

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
ADMINISTRATIVE ADJUDICATION DIVISION

RE: JAMES HAITZ
APPLICATION DENIAL

AAD No. 05-002/F&WA

FINAL ORDER OF DISMISSAL

This matter came before Hearing Officer Mary F. McMahon on August 15, 2005 for prehearing conference. Applicant James Haitz failed to appear at the prehearing conference. The AAD initiated a conference call in which the Hearing Officer, Applicant and Gary Powers, attorney for the Division of Fish and Wildlife ("Division") participated. Mr. Haitz expressed his frustration in dealing with the Division and the likelihood that he would not prevail based on his knowledge of the issues in other summer flounder exemption permit cases heard before the AAD. Mr. Haitz stated that he did not want to pursue his appeal but would not withdraw his request for hearing. A Conditional Order of Dismissal was entered on August 24, 2005 that allowed Applicant until and including August 31, 2005 to file at the AAD a written statement of his intent to proceed with the appeal. As of the date of this Final Order of Dismissal, Applicant has not filed such a statement at the AAD.

Wherefore, I make the following

FINDINGS OF FACT

1. On June 21, 2005, Applicant filed a request for hearing on the denial of his application for a summer flounder exemption permit that was issued by the Division of Fish and Wildlife on June 14, 2005.
2. A Prehearing Order was entered on July 12, 2005 that scheduled this matter for prehearing conference on August 15, 2005.
3. Applicant failed to appear at the prehearing conference on August 15, 2005.
4. On August 15, 2005, during a telephone conference with Applicant James Haitz and with Gary Powers, attorney for the Division of Fish and Wildlife ("Division"), the Applicant stated that he did not want to pursue his appeal but would not file a withdrawal of his request for hearing.
5. On August 24, 2005, a Conditional Order of Dismissal was entered that allowed the Applicant until and including August 31, 2005 to file at the AAD a written statement of his intent to proceed with the appeal. The Conditional Order of Dismissal provided that if the Applicant failed to file such a statement, then he would be deemed to have waived his right to a hearing and a Final Order of Dismissal would be entered against the Applicant.
6. As of the date of this Final Order of Dismissal, Applicant has not filed such a statement at the AAD.

CONCLUSION OF LAW

Based upon the above Findings of Fact, I conclude the following as a matter of law:

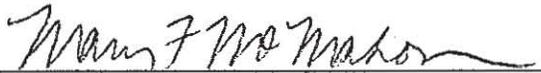
1. The Applicant has waived his right to a hearing on the denial of his application for a summer flounder exemption permit that was issued by the Division of Fish and Wildlife on June 14, 2005.

Wherefore, based upon the above Findings of Fact and Conclusion of Law, it is hereby

ORDERED

1. Applicant's request for hearing on the denial of his application for a summer flounder exemption permit is hereby DISMISSED.

Entered as an Administrative Order this 9th day of September, 2005 and herewith recommended to the Director for issuance as a Final Agency Order.



Mary F. McMahon
Hearing Officer
Administrative Adjudication Division
235 Promenade Street, Third Floor
Providence, RI 02908
(401) 222-1357

Entered as a Final Agency Order this 9th day of September, 2005.



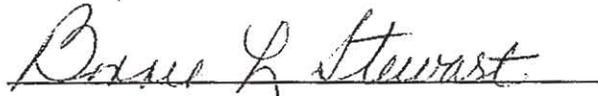
W. Michael Sullivan, Ph.D., Director
Department of Environmental Management
235 Promenade Street, 4th Floor
Providence, RI 02908

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CERTIFICATION

I hereby certify that I caused a true copy of the within Final Order of Dismissal to be forwarded by first-class mail, postage prepaid, to James Haitz, 760 Gravelly Hill Road, Wakefield, RI 02879 and Gary Powers, Esquire, DEM - Division of Fish & Wildlife, Oliver Stedman Government Center, 4808 Tower Hill Road, Wakefield, RI 02879; via interoffice mail to: Gerald McAvoy, Esquire, DEM Office of Legal Services, 235 Promenade St., 4th Fl., Providence, RI 02908; on this 9/12/05 day of August, 2005.



NOTICE OF APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Environmental Management pursuant to R.I. GEN LAWS §42-35-12. Pursuant to R.I. GEN LAWS §42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.