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

RE: ROLLINGWOOD ACRES, INC./SMITHFIELD PEAT CO., INC./SMITHFIELD CRUSHING CO., LLC NOTICE OF VIOLATION OC&I/WP 06-07

AAD NO. 06-004/WRE

DECISION AND ORDER

This is an appeal filed by Rollingwood Acres, Inc., Smithfield Peat Co., Inc. and Smithfield Crushing Co., LLC ("Rollingwood" or "Respondents") from a Notice of Violation ("NOV") issued by the Rhode Island Department of Environmental Management ("RIDEM" or "OC&I") on November 6, 2006 regarding property located at 395 George Washington Highway in Smithfield, R.I. (the "Property"). An Administrative Hearing was held on September 27, 2011, September 28, 2011, December 1, 2011, December 5, 2011, December 6, 2011, and February 28, 2012. OC&I was represented by Marisa A. Desautel, Esquire and the Respondents were represented by Michael A. Kelly, Esquire. Respondents filed a Post Hearing Memorandum on March 12, 2012, OC&I filed a Post Hearing Memorandum on April 6, 2012 and Respondents filed a Reply Memorandum on April 20, 2012.

Stipulated Exhibits

The parties agreed to the following Stipulated Joint Exhibits prior to the hearing:

J1 DEM Site Inspection Report prepared by Sean Carney dated December 29, 1997.

J2 DEM Notice of Intent to Enforce issued to Rollingwood Acres, Inc. dated June 3, 1997.

J3 Notice of Violation to Rollingwood Acres, Inc., Smithfield Peat Co. Inc. and Smithfield Crushing Co., LLC. dated November 6, 2006.

J4 DEM Site Inspection Report prepared by Peter Naumann dated February 9, 2005.

Stipulated Facts

The parties agreed to the following Stipulation of Facts prior to the hearing:

1. The Notice of Violation issued to the Respondents contains a fine in the amount of Thirty One Thousand Four Hundred Seventy and 00/100 Dollars ($31,470.00).

2. Rollingwood Acres Inc., is the record owner of property located at 961 Douglas Pike, Smithfield, Rhode Island, and more specifically described as Town of Smithfield Assessor's Plat 46, Lots 71 and 76, (hereinafter the "Site" or the "Property") and is incorporated as a Rhode Island business corporation having its principal place of business located 295 Washington Highway, Smithfield, Rhode Island.

3. Smithfield Peat Co., Inc. ("Smithfield Peat") is incorporated as a Rhode Island corporation having its principal place of business located at 295 Washington Highway, Smithfield, Rhode Island.

4. Smithfield Peat is registered with the United States Environmental Protection Agency, (hereinafter, the "EPA"), as a small quantity hazardous waste generator of automotive oil, EPA permit identification number RID987467453.

5. Smithfield Peat operates a leaf and yard waste composting facility at the Site.

6. Smithfield Crushing Co., LLC ("Smithfield Crushing ") is incorporated as a Rhode Island limited liability corporation having its principal place of business located at 295 Washington Highway, Smithfield, Rhode Island.

7. Smithfield Crushing operates a rock crushing facility at the Site.

8. On or about May 4, 1982, DEM issued a freshwater wetlands permit, number A-4586, to Smithfield Peat and John P. Despres, authorizing Smithfield Peat to alter freshwater wetlands on the Site by excavating, filling and grading within fifty (50) feet of an unnamed swamp for the purpose of peat removal, construction of two (2) stormwater detention basins, installation of a sewer line and construction of a road.

9. DEM issued a Notice of Intent to Enforce (hereinafter "NOIE") on June 3, 1997 to Respondent Rollingwood Acres, Inc. for sediment laden water to an unnamed stream.

10. On February 9, 2005, DEM performed an inspection at the Site and concluded that there had been an oil spill at the Site. On February 9, 2005, at the direction of the DEM, a representative of Respondent Smithfield Peat contacted and engaged an emergency response contractor to recover spilled oil.

11. During the early afternoon of February 9, 2005, an emergency response contractor arrived at the site and began efforts to contain and clean up an oil discharge.

PROCEDURAL HISTORY

1. On November 6, 2006 DEM issued a Notice of Violation ("NOV") which cited the Respondent for alleged violations of water quality and oil release from conditions on the Property.

2. This NOV was issued almost ten (10) years after RIDEM discovered a so-called turbidity issue at the Property.

3. Respondents timely appealed the NOV.

4. Over the course of these hearings, OC&I presented the following witnesses:

   a. Sean Carney, a principal scientist with RIDEM;

   b. Peter Naumann, Environmental Scientist at RIDEM;

   c. Patrick Hogan, Principal Sanitary Engineer at RIDEM;

   d. David Chopy, supervisor of water compliance section of RIDEM at the time of the NOV; and

   e. Laurel Stoddard, environmental laboratory director for ESS.

5. Over the course of these hearings, the Respondents presented the following witnesses:

   a. Jackson Despres, a principal of Rollingwood Acres, Inc., Smithfield Peat Co., Inc. and Smithfield Crushing Co., LLC;

   b. Jeffrey Hanson, registered professional engineer, with Millstone Engineering, P.C., and is licensed in the state of Rhode Island;

   c. Darin Clavet, an employee of Smithfield Peat; and

d. Cosmo Spaziano, a self-employed truck driver who transported material to the Property during the time the oil release was discovered.

6. In lieu of the testimony of Scott Rabideau, a wetlands biologist, a stipulation was entered between the parties and submitted to the Court whereby the parties agreed that there is no evidence of any harm to wildlife, including aquatic life, as a result of the alleged turbidity and alleged oil spill on the Respondents' property, as alleged in the Notice of Violation, which is the subject of this appeal.

Hearing Summary

OC&I presented its case through three (3) fact witnesses, Sean Carney, Peter Naumann, and Patrick Hogan, all employed by RIDEM and whose testimony primarily reflects their written reports which were admitted into evidence. OC&I also presented David Chopy, Chief of OC&I, who testified about the NOV and determination of the Administrative Penalties. One additional witness, Laurel Stoddard from EES Laboratories, testified regarding analysis of samples taken at the property.

On direct examination, Sean Carney testified by use of his inspection report, (OC&I 8 Full), that he first went to the property on January 9, 1997. The exhibit also included a Site Inspection Report reflecting a follow-up inspection on January 21, 1997 as well as a Complaint Inspection Report signed by Harold Ellis dated 6/2/97. The inspection reports also included a sketch and photographs. Mr. Carney's testimony was that he observed a discharge of sediment into an unnamed stream which was not in conformity with a permit identified as A–4586. He also observed that two new culvert pipes had been installed in non-conformance with permit A-4586. Mr. Carney testified that he reviewed permit A-4586 which was issued to Smithfield Peat Co., Inc. which was submitted into evidence as OC&I Full 7. Mr. Carney said that, based on his review, he determined that the drainage structure he observed was not in compliance with the

permit. He described in detail the differences between that which was approved and that which he observed on January 9, 1997. Mr. Carney testified that he conducted a follow-up inspection on December 29, 1997 which is reflected in his Site Inspection Report which was introduced into evidence as Joint 1 Full. Mr. Carney's testimony and report indicated that the follow-up inspection was conducted in response to statements made by Jackson Despres and Kelly Presley (RIDOT) regarding placement of the section of the 18" RCP that is the subject of the NOIE.

On cross examination, Mr. Carney testified that he had not been to the property prior to 1997 and his initial visit was prompted by a complaint from the Rhode Island Department of Transportation ("RIDOT"). He testified about changes in the Respondents' drainage system as reflected in a sketch he made which is part of OC&I 8 Full. He didn't know who made the unauthorized changes and didn't recall if Mr. Despres told him that RIDOT installed the pipe. Prior to his initial visit to the property RIDOT had made considerable changes to Route 7 which abuts the property in the area of the Respondents' drainage system. He reviewed RIDOT's approved plan (95-0308) and there were no changes to the drainage system on the plan.

The primary problem was that the approved drainage system under A-4586 provided for a 15" pipe and which appeared to have been replaced with an 18" pipe. Mr. Carney said that the ditch and swale along Route 7 was constructed by RIDOT. He said that he didn't recall a letter from Mr. Despres that RIDOT had installed the new pipe. He had no personal knowledge that Respondents had installed the pipe.

Mr. Carney testified when pressed on cross examination that there were discussions with Kelly Presley of RIDOT regarding the fact that the 18" pipe was not approved. He said there was to be a follow-up letter from RIDOT. The drainage structure approved by A-4586 provided for

two retention ponds on the Respondents' property and then a final discharge under Route 7 to an unnamed stream. The sediment was found entering the unnamed stream on the other side of Route 7. The increase in sediment appeared to be the result in the modification of the original approved plan.

Mr. Carney testified that after his initial discussions with Kelly Presley a portion of the new 18" pipe was replaced with a 15" pipe. He recalls Mr. Despres indicating that RIDOT was responsible for the changes. He didn't recall if RIDEM ever issued an Order to RIDOT to clean up the sediment. He knew that it was discussed at one point that RIDOT needed to follow up with compliance issues associated with their work. He didn't know who installed the 18" pipe. He knew that RIDOT replaced a portion of the 18" pipe. He never discussed the 18" pipe with anyone from RIDOT at the site. He said an additional problem with the new pipe was that it was too low, which allowed more flow and more sediment.

Mr. Carney was next questioned about his Notes to the File dated 11/19/97 which was later entered into evidence as Respondents' B Full. He said that the notes reflect a telephone conversation with Mr. Despres who had asked what was happening with RIDOT. The notes reflect that RIDOT would only replace a portion of the 18" pipe to the property line. He also noted that he was waiting for a letter from RIDOT explaining their involvement in the case and their intention.

Mr. Carney was next questioned about his Notes to File dated 11/20/97 which was later entered into evidence as Respondents' C Full. This note reflects a telephone conversation with Kelly Presley from RIDOT and references an earlier conversation in which she acknowledged that RIDOT was involved partially in the installation of the unauthorized pipe. She asked if RIDOT replaced the existing 18" pipe would that resolve the NOIE. His note reflects that he talked to his

supervisor and advised her that if the new pipe was 15" at the approved elevation it would be an acceptable resolution. Ms. Presley offered to have a letter sent from RIDOT stating RIDOT's intention to resolve the matter. He testified that RIDEM never received a letter from RIDOT.

Mr. Carney next testified regarding his Note to File dated 11/24/97 which would later come into evidence as Respondents' D Full. It reflected a call from Mr. Despres asking about RIDOT's plan to restore his drainage system. Mr. Carney was shown a letter by Respondent's counsel `from Harold K. Ellis, Supervisor of the Wetlands Compliance Section, Office of Compliance and Inspection to J. Michael Bennett, Deputy Chief RIDOT dated April 16, 1998 which would later come into evidence as Respondents' E Full. Mr. Carney said that it was likely that he drafted the document. The letter indicates that RIDEM had been advised that the unauthorized removal of the 15" pipe and installation of the 18" pipe were part of the Route 7 Project carried out by RIDOT. The letter went on to reflect the conversations with Ms. Presley and how the issue could be resolved. Mr. Ellis' letter indicated that RIDEM was waiting for a letter from RIDOT describing what RIDOT would do to assist in the resolution of the case. Finally, Mr. Ellis spells out to RIDOT what needed to be done and requested a response in writing. Mr. Carney testified that no letter or call from RIDOT was forthcoming.

Mr. Carney next testified regarding a Site Inspection Report dated 6/25/97 which was marked as Respondents' F for identification. A letter from Harold Ellis to John P. Despres of Rollingwood Acres, Inc. dated April 16, 1998 was admitted into evidence as Respondents' G Full. Witness Carney testified that he drafted the letter for Mr. Ellis. The letter states that "It is my understanding that the Rhode Island Department of Transportation (RIDOT) eliminated the originally approved 15-inch outlet pipe during the reconstruction of Route. 7." He goes on to tell Mr. Despres what needed to be done to resolve the matter. The steps to resolve the matter are the

same as those contained on Respondents' G Full, (the letter to RIDOT).

On redirect Mr. Carney testified that the Respondents did not take the steps necessary to resolve the matter. He said that he was unaware of any other time when RIDOT had installed a drainage pipe on private property without the owner's consent.

Peter C. Naumann was called as OC&I's next witness. He described himself as a senior scientist with RIDEM, he has been employed since 1997. Mr. Naumann testified that he inspected the property on February 9, 2005 and prepared a Site Inspection Report which came into evidence as J4 Full. He said he was out on an unrelated complaint and decided to do a follow-up inspection to the 1997 Wetlands Complaint. He observed an oily sheen in a retention pond on the Smithfield Peat property. He said that oily water was coming down a slope off into the retention pond.

Mr. Naumann notified DEM Emergency Response and the Smithfield Fire Department. He tracked the spill from the retention pond easterly on the property to a high point in the yard where there was three (3) large piles of waste rock that were later to be determined as from the Narragansett Bay Commission Combined Sewer Overflow Tunnel. They couldn't find the specific point of origin of the oily material and there was no odor associated with any of the oily material. He talked to an equipment operator who said that there had been no oil or hydraulic oil spills on the property. Representatives of Lincoln Environmental, Inc. responded to the property at Respondents' request and began to deploy oil booms and pads. All of the facts testified to about Mr. Naumann's initial inspection occurred between 1120 hours and 1400 hours.

Mr. Naumann testified that he returned to the property on 2/10/05. He prepared a Site Inspection Report of his observations and activities which came into evidence as OC&I 12 Full. He took five (5) samples of the runoff water for analysis on that date. He listed in his report the

locations where the samples were taken. He described the steps taken to collect and store the samples. He attempted to testify about the laboratory analysis results, but after objection was not allowed to do so due to lack of foundation and expertise. He said he took the samples to the ESS Laboratory. He said that this was his first oil spill.

On cross examination he said that although this was his first oil spill case he was familiar with oil sheens from when he was a volunteer firefighter in the 70's and 80's. He said that on February 9, 2005 he was at the property from 11:30am to 2:00pm. Smithfield Peat was cooperative and Lincoln Environmental responded promptly. He said he didn't observe any oil or hydraulic fluid leaking from equipment and the equipment was kept on the other side of the property. He wasn't sure when the heavy equipment was parked.

Mr. Naumann testified that on February 11, 2005 he spoke by telephone with Joe Pratt, the Project Manager of the NBC project. Mr. Pratt told him that there had been a recent spill of hydraulic oil. He also said he was told that all the excavated material was coated with a carbon material that also creates a sheen as well. Mr. Naumann prepared a note reflecting the telephone conversation which was admitted into evidence as Respondents' H Full.

Patrick Hogan was called as OC&I's next witness. He has been working for RIDEM for 17 years, the last 8 years as Principal Sanitary Engineer. He visited the property on April 4, 2006 and prepared a Site Inspection Report which came into evidence as OC&I 13 Full. The report reflects in detail how samples were taken and included photos taken that day. He observed coffee colored water coming from a discharge pipe enter an unnamed stream and then dissipate about 1500 feet downward stream. He took six (6) samples which were submitted to ESS Laboratory on April 4, 2006. He testified that coffee colored water is an indication of turbidity. Mr. Hogan testified he reviewed a plan that was part of permit A-4586. The plan was entered into evidence

as OC&I 11 Full. He said that the plan didn't show the new pipe.

On cross examination Mr. Hogan said that he became a Registered Professional Engineer in 2000. He worked for RIDOT during the years 1989, 1990, and 1991. He said that he reviewed the RIDOT reconstruction plans for Route 7 and is not aware of changes made in the field. He went to the site at the request of his supervisor, David Chopy, to take samples. It was a rainy day and he stayed for about 2 hours. He said that he did not take any upstream samples and didn't go onto the property. He said that he had done one or two turbidity site samples in 2006 and maybe two including this one in 2007.

On redirect examination he said that he didn't take an upstream sample because he didn't believe he had the legal right to go on the property.

On recross examination he said that he couldn't find an upland stream because he thought that he couldn't go onto the property. He said "maybe if I were able to follow the waterway all the way up through the property, maybe I could have found an upstream sample" (TR, Vol. 2 pg. 80). He never saw Mr. Naumann's report prior to taking samples. Then he said he might have seen it but he didn't read it.

OC&I called David Chopy as its next witness. He identified himself as the Chief of the Office of Compliance and Inspection. Mr. Chopy's resume was introduced into evidence, without objection as OC&I 15 Full. He described his experience in the area of turbidity testing and said that his current duties involve reviewing reports and drafting notices.

Mr. Chopy described how NOV'S are prepared. He was recognized as an expert in the interpretation of turbidity analytical results. The NOV dated November 6, 2006 was entered into evidence as J 3 Full. He was brought through some of the factual statements from the NOV. He said that the Respondents did not have approval from RIDEM to discharge oil upon the land of the

State. He said that the Respondents didn't have approval from RIDEM to discharge water or stormwater in concentrations that violate the Water Quality Standards. He said another fact alleged in the NOV is that the Respondents did not report the release of oil. He said that the Respondents were directed to take certain corrective actions which, to his knowledge, have not been done. Mr. Chopy next described how he calculated the Administrative Penalty.

On cross examination Mr. Chopy testified that he reviewed the entire file but didn't remember seeing correspondence in the file regarding the involvement of RIDOT in this matter. He also didn't remember seeing a letter from Hank Ellis to Mr. Bennett of RIDOT. He's not sure if he took those documents into consideration when determining his findings. He said that he didn't agree that RIDOT installed the 18" pipe. He said that he didn't know who installed the 18" pipe. He agreed that the 18" pipe from the basin to Route 7 was the cause of the increased sediment. He had no personal knowledge of a turbidity problem at the site prior to the involvement of RIDOT in 1997.

Mr. Chopy testified that he didn't recall reviewing the file for permit A-4586 but he must have. He didn't know of any reason why a property owner would rip out a valid permitted discharge pipe and put in an illegal pipe. He said Mr. Despres had, on numerous occasions, denied he had done it. He also admitted that he's never been to the site. He didn't recall reviewing the RIDOT permit file, 95-0308. He said that he never contacted anyone at RIDOT to follow up on Mr. Ellis' letter.

Mr. Chopy testified that he took into consideration the background levels of turbidity in assessing the fines, and the sample taken by Mr. Hogan taken 1500 feet downstream. He didn't know if the stream off the site on Route 116 where Mr. Naumann took a background sample was part of the same stream complex or a different stream. He said that he did not review any other

wetland applications regarding the property except A-4586. He wasn't aware of the original permit issued in 1967 from RIDOT before RIDEM came into existence.

Mr. Chopy testified that RIDEM has issued NOVs against RIDOT for various offenses. It has issued dozens and dozens of NOVs and informal notices. RIDOT has a history of not complying with wetlands statutes and water quality statutes. He acknowledged that RIDOT was involved in some partial reconstruction of the 15" pipe at the property. He said they attempted to investigate the involvement of RIDOT but never got a satisfactory response. They never got any response. He said that if they had issued a NOV to RIDOT that they would have got to the bottom of it. He said that they cited the Respondents because they are the property owners and presumably consented to the smaller pipe being installed. He said that Smithfield Peat and Smithfield Crushing Co., LLC don't own the property but Rollingwood Acres, Inc. does. He has no information to support that the Respondents consented to the installation of the pipe. Mr. Chopy, when shown Respondents F Full (Sean Carney Report of 6/25/97) said that he doesn't remember if he saw it prior to issuing the NOV.

Mr. Chopy was shown Respondents' G Full and acknowledged that the letter from Mr. Ellis to Mr. Bennett said "it's my understanding the Rhode Island Department of Transportation eliminated the original approved 15-inch outlet pipe during the construction of Route 7". He said that "That was just what Mr. Ellis had as his understanding based on the discussions with Mr. Carney. But we didn't know for sure, and that's why we were asking Mr. Bennett to explain" (TR Vol 2 p 139). RIDOT never got permission to change the drainage from the basin. He didn't check the RIDEM files of the RIDOT Route 7 project.

Mr. Chopy was shown Respondents' B Full and acknowledged that Mr. Despres was calling to find out what was going to be done with RIDOT to fix the problem of the 18" pipe. Mr.

Chopy was next shown Respondents D Full and he acknowledged that Mr. Despres had called again that he wanted RIDOT to replace the pipe. He didn't recall if he looked at Respondents' D Full prior to issuing the violation and fines.

Mr. Chopy was next shown Respondents' C Full which is a record of conversation between Sean Carney and Kelly Presley of RIDOT in which Ms. Presley acknowledged the partial involvement of RIDOT in the installation of the unauthorized pipe. He had no evidence of the involvement of Smithfield Peat Co., Inc. or Smithfield Crushing Co., LLC in the installation of the unauthorized pipe and the only evidence of Rollingwood Acres, Inc. was the fact that it was the owner of the property. In spite of RIDOT's acknowledgement of its involvement he said that it didn't mean it was true. Mr. Chopy testified that the fact that RIDOT admitted it was partially involved implied that someone else was also involved. He said RIDOT never said Respondents were involved. He said that without a formal admission in writing by RIDOT he felt that the notes to the file were unreliable and possibly factually inaccurate.

Mr. Chopy testified that Mr. Naumann had tested a sheen on the ground that looked like oil but in fact was a graphite sheen which is a biproduct of the drilling at NBC. There is no evidence that the Respondents knew about the oil spill before Mr. Naumann discovered it. Mr. Chopy concluded his testimony subject to recall.

OC&I called Laurel Stoddard as its next witness. Ms. Stoddard identified herself as an employee of ESS Laboratories, Inc. and had been so employed since 1997. Her duties involve quality control and customer service. She was shown OC&I 16 (her resume) which came in as a Full exhibit. She briefly reviewed her resume. Ms. Stoddard was recognized as an expert in the area of quality control and quality assurance for ESS Laboratories, Inc..

Ms. Stoddard was shown OC&I 12 and identified it as a report from ESS Laboratories,

Inc. dated February 10, 2005. She signed the report and said that there were no major issues with it. She said that the test analysis was performed in accordance with standard operating procedures. She testified with regard to the chain of custody and the testing methods developed by the EPA. OC&I 12 was entered as a Full exhibit without objection.

Ms. Stoddard was next shown OC&I 18 which was marked for identification. It was identified as a lab report that ESS sent to RIDEM dated April 11, 2006. It reflected testing of samples taken by Patrick Hogan. She said her signature on the report indicates that the lab was following the protocols for quality assurance and quality control. OC&I 18 was marked as a Full exhibit. OC&I moved and OC&I 13 was entered as a Full exhibit. Ms. Stoddard was next shown an invoice in the amount of One Hundred and Fifteen Dollars ($115.00) for testing done in this matter as requested by RIDEM. The invoice came in as OC&I 19 Full without objection.

Upon cross examination Ms. Stoddard testified that she did not conduct any of the tests reflected in the reports. She said she never testified as an expert before in court or this tribunal. The purpose of the test results attached to Exhibit 19 was to create a chromatogram for comparison purposes. Ms. Stoddard testified that peat and leaves are in the range between C 9 to C 36 which means they are carbons. Oil is also in that range as is hydraulic oil. She said that she was not qualified to distinguish between the test results. Respondents' I was marked for identification as a fax transmittal sheet dated April 7, 2006, plus the accompanying ESS Laboratory report, all documents totaling 10 pages. The Respondents were never given an opportunity to conduct tests of the samples. Respondent sought to strike Exhibit 12 because of questions about the surrogates. After additional questioning the motion to strike was denied.

OC&I indicated that it was going to present John Leo to testify as an expert to analyze the Lab test results. Respondent objected and the Hearing Officer indicated that Mr. Leo had not

been identified as a witness in OC&I's Prehearing Memorandum. OC&I then said that it would bring back Mr. Chopy to testify about turbidity and the ESS test results.

The cross examination of David Chopy was resumed. He said that he reviewed permit A-4586 but may not have reviewed the entire file. He testified that he did not know where the source of the oil was, just that it was on their property. He acknowledged that the property is about 83 acres. He has no evidence that the Respondents were aware of the oil spill before RIDEM inspectors went on the property. He said that the Respondents got Lincoln Environmental on the property immediately. The oil was treated immediately by the Lincoln Environmental and never left the property. He considered this a single occurrence in the moderate category.

Mr. Chopy was shown Respondents' Exhibit J which was marked for identification. This document was identified as a Hazardous Waste Field Inspection Report dated March 25, 2005. He said that decision to go from minor to moderate in classifying the violation because Smithfield Peat was registered as a small quantity generator with oil with the EPA. If not for this designation he would have assessed the spill as a Type 1 violation minor and assessed a $2500 penalty for that. He changed it because they should know what oil looks like. The Respondents' employees continuously said that there was no spill from any of their equipment.

Mr. Chopy was shown Respondents' Exhibit L which was marked for identification. Respondents' L Full was comprised of correspondences from 1981 and 1982 involving permit Number A-4586. Apparently when A-4586 was being considered there was an objection filed by local residents called the Greenville Pond Association. In an inter-office memo to Todd Bryan, Supervisor of the Freshwater Wetland Section from James W. Fester Chief of Division of Water Resources dated 16 October 1981 it is stated that the project may have some adverse effects on the

unnamed brook, "the effects ... will be negligible". Mr. Chopy said that the memo acknowledges that there's going to be some pollutants, suspended solids in the unnamed brook. He said that there were no design standards for basins back in 1982.

OC&I conducted a redirect examination of Mr. Chopy. He said he cited Respondent, Rollingwood Acres, Inc. because they were the owner of the property. He cited Smithfield Peat and Smithfield Crushing because they operate a composting and rock crushing operation respectively. He said that since the violation involved release of oil to the ground and discharge of sediment to the waters of the State both of their businesses could have been the source of that sediment and oil. In addition Smithfield Peat is registered as a small quantity generator of hazardous waste as it pertains to automobile oil. He said RIDOT violates regulations often and that RIDEM often cites RIDOT. He said that he didn't cite RIDOT in this matter because he didn't have any evidence RIDOT did anything. He is aware RIDOT took some corrective action by replacing one small section of the 18-inch pipe that's on State property and put it back to the 15-inch pipe that was originally there. The Respondents have not replaced the remainder of the 18-inch pipe. He acknowledges that he recently became aware, just before the hearing, that RIDOT had to make some changes in the field. RIDOT replaced the 15-inch pipe with an 18-pipe to the State property line and Mr. Despres put in an 18-inch pipe from the basin to connect to that 18-inch pipe on the State property line.

Mr. Chopy was shown OC&I Exhibit 20 which was marked for identification. It was described as a letter from Jackson Despres to Mr. William Ankner Director of RIDOT dated October 2, 1997. The letter included two diagrams. The letter was entered as a Full Exhibit without objection. Mr. Chopy read a highlighted section of the letter in which the Respondents say the "acquiesced" to install the 18-inch pipe from the State property line up to the basin.

Mr. Chopy testified that he reviewed the plan in Application File 4586 which described two basins together with a drainage pipe. He described the current problem with the drainage structure; a larger 18-inch pipe set at a lower elevation than the 15-inch pipe which results in greater sediment discharge.

On recross examination Mr. Chopy said he doesn't recall looking at the entire file for A-4586. He doesn't recall ever looking at the RIDOT file until the Wednesday before the Hearing. Counsel for Respondents directed Mr. Chopy's attention to other parts of OC&I 20 Full in which Mr. Despres wrote that "Smithfield Peat Co. protested vehemently because elimination of the pipe in favor of an open swale would drastically alter the design characteristics of our retention basin". Mr. Chopy said that the 15-inch pipe shown in the drawing of A-4586 in OC&I 20 Full went into a catch basin in the middle of Douglas Pike (Route 7). It then goes into another catch basin in the middle of Douglas Pike (Route 7) then goes into 24-inch pipe and into the unnamed stream. He said that RIDOT made a change in the field base on something that had come up. RIDOT changed what they were permitted to do by RIDEM. When RIDOT got a permit to widen Route 7 it was to put in swales and didn't say anything about changing the pipe that went to Respondents' property. RIDOT has never received a permit to revise their plans. There is no question that RIDOT should have applied for a revision to their permit. If RIDOT had applied for a permit to revise its plans it would have held up the project most likely for several months. Mr. Chopy acknowledged that the situation was created by RIDOT as a result of a conflict in the design of the reconstruction of Route 7. He said he is sure RIDOT was involved but wasn't certain who else was involved. Mr. Despres from day one had taken the position that this problem was caused by RIDOT and they would have to correct it at no expense to him. Mr. Chopy acknowledged that RIDOT had violated the RIDEM Freshwater Wetlands Regulations yet, no violation has ever been

issued to RIDOT.

OC&I proceeded with Mr. Chopy on a direct examination on the issue of turbidity. He was shown OC&I 12 Full which is a report by Mr. Naumann dated February 10, 2005 of his inspection of Respondents' property. He said turbidity is a measure of cloudiness of the water. He is the person at RIDEM who makes a determination about turbidity. He testified that the turbidity results of samples taken by Mr. Naumann on February 10, 2005, as reflected in the laboratory results, was 975 NTUs in sample number 1. NTU is short for Nephelometric Unit. The number alone does not relate to the regulations. The results were 167 NTUs from a basin that runs parallel to Route 7 prior to it discharging into Basin A. The results were 253 NTUs in Basin A, sample site 3. The results were 546 NTUs taken after the water had discharged from Basin A and through the 18-inch pipe that's under Route 7.

Mr. Chopy testified that there is no RIDEM specific standard in the regulations to compare the test results to. In order to determine if the discharge is beyond standard is if it is more than 10 NTUs over "background". You need a point of comparison. We take background from the same stream. He used other results from Mr. Naumann to determine the violation "even though we didn't have a sample in the stream to prove it" (TR. Vol. 3 pg. 63). Mr. Chopy testified that he had Mr. Hogan take additional tests which were reflected in OC&I 18 Full. These tests were taken on April 4, 2006 in a manner described in OC&I 13 Full. Sample S1 from a drainage swale was 12.6 NTUs. He detailed the results from other samples taken as follows: Sample 3, 305 NTUs; Sample 4, 84.4 NTUs; Sample 6 was taken downstream to be used as a background sample with a result of 8.5 NTUs. The violation was determined as more than 10 NTUs over "background". (The standard comes from Rule 8.D (2) of the 1997 Water Quality Regulations.)

On cross examination Mr. Chopy was shown a historical aerial photograph which was entered into evidence as Respondents' Exhibit M Full. He identified some locations which reflected testimony by Mr. Naumann and Mr. Hogan. He acknowledged that it is important to know the quality of water coming into the property when possible. He acknowledged that he had no tests of a stream coming into the site from Route 116. Mr. Chopy upon request from Respondents' counsel designated on Respondents' M Full the location of sample taken by Mr. Naumann.

Mr. Chopy says he didn't have a "background" test by Mr. Naumann from his February 10, 2005 inspection. He didn't know what the turbidity level was prior to February 10, 2005. He used some of Mr. Hogan's test results in 2006 to come to the conclusion that some of Mr. Naumann's tests were violations. Mr. Chopy marked on the aerial map where Mr. Hogan's samples were taken. He acknowledged that there was no wildlife or recreational activity on the unnamed stream.

On redirect examination Mr. Chopy said that Mr. Hogan did testing because they had determined that there wasn't sufficient evidence from Mr. Naumann's report to determine whether there was a violation. He needed a "background". He said Mr. Hogan took the "background" sample approximately 1500 feet downstream.

On recross examination Mr. Chopy testified that Mr. Naumann's tests were inconclusive. Mr. Naumann's "background" sample was determined by him as insufficient. Mr. Hogan took tests fourteen months later and the violation was based on his "background" sample.

After a brief discussion OC&I Exhibit 19, Respondents' Exhibit K, J, and L were marked as Full Exhibits. OC&I next called Sean Carney who they intended to use to interpret the ESS Laboratory results. After brief examination and argument of the parties OC&I's request to have

Mr. Carney testify as an expert in the area of interpreting laboratory results was denied. The Hearing Officer advised that he would allow Mr. Carney to testify about the laboratory results without qualifying him as an expert. If he found the testimony without credibility he would entertain a motion to strike.

Mr. Carney was shown OC&I 12 Full which ARE the results of samples taken by Mr. Naumann on February 10, 2005. He said that at page 3 the report identifies the presence of total petroleum hydrocarbons (TPC) in the sample at a concentration of 13 milligrams per liter. He said that this meant that there was petroleum hydrocarbons present in the sample. On page 10 of the report the TPC results were 191 milligrams per liter. At page 17 it shows a concentration of 9.68 milligrams per liter total petroleum hydrocarbons. He went on to testify about other TPC results in the report that he said reflect the presence of petroleum hydrocarbons in the sample.

On cross examination Mr. Carney said that he wasn't on the site in 2005 and therefore didn't take any of the samples about which he testified. He had reviewed the report for about 30 minutes before testifying. He was then questioned about his report which is OC&I 13 Full. Upon completion of Mr. Hogan's testimony RIDEM rested.

Respondents filed two Motions to Dismiss; one motion pursuant to Rule 52 C and one Motion for Failure to Join an Indispensable Party, RIDOT. The Hearing Officer said that he would allow RIDEM time to review the motions and file an objection. The Hearing Officer ruled by denying Respondents' Motion to Dismiss for Failure to Join an Indispensable Party and reserved ruling on the Rule 52 C Motion.

The Respondents called as their first witness Jackson P. Despres who said that he has been involved in the construction business full time since 1970. He was shown Respondents' M Full and said that the distance between his offices and the drainage system was approximately

1700 feet. He said that the Respondents did not have any heavy equipment in the area of the basins. In 2004 and 2005 Smithfield Peat and Smithfield Crushing bought in 500,000 tons of crushed rock from the City of Providence Big Dig Project to their property in Smithfield. Smithfield Peat leased independent truckers to bring in the material.

Mr. Despres said that he had an agreement with NBC that the material was not hazardous. The material was dark gray shale. When it rained it created a sheen resembling oil. He said that he first learned about a problem with RIDEM when he received a call from his office that they were on his property. When he was told by his office that there was an issue of an oil spill he told them to contact Lincoln Environmental ("Lincoln"). They had an understanding with Lincoln that they would respond if they had a problem.

Mr. Despres testified that he went to the site and tried to determine the source of the oil. He saw evidence of oil in an extremely limited amount in Basin B. He said that the NBC material was emanating some type of sheen which was almost imperceptible. Lincoln set up three booms in the basins. Basin B had some sheen but Basin A did not. Lincoln was on the property for two to three days but not the personnel only the booms. Mr. Despres said Lincoln charged Two Thousand One Hundred and Sixty-Four Dollars and Fifteen Cents ($2,164.15) for their work which was evidenced by an invoice which was marked as Respondents' Exhibit N for identification later to come in of a Full Exhibit.

Mr. Despres testified that there was no evidence that oil had been spilled from any of his equipment or machinery. He has a contract with Caterpillar to maintain the heavy equipment. There was no indication from Caterpillar of a problem. He had a conversation with a Cosmo Spaziano ("Spaziano") who is an independent trucker who brings in material from NBC. Spaziano is not his employee. The hauling operation had been going on for approximately one

year nonstop five or six days a week. Spaziano told him that several days prior to the date of the spill that a hydraulic line blew on a 988 Loader at the NBC project in Providence. Spaziano said the leak had occurred in the area of a stockpile of material they were taking to the property. He told Mr. Naumann what Mr. Spaziano had told him.

Mr. Despres said that when he became aware of that fact he stopped receiving material from NBC and sent them a letter on February 11, 2005 to that effect. Mr. Despres was shown a document which was marked as Respondents' Exhibit O Full. Their prior arrangement with NBC was that the material was for free but they would sell it when processed.

Respondents suspended examination of Mr. Despres and called Cosmo Spaziano as its next witness out of time. Mr. Spaziano identified himself as a self-employed truck driver. He did work for Smithfield Peat during 2004-2005 hauling material from the NBC tunnel project to the property off Route 7. He said he did between nine and eleven loads a day. At NBC the material was loaded into the trucks by a 988 loader with a seven yard bucket.

He said that in early 2005 the 988 loader blew a hydraulic line while loading his truck. He saw oil dripping off the bottom of the machine. The leak occurred right on top of the material which was being loaded. He was loaded by another piece of equipment and took the load to Smithfield Peat where he dumped it. He continued to take material to Smithfield Peat for two or three more days at which time the work stopped. He later talked to Mr. Despres who told him the work stopped because there was oil in the material. He told him about the blown hydraulic line and leak. He was familiar with the Smithfield Peat equipment and never saw or heard about any leakage.

On cross examination Mr. Spaziano couldn't recall the exact day the oil spill occurred. He never saw the oil or the Smithfield Peat property. The NBC hydraulic oil was yellow like

Mazola oil. He initially thought that the hauling was stopped because of the rain and muddy conditions. He said that there were anywhere from 10 to 14 trucks transferring material. He said that the 988 loader had a hydraulic reservoir of about 20 to 30 gallons.

Respondents recalled Jackson Despres to complete his direct examination. He said that he worked at Smithfield Peat since 1964. In 1980 they received a Notice of Violation concerning removal of peat from the property. He received a permit to remove peat up to the property line. In 1966 or 1967 RIDOT gave them a permit to install a pipe to connect with a 24" pipe under Route 7. There were no catch basins or retention ponds.

Mr. Despres testified that in 1980 they received a Notice of Violation which prompted them to file application Number 4586. It took about two years to get the permit. He was shown a OC&I Exhibit 7 which was marked Full. Mr. Despres identified OC&I 7 Full as the approval of Application 4586. This permit created Basin A & B and a 15" pipe from a control structure inside Basin A. It also provided for two catch basins, one of which was under Route 7.

Mr. Despres said that after the installation of the permitted drainage structure they did not receive any NOV. There was no sediment flowing off the property. In 1991 they received a letter from RIDOT that the State was about to upgrade Route 7. He had seen a copy of the RIDOT plan it showed the control structure and 15-inch pipe was to remain intact. Mr. Despres was shown Respondents' Exhibit P for identification which he identified as a letter he sent to RIDOT because RIDOT had completely eliminated the control structure, the 15-inch pipe, the catch basin, all the drainage that was permitted by A-4586. They replaced that with an unauthorized 18-inch pipe in a completely different location, at a different invert and outlet elevation and a different diameter.

Mr. Despres testified that he couldn't see the activities on Route 7 from his office. At

some point in 1997 he learned that the permitted pipe drainage underA-4586 had been removed. Mr. Despres received a radio call from one of his employees that RIDOT was stealing fill from their property on Route 7. He immediately went down to the site and saw a 235 excavator digging fill and loading it into a truck. This was in the exact area of Basin B. The fill had been left by Respondents on the property to divert surface water back onto the property.

Mr. Despres testified that he immediately stopped the excavation, notified the resident engineer and called RIDOT. Several days later they had a site meeting and RIDOT denied any wrong doing including removing granite bounds which differentiated State property with their property. During that meeting he took a walk along the entire frontage of Route 7 and noticed that the control structure, the 15-inch pipe, the catch basin out in the street and all the drainage that was permitted pursuant to A-4586 was missing and an 18-inch pipe had been installed in its place. He said that he absolutely did not give permission to anyone to remove all the drainage structure. He said that it took him two years and cost over $100,000 to install the permitted drainage structure.

Mr. Despres testified that at the site meeting a RIDOT employee Bill Ricci claimed the Respondent didn't have a permit which allowed the 15-inch pipe. He took him to his office and showed him the 1967 PAP which later was allowed in the A-4586 permit. Riccio was shocked and said that RIDOT didn't retain the original. He said apparently Riccio called RIDEM and complained about increased sediment. He said he didn't give RIDOT permission to remove anything.

Mr. Despres testified that he pursued the issue of the stolen fill with RIDOT. He hired an engineer and a lawyer. After a great deal of back and forth, RIDOT admitted taking 5000 cubic yards of material. RIDOT paid compensation for the material but did not pay his expense for the

engineer or lawyer. He built an additional retention pond to control surface water that had been controlled by the stolen embankment. The retention pond cost $42,500. RIDOT didn't pay for the costs of the retention pond.

Mr. Despres described in detail the nature and function of the two catch basins. The catch basins captured sediment which on occasion was removed. The catch basins were removed when the 15-inch pipe was replaced. He said he continuously told RIDEM that he wasn't responsible for the removal and would not be held responsible for fixing it. He said he demanded replacement of the entire 15-inch pipe verbally and in writing. He said that some of the wording in his letter (OC&I 20 Full) was a typographical error. He said that he absolutely did not touch any of the pipe because he had an approved, functioning drainage system that he went through great time and expense to obtain. Respondents presented a RIDOT plan for the upgrade of Route 7 dated 1/21/90 which was entered into evidence as Respondents' Exhibit Q Full. Mr. Despres testified that the plan did not provide for changes to his permitted drainage system. RIDOT didn't get a permit for alterations. He said the permit process is time consuming and expensive. He testified that the unauthorized changes to his permitted drainage structure were of absolutely no benefit to him. He said that there isn't a reason in the world he would remove a fully functioning approved pipe, rip it out, and install an unauthorized pipe. Respondents' moved that Respondents' Exhibit P be marked as a Full exhibit and without objection it was so marked.

OC&I conducted a cross examination of Mr. Despres and he said that in February 2005 he had an understanding with Lincoln Environmental to respond if needed. He didn't know if Lincoln Environmental took samples. He said he just noticed a sheen when Mr. Naumann brought his attention to it. Mr. Despres testified that the material was examined when deposited but no sheen was noticed. He had no idea that the material contained any contamination. The

rock piles were 500 feet from the basin in which the sheen was detected. It appeared to come from the middle of the pile of NBC material.

Mr. Despres was asked about the conflict in his testimony and the statement made in OC&I 20 Full. He said that he had had a preliminary conversation with RIDOT where they notified him that the existing pipe was in conflict with the design swale. They said the pipe should be eliminated and he said that was unacceptable. He said he recognized the fact that anything that they did to change the drainage would have to be resubmitted to RIDEM for approval and that it would also need his approval. He said as owner he would have to sign an application. He wouldn't just let them go and make a change to a permitted pipe that he had to struggle for two years to get permitted. He said he agreed that, if it was in conflict, that they could prepare and submit a new design.

Mr. Despres testified that he first sought a resolution from RIDOT and did not notify RIDEM. He said that there was no benefit to the Respondents in changing the drainage structure. He said that he hasn't filed an application for a change because he had nothing to do with it. He said he never saw the activity of RIDOT in removing his drainage structure. He said there was no direct view from his office which is about 1700 feet from the site.

The Respondents called Darin P. Clavet as their next witness. He identified himself as an employee of Smithfield Peat since 1993. He runs the day to day operations. In 1995-1996 he was on the property every day. He was with Mr. Despres when they discovered the pipe had been changed. No one from Smithfield Peat changed the pipe. They didn't learn about the change in the pipe until they went down to investigate the removal of fill. He said Mr. Despres was upset when he discovered the pipe was removed without notification. He testified that the Respondents did not give RIDOT permission to remove the pipe.

Mr. Clavet testified that he was still employed by Smithfield Peat in February 2005 with the same duties and responsibilities. He was familiar with the material being brought in from NBC. When it rained it had a sheen. On February 9, 2005 Mr. Clavet was with Mr. Despres at a meeting in Providence when the call came from their office that RIDEM had observed an oil spill on the property. Lincoln Environmental was notified immediately by Rollingwood. Mr. Clavet testified that there was no leak from equipment on the property. When he returned to the property he saw a small sheen from the NBC pile.

On cross examination Mr. Clavet said there was no reason to call RIDEM about the oil spill because they were already on the property. Neither he not any of the other employees saw RIDOT remove and replace the pipes. He testified that Smithfield Peat didn't ever purchase any 18-inch pipe. On redirect Mr. Clavet testified that he would have been involved in any construction on the site and the ordering of pipe.

Respondents next called Jeffery C. Hanson whose resume was entered into evidence as Respondents' Exhibit U Full. He is a registered professional engineer and familiar with the NOV in this matter. He worked for John Caito Corporation. He reviewed the details relating to permit A-4586. He had reviewed the RIDOT plan (Respondents' Q) and said that there were no changes planned in Respondents' permitted drainage structure. He testified about the drainage structure after the change. He testified about greater velocity through an 18-inch pipe verses a 15-inch pipe as well as lower elevation causing more sedimentation. He said he had been to the site prior to 1997 and there was no problem. He said that he reviewed the RIDOT plans (Respondents' Q) and said that there was a conflict between the swale design by RIDOT and Respondents' permitted 15-inch pipe. The pipe would have been exposed and would impede water flow into the swale. In his opinion the 15- pipe was removed to eliminate the conflict with the swale designed by RIDOT.

He also testified that he observed that fill had been removed from the property which had served as a stormwater control.

The parties filed a Stipulation with the AAD on the day following conclusion of testimony, February 28, 2012. The stipulation indicated that there is no evidence of any harm to wildlife as a result of the alleged turbidity or oil spill on Respondents' property. Both parties rested.

ANALYSIS

The Department of Environmental Management bears the burden of proof in this matter and must prove the allegations in the NOV by a preponderance of the evidence. "The burden of showing something by a preponderance of the evidence... simply requires the trier to believe that the existence of a fact is more probable than its nonexistence before he may find in favor of the party who has the burden to persuade the judge of the facts existence" **Metropoliton Stevedore Co. V. Rambo, 521 U.S. 121.**

This is a case which involves two separate independent types of violations of State Law and RIDEM Regulations: 1. Violation of the Rhode Island Water Pollution Act and RIDEM's Water Quality Regulations ("Turbidity") and Violation of the Rhode Island Oil Pollution Control Act and, 2. Violation of the Rhode Island Oil Pollution Control Act and RIDEM's Oil Pollution Control Regulations ("Oil Spill").

Turbidity

The violation of the Rhode Island Water Pollution Act and RIDEM's Water Quality Act relating to the Respondents' property was first brought to the RIDEM's attention by a complaint

filed on 12/3/96 by Bill Riccio of RIDOT. (See Respondents' T Full). On 1/9/97 Sean Carney from RIDEM inspected the area of Respondents' property which abuts Route 7 in Smithfield, RI. He observed a "discharge of sediment into a stream in non-conformity with the permit letter contained in application number A-4586 and the installation of two new pipes in non-conformance with A-4586". On 1/212/97 he returned to the site and on reinspection observed sediment continuing to be discharged into the stream (OC&I 8 Full). OC&I 8 Full also included a note signed by supervisor Harold Ellis dated 6/2/97 which identified two sediment problems. The first was coming from Repondents' basin. The second was the result of "failure of e/s controls associated with RIDOT reconstruction of Route 7. The latter is being handled as a separate enforcement action". A Notice of Intent to Enforce ("NOIE") was issued by Harold Ellis on June 3, 1997 against John P. Despres and Rollingwood Acres, Inc. requiring remediation of the unauthorized drainage structure (JT 2 Full).

On October 2, 1997 Jackson Despres sent a letter to William D. Ankner Director of RIDOT (OC&I 20 Full). He said that the problem was "the result of a conflict in the design of the reconstruction of Route 7 and the unauthorized elimination of a pipe and substitution of a larger diameter pipe by RIDOT". He went on to say that he expects "RIDOT to complete the required construction work to fully rectify this problem – with NO expense to Smithfield Peat Co. A copy of this letter was sent to Harold Ellis of RIDEM.

The next recorded activity in this matter appears in a note to the file by Sean Carney dated 11/19/97 (Respondents' B Full). The note reflects a telephone call to him from Jackson Despres in which he questioned RIDOT's plans in "Replacing the 18" culvert pipe that extends from his detention basin to Rt. 7." Mr. Carney indicated he was waiting for a letter from RIDOT explaining their involvement. A note to file dated 11/20/97 (Respondents' C Full) reflects a

telephone conversation with Kelly Presley of RIDOT wherein it was acknowledged that RIDOT "was involved partially with the installation of the unauthorized pipe". She asked if RIDOT "replaced the existing 18" pipe with a 15" pipe would that resolve the matter?" Mr. Carney discussed the matter with his supervisor and was told that if the 15" pipe was set at the approved elevation it would be an acceptable resolution. A letter was promised from RIDOT but never came.

On 11/24/97 Jackson Depres called Mr. Carney again (Repondents' D Full) to see if the letter was received. It was his understanding that RIDEM and RIDOT had an agreement regarding the restoration. He said he was told by RIDOT field people that they would only replace that portion of the 18" pipe on State property. He, Carney, was still waiting for a letter and would call Mr. Despres when it was received. The letter never came. On April 16, 1998 Harold Ellis sent two very similar letters to J. Michael Bennett of RIDOT (Respondents' E Full) and John P. Despres, Rollingwood Acres, Inc. (Respondents' G Full). In this letter to RIDOT Mr. Ellis said that in a meeting with Mr. Despres on June 25, 1997 and subsequent conversations he told him that RIDOT had removed the original 15-inch outlet pipe and an unauthorized 18-inch pipe was installed in a new location during the reconstruction of Route 7. He reviewed Mr. Despres's letter to Mr. Ankner on October 2, 1997 and conversations between Kelly Presley and RIDEM. He requested a letter from RIDOT as previously promised to resolve the matter. No letter from RIDOT was ever sent. No additional action was taken in this matter until February 9, 2005, approximately 7 years later.

On February 9, 2005 Peter Naumann went to the site of the Repondents' drainage structure which was the subject of the previous NOIE issued on June 3, 1998. His visit was not the result of a complaint but a follow up inspection while he was in the area on another complaint.

He observed an oil sheen in one of the retention basins. He contacted the RIDEM Emergency Response who sent out representatives. The details of the oil spill will be addressed later in detail. The discovery of the oil spill served to reactivate RIDEM's concern about the sediment discharge, otherwise known as turbidity. Mr. Naumann prepared an inspection site report (J 4 Full) reflecting his inspection together with photographs and a diagram.

On February 10, 2005 Mr. Naumann returned to the property and collected five (5) samples to be tested for TPH, SVOC, PPM13, Hardness and Turbidity. Four (4) of the samples were taken on or near the subject site and one (1), a "background" sample was taken on Route 116 300 feet east of Lyden Area Rd. The samples were sent to ESS Laboratory ("ESS") for analysis. The results of Mr. Naumann's samples reported by ESS was dated March 1, 2005 (OC&I 19 Full). On April 4, 2006 Patrick J. Hogan went to the subject property to conduct an additional inspection and collect additional samples. He observed what he described as turbidity. He took six (6) samples, five (5) from the immediate area of the drainage structure and discharge into the unnamed stream and one (1) "background" test 1500 feet downstream from the point of discharge. His samples were sent to ESS and the results were reported back on April 11, 2006. RIDEM issued the NOV which is the subject of this appeal on November 6, 2006 for turbidity and the oil spill.

The Respondents argue that they are not responsible for the turbidity violation because of the actions of RIDOT in altering their previously approved and functioning drainage structure. In addition to the reports referenced previously, Mr. Despres testified that he never approved the removal of his 15-inch pipe and the substitution of an 18-inch pipe. He also said he did not authorize the removal of the catch basin and control structure as allowed by A-4586. He testified about the history of his drainage structure going back to 1968 and then 1982. He said it took two

(2) years and more than One hundred Thousand ($100, 000) dollars to obtain permit A-4586.

Mr. Despres testified that he was not aware that RIDOT had changed his drainage structure until he went to that area of his property on a report RIDOT was stealing his fill in the area of his drainage structure. While inspecting the property he saw that the15-inch pipe had been replaced with an 18-inch pipe at a different location and elevation. He insists that he had no reason to agree to a change and would never do so without going through the permit process. His position is that RIDOT went ahead without his permission and made the change to resolve a design conflict that they had in the reconstruction of Route 7. While he had discussed the possibility of a change to his drainage structure, he thought that they would go through the process with RIDEM and he would have to sign off as owner. His testimony about the discovery of the change was supported by the testimony of David Clavet who was with him when he discovered the change.

David Chopy testified about the decision of RIDEM to charge the Respondents with the violations relating to turbidity and how the Administrative Penalty was calculated. Mr. Chopy testified that the violations occurred as a result of a change in Respondents' authorized drainage system. He said that he didn't know who changed the drainage system but assumed that the Respondents, as owners of the property, had either made the change or consented to it. He said that he didn't have any other facts or information that the Respondents had made the change.

Respondents presented as exhibits numerous notes to file and correspondence which indicated the RIDOT bore some or all the responsibility for altering Respondents' drainage structure. When asked if he read the notes to file Mr. Chopy's response very often was that he probably read the notes but didn't recall. He initially said that he did not see sufficient evidence to decide if RIDOT was involved. He later said the RIDOT was involved to the extent that they

replaced the 18-inch pipe with a 15-inch pipe up to Respondents' property line. When I consider the length of time from the initial incident to the issuance of the NOV it is quite possible that Mr. Chopy did not see all the evidence pointing to RIDOT's involvement in this matter. He acknowledged the RIDOT often violates environmental laws and regulations and that RIDOT would not accept responsibility for something that it didn't do. Mr. Chopy's testimony was also affected by review of files immediately prior to his testimony which he may or may not have seen in 2006 when the NOV was issued.

Mr. Chopy testified about the taking of turbidity samples in 2005 by Mr. Naumann and in 2006 by Mr. Hogan. He said that Mr. Hogan took additional samples because "the first set of results that Mr. Naumann took really weren't useful...When we take background samples, we take it within the same stream itself, not in some other stream off-site". (TR. VOL. 4 PG. 62) So Mr. Hogan went back more than one (1) year later to take samples, most importantly to obtain a valid background sample. Mr. Hogan's testimony is that he took a "background" sample approximately 1500' downstream.

The Water Quality Regulations for the State of Rhode Island promulgated in August 1997 Table 1. 8. D. (2) established Turbidity violations as: "None in such concentrations that would impair any usage specifically to this class. Turbidity not to exceed 10 NTU over natural background".

In the Water Quality Regulations Appendix C III Definitions it says "Background" means the water quality upstream of all point and nonpoint sources of pollution". (emphasis added) There is certainly logic in this regulation and definition. In order to determine the extent to which the alleged violation contributed to the turbidity level of a stream is to have a baseline or reference upstream from their discharge. In the case at hand there is no "background" sample against which

to base a violation. Without a valid upstream sample all of RIDEM's samples and testing on turbidity are meaningless. RIDEM has not sustained its burden of proof that the Respondents' have caused turbidity to be discharged into the unnamed stream in excess of 10 NTU over natural background and therefore the violations in the NOV on that issue are unsustainable.

I also find that RIDEM has not sustained its burden of proof that the actions of the Respondents' caused the increased sediment discharge taking all the testimony and documentary evidence into consideration. I believe that the changes made to Respondents' drainage system were done by RIDOT without Respondents' knowledge or consent. It simply does not make sense that the Respondents would agree to tear out a validly permitted and functioning drainage structure and replace it with an unauthorized non functioning system, especially in light of the credible testimony of Mr. Despres regarding the time and expense involved in the permit process for A-4586. There is no evidence that the Respondents' benefited in anyway. The only documentary inference that Respondents were involved or consented is found in OC&I 20 Full, a letter from Jackson Despres to William Ankner of RIDOT in which he said he "acquiesced" to the installation of the 18-ince pipe. This statement was explained as a typographical error and is in contradiction to the rest of the letter and all other testimonial and documentary evidence Mr. Despres presented.

After hearing all the evidence on the issue of turbidity, it is clear that the Respondents were victimized by RIDOT. Instead of following up and holding RIDOT responsible for its involvement in this matter RIDEM charged the Respondents only. The Respondents have been assessed with a Twelve Thousand Five Hundred ($12,500.00) Administrative Penalty and ordered to return its drainage structure into compliance. I find that the Respondents are not responsible for the turbidity violation and therefore not liable for the related Administrative

Penalty.

Oil Violation

This issue raised in the portion of the NOV relating to the discharge of pollution is separate and apart from the turbidity issue. The Respondents are charged with three violations of the Rhode Island Oil Pollution Control Act and RIDEM's Oil Pollution Control Regulations: (1) discharge of oil upon the land of the State where they are likely to enter the waters of the State; (2) failure to immediately report the release of oil to RIDEM; and (3) failure to immediately stop, contain and remove the oil or waste material.

The facts and documentary evidence establishes that on or before February 9, 2005 a petroleum based product was released on the Respondents' property. I accept as valid and reliable all test results presented by RIDEM that there was a petroleum product discovered on Respondents' property. RIDEM properly took and tested samples to establish this fact. The testimony of Mr. Despres and Mr. Clavet is uncontradicted that the first notice of presence of a petroleum product on Respondents' property was when Mr. Naumann came onto the property regarding the turbidity issue. There was no testimony estimating the amount of petroleum product issued and it appeared that at times during the initial investigation there was some confusion in determining petroleum product from graphite from the shale.

The evidence was that there was no oil or hydraulic fluid reportedly released from equipment on the Respondents' property. Mr. Spaziano, an independent trucker, testified that there had been a hydraulic fluid leak at the NBC project a few days prior to the discovery of a petroleum product which seemed to emanate from the pile of NBC material recently trucked into the site. I find that it is more likely than not that the petroleum product came onto the property in

the NBC material. This does not relieve the Respondents from responsibility for this discharge. Mr. Despress testified that the Respondents do not get paid for taking the material from NBC but benefit from the processing and resale of the material. They received a commercial benefit from this activity. They must also accept the responsibility of any negative environmental consequences from this commercial activity.

I do not find that RIDEM has sustained its burden of proof on the other two aspects of the oil discharge violation. The uncontradicted sworn testimony is that Respondents did not become aware of the oil discharge until February 9, 2005 when it was discovered by Mr. Naumann. The duty to immediately report an oil discharge to RIDEM presupposes knowledge of the discharge. I find that the Respondents did not know that a petroleum product had been discharged on its property and therefore has not violated the duty to immediately notify RIDEM.

The final violation is failure to contain and remove the oil and waste material. The testimony and documentary evidence is that the Respondents contacted Lincoln Environmental who responded to the site while Mr. Naumann was still conducting his initial investigation. I find that RIDEM has not met its burden of proof that Respondents failed to contain and remove the oil and waste from its property. In summary I find that Respondents are liable for the violation of discharging oil upon the land where it is likely to enter the waters of the State. I do not find that Respondents are liable for the violations of failure to immediately report and contain the oil spill.

ADMINISTRATIVE PENALTIES AND COSTS

The Respondents are not responsible for any Administrative Penalty except for that relating to the release of oil. The penalty imposed in the NOV for the release of oil was Six Thousand Two Hundred and Fifty dollars ($6,250.00) as a Type One moderate violation. Mr.

Chopy testified that "Personally I don't think it was a big deal" (Tr. Vol. 3 pg. 155). He said that he had decided to rate the violation "moderate" rather than "minor" because of Smithfield Peat's involvement as a registered small quantity generator with oil and the knowledge that he would expect the employees to have in evaluating and inspecting for releases. This factor was not included in the Administrative Penalty matrix on page 11 of the NOV. In the matrix there is listed as Factor Considered (F) that "The Respondents did not take reasonable and appropriate steps to mitigate the oil release until directed to do so by DEM." The Respondents had Lincoln Environmental respond to the property within one hour of being notified. It's hard to imagine a more prompt response. Finally as Factor Considered (I) I don't agree with the characterization of Respondents' actions as willful or foreseeable.

Mr. Chopy testified that the primary reason he moved from minor to moderate was the Smithfield Peat registration. He said if it were a minor violation he would have imposed a Two Thousand Five Hundred Dollar ($2,500.00) penalty. I, therefore, find that this should have been rated as a minor violation and the Administrative Penalty should be Two Thousand Five Hundred Dollar ($2,500.00).

The last issue is the question of the cost recovery. OC&I did not introduce an invoice from ESS Laboratories during the course of the hearing. The information regarding the cost of test sample analysis is generally stated on page 9 of the NOV. The total cost of three (3) laboratory analysis appears to be Six Thousand Four Hundred and Seventy Dollars ($6470.00). The test analysis for samples taken on February 10, 2005 was for both oil and turbidity issues. The Respondents should not be held responsible to pay for analysis of turbidity tests which were not conducted properly. It is not possible to determine the exact cost of oil sample analysis from the information presented. The laboratory analysis of oil sample taken on March 3, 2005 was One

Hundred and Fifteen Dollars ($115.00). The cost of the soil analysis of samples taken on March 5, 2005 is not recoverable because the samples were not properly taken and the violation of turbidity was not sustained. The Respondents are liable for costs incurred only in oil sample analysis. The Respondents, therefore, are liable for One Hundred and Fifteen dollars ($115.00) in costs.

Conclusion

The Respondents had a legally permitted, functioning drainage system until 1996-1997 when RIDOT came out to Smithfield to do roadwork on Route 7. During the course of the road-work RIDOT removed Respondents' drainage system to resolve a design conflict. They did not receive Respondents' approval and Respondents did not participate. RIDOT then filed a report with RIDEM that Respondents were causing a violation by discharging silt. The discharge is due to the unauthorized changes made by RIDOT.

RIDEM became aware early on that RIDOT was involved and initially tried to hold them responsible and requested remediation. In spite of Respondents' insistence, RIDOT did not return their drainage system to its previous condition. RIDEM, for some unknown reason, failed or refused to pursue RIDOT concerning these violations. The matter remained dormant from 1998 until 2005.

In 2005 Respondents committed a violation by allowing a petroleum product to be released on their property. When RIDEM issued its NOV for the oil spill violation it also included violations for turbidity which relate back to 1997 and 1998. RIDEM did not include RIDOT as a party to the violation although they knew or should have known of the involvement of RIDOT. The Respondent should be held responsible for the oil discharge. RIDOT should have been held responsible for the Water Quality violation and not Respondents.

Findings of Fact

I make the following Findings of Fact based on the testimony, documentary evidence and stipulations of the parties:

1. The Notice of Violation issued to the Respondents contains a fine in the amount of Thirty One Thousand Four Hundred Seventy and 00/100 Dollars ($31,470.00).

2. Rollingwood Acres Inc., is the record owner of property located at 961 Douglas Pike, Smithfield, Rhode Island, and more specifically described as Town of Smithfield Assessor's Plat 46, Lots 71 and 76, (hereinafter the "Site") and is incorporated as a Rhode Island business corporation having its principal place of business located 295 Washington Highway, Smithfield, Rhode Island.

3. Smithfield Peat Co., Inc. ("Smithfield Peat") is incorporated as a Rhode Island corporation having its principal place of business located at 295 Washington Highway, Smithfield, Rhode Island.

4. Smithfield Peat is registered with the United States Environmental Protection Agency, (hereinafter, the "EPA"), as a small quantity hazardous waste generator of automotive oil, EPA permit identification number RID987467453.

5. Smithfield Peat operates a leaf and yard waste composting facility at the Site.

6. Smithfield Crushing Co., LLC ("Smithfield Crushing ") is incorporated as a Rhode Island limited liability corporation having its principal place of business located at 295 Washington Highway, Smithfield, Rhode Island.

7. Smithfield Crushing operates a rock crushing facility at the Site.

8. On or about May 4, 1982, DEM issued a freshwater wetlands permit, number A-4586, to Smithfield Peat and John P. Despres, authorizing Smithfield Peat to alter freshwater wetlands on the Site by excavating, filling and grading within fifty (50) feet of an unnamed swamp for the purpose of peat removal, construction of two (2) stormwater detention basins, installation of a sewer line and construction of a road.

9. On February 9, 2005, DEM performed an inspection at the Site and concluded that there had been an oil spill at the Site. On February 9, 2005, at the direction of the DEM, a representative of Respondent Smithfield Peat contacted and engaged an emergency response contractor to recover spilled oil.

10. During the early afternoon of February 9, 2005, an emergency response contractor arrived at the site and began efforts to contain and clean up an oil discharge.

11. During 1996 and 1997 the Rhode Island Department of Transportation ("RIDOT") engaged in a project to improve Route 7 in Smithfield immediately adjacent to Respondents' property.

12. Prior to RIDOT conducting improvements on Route 7 Respondents' had a properly functioning drainage structure permitted by RIDEM application A-4586.

13. The Respondents' drainage structure consisted of two retention basins, a control structure, 15-inch pipe, and two catch basins.

14. Respondents paid more than One Hundred Thousand Dollars ($100,000.00) and it took more than two (2) years

15. to obtain its approved drainage structure.

16. The RIDOT Plan for improvements to Route 7 (Respondents' Q Full) did not show any changes or alterations to Respondents' drainage structure.

17. Respondents' drainage structure with 15-inch pipe presented a design conflict with RIDOT's swale design.

18. Respondents did not give their permission to RIDOT to alter their drainage structure.

19. RIDOT removed Respondent's drainage structure.

20. RIDOT replaced the Respondents' drainage structure with an 18-inch pipe at a different elevation, without control structure or catch basins.

21. Respondents were not aware of the fact that RIDOT had altered their drainage structure until after it was done.

22. RIDOT did not obtain a permit from RIDEM for permission to alter Respondents' drainage structure.

23. The alteration of Respondents' drainage structure caused the system to discharge increased sediment, also referred to as turbidity, into an unnamed stream.

24. On or about December 3, 1996 Bill Riccio of RIDOT made a complaint to RIDEM that Respondents' drainage structure was causing sediment into the unnamed stream. (see Respondents' T Full)

25. Sean Carney a representative of RIDEM conducted inspections of the Respondents' property and adjacent area on January 9, 1997 and January 21, 1997.

26. Mr. Carney observed turbidity, or coffee colored water, being discharged into an unnamed stream.

27. DEM issued a Notice of Intent to Enforce (hereinafter "NOIE") on June 3, 1997 to Respondent Rollingwood Acres, Inc. for sediment laden water to an unnamed stream.

28. Representatives of RIDEM conducted inspections of the Respondents' property and the adjacent area on February 9 and 10 of 2005 and April 4, 2006.

29. During the inspections in 2005 and 2006 Representatives of RIDEM took samples of the water discharge to test for turbidity levels.

30. The standard for a violation under the Water Quality Regulations is for excessive turbidity that is 10 NTU over natural background.

31. The Water Quality Regulations defines "background" as the water quality upstream of all point and nonpoint sources of pollution.

32. Representatives for RIDEM when taking water samples for turbidity testing did not take upstream samples.

33. The water samples taken by representatives of RIDEM were not taken in accordance with the Water Quality Regulations and are of no use in proving a turbidity violation by Respondents.

34. RIDEM has not met its burden of proof by a preponderance of evidence that Respondents have caused a discharge of turbidity into the waters of the State of Rhode Island in violation of the Water Quality Regulations or Statutes.

35. Respondents are not liable for Administrative Penalties for violation of the water Quality Regulations or Statutes.

36. Respondents are not liable for costs incurred by the State of Rhode Island for analysis of water samples relating to turbidity.

37. On February 9, 2005 Peter Naumann of RIDEM observed an oily sheen in one of the Respondents' retention ponds.

38. Mr. Naumann suspected an oil discharge and notified the RIDEM Emergency Response.

39. RIDEM immediately notified the Respondents of the suspected oil discharge.

40. Respondents immediately notified Lincoln Environmental, Inc. of the suspected oil discharge.

41. Respondents had an arrangement with Lincoln Environmental, Inc. to respond to their property in the event of an environmental emergency.

42. Lincoln Environmental, Inc. went to the Respondents' property and began containment and cleanup procedures.

43. Lincoln Environmental, Inc. appeared at Respondents' property while Mr. Naumann was still conducting his initial inspection.

44. Mr. Naumann's Inspection Report indicates that he was at Repondents' property on February 9, 2005 from 1120 hrs. until 1400 hrs.

45. On February 10, 2005 Mr. Naumann returned to the Respondents' property to take samples of oil in the retention pond as well as samples for turbidity.

46. The samples taken by Mr. Naumann were sent to ESS Laboratories, Inc. for analysis.

47. The report of ESS Laboratories, Inc. indicated the presence of total petroleum hydrocarbons ("TPC") in samples taken by Mr. Naumann.

48. The presents of TPC in the samples taken from respondents' Property proves that a petroleum product was released on Respondents' Property.

49. The tests conducted by ESS Laboratories were in accordance with proper quality control protocols.

50. There is no estimate given in the testimony or reports as to the quantity of petroleum product released on Respondents' Property.

51. The petroleum product was contained by Respondents' retention pond and did not enter the waters of the State of Rhode Island.

52. The petroleum discharge appeared to be coming from the piles of material on the Respondents' property which then flowed to the retention pond.

53. Representatives of Respondents testified that they were not aware of the discharge of petroleum product on their property until notified by RIDEM.

54. During 2005 Respondents were engaged in an activity whereby they received thousands of tons of material from the Narragansett Bay Commission ("NBC") relating to its tunnel project in the City of Providence.

55. The petroleum product discovered on Respondents' Property came from material recently delivered from the NBC tunnel project.

56. A hydraulic leak occurred at the NBC tunnel project a few days before February 9, 2005.

57. I find that witnesses for Respondent Jackson Despres, Darin Clovet, and Cosmo Spaziano to be credible.

58. Respondents did not know of the discharge of a petroleum product on their property.

59. The delivery of material from the NBC tunnel project was part of Respondents' business from which they benefited financially.

60. Respondents are responsible for the violation contained in the NOV for discharge of petroleum in the State.

61. Respondents did not violate Rhode Island Oil Petroleum Control Regulations and Statutes for failing to immediately notify RIDEM of the petroleum release.

62. RIDEM was aware of the petroleum release before Respondents.

63. Respondents did not violate the Rhode Island Oil Petroleum Control Regulations and Statutes for failing to immediately cleanup the release of oil.

64. Lincoln Environmental, Inc. at the Respondents' request immediately responded to control and cleanup the petroleum discharge.

65. The petroleum was cleaned up within approximately three days.

66. The fact that Respondents Smithfield Peat, Inc. is registered with EPA as a small quantity hazardous waste generator of automobile oil was not relevant to the petroleum discharge.

67. Respondents are responsible for a Type I, Minor Violation of the Rhode Island Oil Petroleum Control Regulations and Statures.

68. The appropriate Administrative Penalty for discharging a petroleum product should be Two Thousand, Five Hundred Dollars ($2,500.00).

69. Respondents are responsible for the payment to RIDEM for the costs of testing for oil in the amount of One Hundred and Fifteen Dollars ($115.00).

Conclusions of Law

After due consideration of the documentary and testimonial evidence of record and based on the Findings of Fact as set forth herein, I conclude the following as a matter of law:

1. The Administrative Adjudication Division for Environmental Management ("AAD") has jurisdiction over the matter pursuant to R.I.G.L. §42-17.7-2, The Rhode Island Water Pollution Act, RIDEM's Water Quality Regulations, RIDEM Regulations for the Rhode Island Pollution Discharge Elimination System, The Rhode Island Oil Pollution Control Act, and RIDEM's Oil Pollution Control Regulations;

2. The AAD has personal jurisdiction over the parties to this appeal;

3. RIDEM's NOV is sustained in part and reversed in part;

4. RIDEM has proven by a preponderance of the evidence that Respondents violated R.I.G.L. §42-12.5.1-3 by discharging oil upon the land of the State without a permit issued by the Director of RIDEM;

5. RIDEM has proven by a preponderance of evidence that Respondents have violated Section 6(a) of the DEM Oil Pollution Control Regulations for having discharged oil onto the land of the State.

6. RIDEM has not proven by a preponderance of the evidence that Respondents violated Section 12(b)(2) of DEM's Oil Pollution Control Regulations for failure to immediately stop, contain, and remove oil and waste material.

7. RIDEM has not proven by a preponderance of the evidence that Respondents violated Section 12(b)(3) of DEM's Oil Pollution Control Regulations for failure to immediately report the release of oil to DEM.

8. RIDEM has not proven by a preponderance of the evidence that Respondents violated the DEM's Water Pollution Regulations.

9. RIDEM has not proven by a preponderance of the evidence that Respondents violated Water Quality Regulations.

10. RIDEM has not proven by a preponderance of the evidence that Respondents have violated DEM's Regulations for the Rhode Island Pollution Discharge Elimination System.

11. Under the Rules and Regulations for Assessment of Administrative Penalties Respondents are assessed a penalty of Two Thousand Five Hundred Dollars ($2500.00).

12. Respondents are responsible for payment of One Hundred and Fifteen Dollars ($115.00) for extra ordinary costs.

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

ORDERED

1. Respondents' Appeal is granted in part and denied in part.

2. Respondents' Appeal is **Denied** as it related to the violation of discharging oil in the State on or about February 9, 2005.

3. Respondents are Ordered to pay the sum of Two Thousand and Five Hundred Dollars ($2500.00) as Administrative Penalty and One Hundred and Fifteen Dollars ($115.00) for cost reimbursement within twenty (20) days. Payment shall be in the form of a certified check, cashiers check or money order made payable to the "General Treasury – Water & Air Protection Program Account" and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.

4. Respondents' Appeal is **Granted** as to each and every other violation, penalty, and compliance order contained in RIDEM's NOV dated November 6, 2006 (J 3 Full).

RE: ROLLINGWOOD ACRES, INC./SMITHFIELD PEAT CO., INC./SMITHFIELD CRUSHING CO., LLC AAD NO. 06-004/WRE
NOTICE OF VIOLATION OC&I/WP 06-07

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Entered as an Administrative Order this 27th day of June, 2012.

David Kerins
Chief Hearing Officer
Administrative Adjudication Division
One Capitol Hill, 2nd Floor
Providence, RI 02908
(401) 574-8600

CERTIFICATION

I hereby certify that I caused a true copy of the within Status Conference Order to be forwarded by first-class mail, postage prepaid to: Michael A. Kelly, Esq., and Joelle Sylvia, Esq. 128 Dorrance Street, Suite 300, Providence, RI 02903; and via interoffice mail to Marisa Desautel, Esq., DEM Office of Legal Services and David Chopy, Chief, DEM Office of Compliance and Inspection, 235 Promenade Street, Providence, RI 02908 on this 27th day of June, 2012.

Bruce L. Stewart

RE: ROLLINGWOOD ACRES, INC./SMITHFIELD PEAT CO., INC./SMITHFIELD CRUSHING CO., LLC AAD NO. 06-004/WRE
NOTICE OF VIOLATION OC&I/WP 06-07

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Appendix

The following is the list of Full Exhibits:

Joint Exhibits

JT. 1 Full	Site Inspection Report of Sean Carney dated 12/29/97
JT. 2 Full	Notice of Intent to Enforce dated June 3, 1997
JT. 3 Full	Notice of Violation ("NOV") dated November 6, 2006
JT. 4 Full	Site Inspection Report of Peter C. Naumann dated 2/9/2005

OC&I Exhibits

OC&I 7 Full	DEM Permit approval for Application No. 4586 dated May 4, 1982
OC&I 8 Full	Complaint Inspection Report of Sean Carney dated 1/9/97 together with Site Inspection Report dated 1/27/97
OC&I 11 Full	Topographic survey for Smithfield Peat Co. Inc. & John Despres dated December 1980 revised March 1982
OC&I 12 Full	Site Inspection Report of Peter C. Naumann dated 2/10/2005
OC&I 13 Full	Site Inspection Report of Patrick J. Hogan dated April 4, 2006
OC&I 14 Full	Resume of Sean R. Carney
OC&I 15 Full	Resume of David E. Chopy
OC&I 16 Full	Resume of Laurel Stoddard
OC&I 17 Full	Resume of Patrick J. Hogan
OC&I 18 Full	EES Laboratory Narrative dated April 11, 2006
OC&I 19 Full	EES Report of Analysis dated March 1, 2005
OC&I 20 Full	Letter from Jackson Despres of Rollingwood Acres, Inc. to William D. Anker Director RIDOT dated 2 October, 1997

Respondents' Exhibits

RES. B Full	Notes to file by Sean Carney dated 11/19/97
RES. C Full	Notes to file by Sean Carney dated 11/20/97
RES. D Full	Notes to file by Sean Carney dated 11/24/97
RES. E Full	Letter from Harold K. Ellis to J. Michael Bennett Deputy Chief of DOT dated April 16, 1998
RES. F Full	Site Inspection Report by Sean Carney dated 6/25/97
RES. G Full	Letter from Harold k. Ellis to John Despres dated April 16, 1998
RES. H Full	Note to file by Peter Naumann dated 2/11/05
RES. I Full	Fax from ESS Laboratory to Patrick Hogan with test results dated 4/7/06
RES. J Full	Hazardous Waste Field Inspection Report filed by Sean Carney dated 3/25/05
RES. K Full	Inter-Office Memo to David Chopy from Sean Carney dated April 12, 2005
RES. L Full	Certified copies of DEM records regarding the application and approval of Wetlands Permit 4586
RES. M. Full	2004 Historic Aerial Photograph of portion of Smithfield, R.I.
RES. N Full	Invoice from Lincoln Environmental, Inc. to Smithfield Peat dated March 15, 2005
RES. O Full	Letter from Smithfield peat to Mr. Steve Minassian dated 11 February 2005
RES. P Full	Letter from Jackson Despres to Mr. William D. Ankner, Director RIDOT dates 13 January 1998
RES. Q Full	Copy of RIDOT plan for expansion of Rt. 7

RES. R Full	Copy of Temporary Easement Agreement between RIDOT and Rollingwood Acres, Inc. dated May 1, 1996
RES. S Full	Tow (2) color photos of area near Rt. 7
RES. T Full	Complaint form filed by RIDOT, Bill Riccio to RIDEM

NOTICE OF APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Environmental Management pursuant to RI General Laws § 42-35-12. Pursuant to R.I. Gen. Laws § 42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.