

July 20, 1993

Mr. Lawrence L. Fox
Fox Environmental Services, Inc.
5150 North Port Washington Road
Executive Suite 101
Milwaukee, WI 53217

Re: Request for hearing

Dear Mr. Fox:

Your hearing request dated April 27, 1993 (received May 28, 1993), concerning the insurance coverage for Fox Environmental Services, Inc., is denied.

Under §101.02(6)(e), Wis. Stats., a person who is adversely affected by a department order may petition for a hearing on the reasonableness of the order. Under §101.02(6)(g), Wis. Stats., "if the issues raised in such petition have theretofore been adequately considered, the department shall determine the same by confirming without hearing its previous determination."

You are contesting the application of §ILHR 47.30(3)(c), Wis. Adm. Code, to your company. The rule requires that each PECFA consulting firm must obtain errors and omissions and pollution impairment insurance coverage from an insurance firm that has an A.M. Best rating of at least A-. There is no question that your current insurance coverage does not meet this standard. You essentially wish to argue that the rule should not be applied to you at this time.

When §ILHR 47.40(3)(c), Wis. Adm. Code, was adopted, the department considered alternative policies, but decided on the policy embodied in the rule to create a reasonable expectation of insurer stability without having to track the status of individual policies.

Because it is clear that you are covered by the rule and that you are not currently in compliance, your appeal amounts to a request that the rule not be applied. There is no valid way to honor this request. The rule does not provide for exceptions, and the department does not have the discretion to enforce the rule on a selective basis.

Based on the determination that the department has already adequately considered the issues raised in your letter, the decision in Mr. Morrissey's letter of May 11, 1993 is affirmed and your request for a hearing is denied.

Sincerely,

Howard I. Bernstein
General Counsel

cc: Attorney John M. Van Lieshout
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