



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION GRANTING

SUMMARY DECISION

OAL DKT. NO. ECE-AI 05410-12

AGENCY DKT. NO. PEA100001-46416

**NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION –
AIR COMPLIANCE AND ENFORCEMENT,**

Petitioner,

v.

JOZSEF ANTAL,

Respondent.

Lisa M. Almeida, Deputy Attorney General, for petitioner (Christopher S. Porrino,
Acting Attorney General of New Jersey, attorney)

Jozsef Antal, respondent, pro se

Record Closed: July 29, 2013

Decided: July 11, 2016

BEFORE **ELIA A. PELIOS**, ALJ:

STATEMENT OF THE CASE

Jozsef Antal (respondent, Antal) requested an administrative hearing challenging the issuance of an Administrative Order and Notice of Civil Administrative Penalty

Assessment (AONOCAPA) by the Department of Environmental Protection (petitioner, agency, Department) against him for violations of the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., and regulations promulgated thereto, specifically, N.J.A.C. 7:27-2.3(a). The AOCOCAPA also imposed a \$200 civil administrative penalty.

PROCEDURAL HISTORY

The matter was transmitted to the Office of Administrative Law (OAL) on April 19, 2012. The agency filed the herein motion for summary decision on February 22, 2013. No responsive papers were filed. Oral argument on the motion was held July 29, 2013. Both parties appeared and the record closed on the motion at that time.

STATEMENT OF FACTS

The agency has brought the herein motion seeking a decision concluding that respondent did violate the APA, specifically 7:27-2.3(a), and that the agency properly calculated and assessed administrative penalties in the amount of \$200.

In support of its motion, the agency asserts the following statement of material facts:

1. The Department is an administrative agency as defined by N.J.S.A. 2:14B-2(a). The agency is required to conserve the natural resources of the State, promote environmental protection, prevent pollution of the environment, and is authorized to enforce the State's air pollution laws. N.J.S.A. 13:1D-9(n).
2. Respondent resides at 841 East Drive, Bordentown City, Burlington County. Michael Curran (Curran) Certification ¶¶1-2.
3. On October 9, 2010, the Bordentown police received a complaint regarding open-burning at the Antal residence from the respondent's neighbor, Sid Morgenstein, residing at 849 East Drive, Bordentown City, Burlington County. Curran Certification ¶4.

4. Curran, of the Bordentown Police Department, conducted an investigation at the Antal residence on October 9, 2010. Curran Certification ¶¶4-6.
5. Curran observed that Antal was burning commercial, chemically-treated, and painted wood, in his backyard. The fire was contained in a metal fire pit, with a screen which covered the top of it. Curran Certification ¶¶7-9.
6. Curran told the respondent that according to Township regulations, he could not burn treated-wood due to its chemical composition and toxic fumes. Curran Certification ¶10.
7. Curran told Antal to put out the fire immediately. Curran Certification ¶11.
8. Curran filled out a police report regarding the incident. Curran Certification ¶12.
9. On November 18, 2010, the Department issued an AONOCAPA to Antal for a first violation of the APCA under N.J.A.C. 7:7-2.3(a), specifically, for permitting the disposal of various materials by open-burning the materials in a metal fire pit. Bernadette Hayes (Hayes) Certification ¶3.
10. The November 18, 2010, AONOCAPA directed the respondent to immediately cease the open-burning of various materials. Hayes Certification ¶3.
11. The AONOCAPA assessed a \$200 civil administrative penalty against Antal for the APCA violation.
12. The respondent timely filed for an administrative hearing. Hayes Certification ¶3.
13. The Department calculated civil administrative penalties pursuant to N.J.S.A. 26:2C-19 and N.J.A.C. 7:27A-3.10(m), which assigns a penalty of \$200 for small scale, first-time violations of N.J.A.C. 7:27-2.3(a). Hayes Certification ¶3.
14. To date, this penalty remains outstanding against Antal.

In support of its asserted statement of facts, the agency relied upon the certification of Michael Curran, a patrolman employed by the Bordentown Township Police Department.

The respondent did not file any responsive papers or certification disputing the agency's asserted material facts. He did admit at oral argument to burning wood, and stated that he "thought" that the wood was untreated, and that as an allergy sufferer, he would have detected any toxic fumes from treated-wood. He states if he did burn treated-wood, it was not on purpose, and that he is out of work, and has little money.

CONCLUSIONS OF LAW

Pursuant to N.J.A.C. 1:1-12.5(b), summary decision "may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." This rule is substantially similar to the summary judgment rule embodied in the New Jersey Court Rules, R. 4:46-2. See, Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 74 (1954). In connection therewith, all inferences of doubt are drawn against the movant and in favor of the party against whom the motion is directed. Id. at 75. In Brill v. Guardian Life Insurance Co., 142 N.J. 520 (1995), the New Jersey Supreme Court addressed the appropriate test to be employed in determining the motion:

[A] determination whether there exists a 'genuine issue' of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party. The 'judge's function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial'.

[Brill, supra, 142 N.J. at 540 (citations omitted).]

The mere existence of disputed facts is not conclusive. An agency must grant a plenary hearing only if material disputed adjudicative facts exist. Bally Mfg. Corp. v. Casino Control Com'n, 85 N.J. 325, 334, 426 A.2d 1000 (1981), App. Div. 454 U.S. 804, 102 S.Ct. 77, 70 L.Ed.2d 74 (1981); Cunningham v. Dept. of Civil Service, 69 N.J. at 24-25, 350 A.2d 58. N.J.S.A. 52:14B-9.

As noted earlier, respondent has filed no opposition papers to the herein motion. At oral argument he offered only his assertion that he “thought” the wood was untreated. Given the detailed description offered in Officer Curran’s Certification as to the types of wood and the mere assertive nature of respondent’s defense, I **CONCLUDE** that respondent’s assertion does not constitute a disputed material fact. Accordingly I **FIND** that there are no genuine issues of material fact and **FIND** and **ADOPT** the statement of facts asserted by the agency. I therefore **CONCLUDE** that this matter is ripe for summary decision.

The agency alleges a violation of N.J.A.C. 7:27-2.3(a), which provides that “No person shall cause, suffer, allow or permit the disposal of rubbish, garbage, trade waste, buildings or structures by open burning.” The record reflects that the respondent did cause the disposal of rubbish or garbage by open-burning. Accordingly, I **CONCLUDE** that respondent did violate N.J.A.C. 7:27-2.3(a).

The agency also seeks to impose a \$200 civil administrative penalty. N.J.A.C. 7:27A-3.10(m) provides for a \$200 penalty for a first offense of a small scale violation of N.J.A.C. 7:27-2.3(a). Accordingly, I **CONCLUDE** that the civil administrative penalty imposed was appropriate and should be **AFFIRMED**.

DECISION AND ORDER

For the reasons set-forth above, the motion for summary disposition filed by the petitioner, New Jersey Department of Environmental Protection, is and the same is hereby **GRANTED**, and the AONOCAPA with a total penalty assessment of \$200 shall be **AFFIRMED**.

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.

July 11, 2016

DATE



ELIA A. PELIOS, ALJ

Date Received at Agency:

July 11, 2016

Date Mailed to Parties:

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