

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**  
**IN AND FOR KENT COUNTY**

**EASTERN SHORE** )  
**ENVIRONMENTAL, INC.,** )

Plaintiff, )

v. )

C.A. No. 01C-06-036 HDR

**DELAWARE SOLID** )  
**WASTE AUTHORITY,** )

Defendant. )

Submitted: July 9, 2001  
Decided: July 9, 2001

John W. Paradee, Esq. of Prickett, Jones & Elliott, Dover, Delaware; David Staats, Esq. of Law Office of David Staats, P.A., Wilmington, Delaware; and Edward C. Duckers, Esq. and Lowell R. Stern, Esq. of Hogan & Hartson, L.L.P., Washington, D.C., for Plaintiff.

F. Michael Parkowski, Esq., Jeremy W. Homer, Esq. and Mark F. Dunkle, Esq. of Parkowski & Guerke, P.A., Dover, Delaware, and John C. Phillips, Jr., Esq. of Phillips Goldman & Spence, P.A., for Defendant.

**UPON DEFENDANT'S MOTION TO DISMISS**  
***GRANTED***

RIDGELY, President Judge

***Eastern Shore Environmental, Inc.  
v. Delaware Solid Waste Authority***  
**01C-06-036 HDR**  
July 9, 2001

**O R D E R**

This 9th day of July, 2001, it appears that:

(1) Plaintiff Eastern Shore Environmental, Inc. (“ESE”) seeks declaratory relief and damages against the Delaware Solid Waste Authority (“DSWA” or “Authority”) arising from its adoption of DSWA Regulation 4.01 by Order dated June 7, 2001. This Order requires in part that certain solid waste and dry waste be disposed at a DSWA Solid Waste Facility.

(2) The complaint was filed on June 25, 2001 prior to the publication of the Order in the Delaware Register on July 1, 2001. On July 6, 2001 ESE re-filed the same complaint which has been assigned C.A. No. 01C-07-011 HDR.

(3) DSWA has moved to dismiss the complaint because judicial review is not available under the Administrative Procedures Act except by complaint “within 30 days of the day the agency order with respect to the regulation *was published* in the Register of Regulations.”<sup>1</sup>

(4) The Authority’s motion has merit. In view of the fact that the complaint has been re-filed, this matter will be dismissed without prejudice and the motion for

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<sup>1</sup> 29 Del. C. § 10141(d) (emphasis added). See also *Pitcavage v. Delaware State Personnel Comm’n*, Del. Super., 1993 WL 93458, Jacobs, V.C. (March 25, 1993) (Mem. Op).

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stay argued this date will be deemed, in the interest of judicial economy, to have been made in C.A. No. 01C-07-011 HDR.

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**NOW, THEREFORE, IT IS ORDERED** that the complaint is dismissed without prejudice.

/s/ Henry duPont Ridgely  
President Judge

cmh  
oc: Prothonotary  
xc: Order Distribution