

STATE OF WISCONSIN
DEPARTMENT OF COMMERCE

In the Matter of the PECFA Appeal of

Mohammad Shafi
Shafi Enterprises LLC
1218 W Kilbourn
Milwaukee WI 53206

PECFA Claim # 53205-1153-19
Hearing #08-57

DECISION DISMISSING PETITION

The petitioner herein is Mohammad Shafi, of Shafi Enterprises LLC, Milwaukee, Wisconsin. The respondent is the State of Wisconsin Department of Commerce (Department).

Chronology

The Department, by its November 6, 2008 letter to petitioner, advised petitioner of its decision to deny petitioner's request to access the Petroleum Environmental Clean-up Fund Award (PECFA) program.

In response, an architect named Steven Sharpe, by November 22, 2008 letter to the Department, stated that he (or his firm) was by that letter requesting an appeal of the Department's decision that the Mohammad Shafi (Shafi) "claim is ineligible for petroleum clean-up costs...." (November 22, 2008 at page 1.)

By motion of December 10, 2008, the Department moved to dismiss the hearing request, for lack of standing, specifically stating that the claimant or attorney therefor did not file the appeal.

Steven Sharpe's December 22, 2008 letter to the Department was filed in response to the motion to dismiss, stating Mr. Sharpe's position. He referenced therein having obtained a signed copy of the original petition, signed, that is, by petitioner Mohammad Shafi, and dated December 15, 2008.

Applicable statute and regulations.

101.02 Powers, duties and jurisdiction of department.

101.02(6)(e). Any employer or other person interested either because of ownership in or occupation of any property affected by any such order, or otherwise, may petition for a hearing on the reasonableness of any order of the department in the manner provided in this subchapter.

Chapter Comm 47, Wis. Admin. Code

PETROLEUM ENVIRONMENTAL CLEANUP FUND

Definitions

Comm 47.015

(6) "Claimant" means any party who is eligible to submit a claim for an award under this chapter. Under this chapter, the claimant may also be the responsible party.

Comm 47.015

(8) "Consultant" means a person who performs or provides professional investigation, interpretation, design or technical project management services including, but not limited to, conducting site investigations, preparing remedial action plans and alternatives, and interpretation of data for passive or active bio-remediation systems. An owner or operator may prepare bid documents and complete other requirements of the bid process without being designated as a consultant.

Comm 47.015

(30) "Owner" is an entity under the PECFA program or a trust and in addition has the meaning set forth in s. 101.143 (1) (e), Stats.

101.143(1)(e) (e) "Owner" means any of the following:

101.143(1)(e)1

1. A person who owns, or has possession or control of, a petroleum product storage system, or who receives direct or indirect consideration from the operation of a system regardless of whether the system remains in operation and regardless of whether the person owns or receives consideration at the time environmental pollution occurs.

101.143(1)(e)2

2. A subsidiary or parent corporation of the person specified under subd. 1.

101.143(1)(e)3.

3. A person who formerly owned a farm tank and who satisfies the criteria in sub.(4)(e)1m.b.

Comm 47.015(28)

(28) "Operator" has the meaning set forth in s. 101.143 (1) (d), Stats.

101.143(1)(d)

(d) "Operator" means any of the following:

101.143(1)(d)1.

1. A person who operates a petroleum product storage system, regardless of whether the system remains in operation and regardless of whether the person

operates or permits the use of the system at the time environmental pollution occurs.

101.143(1)(d)2.

2. A subsidiary or parent corporation of the person specified under subd. 1.

Discussion

The standing requirement.

A timely petition or request for hearing can be filed with the Department if, and only if, such request is filed by one with standing to do so. The law provides that following a PECFA-related denial, either the owner or operator (or its legal counsel) of the site would have to file the request. Further, even when filed by one who has standing to request a hearing (not the case here), such request must be timely filed, that is, within thirty days of the date of the Department decision denying the request for hearing.

The Department's November 6, 2008 denial letter was addressed to Mohammad Shafi, Shafi Enterprises, with no other addressee listed. The letter advises, in pertinent part, who may request an administrative hearing on the denial:

An owner or an operator, or an attorney representing the owner or the operator, (but not a consultant or claim preparer) may request an administrative hearing to review this action by delivering, mailing or faxing a written request for a hearing to: Dept. of Commerce PECFA Appeals, PO Box 7838 Madison, WI 53707-7838 FAX: (608) 267-1381. (Department November 6, 2008 denial letter at page 1.)

A consultant lacks standing to request a hearing on the denial.

There is no evidence or indication or assertion in the November 22, 2008 request for hearing that Steven Sharpe (or his firm) is other than a consultant. That is, there is no assertion or showing in the Sharpe letter that he or his firm is either an owner of the site or an operator of the site.

The November 22, 2008 Sharpe letter on its signature line below Steven Sharpe's name states only "Architect/Project Manager." (Sharpe letter, page 2.)

Because the sole timely request for hearing herein was filed by a consultant (the architect Steven Sharpe), that is, by one who is neither the site owner nor an operator nor legal counsel within the meaning the above statute and regulations, the Department's motion to dismiss is granted, and the case is dismissed. The consultant herein simply lacks standing to appeal the Department Decision.

The right to appeal decisions of the PECFA program is contained in §COMM 47.53, Wis. Adm. Code. As indicated in §47.53(1)(a), Wis. Adm. Code, the underlying basis for such appeals is §101.02(6)(e), Stats. That statutory right to request a hearing

extends only to persons who are “interested” in property. In the case of the PECFA program, consultants have a legal interest only with regard to decisions affecting their registration to participate in the program. Consultants do not have a legal interest in any decisions affecting the claim for reimbursement, including a decision denying reimbursement for costs or PECFA eligibility. The appeal in this case was not signed by the claimant or it’s attorney as required by §COMM 47.53(1)(b)2. Accordingly, the request for hearing is denied, and the appeal is dismissed.

No timely request for hearing was filed by an owner or operator of the Shafi site.

Department rules as to challenging PECFA decisions are clear:

Comm 47.53(1)(b)1.

1. All appeals pursuant to this chapter shall be in writing and shall be received by the department no later than 30 calendar days after the date of the decision being appealed. Appeals received more than 30 days after the date of the decision being appealed shall be dismissed. For purposes of this section, appeals received after 4:30 p.m. shall be considered received on the next business day.

In this case, the Department November 6, 2008 letter of denial started the thirty-day appeal period running. The time frame for such request ran from November 7, 2008 until December 7, 2008. During this time, the petitioner (as owner or operator) could request a hearing. No appeal by Shafi was filed within that time frame. Only after that jurisdictional time had expired did someone -- the consultant -- suggest that a request for hearing had been signed by Shafi (and dated December 15, 2008). Even if otherwise valid, such petition was jurisdictionally late and must be dismissed.

DECISION

For the above reasons, the appeal herein is dismissed.

NOTICE

This is a final decision of the Department of Commerce. You may request a rehearing pursuant to §227.49, Stats., within 30 days of the date of this decision, by sending your petition to Joseph Thomas, Chief Counsel, Department Commerce, P.O. Box 7970, Madison, Wisconsin 53707-7970. This decision may be appealed within 30 days of the date of this decision or the date of a decision on a request for rehearing, if any, pursuant to §227.53, Stats. The parties in interest are the Secretary, Department of Commerce, 201 West Washington Ave., 6th Floor, P O Box 7970, Madison, Wisconsin 53707-7970 and the appellant named in the appeal caption above.

Dated and mailed: _____

Steven Wickland
Administrative Law Judge
Department of Commerce

Copies to:

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