

**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
FOR THE STATE OF DELAWARE**

ANIS AND SELHEM SALIBA,	)	
	)	
Appellants,	)	
v.	)	Appeal No. 2002-04
	)	
SECRETARY OF THE DEPARTMENT OF	)	
NATURAL RESOURCES AND ENVIRONMENTAL,	)	
CONTROL OF THE STATE OF DELAWARE,	)	
	)	
Appellee.	)	

***DECISION AND ORDER***

Pursuant to due notice of time and place of hearing served on all parties in interest, the above stated cause came before the Environmental Appeals Board on October 22, 2002, in the Auditorium, Richardson & Robbins Building, 89 Kings Highway, Dover, Kent County, Delaware.

**PRESENT:**

- Donald E. Dean, Chairman
- Joan Donoho, Member
- Peter McLaughlin, Member
- Stanley Tocker, Ph.D., Member
- Gordon Wood, Member

Kevin R. Slattery, Attorney for the Board.

**APPEARANCES:**

- Selhem Saliba, for the Appellants
- Matthew P. Chesser, Deputy Attorney General for the Appellee, DNREC

A hearing was held before the Environmental Appeals Board ("Board") on October 22, 2002, to consider oral argument on the Agency's Motion to Dismiss.

### Summary of the Arguments

The Department of Natural Resources and Environmental Control ("DNREC" or "Agency") contends that the appeal should be dismissed for two reasons. First, it is argued that the Salibas' proposed pier and dock would extend beyond the mean low water line. Accordingly, the structure would be built (in part) on public subaqueous lands. Pursuant to 7 Del. C. §§ 6008(e) and 7210, the Board does not have jurisdiction to hear an appeal from the denial by the Secretary of a permit involving public subaqueous lands. Second, the Agency argues that the appeal was not timely filed. The Agency sent its decision denying the permit to the Salibas by certified mail. It was signed for on December 29, 2001. An appeal was requested on January 31, 2002—over the twenty (20) day appeal period established by statute. That appeal was also mistakenly filed with the Secretary of DNREC. A properly filed request for an appeal before the Board was not perfected until 77 days after receipt of the denial letter.

Mrs. Saliba contends that she personally received the denial letter sometime between January 7, 2002 and January 9, 2002. She was away from her home at the time the letter was delivered. An older neighbor signed for the certified mail. When she received the letter denying the permit, there was no explanation as to why the permit was denied. No one told her she might have been able to use environmentally friendly materials. Her neighbors have canals adjacent to their properties on which they

constructed docks. The only access to the water from her property would be to build the walkway and dock. Mrs. Saliba also was confused about the appeal time frames. Had she been familiar with them, she would have paid more attention. She admitted that she never contacted the Agency to inquire as to why the permit was denied or whether there were acceptable alternatives.

### STATEMENT OF DETERMINATION

Having considered all the arguments of the parties, the Board, by unanimous vote, granted the Agency's motion for the following reasons. The appeal was not timely filed. Even if the Board were to accept the mistaken filing by the appellants with the Secretary of DNREC—see *e.g.*, *Henry v. Department of Labor*, 293 A.2d 578 (Del. Super., 1972)—the January 31, 2002 filing was outside the twenty (20) day appeal period established in 7 Del. C. §6008(a) and 7 Del. C. §6610. The certified letter was received by an authorized individual on December 29, 2001. Even if the Board were to accept Mrs. Saliba's representations that she **personally** received the denial letter no later than January 9, 2002, the filing would still be untimely. There is no indication that the failure to timely file the appeal was due to some error on the part of the agency. Furthermore, the letter of denial clearly spells out the appeal time frame and the manner in which an appeal may be perfected. As the appeal was not timely filed with the Board, the Board does not have jurisdiction, and the appeal must be dismissed.

Assuming, arguendo, that the appeal had been timely filed, there is an additional basis for dismissal. Pursuant to 7 Del. C. §§ 6008(e) and 7210, the Board does not have jurisdiction to hear an appeal from the denial by the Secretary of a permit

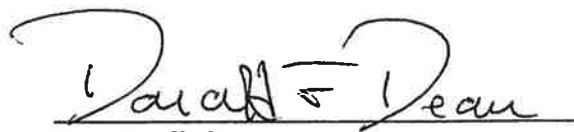
involving public subaqueous lands. Mrs. Saliba does not contest the Agency's determination that the proposed pier and dock extend beyond the mean low water line, and thus, would extend on to public subaqueous lands. She also has not challenged the Agency's jurisdiction over public subaqueous lands issues. In addition, she has not alleged a sufficient case for discriminatory treatment. While her neighbors may have established docks, there is no allegation that these docks were recently permitted or that their construction intruded upon public subaqueous lands. Without more, her appeal on its face does not allege sufficient facts of discriminatory treatment. Accordingly, the Board lacks subject matter jurisdiction over this appeal, and we have no choice but to dismiss it. The Board's dismissal is without prejudice to the extent the appellants are not foreclosed from filing future permit applications with the Agency.

**SO ORDERED** this 25 th day of November, 2002.

**ENVIRONMENTAL APPEALS BOARD**

The following Board members concur in this decision.

Date: Oct 26, 2002

  
Donald E. Dean  
Chairman