

**BEFORE THE DEPARTMENT OF ENERGY &  
ENVIRONMENTAL PROTECTION**

**PETITION FOR DECLARATORY RULING**

Pursuant to Conn. Gen. Stat. § 4-176, and § 22a-3a-4 of the Regulations of the Connecticut State Agencies, the Petitioner, Peter C. White, hereby petitions the Commissioner for a ruling on the following issue:

*Whether the Commissioner has jurisdiction to adjudicate the Application for Permit Inland Wetland & Watercourses, Application No. IW-201502274, submitted by 2772 BPR, LLC, where i) the local agency had "acted" on the application within the 65 day statutory period, and ii) the application that had originally been submitted to the North Branford Inland Wetlands and Watercourses agency was not the application that was submitted to the Department.*

In support of thereof, the Petitioner represents:

**I. FACTS AND CIRCUMSTANCES**

**A. Factual Background**

On August 14, 2014, the applicant, 2772 BPR, LLC, submitted a permit application to the Town of North Branford's Inland Wetland & Watercourses Agency (IWWA) to conduct a regulated activity planned at 40 Ciro Road in the Town of North Branford, the discharge of stormwater runoff from a proposed bulk propane storage facility. Said application was given Application No. #2014/15-1 by the North Branford IWWA. On August 27, 2014, the IWWA heard a presentation by the applicant, and scheduled a site walk for September 24, 2014. On September 24, 2014, a meeting was held before the North Branford IWWA. Due to the number of Town residents in attendance, the meeting was adjourned to the local intermediate school. A decision on the application was tabled to the meeting of Oct. 22, 2014.

In the interim, two North Branford IWWA members recused themselves from acting on the application. Town Planner Carey Duques had scheduled a meeting on October 29, 2014, to comply with the 65-day statutory (CONN. GEN. STAT. § 22a-42a(c)(1)), and a special meeting was scheduled for October 29, 2014. However, the meeting was cancelled for lack of a quorum of IWWA members.

On November 19, 2014, the applicant's attorney wrote to Cheryl Chase, DEEP Director of Inland Water Resources Division, summarizing timeline, stating "that the applicant had not granted any extension and "[w]e do not anticipate that the [local agency] will be able to act on the application at any point in the future." On January 9, 2015, Director Chase wrote to applicant's attorney and Town Manager Duques, urging the parties to adjudicate the application at the local level. Between January 9 and March 5, 2015, Town Planner Carey Duques reached out to the applicant's attorney seeking to refile the application locally as requested by Department representative Robert Gilmore. The applicant's attorney informed the Town's mayor by letter that the applicant "is exercising its right to have the application considered by the [DEEP]."

On March 25, 2015, the Department received an "Application Package" from the applicant's engineer. Instead of submitting the application that had been submitted to the local agency, the applicant, 2772 BPR, LLC, submitted to the Department forms including (a) a "Permit Application Transmittal Form" and (b) a "Permit Application for Programs Administered by the Inland Water Resources Division" along with attachments, some of which had been submitted to the local agency and some of which had not been submitted.

Director of Inland Water Resources Division Cheryl Chase issued a two- page letter, the subject line of which was "Application Insufficiency," identifying, (a) missing or incorrect

hydrologic and hydraulic computations; (b) a need for revised plans; and © attachments H-1 and H-2 missing from the application (because the "drainage report" submitted was for a 2007 project, not the proposed project). The applicant responded to the Department with the following additional documentation:

- An entirely new "Stormwater Management Report" dated June 4, 2015(4 pages), with
- An Appendix A (88 pages of calculations dated June 2, 2015);
- An Appendix B with A site plan revised June 4, 2015(ADJUSTED CONTOURS & GRADING); A Detail Sheet, revised June 4, 2015 (ADJUSTED FLOW ELEVATIONS ON OI;/WATER SEPARATOR); and An S. & E. Control Plan, revised June 4, 2015 (REVISED PROJECT NARRATIVE NOTE "D"); An Existing Conditions Watershed Map, dated June 4, 2015; A Proposed Conditions Watershed Map, dated June 4, 2015; and, An Existing Conditions Detention Basin Plan, Map dated June 4, 2015; and "Attachment H" missing from the March 25 "Application Package signed on 6/52015 (7 pages).

The Department determined that the application, as submitted, was insufficient. At this point, the Commissioner have simply denied the application, and directed 2772 BPR LLC to file a new, complete sufficient application with the North Branford Inland Wetlands and Watercourses Agency (the "local agency" within the meaning of the statute. Nowhere in the language of CONN. GEN. STAT. § 22a-42a(c)(1) does the legislative directive contemplate that the commissioner is to treat a local application as though it were a new application. Nowhere is there a hint that the commissioner can ignore the local regulations provided to the commissioner and adopted under General Statutes §22a-42a(b). The application before the Department is not the application submitted to the North Branford IWWA. There is no statutory authority for an applicant to apply for an IWWA permit directly to the Department, thereby by-passing the control of the local agency. Consequently, the Department should dismiss the application for

lack of jurisdiction.

## II. STATUTE AT ISSUE

CONN. GEN. STAT. § 22a-42a(c)(1).

## III. ASPECT OF LAW

### A. **Whether the Department has statutory authority pursuant to CONN. GEN. STAT. § 22a-42a(c)(1) to adjudicate the application submitted by 2772 BPR, LLC.**

#### 1. **The North Branford IWWA “acted” on the application within the 65 day statutory period, which deprived the Department of jurisdiction to adjudicate the application.**

The Office of Adjudications has no jurisdiction to adjudicate application number IW 201502274 of 2772 BPR, LLC. CONN. GEN. STAT. § 22a-42a(c)(1) describes the procedure to be followed when an inland wetlands agency fails to act on an application:

*If the inland wetlands agency... fails to act on any application ... within sixty-five days from the date of receipt of the application, or within any extension of any such period as provided in section 8-7d, the applicant may file such application with the Commissioner of Energy and Environmental Protection who shall review and act on such application in accordance with this section.*

The statute does not require the inland wetlands agency to make a final adjudication on the application; it only requires to agency to “act” on the application. The North Branford IWWA “acted” on the application within the 65 day statutory, which ran from the August 27, 2014 date of the receipt of the application to October 31, 2014. The North Branford IWWA held a meetings and conducted a site walk. Although the IWWA did not reach a final decision because of the absence of a quorum, it would have done so once a the agency had enough members to reach a quorum. Accordingly, the North Branford IWWA had acted on the application within the

statutory period. Therefore, there was no basis pursuant to CONN. GEN. STAT. § 22a-42a(c)(1) for the applicant to submit the application to the Department.

**2. The application submitted to the Department is not the same application submitted to the North Branford IWWA.**

Additionally, the application under consideration by the DEEP is not the application that was submitted to the local agency as required by CONN. GEN. STAT. § 22a-42a(c)(1). The statute provides, *the applicant may file such application with the Commissioner of Energy and Environmental Protection who shall review and act on such application in accordance with this section .... Id.* (emphasis added). The application being considered by the DEEP is different in that it lacks material submitted to the local agency as part of the application and contains documentation that was not submitted to the local agency, as detailed above.

Consequently, when the Department determined that the application, as submitted, was insufficient, the Commissioner should have simply denied the application, and directed 2772 BPR LLC to file a new, complete sufficient application with the North Branford Inland Wetlands and Watercourses Agency, the "local agency" within the meaning of the statute.

Nowhere in the language of General Statutes § 22a-42a(c)(1) does the legislative directive contemplate that the commissioner is to treat a local application as though it were a new application. The application before the Department is not the application submitted to the North Branford IWWA. There is no statutory authority for an applicant to apply for an IWWA permit directly to the Department, thereby by-passing the control of the local agency. Consequently, the Department should dismiss the application for lack of jurisdiction.

**IV. CONCLUSION**

For the aforementioned reasons, the Petitioner prays that the Commissioner issue a declaratory ruling stating that the Department has no jurisdiction to adjudicate Application No. IW-201502274, submitted by 2772 BPR, LLC.

Respectfully submitted,

THE PETITIONER  
PETER C. WHITE

A handwritten signature in black ink that reads "Peter C. White". The signature is written in a cursive style and is positioned above a horizontal line.

Peter C. White (pro se)  
21 Evergreen Drive  
North Branford, CT 06471  
Tel.: (203) 747-5532  
attorneypeterwhite@icloud.com

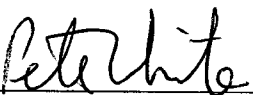
**AFFIDAVIT OF NOTICE**

Peter C. White, the undersigned petitioner, has given notice of the substance of the petition, the opportunity to file comments with the Commissioner, and the right to request intervenor or party status to all persons known to have an interest in the subject matter of the declaratory ruling proceeding, to wit:

2772 BPR, LLC  
c/o Jeffrey T. Beatty, Esq., Agent  
25 Boston Road  
Guilford, CT 06437  
jtbeatty@cshore.com

Brendan Schain, Hearing Officer  
Department of Energy & Environmental Protection  
Office of Adjudications  
79 Elm Street  
Hartford, CT 06106-5127  
Brendan.Schain@ct.gov

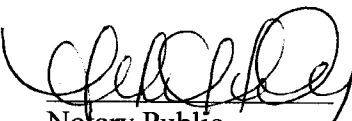
Robert Gilmore  
Department of Energy and Environmental Protection  
Office of Adjudications  
79 Elm Street  
Hartford, CT 06106-5127  
Robert.Gilmore@ct.gov


  
Peter C. White

State of Connecticut        }  
  }  
Count of Hartford         }

ss:     **Hartford**

Subscribed and sworn to before me this 15<sup>th</sup> day of November 2016.

  
Notary Public  
Commission Expires

Seham Staley  
NOTARY PUBLIC  
CONNECTICUT  
MY COMMISSION EXPIRES DECEMBER 31st, 2017 

**NOTICE**

Notice is hereby given to persons who have an interest in the subject matter of the declaratory ruling proceeding of the following:

1. The Petitioner has filed the enclosed Petition for Declaratory Ruling with the Department of Energy & Environmental Protection, seeking a ruling on whether the Department has statutory jurisdiction pursuant to CONN. GEN. STAT. § 22a-42a(c)(1) to adjudicate Application No. IW-201502274, submitted by 2772 BPR, LLC.
2. You will have the opportunity to file comments with the Commissioner at the following address, and
3. You have the right to request party or intervenor status from the Commissioner.

Commissioner  
Department of Energy and Environmental Protection  
79 Elm Street  
Hartford, CT 06106-5127

THE PETITIONER,



Peter C. White