

STATE OF MAINE

KENNEBEC, ss.

JOSEPH SADOWSKI,

Petitioner

v.

DANA MURCH, MAINE  
DEPARTMENT OF  
ENVIRONMENTAL  
PROTECTION,

Respondent

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. AP-05-47

SKS-KEN-11/30/05

**DECISION ON MOTION**

This matter comes before the court on the respondent's motion to dismiss this purported appeal pursuant to M.R. Civ. P. 80C. Because the petition was not timely filed, the motion will be granted.

**Facts**

By letter dated July 1, 2005, Dana Murch, Dams & Hydropower Supervisor at the Department of Environmental Protection ("DEP"), notified the petitioner that an earlier department order awarding ownership of an abandoned dam to the petitioner is now void and the DEP intended to convey that dam to the town of Freedom. The letter concludes, "This letter constitutes final agency action. If you wish to appeal this action, you may do so by filing an appeal with the Superior Court within 30 days after receipt of this letter . . ." According to the return receipt, this letter was delivered to the petitioner on July 7, 2005. On August 8, 2005, the petitioner mailed a response to Mr. Murch and a copy with a document titled "Affidavit of Service" to the Superior Court. The affidavit and letter copy were not received until August 10, 2005, 34 days after the receipt of the agency's final action being appealed.


### Discussion

In accordance with the Maine Administrative Procedure Act, a petition for judicial review of final agency action must be filed within 30 days after receipt of the notice of the agency's decision. 5 M.R.S.A. § 11002(3). Neither the administrative agencies nor the courts have the inherent power to extend or ignore statutory appeal periods. *McKenzie v. Maine Employment Security Comm'n*, 453 A.2d 505 (Me. 1982). The time limits found in the APA are jurisdictional and cannot be waived. *Brown v. State Dep't of Manpower Affairs*, 426 A.2d 880 (Me. 1981); *Persson v. Dep't of Human Services*, 2001 ME 124, 775 A.2d 363. In the present case, the petitioner simply failed to meet the time period by four days. Even if one were to allow an additional three days for service by mail pursuant to M.R. Civ. P. 6(c), the petition still failed to arrive in time. For this reason, the motion must be granted.

The entry will be:

Motion to dismiss is GRANTED and ORDERED that the petition and any independent claim is DISMISSED.

Dated: November 30, 2005

  
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S. Kirk Studstrup  
Justice, Superior Court

Date Filed 8/10/05 Kennebec County Docket No. AP05-47

Action Petition for Review  
80C

Joseph A.F. Sadowski vs. Dana Paul Murch, Depart. of Environmental

Plaintiff's Attorney

Joseph A.F. Sadowski, Pro Se  
30 Murray Road  
Hicksville, NY 11801

Defendant's Attorney Prot. & Dams & Hydropower

Mark A. Randlett, Esq.  
6 State House Station  
Augusta Maine 04333-0006

Date of  
Entry

8/10/05	Complaint, filed. s/Sadowski, Pro Se Affidavit of Service, filed. S/Anthony Russo Service made upon Dana Paul Murch, Dept. of Environmental Protection on 8/8/05
8/26/05	Respondent's Motion to Dismiss, filed. s/Randlett, AAG Memorandum in Support of Motion to Dismiss, filed. s/Randlett, AAG Affidavit of Dana Murch, filed. s/Dan Murch Proposed Order, filed.
09-13-05	PETITIONER RESPONSE TO MOTION TO DISMISS received and filed 09-13-05 by Joseph A.F. Sadowski, Esq. with Affidavit Of Service by Joseph Sadowski, Esq. Date Served 09-12-05.
10/5/05	Notice of setting of motion on 10/26/05 at 1:00 p.m. sent to Pltf. and atty of record.
10/26/05	Hearing had, Hon. Kirk Studstrup Presiding. (no courtroom clerk) Arguments made to the court. Court takes matter <u>under advisement</u> .
11/30/05	DECISION ON MOTION, Marden, J. Motion to dismiss is GRANTED and ORDERED that the petition and ORDERED that the petition and any independent claim is DISMISSED. Copies mailed to attys. of record Copies mailed to Deborah Firestone, Donald Goss and Garbrecht Law Library.