



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

**INITIAL DECISION GRANTING**  
**SUMMARY DECISION TO**  
**CARTERET BUSINESS**  
**PARTNERSHIP, INC.**

OAL DKT. NO. EER 11734-23  
AGENCY DKT. NO. 46606, TWA  
220038

**CARTERET BUSINESS PARTNERSHIP, INC.,**

Petitioner,

v.

**NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION,**

Respondent.

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**William J. Wolf**, Esq., for petitioner (Bathgate, Wegener & Wolf, attorneys)

**Elizabeth Delahunty**, Deputy Attorney General, for respondent (Matthew J. Platkin, Attorney General, State of New Jersey, attorneys)

**Steven J. Eisenstein**, Esq., for Woodbridge (Lum, Drasco and Positan, LLC, attorneys)

Record Closed: June 13, 2024

Decided: July 8, 2024

BEFORE **SARAH G. CROWLEY**, ALJ:

## **STATEMENT OF CASE AND PROCEDURAL HISTORY**

This matter involves the appeal of a denial of Application to Construct and Operate Treatment Works Facility (TWA) by Carteret Business Partnerships (CBP), Inc. by the New Jersey Department of Environmental Protection (NJDEP). The TWA filed by CBP was to construct and operate a sanitary sewer to serve a proposed sixty-four-unit mixed-use development, consisting of condos and commercial space in Woodbridge, NJ. The application was submitted to the Township of Woodbridge (Woodbridge) as well as the Middlesex County Municipal Utilities Authority (MCUA). After Woodbridge and the MCUA declined to act on the application, CBP sought approval from the NJDEP, who denied the application on grounds that neither the municipality nor the MCUA had provided the appropriate consent, and they were therefore constrained to deny the application. The petitioner brings this action pursuant to N.J.A.C. 7:14A-22.8(a)(3)(v)(5) which permits the NJDEP to act on TWA applications where the municipality and/or the sewage authority have declined to act. The NJDEP maintains that they lack such authority where the wastewater treatment facility owner has declined to act.

This matter was transmitted to the Office of Administrative Law as a result of litigation in Superior Court and an Order from the Superior Court Judge in which he found that the NJDEP “can adjudicate the underlying issue – the issuance of the TWA permit and whether it should be issued regardless of the municipalities['] failure to provide consent.” The petitioner has argued that pursuant to the regulations, the NJDEP is obligated to either issue the TWA and/or make a substantive determination regarding the TWA under the regulations. The NJDEP has filed a motion for summary decision on the grounds that the regulations do not permit the NJDEP to issue a TWA in the absence of the consent of the wastewater treatment facility owner. Opposition was filed by the petitioner, which I will treat sua sponte as a cross-motion for summary decision, and a response thereto filed by the NJDEP. Oral argument was heard on the record via ZOOM on June 13, 2024, and the record closed at that time.

### **LEGAL ANALYSIS AND CONCLUSION**

TWA applications require the consent of the affected municipality and the sewage authority. N.J.A.C. 7:14A-22.6(a)(5). This consent is required to ensure that the affected municipality and the authority agree that they have adequate capacity for the TWA. The regulations further provide that if the applicant cannot obtain the foregoing consent, they may appeal to the NJDEP pursuant to N.J.A.C. 7:14A-22.8(a)(3)(v)(5), which provides in relevant part that:

when the affected municipality or sewage authority does not issue either a written statement of consent or a denial of the request for consent, the Department, upon receipt of proof that the applicant has delivered to the affected agency a written request for a written statement of consent, shall review the reasons for the lack of consent or denial, if known on the basis of reasonably reliable information. Any such reasons shall be considered by the Department in determining whether to issue a treatment works approval or sewer connection approval in accordance with this subchapter.

[N.J.A.C. 7:14A:22-8(a)(3)(v)(5) (emphasis added)]

The NJDEP has argued that the foregoing regulation does not apply when the consent is withheld from treatment works facility owner, and thus, they are not obligated to consider the application and the case should be dismissed. The petitioner argues that the intention of these regulations is to have NJDEP step in when the MCUA and the municipality decline to act on a TWA application. The NJDEP has also asserted that they do not have the expertise or knowledge to determine flow capacity of an owner.

The foregoing interpretation by the NJDEP is inconsistent with the language of the regulations, which require the NJDEP to step in to make a decision when the affected municipality, the sewage authority, and/or the treatment facility owner refuse to do so. The NJDEP argues that the provision allowing them to issue a TWA in the absence of consent does not apply when the treatment facility owner fails to consent. Unfortunately, none of the affected parties have disclosed any reason for their denial, and the NJDEP is the only agency with the expertise and the authority to make such a determination. If the NJDEP does not have the data to make such a decision, they have the authority to compel

disclosure of same by the affected parties. The Superior Court Judge reviewed these same regulations and determined that this was a matter that should be resolved administratively by the NJDEP, which is exactly what the petitioner has asked them to do.

The undersigned is constrained to read these regulations so narrowly as to permit the agency to decline to consider the application, as the intention of the regulations is to provide some relief to a party seeking approval for a TWA. Specifically, the regulations state that the NJDEP “shall review the reasons for the lack of consent or denial, if known on the basis of reasonably reliable information. Any such reasons shall be considered by the Department in determining whether to issue a treatment works approval or sewer connection approval in accordance with this subchapter.” N.J.A.C. 7:14A-22.8(a)(3)(v)(5). The petitioner has litigated this matter in the Superior Court, gone to the NJDEP, and now appealed to the Office of Administrative Law seeking to have the TWA application considered on its merits. If the NJDEP cannot make this determination or mandate the treatment facility owner, the sewage authority or the municipality to consider this application, then the NJDEP needs to dictate what the appropriate remedy is. This is a question for the NJDEP and not the undersigned. There is no reason to go through an entire administrative proceeding when the issue is whether the NJDEP has the authority to consider the TWA application, in the absence of the consent of the other parties. Moreover, is it acceptable for the remaining stakeholders to simply refuse to consider the application. There has been no substantive reason articulated for the refusal of the affected municipality, the sewage authority, or the treatment facility to deny this application. The NJDEP should consider the stated reasons on the merits or order the affected entities to issue a substantive reason for the denial. There are no issues of fact in dispute in this matter.

### **ORDER**

I, therefore, **CONCLUDE** that the NJDEP’s Motion for Summary Decision is denied, and Summary Decision in favor of the petitioner is hereby **GRANTED**. The NJDEP is hereby **ORDERED** to consider the TWA application on its merits under the applicable regulations. In the alternative, if the regulations preclude the NJDEP from considering the TWA application in the absence of the consent of the wastewater

treatment facility owner, then the NJDEP should provide some directive on how the petitioner should proceed in the absence of same. Either party may seek appellate review of this question of regulatory interpretation as there are no factual issues in dispute in this matter.

It is **ORDERED** that the Clerk return this matter to the NJDEP for appropriate disposition

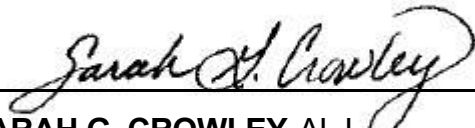
I hereby **FILE** my initial decision with the **COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION**, for consideration.

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, 4<sup>th</sup> Floor, West Wing, P.O. 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.

July 8, 2024

DATE

  
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SARAH G. CROWLEY, ALJ

Date Received at Agency:

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Date Emailed to Parties:

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SGC/oni