



# State of New Jersey

## DEPARTMENT OF ENVIRONMENTAL PROTECTION

OFFICE OF THE COMMISSIONER

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**SHEILA Y. OLIVER**  
*Lt. Governor*

**SHAWN M. LATOURETTE**  
*Commissioner*

FORTY NORTH OYSTER FARMS,	)	<u>ADMINISTRATIVE ACTION</u>
	)	
Petitioner,	)	FINAL DECISION
	)	ORDERING REMAND
v.	)	
	)	
NEW JERSEY DEPARTMENT OF	)	
ENVIRONMENTAL PROTECTION,	)	OAL DKT NO.: EER 13286-19
	)	AGENCY REF. NO.: Permit #915-010-001
Respondent.	)	
	)	
	)	
	)	

This Order concerns Petitioner, Forty North Oyster Farms' (Petitioner) request for an adjudicatory hearing regarding the Department of Environmental Protection's May 16, 2019 modification of Petitioner's Commercial Shellfish Aquaculture Permit and corresponding Operational Plan, authorizing the growing of shellfish in waters classified as Approved or Conditionally Approved and harvest for direct marketing in accordance with N.J.A.C. 7:12.

Petitioners request for a hearing was granted and the matter was transferred to the Office of Administrative Law (OAL) on September 19, 2019. On February 24, 2022, Administrative Law Judge (ALJ) Joseph A. Ascione issued an Initial Decision dismissing the Petitioner's challenge of


the Department's modification for failure to prosecute based upon Petitioner's failure to appear for conference calls on January 18, 2022, and January 28, 2022, with no communication from Petitioner thereafter.

Petitioner submitted exceptions to the Initial Decision on March 3, 2022, as well as a letter to the ALJ on February 28, 2022, explaining that both counsel to the Petitioner and the Deputy Attorney General representing the Department had received no notice of the scheduled appearances. As a result of this clerical error, Petitioner asserts there is no factual basis for the dismissal based on Petitioner's failure to prosecute. Petitioner indicates it wishes to withdraw the request for an adjudicatory hearing. Petitioner requests that the matter be remanded such that the record may be made accurate, and the Petitioner may then withdraw the request for a hearing. The Department submitted exceptions on March 4, 2022, confirming that the Deputy Attorney General had also received no notice of the scheduled appearances and further asserting that no factual basis exists for the dismissal and the Initial Decision should be rejected.

In light of the exceptions filed by the parties, it is requested that the ALJ rescind/vacate the February 24, 2022, Initial Decision and mark the matter as closed/withdrawn. For the reasons above, I REJECT the Initial Decision and, pursuant to N.J.A.C. 1:1-18.7(a), REMAND the matter to OAL for appropriate findings and conclusions.

IT IS SO ORDERED.

Dated: April 11, 2012

  
\_\_\_\_\_  
Shawn M. LaTourette, Commissioner  
Department of Environmental Protection

FORTY NORTH OYSTER FARMS,  
v.  
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

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