

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

RE: COMPLETE WASTE AND RECYCLING SERVICES      AAD NO. 14-004/WME  
D/B/A GREEN RECYCLE & REUSE  
SW 2013-74

DECISION AND ORDER

The above entitled matter came on before Hearing Officer David M. Spinella on the Rhode Island Department of Environmental Management, Office of Compliance and Inspection's ("OC&I") Motion to Dismiss and Memorandum in Support of Motion to Dismiss filed on July 11, 2014. The Respondent failed to file an Objection within the proscribed time as required by Rule 8.00 of the *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters* ("AAD").

FACTS

On or about April 2, 2014, the Rhode Island Department of Environmental Management, Office of Compliance and Inspection ("OC&I") issued a Notice of Violation ("NOV") to the Respondent, Complete Waste and Recycling Services, LLC ("Complete Waste"). On May 17, 2014, pursuant to R.I. General Laws §20-1-8(a)(3), Michael P. Morrissey, in his capacity as an Environmental Police Officer, personally served the NOV upon Wayne Davidson as registered agent for Complete Waste. The NOV clearly indicated that pursuant to R.I. General Laws §42-17.1, §42-17.6, §42-17.7 and §42-35, each named Respondent was entitled to request an administrative hearing. The request was to be received by the Administrative Adjudication Division ("AAD") within twenty (20) days of Respondent's receipt of the NOV. Respondent's written request for hearing was not received by the AAD until June 18, 2014.

Page 2

ARGUMENT

The OC&I argues that the AAD lacks subject matter jurisdiction over this matter because the hearing request was filed outside the statutorily proscribed time limit. The OC&I states that the Respondent in this matter failed to request an administrative hearing within the statutory twenty (20) day time period. As a result, the opportunity for an administrative hearing was lost and the matter automatically became jurisdictional in the Superior Court.

R.I. General Laws §42-17.7-9 states in pertinent part as follows:

Regardless of any other provision of the General Laws to the contrary, all requests for an Adjudicatory Hearing within the Department of Environmental Management must be in writing and must be filed with the Clerk of the Administrative Adjudication Division for Environmental Matters within twenty (20) calendar days of receipt of the contested agency action for all enforcement actions... Every notice of contested agency action shall provide notice of the twenty (20) day... appeal period and of the procedures for filing an appeal. The time and manner of filing established in this chapter are mandatory and jurisdictional. (Emphasis added).

The OC&I further argues that in this instance, it is clear from the plain language and meaning of the statutes that once the statutory timeframe for requesting a hearing had passed, the subject NOV became a final Compliance Order. The case law concerning the finality of final agency orders establishes that jurisdiction for this matter is now squarely with the Superior Court. OC&I cites the case of Semmel Enterprises, Inc./75 Goff Avenue Realty Trust/Yohannes Bein/Simret Zembrht, AAD NO. 03-002/WME as precedent. In that case the AAD Hearing Officer, in dismissing the Respondents' appeal, determined that the "Respondents failed to file a timely request for hearing and the AAD lacks subject matter jurisdiction to hear and issue a Recommended Decision on the NOV." See pp. 3-4. In the Semmel matter, the Petitioner had issued an NOV to the Respondents on or about October 17, 2002. See Id., at 1. On or about January 7, 2003. The Respondents' attorney submitted a

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**Page 3**

request for a formal hearing. Id. In his decision, the Hearing Officer stated that “[t]he AAD and Director have consistently ruled in prior matters that absent a timely filing, AAD lacks subject matter jurisdiction to hear and issue a Recommended Decision on the NOV.” Id. at 2, citing Aram Sarkisian, AAD No. 99-011/WME; Brian’s Service Station, AAD No. 93-015/GWE.

**DISCUSSION**

I agree with the OC&I’s argument that the AAD lacks subject matter jurisdiction to hear this matter as the relevant Statutes and prior decisions are clear and unambiguous. Once the statutory time frame has passed, the subject NOV became a final Compliance Order enforceable in Superior Court.

**FINDINGS OF FACT**

1. Respondent was duly served, personally, with the NOV on May 17, 2014.
2. The Respondent’s written request for hearing was received on June 18, 2014 by the Clerk of the AAD.
3. The Respondent failed to file an Objection to the OC&I’s Motion to Dismiss.

**CONCLUSIONS OF LAW**

1. Respondents Request for a Hearing is time barred pursuant to R.I. General Laws §42-17.7-9.

Page 4

It is hereby:

**ORDERED**

1. OC&I's Motion to Dismiss is **GRANTED**.
2. Respondent's Appeal is **DENIED** and **DISMISSED** for its failure to file a timely request for an appeal.

Entered as an Administrative Order this 24<sup>TH</sup> day of July, 2014.



David M. Spinella  
Hearing Officer  
Administrative Adjudication Division  
One Capitol Hill, 2<sup>nd</sup> Floor  
Providence, RI 02908  
(401) 574-8600

**CERTIFICATION**

I hereby certify that I caused a true copy of the within Order to be forwarded by first-class mail to: William Duckworth, c/o Complete Waste and Recycling Services, LLC, 90 Reservoir Avenue, Providence, RI 02907; via interoffice mail to Joseph LoBianco, Esquire, DEM Office of Legal Services and David Chopy, Chief, Office of Compliance and Inspection, 235 Promenade Street, Providence, RI 02908 on this 24<sup>TH</sup> day of July, 2014.

