

BEFORE THE ENVIRONMENTAL APPEALS BOARD
FOR THE STATE OF DELAWARE

APPEAL OF WORLDWIDE SALVAGE,
INC. AND GEORGE PELOSO

OPINION AND ORDER

Appellant, Worldwide Salvage, Inc. ("Worldwide"), has appealed various actions of the Secretary of the Division of Natural Resources and Environmental Control ("Secretary") taken in connection with the renewal of a lease to salvage the sunken vessel identified as the DeBraak with Sub-Sal, Inc.¹ In particular, the complaint alleges that the Secretary failed to take competitive bids, failed to follow his established practices, failed to provide a requested hearing, and renewed the lease when he knew, or should have known, that various actions allegedly made Sub-Sal unfit to hold the lease. The Secretary's authority to enter a lease for the salvage of a sunken vessel derives from 7 Del. C. 61, the "Underwater Lands Act." Subchapter II of that chapter ("Subaqueous Lands") gives the Secretary,

¹Worldwide also appealed the original grant of the lease to Sub-Sal to the Board. The Board, by action of its administrative assistant, refused to accept that appeal for lack of jurisdiction. That decision has been appealed to the Superior Court Sussex County, Worldwide Salvage v. Environmental Appeals Board, C. A. No. 84A-OC-1. The issue of jurisdiction has been briefed and is pending decision.

in conjunction with the Governor, the authority to lease any subaqueous public land. The statute provides for public hearings on request, but is silent as to appeal rights from the decisions of the Secretary and Governor.

The question before the Board is whether the subsequent enactment of 7 Del. C. §6008 gave the Board jurisdiction to hear such appeals. The Board concludes it did not.

Seven Del. C. §6008(a) reads:

Any person whose interest is substantially affected by any action of the Secretary may appeal to the Environmental Appeals Board within 20 days after the Secretary has announced the decision. The Board may affirm, modify or reverse the decision of the Secretary.

Appellant argues that this section must be given its literal meaning. However, literal interpretation of the phrase "any action" would give the Board the extremely broad power to hear appeals on matters ranging from personnel decision to the Secretary's annual budget request. When literal interpretation leads to such a clearly absurd result, statutory interpretation is appropriate. Coastal Barge Corporation v. Coastal Zone Industrial Control Board, Del. Supr., 492 A.2d 1242, 1246 (1985).

One tool to aid such interpretation is the examination of the statutory scheme as a whole. Sections 6002 through 6005 of Title 7 establish the Secretary's power to issue permits to entities engaged in activities generally involving the discharge of pollutants or waste, and to hold hearings, make determinations and enforce such permits. Section 6006 establishes the Board and §6007 gives it the jurisdiction to hear appeals from the

Secretary's actions. The logical interpretation of this set of statutes is that the General Assembly intended by §6007 to give the EAB jurisdiction to hear appeals regarding the grant or denial of the permits specified in §6003.

This inference is strengthened by examining the remaining chapters of Title 7. The Board is given express jurisdiction to hear appeals in four of these chapters: Chapter 62 (Oil Pollution Liability, §6213); Chapter 63 (Hazardous Waste Management, §6313); Chapter 66 (Wetlands, §6610); and Chapter 71 (Noise Control and Abatement, §7113). Two chapters provide for direct appeal to the Superior Court: Chapter 64 (Solid Waste Authority, §6414) and Chapter 68 (Beach Erosion Control, §6803). The Coastal Zone Industrial Control Board is created by §7007 to take appeals arising from the Secretary's decisions under the Coastal Zone Act. Thus, it was clearly not the General Assembly's understanding that §6007 confers on the Board jurisdiction over any appeal arising under any chapter of Title 7. Such interpretation would render the statutes expressly conferring jurisdiction for specific appeals redundant, and those establishing other avenues of appeal meaningless. Thus, the Board concludes that 7 Del. C. §6007 confers on it only the jurisdiction to hear appeals from permitting decisions of the Secretary arising under §6003.

Worldwide further argues that §6007(e) confers jurisdiction on the Board to hear appeals from grants of permits arising under Chapter 61. Section 6007 states:

There shall be no appeal of a decision by the Secretary to deny

a permit on any matter involving
state-owned land including subaqueous
lands.

It is Worldwide's position that the word "permits" in this section refers to all permits which the Secretary may issue under Title 7, not just permits referred to in §6003, and that since the General Assembly expressly exempted the denial of permits concerning subaqueous lands from appeals, it must have intended that the Secretary's grant of permits to conduct salvage operations on subaqueous lands could be appealed to the Board.

The Board rejects this argument because, as stated, it finds that §6007 grants it jurisdiction only to hear appeals arising from permitting decisions taken under §6003. It reads the word "permits" in §6007(e) to mean only §6003 permits, not all permits which the Secretary may issue under Title 7. The apparent intent of §6007(e) is to deny appeals from permitting decisions taken under §6003, when those decisions concern state owned lands. Rather than enlarging the Board's jurisdiction, §6007(e) narrows it.

For these reasons the Board finds that it has no jurisdiction over the appeal of the grant of a lease made under 7 Del. C. c. 61 and orders the appeal dismissed.

SO ORDERED:

10/23/85
date

Thomas J. Kealy
Thomas J. Kealy, Chairman

10/23/85
date

Evelyn A. Greenwood
Evelyn Greenwood, Member

10/23/85
date

Molger H. Harvey
Molger H. Harvey, Member

10/23/85
date

Richard C. Sames
Richard C. Sames, Member

10/23/85
date

George A. Wharton

