

Brooks, David K., EMNRD

From: Ernest Padilla [epadillaplf@qwestoffice.net]
Sent: Thursday, April 29, 2010 3:39 PM
To: Brooks, David K., EMNRD; Ezeanyim, Richard, EMNRD
Cc: Altomare, Mikal, EMNRD
Subject: RE: Marks and Garner case Case No. 14393 reopened

Gentlemen:

Please accept my apologies for any confusion that we may have created in attempting to continue the hearing in the referenced case. First, my secretary did not follow my standing instructions to hand-deliver pleadings to counsel for the Division--always! I simply did not want to repeat an earlier occurrence where Ms. Altomare was not hand-delivered a copy of a pleading containing a certificate of service through hand-delivery. She apparently did what she believed to be the procedure when Florene is not at her office, i.e., date stamp the pleadings and put them in an in-box somewhere around the date stamp device. When I received Ms. Altomare's copy of an email to you, I realized that she had not received a copy of our motion for continuance, and perhaps, both of you as well. I then immediately emailed a copy of the motion to Ms. Altomare and to both of you.

The continuance to May 13 is acceptable to me. I will follow up with a further continuance request to July 8, the date contained in our motion. Thank you.

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From: Brooks, David K., EMNRD [mailto:david.brooks@state.nm.us]
Sent: Thursday, April 29, 2010 10:57 AM
To: Altomare, Mikal, EMNRD; Ernest Padilla
Cc: Ezeanyim, Richard, EMNRD; Warnell, Terry G, EMNRD; Sanchez, Daniel J., EMNRD; Macquesten, Gail, EMNRD
Subject: RE: Marks and Garner case Case No. 14393 reopened

Dear Ms. Altomare and Mr. Padilla

Inasmuch as I did not receive the below communication from Ms. Altomare until after the hearing, and no counsel appeared at the hearing, I continued the case on my own motion until May 13.

Assuming there is no objection, the requested continuance to July 8 can be granted at the May 13 hearing so that all notice rules will be complied with. I am copying this message to Mr. Warnell, who will presumably be the presiding examiner on May 13.

Sincerely

David K. Brooks

Legal Examiner

From: Altomare, Mikal, EMNRD
Sent: Wednesday, April 28, 2010 5:00 PM
To: Brooks, David K., EMNRD; Ezeanyim, Richard, EMNRD
Cc: Ernest Padilla; Sanchez, Daniel J., EMNRD; Macquesten, Gail, EMNRD
Subject: RE: Marks and Garner case Case No. 14393 reopened
Importance: High

Mr. Brooks and Mr. Ezeanyim,

At this time the OCD would request that case No. 14393 reopened, set for status hearing tomorrow, be reset to the July 8, 2010 docket, at which time we expect that the remediation will be completed and the respondent will be able to provide substantive testimony regarding compliance with the Division's Order. It was the OCD's understanding that the Operator was going to file this request today, and it is therefore our understanding that the operator does not oppose the request. My apologies for the informality of the request (in email format). I will resubmit formally tomorrow morning in hard copy.

Please advise if the resetting is acceptable.

Thank you,
Mikal Altomare



Mikal M. Altomare

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From: Altomare, Mikal, EMNRD
Sent: Wednesday, April 28, 2010 4:51 PM
To: Brooks, David K., EMNRD; Ezeanyim, Richard, EMNRD
Cc: 'Ernest Padilla'
Subject: Marks and Garner case
Importance: High

David and Richard

Ernie had indicated he intended to request to continue the hearing set for tomorrow, and we had indicated that we did not oppose the continuance. It is now ten to 5 and I have not received anything yet, and I am wondering if the engineering bureau/examiners have received anything (as I do not always get copied on everything). I had not planned to proceed to hearing based on my prior communications with Mr. Padilla, and neither did Daniel, who has already left for the day. Please advise if you have received anything from Mr. Padilla's office. Thank you.

Mikal



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