protection  
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*Governor*

CATHERINE R. MCCABE  
*Commissioner*

SHEILA Y. OLIVER  
*Lt. Governor*

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

Petitioner,

v.

BRIDGE AVENUE GAS LLC AND JAMES  
GAMBACORTO,

Respondents.

) ADMINISTRATIVE ACTION

) FINAL DECISION

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) OAL DKT NO.: ECE 3239-14

) AGENCY REF. NO.: PEA130004-014918

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This Order addresses the appeal of an Administrative Order and Notice of Civil Administrative Penalty Assessment (AONOCAPA) issued on April 9, 2013 by the New Jersey Department of Environmental Protection (Department), Bureau of Hazardous Waste Enforcement against Bridge Avenue Gas LLC and James Gambacorto (Respondents). The AONOCAPA assessed a \$295,200 civil administrative penalty against Respondents for repeated major violations of the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq., the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., and their implementing regulations at N.J.A.C. 7:14B and N.J.A.C. 7:27, arising from improper monitoring and management of underground storage tanks (USTs) at a gasoline dispensing facility (the Facility) located at 187 Riverside Avenue, Red Bank Borough, Monmouth County. Specifically, the Department assessed penalties for Respondents' knowing and willful failure: (1) to ensure corrosion protection

pursuant to N.J.A.C. 7:14B-4.1(a)(1) and (2); (2) provide release detection monitoring pursuant to N.J.A.C. 7:14B-6.1(a); and (3) provide emission controls pursuant to N.J.A.C. 7:27-16.3(d) and (e). In addition to civil administrative penalties, the AONOCAPA ordered Respondents to cease the storage and distribution of motor fuels and to remove all product from and formally close the USTs and ancillary equipment at the Facility.

On April 24, 2013, Mr. Gambacorto timely submitted an administrative hearing request on behalf of himself and Bridge Avenue Gas LLC. The Department granted the request on May 16, 2013, and the matter was transferred to the Office of Administrative Law (OAL), where it was filed on March 18, 2014, and assigned to Administrative Law Judge Susan M. Scarola (ALJ). The matter was scheduled for hearings on October 19, 2015, April 25, 2016, May 19, 2017, and July 21, 2017 – all of which were adjourned to accommodate the Respondents adjournment requests.

At the next hearing date of September 21, 2017, Mr. Gambacorto appeared by phone and agreed, on behalf of himself and Bridge Avenue Gas LLC, to the essential elements of a settlement which were then read into the record. Thereafter, Mr. Gambacorto declined to sign the settlement and, on February 22, 2018, stated, for the first time, that he did not have authority to act on behalf of Bridge Avenue Gas LLC. These claims were made despite Mr. Gambacorto's numerous representations on behalf of Bridge Avenue Gas LLC as part of the subject OAL case, negotiation and consent to settlement terms and his prior execution of tax documents as the LLC's managing member. In response, the ALJ scheduled an in-person conference for November 21, 2018 to determine Mr. Gambacorto's authority to bind Bridge Avenue Gas LLC to the agreed-upon settlement.

Despite being advised of the conference during a telephonic status conference held on September 18, 2018, as well as pursuant to a Notice of Prehearing dated September 19, 2018, Respondents did not appear at the November 21, 2018 in-person conference's 9:30 a.m. start time. The ALJ's notes reflect that sometime after 10:00 a.m., Bradford Batcha, Esq. contacted the OAL on Mr. Gambacorto's behalf.<sup>1</sup> At 11:08 a.m., Mr. Batcha faxed to OAL an e-mail from Mr. Gambacorto indicating that he was unable to attend the conference due to an upper respiratory infection and bronchitis and requesting the conference be rescheduled. Within one hour of the ALJ's request for proof of illness, Mr. Batcha faxed a doctor's note, dated and printed November 17, 2018, indicating that Mr. Gambacorto had been "seen and evaluated in our office 11/17/2018" and requesting that this be taken "into consideration when reviewing the time away from work-meeting 11/21/18."

On November 26, 2018, the ALJ advised the parties that Mr. Gambacorto's excuse for failing to attend the November 21, 2018 in-person conference was inadequate, issued a notice of return for Respondents' failure to appear and returned the matter to the Department in accordance with N.J.A.C. 1:1-14.4(a). On January 4, 2019, the Department remitted the matter back to OAL, requesting the ALJ issue an initial decision pursuant to N.J.A.C. 1:1-14.4(c)(requiring the ALJ to issue an initial decision where an explanation has been offered for a failure to appear). On February 21, 2019, the ALJ issued an initial decision finding no good cause for Respondents' failure to attend the November 21, 2018 in-person conference, dismissing the appeal, and returning the matter to the Department (Initial Decision). No exceptions were filed.

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<sup>1</sup> While Mr. Batcha did not enter an appearance attorney in this matter, the record reflects his involvement on behalf of Respondents in attempts to resolve this matter.

Based on the above facts of record, I REJECT the Initial Decision concluding no good cause was shown for failure to appear and dismissing Respondents' hearing request. N.J.A.C. 1:1-14.4(c) provides that, where a party has explained its failure to appear, the ALJ must consider whether the explanation has established "good cause." N.J.A.C. 1:1-14.4(c). If the ALJ concludes that no good cause for the failure to appear has been shown, she may "refuse to reschedule the matter and shall issue an initial decision explaining the basis for that conclusion, or may reschedule the matter." N.J.A.C. 1:1-14.4(c)2. If good cause is shown, however, the ALJ "shall reschedule the matter." N.J.A.C. 1:1-14.4(c)1.

Here, although Respondents undoubtedly did not appear at the November 21, 2018 in-person conference, I find that the record before me warrants rescheduling the proceeding under N.J.A.C. 1:1-14.4(c) to allow Respondents a final opportunity to address the violations set forth in the AONOCAPA. The record reflects that, while late, Mr. Gambacorto's representative did contact the OAL on the day of the conference and provided a doctor's note on his behalf as proof of his inability to appear. Despite the doctor's note being non-specific as to Mr. Gambacorto's health condition on the conference date, if true, his illness, taken together with his efforts to comply, constitute good cause for failure to appear and mandate rescheduling the proceeding under N.J.A.C. 1:1-14.4(c). Accordingly, I am returning this matter to the OAL for rescheduling to provide Respondents a final opportunity to either defend or resolve this matter.

In issuing this decision, it does not go unrecognized that the ALJ has, for years, extended every courtesy to Mr. Gambacorto in the scheduling and rescheduling of proceedings in this matter. It is also noted that Mr. Gambacorto, having received his doctor's note several days prior, could and should have notified the OAL or the Department of his illness before the November

21, 2018 in-person conference. However, as Mr. Gambacorto has indicated a desire to proceed, this ruling will avoid any question of his intention.

Therefore, for the reasons set forth herein, I REJECT the findings and conclusions of the Initial Decision dated February 21, 2019 and return this matter to OAL for rescheduling.

IT IS SO ORDERED.

Date: \_\_\_\_\_

4/4/19



Catherine McCabe, Commissioner  
New Jersey Department of  
Environmental Protection

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