

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
ADMINISTRATIVE ADJUDICATION DIVISION

RE: VALLEY BROOK PARTNERS, INC.
APPLICATION NO. 03-0537

AAD No. 04-009/FWA

FINAL ORDER OF DISMISSAL

This matter came before Hearing Officer Mary F. McMahon on January 8, 2007 for a show cause hearing. The show cause hearing was scheduled for Applicant to show good cause why Applicant should not be deemed to have waived the right to an adjudicatory hearing and have the appeal dismissed. Applicant failed to appear or otherwise apprise the Hearing Officer of its inability to appear at the show cause hearing.

Gregory S. Schultz, Esq. appeared on behalf of the Office of Water Resources (OWR). Mr. Schultz represented that a file review indicates that the OWR Freshwater Wetlands Permit Program held a settlement meeting with Applicant but that no materials were submitted after the denial of the permit.

FINDINGS OF FACT

A review of the AAD file reveals the following:

1. On July 14, 2004 Applicant filed a request for hearing on the denial of its Application to Alter a Freshwater Wetland, No. 03-0537.
2. On August 27, 2004 Applicant filed a waiver of its right to a hearing within ninety (90) days of filing the hearing request. In the correspondence, Robert A. Cioe, President of Valley Brook Partners, Inc., represented that he had met with an individual in the Freshwater Wetlands Permit Program and fully expected to resolve the outstanding issues. Applicant requested that a control date of May 2005 be established.
3. Pursuant to Applicant's request, a control date of May 6, 2005 was established. The parties were to advise AAD of the status of this matter on or before said date.

4. On October 6, 2005 a letter was sent by the AAD Clerk inquiring as to the status of the matter since neither party had responded to the May 6, 2005 control date.
5. The Order Establishing Control Date entered on June 28, 2006, stated that there had been no response to the AAD Clerk's letter and established a new control date of July 21, 2006. The Applicant was ordered to provide an update on the status of settlement negotiations on or before said date or the matter would be set down for a show cause hearing for Applicant to show cause why the appeal should not be dismissed.
6. Applicant did not respond to the July 21, 2006 control date.
7. The Order Scheduling Show Cause Hearing was entered on December 7, 2006. The Order scheduled a show cause hearing for January 8, 2007.
8. Applicant failed to appear or otherwise apprise the Hearing Officer of its inability to appear at the show cause hearing held on January 8, 2007.

CONCLUSIONS OF LAW

1. Applicant has failed to show good cause why it should not be deemed to have waived the right to an adjudicatory hearing and have the appeal dismissed.
2. Applicant Valley Brook Partners, Inc. is deemed to have waived its right to an adjudicatory hearing on the denial of its Application to Alter a Freshwater Wetland, No. 03-0537.

Wherefore, it is hereby

ORDERED

1. Applicant's request for hearing on the denial of its Application to Alter a Freshwater Wetland, No. 03-0537, is DISMISSED.
2. Applicant may contact Bonnie L. Stewart, Clerk of the AAD, at 222-1357 to institute procedures for the return of the balance of the hearing appeal fee.

Entered as an Administrative Order this _____ day of January, 2007
and herewith recommend to the Director for issuance as a Final Agency Order.

Mary F. McMahon
Hearing Officer
Department of Environmental Management
Administrative Adjudication Division
235 Promenade Street, Third Floor
Providence, RI 02908
(401) 222-1357

Entered as a Final Agency Order this _____ day of _____, 2007.

W. Michael Sullivan, Ph.D., Director
Department of Environmental Management
235 Promenade Street, 4th Floor
Providence, Rhode Island 02908

CERTIFICATION

I hereby certify that I caused a true copy of the within Order to be forwarded by first-class mail, postage prepaid, to Robert A. Cioe, President, Valley Brook Partners, Inc., P.O. Box 358, North Kingstown, RI 02852; via interoffice mail to Gregory Schultz, Esquire, DEM Office of Legal Services, 235 Promenade Street, Providence, RI 02908 on this _____ day of January, 2007.
