

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE COMMISSIONER OF ENVIRONMENTAL CONSERVATION**

STAFFORD GLASHAN,

Requester,

v.

DEPARTMENT OF ENVIRONMENTAL
CONSERVATION, DIVISION OF WATER,

Respondent.

OAH No. 23-0148-DEC

RULING ON REQUEST FOR ADJUDICATORY HEARING

I. Introduction

In general, parties who received an adverse decision by a division of this Department may seek commissioner-level review of the underlying decision. This is initiated by filing a request for hearing under 18 AAC 15.200.

After the Division of Water issued a Clean Water Act (CWA) § 401 certification in connection with Wetland Permit POA-2022-00448, Stafford Glashan—who owns land adjacent to the project—immediately filed such a request challenging the permit. The single ground for his challenge is that, in his view, the Division failed to follow the public notice procedure that department regulations require. He says that because of the lack of notice, he and other affected parties were not given an opportunity to comment on the proposed action.

This decision finds that Mr. Glashan did not raise an issue that requires a hearing.

II. Background

This straightforward case relates to the application of Steel Timber LLC and Lucas Wright to the Corps of Engineers for a permit to discharge about 4500 cubic yards of dredged and/or fill material in a wetland. The applicants are seeking to create a gravel pad of about 0.7 acres to support a business office and materials storage yard. The area of the project is north of the Finger Lakes between Palmer and Wasilla.¹

¹ ADEC 001.

The applicants requested a CWA § 401 certification from the Division, which issued an public notice of the request on January 13, 2023 in the Alaska Online Public Notice System (AOPNS).² No newspaper notice was published.³ The AOPNS notice invited the public to “comment on the project or request for a public hearing.”⁴ The period for submitting comments expired on February 2, 2023.⁵ A water quality certificate was apparently issued on February 9, 2023.⁶

Mr. Glashan filed a Request for Adjudicatory Hearing on the Department form for hearings under 18 AAC 15.200 on February 15, 2023. He seeks rescission of the certification so that the public comment period can be reopened. He crisply summarizes his single ground for seeking this result as follows:

My reason for this appeal is that the public comment period was not properly conducted as required by 18 AAC 15.[0]50. No notice was placed in the local newspapers (ADN or Frontiersman). . . . Because of the lack of sufficient notice many impacted parties including adjacent landowners . . . were not afforded the opportunity to comment.”⁷

Pursuant to 18 AAC 15.220(a)(2), the request was conditionally referred to the Office of Administrative Hearings to prepare “a recommended decision as to whether the request meets the requirements of 18 AAC 15.200 and the scope of any hearing on the request.”

III. Need for a Hearing

In general, Mr. Glashan’s request for a hearing is a model of clear, concise communication. He states his interest in the matter plainly: he is an adjacent landowner whose land is crossed by the creek that drains this wetland, and he failed to learn that the applicants were seeking a § 401 certification. He identifies the exact regulation he thinks the Division failed to follow in processing this certification. And he explains exactly how he feels the Division violated that regulation: not publishing the notice in one of the two local newspapers of general circulation.

Beyond that, however, a person requesting a hearing under 18 AAC 15.200 must show, in the hearing request, that the interest asserted “is one that the applicable statutes and regulations

² ADEC 006. The AOPNS is operated by the Lieutenant Governor under AS 44.62.175.

³ This is effectively conceded in the Division’s opposition to the request for adjudicatory hearing.

⁴ *Id.* (sic).

⁵ *Id.*

⁶ Request for Hearing at 2.

⁷ *Id.*

were intended to protect.”⁸ Mr. Glashan asserts a violation of 18 AAC 15.050. 18 AAC 15.050(a) requires the notices covered in that section to be published twice in “a newspaper of general circulation in the area that would be affected.” But 18 AAC 15.050(a) applies—according to its own text—only to applications for “a solid waste disposal permit, a short-term variance from water quality standards, or a wastewater disposal permit.”⁹ This is not such an application.

The applicable regulation regarding public notice of a CWA § 401 certification request is in Article 4 of 18 AAC 15, relating to “Certification.” There, 18 AAC 15.140 and 18 AAC 15.180 require “publication” and requires that the *contents* of published notice track the *information* required in 18 AAC 15.050(b). It does not, however, in any way require that the publication be in a newspaper; nor does it cross-reference or incorporate the more elaborate publication methodology set out in 18 AAC 15.050(a). Mr. Glashan’s interest in newspaper notification is not one that the applicable regulation, 18 AAC 15.140 and 18 AAC 15.180, were intended to protect.

The Division pointed out this deficiency in its own admirably succinct brief in response to the hearing request. Mr. Glashan was given seven days to respond, but he had no response.

IV. Conclusion

An adjudicatory hearing under 18 AAC 15 is denied.


Revised after deliberations on April 5, 2023.

By: 
Christopher Kennedy
Administrative Law Judge

Adoption

A. The undersigned, in accordance with 18 AAC 15.220(c)(2), DENIES the request for an adjudicatory hearing as not meeting the requirements of 18 AAC 15.200. Under AS 44.64.060(b), judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 5th day of April, 2023.

By: 
Jason W. Brune
Commissioner

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⁸ 18 AAC 15.200(d)(3).

⁹ 18 AAC 15.050(a).