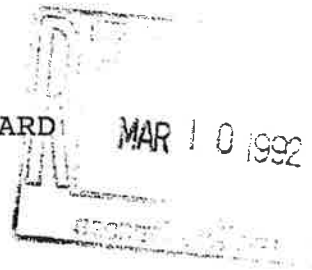


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
OF THE STATE OF DELAWARE



EAR FILE 1941

IN RE: APPEAL OF  
JOHN PEARSON

)  
) Appeal No. 92-01  
)

FINAL ORDER

On February 25, 1992, the Board heard and considered the appeal of John Pearson filed on January 10, 1992. The Board members present were Thomas J. Kealy, Clifton H. Hubbard, Jr., Joan Donoho and Mary Jane Willis. Steven C. Blackmore, Deputy Attorney General, advised the Board. Deputy Attorney General Jeanne Langdon represented the Secretary of the Department of Natural Resources and Environmental Control and Andre M. Beauregard represented the appellant John Pearson.

The sole issue before the Board was whether appellant filed his appeal within the twenty (20) day appeal period. Both parties presented documentary evidence and examined witnesses. At the conclusion of the hearing the Board orally announced its unanimous decision that this appeal was untimely. This Order follows.

FINDINGS OF FACT

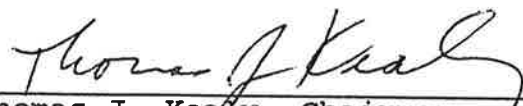
The Order appealed from, Secretary's Order No. 91-WR-06, was issued June 17, 1991 and hand delivered on June 18, 1991 to appellant by Robert C. Miller, an Environmental Protection Officer employed by the Secretary. Mr. Pearson received and opened the envelope containing the Order, but he refused to accept it after having an opportunity to review it and discussing the amount of the penalty imposed with Mr. Miller. Mr.

Pearson gave the Order back to Officer Miller who then left the Pearson residence with the Order. Officer Miller returned to the Pearson residence the next day with the Order and, after finding that no one was home, Officer Miller left a copy of the Order in the Pearson's screen door. The Secretary also attempted to provide a copy of the Order to Mr. Pearson by certified mail but the envelope was returned to the Secretary with a notice that it was unclaimed. Thereafter, sometime in early July, Valerie Satterfield-Glover, a senior secretary employed by the Secretary, sent a copy of the Order through regular mail and this envelope was not returned to her. The envelope did not contain the post office box which Mr. Pearson uses as his mailing address, but it contained the proper name of the trailer park and it used the same address as the certified envelope which was returned unclaimed.

#### CONCLUSIONS OF LAW

The statute governing appeals to the Environmental Appeals Board was amended effective July 10, 1991 to provide a right of appeal if the appellant files "within 20 days after receipt of the Secretary's decision or publication of the decision." 7 Del. C. sec. 6008(a). Prior to its amendment, the statute simply required an appeal to be filed within twenty (20) days after announcement of the decision. Regardless of which statute governs, appellant did not file this present appeal within the twenty (20) day requirement and, accordingly, this Board lacks jurisdiction to consider his appeal. The actions of Officer Miller were sufficient to conclude that appellant was provided with a copy of the Secretary's Order. Also, the

mailings sent by the Secretary were reasonably calculated to provide appellant with the Order. Even using the date of the later notification provided by Ms. Satterfield-Glover, the appeal is still untimely.

  
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Thomas J. Kealy, Chairman

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Clifton H. Hubbard, Jr.

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DATE: February , 1992

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*Clifton H. Hubbard*  
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Clifton H. Hubbard, Jr. 2/29/92

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