

**U.S. Department of Labor**

Office of Administrative Law Judges  
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**Issue Date: 16 May 2016**

**Case No: 2010-STA-00004**

*In the Matter of:*

**PERRY WAYNE WEST,**  
Complainant

v.

**CES ENVIRONMENTAL SERVICES**  
Respondent

**ORDER OF DISMISSAL**

This proceeding arises under the employee protection provisions of the Surface Transportation Assistance Act (“the Act”) of 1982, 49 U.S.C. § 31105, 29 C.F.R. Part 278, and the implementing regulations at 29 C.F.R. Part 24. This matter was docketed with the U.S. Department of Labor, Office of Administrative Law Judges (“Office”) on November 20, 2009 upon receipt of Complainant’s request for hearing.

On December 29, 2009, Judge Rosenow of the Covington, Louisiana District Office, Office of Administrative Law Judges, issued an order setting a formal hearing date of April 20, 2010 in Houston, Texas. The hearing was subsequently held on June 16, 2010 at the Bob Casey U.S. Courthouse in Houston, Texas after being rescheduled at the agreement of the parties. Complainant’s post-hearing brief was due September 16, 2010; Respondent’s brief was due October 16, 2010.

On August 13, 2010, Respondent filed a voluntary petition for bankruptcy under Chapter 11. On December 15, 2010, Judge Rosenow granted an unopposed motion by Respondent to stay these proceedings under 11 U.S.C. § 362(a)(1). Judge Rosenow ordered Respondent to provide a bankruptcy proceeding status report every 90 days, with the first due on December 20, 2010. Respondent was also ordered to notify Judge Rosenow within 15 days of the date the automatic stay was lifted. On January 18, 2011, Respondent filed a motion requesting that the case be dismissed. Respondent stated that because Complainant did not have proof of claim, he would be unable to obtain a lift of the stay currently in place under the bankruptcy regulations. Neither party has filed anything since January 2011. The case was transferred to the Washington, D.C. Office as a result of the extended stay in the proceedings.

At my direction, this Office contacted the parties to assess the status of the matter in late 2015. Respondent's former attorney indicated that Respondent is no longer a going concern due to its bankruptcy.<sup>1</sup> Complainant's attorney indicated that she would contact Complainant to ascertain whether he was interested in further pursuing this claim. However, Complainant's attorney has not contacted this Office since, and has failed to respond to voicemails left January 27, 2016; February 24, 2016; and March 21, 2016.

On April 4, 2016, I issued an order instructing the parties to show cause within 30 days why this matter should be dismissed; why it is appropriate to continue to stay these proceedings; or why the stay should be lifted. The parties were warned in the order that failure to timely respond may result in dismissal. The order sent by this Office to the address on record for Respondent was returned as undeliverable. The orders sent to Complainant and Complainant's counsel appear to have been delivered as they were not returned to this Office.

Accordingly, it is hereby ORDERED that the above-captioned matter is DISMISSED.

SO ORDERED:

**STEPHEN R. HENLEY**  
Chief Administrative Law Judge

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<sup>1</sup> The Chapter 7 bankruptcy petition number appears to be 10-36924.

**NOTICE OF APPEAL RIGHTS:** To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within fourteen (14) days of the date of issuance of the administrative law judge's decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: [Boards-EFSR-Help@dol.gov](mailto:Boards-EFSR-Help@dol.gov)

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1978.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You may be found to have waived any objections you do not raise specifically. *See* 29 C.F.R. § 1978.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor for Occupational Safety and Health. *See* 29 C.F.R. § 1978.110(a).

If filing paper copies, you must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review. If you e-File your petition and opening brief, only one copy need be uploaded.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points

and authorities. The response in opposition to the petition for review must include an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and may include an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies. If you e-File your responsive brief, only one copy need be uploaded.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board. If you e-File your reply brief, only one copy need be uploaded.

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. §§ 1978.109(e) and 1978.110(b). Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. § 1978.110(b).