

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE POLLUTION CONTROL AGENCY

In the Matter of the Administrative Penalty
Ordered Issues to Martin Ahlman d/b/a
Coyote Cap Lasergraphics

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

This matter came before Administrative Law Judge James E. LaFave for a telephone prehearing conference on March 20, 2014.

Max Kieley, Assistant Attorney General, appeared on behalf of the Pollution Control Agency (MPCA). No one appeared on behalf of Respondent Max Ahlman d/b/a Coyote Cap Lasergraphics. In addition, no one contacted the Administrative Law Judge on behalf of the Respondent to request a continuance of this matter or request any other relief. Based upon Respondent's failure to appear, the MPCA has requested a default recommendation.

STATEMENT OF THE ISSUES

1. Whether the MPCA properly determined that Respondent violated Minnesota Statutes, section 116.081 and Minnesota Rules 7001.0030, 7001.3050 and 7035.2565; and
2. If so, whether the \$3,811 penalty assessed by the MPCA is reasonable?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

3. On April 11, 2013, the Notice and Order for Prehearing Conference and Hearing in this matter was served by first class mail upon Respondent at his last known address on file with the MPCA. It notified Respondent of the prehearing telephone conference scheduled for May 16, 2013, at 3:30 p.m. and provided the call information. The Notice and Order for Prehearing Conference and Hearing was not returned to the MPCA as refused or not deliverable.

4. The Notice and Order for Prehearing Conference and Hearing informed Respondent that his failure to appear at the Prehearing Conference may result in a finding that he is in default and that his statutory right to a contested case hearing in front of an Administrative Law Judge may be waived.

5. At 3:30 p.m. on May 16, 2013, Respondent failed to appear at the Prehearing Conference, either personally or through counsel.

6. On June 5, 2013, the MPCA filed a Motion and Memorandum of Law in Support of Default Judgment.

7. On June 7, 2013, Respondent filed a letter explaining that his failure to appear was because he was at the Veteran's Administration Medical Center for a family emergency that was in its third week.

8. Administrative Law Judge M. Kevin Snell granted a continuance on August 9, 2013.

9. Respondent appeared at a prehearing conference held on September 11, 2013.

10. On October 11, 2013, this matter was reassigned to Administrative Law Judge James E. LaFave.

11. By Order dated February 14, 2014, Judge LaFave scheduled a prehearing conference for March 11, 2014 at 1:30 p.m.

12. At 1:30 p.m. on March 11, 2014, Respondent failed to appear at the Prehearing Conference either personally or through counsel.

13. The Second Prehearing Order dated March 12, 2014, set a prehearing conference for 11:30 a.m. on March 20, 2014.

14. The Second Prehearing Order informed Respondent that failure to appear at the prehearing conference or hearing may result in a finding that he is in default. That this means his statutory right to a contested case hearing before an Administrative Law Judge may be waived and that the proposed action by the MPCA may be upheld.

15. The Second Prehearing Order was not returned to the Office of Administrative Hearings as refused or not deliverable.

16. By e-mail dated March 17, 2014, counsel for the MPCA sent an e-mail to Respondent attaching the Second Prehearing Order.

17. Respondent sent an e-mail to the MPCA's counsel on March 18, 2014.

18. At 11:30 a.m. on March 20, 2014, Respondent failed to appear at the Prehearing Conference either personally or through counsel.

19. At the close of the prehearing conference, the MPCA requested a default recommendation.

20. Because Respondent failed to appear as ordered, he is in default.

21. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice and Order for Hearing, a true and correct copy of which is appended as Attachment A, are taken as true and incorporated by reference into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

The Administrative Law Judge and the Commissioner have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 116.072, subd. 6.

1. The Respondent received due, proper and timely notice of the charges against him and the time and place of hearing. The matter is, therefore properly before the Commissioner and the Administrative law Judge.

2. The MPCA has fulfilled all procedural requirements of law and rule.

3. A default occurs when a party fails to appear without the prior consent of the judge at a prehearing conference, settlement conference or a hearing. If the agency appears at a hearing but the party against whom the agency intends to take action does not, the allegations in the Notice and Order for Hearing shall be taken as true and deemed proved without further evidence.¹

4. Respondent, having failed to appear at the prehearing conference on March 11, 2014 and the prehearing conference on March 20, 2014 without the prior consent of the judge, is in default. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice and Order for Prehearing Conference and Hearing are hereby taken as true.

5. The MPCA documented a burn area on Respondent's property which was approximately 25 feet by 25 feet (length, width) by 5 feet deep containing solid waste and ash. Respondent admitted to MPCA staff that he had used the burn area for approximately 15 years for waste generated from his business and from individuals residing on the property.

6. As a result, Respondent violated Minnesota statutes, section 116.081 and Minnesota Rules 7001-.0030, 7001.3050 and 7035.2565.

7. The MPCA properly considered the statutory factors in Minnesota statutes section 116.072, subdivision 2 in assessing an administrative penalty in the amount of \$3,811. There has been no showing that the penalty is unreasonable.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

¹ Minn. R. 1400.6000.

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that the Commissioner **AFFRIM** the Administrative Penalty Order issued to Max Ahlman d/b/a Coyote Cap Lasergraphics.

Dated: April 14, 2014

s/James E. LaFave
JAMES E. LAFAVE
Administrative Law Judge

Reported: Default.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of the MPCA will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 116.072, subd. 6(e), the Commissioner's decision shall not be made until five days after receipt of this Report. The person to whom the Order is issued may, within those five days, comment to the Commissioner on the Recommendation. The final order may be appealed in the manner provided in Minn. Stat. § 14.63 to 14.69.