

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
ADMINISTRATIVE ADJUDICATION DIVISION**

**RE: ACME PLUMBING, HEATING AND FUEL  
002/SRE  
OIL CO., INC.**

**AAD No. 02-**

**FINAL ORDER OF DEFAULT**

This matter came before Hearing Officer Mary F. McMahon for prehearing conference on November 25, 2003. Respondent failed to appear or otherwise apprise the Hearing Officer of Respondent's inability to appear at the prehearing conference. A Conditional Order of Default was entered on November 28, 2003 which afforded Respondent until December 10, 2003 to show good cause why a Final Order of Default should not enter and the Notice of Violation and Order that was issued April 9, 2002 become a compliance order.

As of the date of this order, no objection to the Conditional Order of Default has been received, nor has any correspondence been received by the Administrative Adjudication Division in response to the Conditional Order of Default.

Wherefore, I make the following

**FINDINGS OF FACT:**

1. An Order Granting Withdrawal of Counsel; Order Rescheduling Prehearing Conference ("Order") was entered on October 30, 2003 rescheduling this matter for prehearing conference on November 25, 2003.
2. The Order provided that all other aspects of the Prehearing Order entered on February 19, 2003 remained in full force and effect.

3. The Prehearing Order provided as follows:

Upon failure of a party to appear at the Prehearing Conference, the Hearing Officer shall sua sponte issue a seven (7) day Conditional Order of Dismissal /Default with prejudice, which shall automatically become final unless the absent party demonstrates good cause for the failure to appear.

4. Counsel for the Office of Compliance and Inspection ("OCI") appeared at the Prehearing Conference on November 25, 2003.
5. Respondent failed to appear or otherwise advise the Hearing Officer of his inability to appear at the Prehearing Conference on November 25, 2003.
6. A seven (7) day Conditional Order of Default was entered against Respondent on November 28, 2003 affording Respondent until December 10, 2003 to show good cause why a Final Order of Default should not enter and the Notice of Violation and Order become a compliance order.
7. Respondent did not respond by December 10, 2003 and has not responded as of the date of this Order.

#### CONCLUSION OF LAW

Based upon the above findings of fact, I conclude the following as a matter of law:

1. Respondent has failed to show good cause why a Final Order of Default should not enter and the Notice of Violation and Order issued on April 9, 2002 become a compliance order.

Wherefore, based upon the above Findings of Fact and Conclusion of Law, it is hereby

**ORDERED**

The Notice of Violation and Order issued on April 9, 2002 shall be final and become a compliance order immediately upon the entry of the Final Agency Order herein.

Entered as an Administrative Order this 22<sup>nd</sup> day of December, 2003  
and herewith recommended to the Director for issuance as a Final Agency Order.

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Mary F. McMahon  
Hearing Officer  
Administration Adjudication Division  
235 Promenade Street, Third Floor  
Providence, RI 02908  
(401) 222-1357

Entered as a Final Agency Order this 9<sup>th</sup> day of January 2004.

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Frederick J. Vincent  
Acting Director  
Department of Environmental Management  
235 Promenade Street, Fourth Floor  
Providence, Rhode Island 02908

RE: ACME PLUMBING, HEATING AND FUEL  
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**CERTIFICATION**

I hereby certify that I caused a true copy of the within Order to be forwarded by first-class mail, postage prepaid, to Alan Fusco, 71 Saybrook Avenue, Narragansett, RI 02882 and Joseph DeAngelis, Esquire, Tillinghast Licht Perkins Smith & Cohen, LLP, Ten Weybosset Street, Providence, RI 02903-2818; via interoffice mail to Bret Jedele, Esquire, Office of Legal Services, and Dean H. Albro, Chief, Office of Compliance and Inspection, 235 Promenade Street, Providence, RI 02908 on this 9<sup>th</sup> day of January.

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If you are aggrieved by this Final Agency Order, you may appeal this final order to the Rhode Island Superior Court within thirty (30) days from the date of mailing of this notice of final decision pursuant to the provisions for judicial review established by the Rhode Island Administrative Procedures Act, specifically, R.I. Gen. Laws § 42-35-15.