



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

FAILURE TO APPEAR

OAL DKT. NO. ECE 19333-16

AGENCY DKT. NO. PEA130001-

0381459

**NEW JERSEY DEPARTMENT OF ENVIRONMENTAL
PROTECTION, BUREAU OF HAZARDOUS WASTE
ENFORCEMENT,**

Petitioner,

v.

NJ INSTITUTE OF ALLIED HEALTH LLC,

Respondent.

Elsbeth Faiman Hans, Deputy Attorney General, appearing for petitioner New Jersey Department of Environmental Protection (Christopher S. Porrino, Attorney General, attorneys)

No appearance for respondent NJ Institute of Allied Health, LLC

Record Closed: September 18, 2017

Decided: September 26, 2017

BEFORE **GAIL M. COOKSON**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On May 2, 2013, NJ Institute of Allied Health, LLC, (Allied Health or respondent) filed an administrative hearing request from a Notice of Civil Administrative Penalty

Assessment (NOCAPA) issued by petitioner New Jersey Department of Environmental Protection (NJDEP) on or about April 3, 2013, alleging that respondent violated several provisions of the Comprehensive Regulated Medical Waste Management Act, N.J.S.A. 13:1E-48.1 et seq. on October 2, 2012, and seeking \$59,000.00 in penalties. NJDEP did not transmit the hearing request to the Office of Administrative Law (OAL) until December 22, 2016, to be heard as a contested matter.

I attempted to schedule this matter in early January 2017 for a case management conference but the OAL was unable to reach any representative for respondent. Accordingly, I requested that petitioner NJDEP undertake additional due diligence to locate a representative of the respondent due to the significant passage of time. I adopt by reference and incorporate hereto the Certification of the Deputy Attorney General submitted on September 18, 2017, setting forth the due diligence undertaken in order to locate Allied Health or one of its officers or principals. Having failed to located any representative of respondent, petitioner herein seeks to have the matter returned to the agency for respondent's failure to appear.

N.J.A.C. 1:1-14.4(a) provides that if, after appropriate notice, a party does not appear in any proceeding scheduled by a judge, the judge shall hold the matter for one day before taking any action. If the judge does not receive an explanation for the nonappearance within one day, the judge may direct the Clerk to return the matter to the transmitting agency for appropriate disposition.

Based on the foregoing facts and the applicable law, I **CONCLUDE** that that there is just cause, under all the circumstances, to dismiss respondent's appeal without prejudice and that it should be returned to the transmitting agency. I mark it as dismissed without prejudice because of the passage of significant time between the respondent's hearing request and the agency's transmittal, in the unlikely event that respondent comes forward in the future to contest any final entry of judgment on the penalties.

ORDER

It is **ORDERED** that the matter be deemed dismissed without prejudice for failure to file an appearance and failure to prosecute the hearing request.

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.

September 26, 2017



DATE

GAIL M. COOKSON, ALJ

Date Received at Agency:

9/26/17

Date Mailed to Parties:

id