

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

JAMES AND NANCY OLIVER dba)
SAFETY WASTE INCINERATION,)

Requester,)

v.)

ALASKA DEPARTMENT OF)
ENVIRONMENTAL CONSERVATION,)
DIVISION OF ENVIRONMENTAL HEALTH,)

Respondent.)

OAH No. 24-0088-DEC

RECOMMENDED DECISION ON REQUEST FOR ADJUDICATORY HEARING

I. Introduction

James and Nancy Oliver, doing business as Safety Waste Incineration, Inc. (SWI) requested an adjudicatory hearing to contest the January 2, 2024 decision of the Alaska Department of Environmental Conservation, Division of Environmental Health (Division) to deny SWI's application for renewal of its solid waste treatment permit. Due to a procedural error by the Division in denying the application before notifying SWI of the application's deficiencies, the Division's decision denying the renewal application is vacated, the matter is remanded to the Division for further action, and the hearing request is denied.

II. Factual and Procedural History

The Division issued solid waste permit number SWZA102-24 to SWI on January 17, 2017, pursuant to Title 46 of the Alaska Statutes and Title 18, Chapter 60 of the Alaska Administrative Code (AAC).¹ The permit authorized SWI to maintain and operate an autoclave, incinerator, and medical waste storage facility in Wasilla for the treatment of medical waste.² The permit was effective for a five-year period.³

On October 24, 2022, following an announced routine inspection of the facility on September 7, 2022, the Division issued SWI a Notice of Violation, alleging multiple permit and

¹ ADEC 000104-000107.

² ADEC 000104.

³ ADEC 000104.

regulatory violations identified during the inspection.⁴ After several meetings of the parties and their counsel, SWI and the Division entered into a compliance order by consent (COBC) on April 4, 2023.⁵

Under the terms of the COBC, SWI was required to take various corrective actions, including displaying appropriate signage at the facility and the submittal of multiple plans and forms for the Division's approval.⁶ Additionally, SWI was required to develop a new system for tracking waste for the Division's approval, and to submit tracking information to the Division monthly. The COBC also suspended civil penalties of \$19,897.29 for the alleged violations, conditioned on SWI's compliance with its obligations under the agreement.⁷

On April 28, 2023, SWI submitted its first deliverable to the Division under the COBC.⁸ The Division responded on May 3, 2023, explaining that the proposed plans and forms lacked sufficient detail and detailing the reasons.⁹

On May 5, 2023, SWI provided its first monthly submission under the COBC. The Division notified SWI that the submittal was insufficient on May 8, 2023, and it followed up with a May 17, 2023 letter that detailed deficiencies with SWI's compliance and established a new deadline (May 25, 2023) for submittal of corrected plans and forms.¹⁰

On June 6, 2023, the Division conducted an inspection of the facility and identified multiple instances of alleged noncompliance with the COBC. The Division outlined these deficiencies in a June 27, 2023 letter advising that it was imposing half (\$9,948.65) of the suspended civil penalty under the COBC, based on SWI's continued noncompliance with the agreement.¹¹ On July 17, 2023, the Division consolidated its prior comments and plan reviews into a single document "to aid [SWI] in revising [its] forms and plans."¹²

⁴ ADEC 00005-000013. The alleged violations included violations regarding signage, access control, waste tracking, bloodborne pathogen training, waste storage locations and duration, secondary containment, and record-keeping, among other things.

⁵ ADEC 000014-000046.

⁶ ADEC 000026-000033. In addition to addressing signage, the COBC required plans for access control, waste tracking, bloodborne pathogen training, secondary containment leak prevention, and monthly biological testing, and forms for visual monitoring and waste tracking.

⁷ ADEC 000033.

⁸ SWI was required to submit to the Division a facility map, visual monitoring form, waste manifest form, and plans for signage and access control by April 28, 2023. ADEC 000026-28 and 000032.

⁹ ADEC 000048-000052.

¹⁰ ADEC 000054-55; ADEC 000057-000062.

¹¹ ADEC 000064-000068.

¹² ADEC 000070-000075.

On July 31, 2023, SWI requested dispute resolution from the ADEC Commissioner's Office, primarily concerning the monthly waste manifest forms it was required to submit to the Division under the COBC. The Commissioner delegated the matter to the Division director, who issued a letter on September 15, 2023, upholding the Division's imposition of the civil penalty and costs incurred and its requirements for items that must be included on the waste manifest forms, excluding signature blocks.¹³

The Division conducted another inspection on September 13, 2024, and purportedly found many of the same noncompliance issues it had previously observed at the facility. On October 13, 2023, the Department of Law notified SWI of the deficiencies and that it was imposing the remainder (\$9,948.65) of the suspended penalty under the COBC.¹⁴

On December 15, 2023, SWI submitted to the Division an application for the renewal of its waste disposal permit, which was set to expire on January 17, 2024.¹⁵ The application was missing all relevant attachments, which SWI identified as either "pending" or "not applicable," with no further explanation. On January 2, 2024, the Division denied the permit application, deeming it to be incomplete and citing SWI's history of noncompliance.¹⁶ Explaining the basis for its decision, the Division stated:

18 AAC 60.215(a)(9) allows the department to evaluate "the applicant's compliance history while conducting other operations regulated by the department under this title, including any notice of violation, mandatory compliance order, consent order, and any other administrative civil, or criminal enforcement action; an applicant's compliance history will constitute sufficient basis for denial of approval if, in the department's determination, that history shows a pattern or practice of noncompliance that demonstrates the applicant's unwillingness or inability to achieve or maintain compliance with provisions of this chapter".

SWI's history of noncompliance demonstrates that the applicant is unwilling or unable to achieve and maintain compliance with their current permit (SWZA102-24) and the regulations. Further, 18 AAC 15.110 requires an applicant for a permit renewal to submit a complete application, as required by 18 AAC 15.020 and 18 AAC 15.110. SWI submitted an incomplete application.

¹³ ADEC 000077-000080.

¹⁴ ADEC 000082-000089.

¹⁵ ADEC 000090-000102.

¹⁶ ADEC 00001-00003.

Based on a review of the compliance history at the facility and the submission of an incomplete application, ADEC is denying the requested permit renewal under 18 AAC 60.215.¹⁷

On January 29, 2024, SWI sought an adjudicatory hearing, which the Commissioner conditionally referred to the Alaska Office of Administrative Hearings to determine whether the request satisfies the requirements of 18 AAC 15.200, and if so, the scope of the hearing. The Division opposed the hearing request.

III. Discussion

The administrative permit procedures in 18 AAC Chapter 15 and the more specific waste disposal permit procedures in 18 AAC Chapter 60 apply to SWI's permit renewal application in this case.¹⁸ Under the regulations, SWI was required to submit an application to renew its solid waste treatment permit no later than 30 days before the expiration date of the permit (January 17, 2024), which SWI did by submitting its application 33 days in advance.¹⁹ The application was incomplete, however, as it lacked virtually all required documentation.

The question is whether the Division was allowed to deny the permit without first notifying SWI that its application was incomplete and describing the deficiencies. Under the regulations, SWI was required to submit a completed renewal permit for the Division's evaluation.²⁰ But 18 AAC 60.210(d) makes clear that if an application is deficient, as was the case here, the Division "will notify the applicant and will describe the deficiencies. When the deficiencies are corrected, the application will be considered complete. . . and the Division will continue processing the application."²¹

Here, the Division denied the permit renewal application without first notifying SWI of the deficiencies in the application, in contravention of 18 AAC 60.210(d). Because the decision to deny the permit was premature, the decision is vacated, and the matter is remanded to the Division to take further action on the permit application, including notifying SWI that the application is incomplete and describing the deficiencies. Once the Division so notifies SWI,

¹⁷ ADEC 00002.

¹⁸ 18 AAC 15.010(a)(1) states that the provisions of 18 AAC 15.020 to 18 AAC 15.100 apply to waste management and disposal permits under AS 46.03.100 and 18 AAC 60.215, which includes the permit renewal at issue in this case.

¹⁹ 18 AAC 15.100(d).

²⁰ 18 AAC 15.020(a) (requiring an applicant for a permit "to serve a complete application on the department"); 18 AAC 60.210(a) (requiring an applicant for a solid waste disposal permit "to submit a complete and signed application.")

²¹ 18 AAC 60.210(d).

SWI should be afforded no more than 33 days to complete its permit renewal application. This is because the original permit, which was set to expire on January 17, 2024, was only effective for 33 more days after SWI submitted its incomplete application.²²


This decision does not affect SWI's duty to obtain and comply with any other permits as required by law.

IV. Conclusion


In accordance with 18 AAC 15.220(b)(3) and (c)(3), the Division's January 2, 2024 decision denying the permit renewal application is vacated. This matter is remanded to the Division to take further action on the permit, including notifying SWI that the application was incomplete and describing the deficiencies.

The request for a hearing is denied as moot.

Date of Recommended Decision: March 18, 2024.

By: 
Lisa M. Toussaint
Administrative Law Judge

Date of Adoption of Recommended Decision: _____.

By: **Emma Pokon** 
Digitally signed
by Emma Pokon
Date: 2024.03.26
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Emma Pokon
Commissioner

Certificate of Service: The undersigned certifies that this is a true and correct copy of the original and that on this date an exact copy of the foregoing was provided to the following individuals: James and Nancy Oliver (by mail & email); Masha Kazakova, AAG (by email); Dept. of Law Central Email. A courtesy copy was provided to: Julie Pack, Assistant Attorney General (by email) and Gary Mendivil, Department of Environmental Conservation (by email).

Signature:  Date: 03/26/2024

²² Under 18 AAC 15.110(a), the conditions of SWI's original, expiring permit would remain in effect until a permit renewal is issued or the Division denies the application, but only if the application to renew the permit is complete as required by 18 AAC 15.020.