

BEFORE THE ENVIRONMENTAL REVIEW APPEALS COMMISSION
STATE OF OHIO

DENNIS SCOTT WALLACE, : Case No. ERAC 13-156747
: :
Appellant, : :
: :
v. : :
: :
SCOTT NALLY, DIRECTOR OF : :
ENVIRONMENTAL PROTECTION, : :
: :
and : :
: :
TERVITA, LLC, : :
: :
Appellees. :

RULING ON APPELLEES' JOINT MOTION TO DISMISS

Rendered on July 2, 2014

Dennis Scott Wallace, pro se Appellant

Michael DeWine, Attorney General, and *George Horvath* for
Appellee Scott Nally, Director of Environmental Protection

Michael A. Cyphert, *Leslie G. Wolfe*, and *Bozana L.
Lundberg* for Appellee Terivta, LLC

{¶1} This matter comes before the Environmental Review Appeals Commission ("Commission") on a July 1, 2013 Notice of Appeal filed by Appellant Dennis Scott Wallace ("Appellant"). Case File Item A.

{¶2} On June 6, 2014, the Commission received from Appellant a document entitled Notice That Appellant Dennis Scott Cannot Proceed Futher In The Above Stated Cause Of Action Without The Request Discovery ("Notice"). Case File Item 6K.

{¶3} On June 10, 2014, the Commission received Appellees' Joint Motion To Dismiss Pursuant To Appellant's "Notice That Appellant Dennis Scott Cannot Proceed Futher [sic] In The Above Stated Cause Of Action Without The Request [sic] Discovery" (sic in original) ("Motion"). Case File Item 6O.

{¶4} Appellant filed a Response to Appellees' Joint Motion to Dismiss on June 27, 2014. Case File Item 6Q.

{¶5} Upon review, the Commission finds Appellees' Joint Motion to Dismiss well-taken and issues the following Findings of Fact, Conclusions of Law, and Final Order GRANTING Appellees' Motion and ORDERING the above-caption matter be DISMISSED for want of prosecution.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER

{¶6} Appellant's Notice states in full as follows:

Comes now the Appellant, Dennis Scott Wallace and files this notice and offers the following in the support thereof:

1. The Appellant, Dennis Scott has made repeated requests for Discovery and have been denied the same by Tervita and by the Commission.
2. The requested Discovery is vital to the Appellant to proceed further in the prosecution of this Action and cannot proceed without the requested Discovery.
3. If the Commission and Tervita refuse to provide the discovery requested, the *Appellant must let the Commission make its final order* and then take an Appeal of that Final Order to the Court of Appeals to get the requested Discovery.

Case File Item 6K (emphasis added).

{¶7} In their Motion, Appellees argued that "Appellant's Notice should be construed as a Notice of Voluntary Dismissal" because "Appellant has advised the Commission that [he] cannot prosecute this appeal and wishes to dismiss the appeal if

the alleged documents are not produced.” Appellants argued that the specific items Appellant seeks through discovery do not exist. Thus, because Mr. Wallace indicated he cannot proceed with his appeal without the requested documents, Appellees argue the appeal should be dismissed. Case File Item 6O.

{¶8} In Response, Appellant offered the following statement:

1. The Appellant Dennis Scott Wallace has made request for discovery that have been denied by the Director and by Tervita.
2. *The discovery is needed to proceed in this action.*
3. Tervita claims the requested discovery cannot be produced, which is an absolute lie.
4. On the face of the permit issue to Tervita by the Director of Environmental Protection, it states the Director can inspect all documents of the Facility it issued the permit to at any time.
5. *The Bills of Lading and all documents of all material brought into Tervita in their dump in Negley Ohio are vital to proceed in this cause of action.*

Case File Item 6Q (emphasis added).

{¶9} Notably, at several junctures during this appeal, the Commission reviewed Appellant’s numerous filings related to the specific discovery requests at issue, construed them as motions to compel, and denied each request because Appellant failed to establish that the materials sought were reasonably calculated to lead to admissible evidence in this appeal. See e.g., Case File Item 5L.

{¶10} Further, the Commission notes that, throughout this appeal, Appellant has consistently and repeatedly contended he is unable to proceed without obtaining the specific materials sought in his discovery requests. For example, on April 18, 2014, Appellant filed a Statement of Facts, providing in pertinent part, “* * * as the Appellant cannot proceed further in this case without the requested Discovery documents, this

Commission must do what it wishes and after this Commission makes its order, an appeal will be taken to the Franklin County Court of Appeals for the denial of Discovery Material.” Case File Item 5M.

{¶11} Similarly, on May 22, 2014, Appellant filed a document entitled Motion For Time Table Of The Deposition Of Dr. Ann Harris, To Be Stayed, As Her Medical Condition Is Still A Healing State From Being In The Hospoital 3 Months And Appellant Still Has Not Received Requested Discovery Of Which Dr. Ann Harris Needs To Be Able To Give Her Requested Deposition. The document stated, “[t]he requested Discovery is vital to the outcome of the trial and without the Discovery, there can be no trial.” Case File Item 5X.

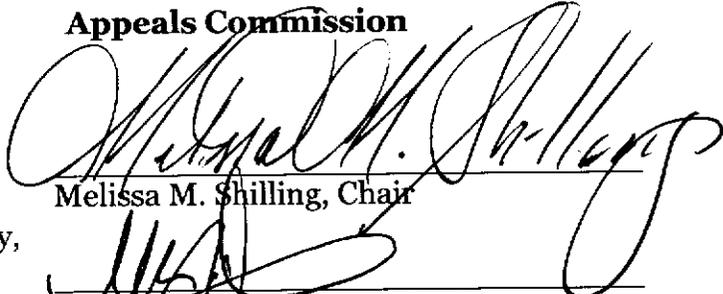
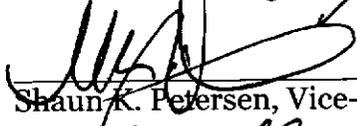
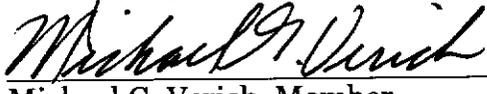
{¶12} Finally, on May 22, 2014, the Commission received from Appellant a document entitled Objection To Ruling On Request For A Stay Of Time Table, which stated, “[w]ithout the requested discovery, the Appellant is not able to proceed with a trial in this matter.” Case File Item 5Y.

{¶13} Upon review, the Commission finds that Appellant’s June 6, 2014 Notice, in combination with the earlier filings detailed above, demonstrate Appellant’s is unwillingness and/or inability to prosecute this appeal further. Accordingly, the Commission hereby GRANTS Appellees’ Joint Motion to Dismiss and ORDERS that the above-captioned case be DISMISSED for want of prosecution pursuant to Ohio Administrative Code (“Adm.Code”) 3746-5-28(C).

{¶14} In accordance with Ohio Adm.Code 3746-13-01, the Commission informs the parties of the following:

Any party adversely affected by an order of the commission may appeal to the court of appeals of Franklin County, or, if the appeal arises from an alleged violation of a law or regulation, to the court of appeals of the district in which the violation was alleged to have occurred. The party so appealing shall file with the commission a notice of appeal designating the order from which an appeal is being taken. A copy of such notice shall also be filed by the appellant with the court, and a copy shall be sent by certified mail to the director or other statutory agency. Such notices shall be filed and mailed within thirty days after the date upon which appellant received notice from the commission of the issuance of the order. No appeal bond shall be required to make an appeal effective.

The Environmental Review Appeals Commission


Melissa M. Shilling, Chair

Shaun K. Petersen, Vice-Chair

Michael G. Verich, Member

Entered into the Journal of the Commission this 7th day of July, 2014.

Copies Sent to:

DENNIS SCOTT WALLACE
SCOTT NALLY, DIRECTOR OF
ENVIRONMENTAL PROTECTION
TERVITA, LLC
George Horvath, Esq.
Michael A. Cyphert, Esq.
Leslie G. Wolfe, Esq.
Bozana L. Lundberg, Esq.

[CERTIFIED MAIL]
[CERTIFIED MAIL]
[CERTIFIED MAIL]