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

IN RE: RICHIE CONSTRUCTION CORPORATION
AAD NO. 94-007/ARE NOV NO. 94-23-AP

DECISION AND ORDER

This matter is before the hearing officer pursuant to §23-23-5, §42-17.1-2 (u) and §42-17.6-2 of the General Laws of Rhode Island as amended. An administrative hearing was conducted on June 27, 1995 at the offices of the Administrative Adjudication Division for Environmental Matters, 1 Capitol Hill, Providence, Rhode Island. Raymond Pezza, Esq. represented the Respondent, Richie Construction Corporation and John A. Langlois, Esq. represented the Division of Air Resources of the Department of Environmental Management ("Division"). A Notice of Violation and Order and Penalty ("NOVAP") was issued to Richie Construction Corporation ("Respondent") on September 14, 1994. A request for an administrative hearing was filed by Richard Romanoff on September 28, 1994. The pending matter before the hearing officer is an enforcement action for alleged violations of the Air Pollution Control Regulations and accordingly, it is the Division's burden to prove the allegations contained in the NOVAP by a preponderance of the evidence.

A prehearing conference was held on March 17, 1995 and a prehearing conference record reflecting the agreements of the parties was issued on March 20, 1995. Additional stipulations of fact were submitted to the hearing officer prior to the commencement of the hearing on June 27, 1995. The agreed

stipulations of fact and the agreed exhibits are as listed below.

Stipulations

1. The Notice of Violation and Penalty was issued by the Department and served upon the Respondent in accordance with all statutory and regulatory requirements.

2. That on August 5, 1994, the seven violations of Air Control Regulation No. 24 alleged in the NOVAP No. 94-23-AP occurred at 74 Zinnia Drive in Cranston, Rhode Island.

3. That the penalty assessed in NOVAP No. 94-23-AP is not excessive and was assessed in conformance with statutory and regulatory authority.

4. That the Respondent disputes its liability for the violation and penalty and the only issue to adjudicate at hearing is the liability of Richie Construction Corporation.

Exhibits (agreed as full exhibits)

Div. 1 Notice of Violation and cover letter dated September 14, 1994 (11 pp.)

Div. 2 Complaint Report dated August 5, 1994 (6 pp. with three copies of photographs attached)

Div. 3 Resume of Leonard Giuliano (2 pp.)

Div. 4 Resume of Christopher John (2 pp.)

Div. 5 Resume of Edward Burns (2 pp.)

Div. 6 Resume of Stephen Majkut (1 p.)

The Division of Air Resources called two witnesses. Its initial witness was Dorothy Yattaw. Mrs. Yattaw testified that she is the owner of property located at 74 Zinnia Drive, Cranston Rhode Island, the location where the stipulated violations occurred. But for the above referenced facts, Mrs. Yattaw's testimony was of limited assistance to the hearing officer. Mrs. Yattaw's demeanor was hesitant and uncertain and she did not

testify with clear personal knowledge of the name of the business operated by her son-in-law Mr. Richard Romanoff or the type of work performed by his company. She could not identify the individuals who performed the sandblasting on her home nor did she have any personal knowledge of who they worked for, if anyone. The Respondent's counsel did not cross-examine this witness.

The Division of Air Resources called Leonard Giuliano as its only other witness. Mr. Giuliano is employed with the Division of Air Resources as an Air Quality Specialist for the Division's Lead Paint Program funded through the Department of Health. Mr. Giuliano's duties include responding to complaints received concerning lead paint removal. On August 5, 1995 he received a complaint regarding the removal of paint from a house located at 74 Zinnia Drive, Cranston, Rhode Island. He responded to the site and on approach he could hear the sound of sandblasting. Upon arrival he observed a white cloud of dust and a man using a machine which was sandblasting paint off the home. A second man walked around to the front of the property. Mr. Giuliano took photographs before he left the vehicle and thereafter he approached the men in an effort to stop the sandblasting. Mr. Giuliano testified that he identified himself to the men and informed them that he was responding to a lead paint complaint. He asked the men for their names and the man operating the sandblasting unit identified himself as Garret Coon. Mr.

Giuliano asked him if he was the homeowner or contractor and he responded that he was employed by Richie Construction and characterized his position as "foreman". He identified Richard Romanoff as the owner of Richie Construction and provided Mr. Giuliano with the address and phone number to contact Mr. Romanoff. The information provided to Mr. Giuliano by Mr. Coon is also reflected in Division Exhibit 2 which was agreed to by the parties as a full exhibit and so referenced in the prehearing conference record issued on March 20, 1995. The hearing officer allowed the above testimony into evidence despite the objections of Respondent's counsel. Counsel objected to the admission of Mr. Coon's statements as hearsay, however, the hearing officer ruled that they were admissible as an admission of an agent pursuant to Rule 801(d)(2)(D) of the Rhode Island Rules of Evidence. Mr. Giuliano testified that he made several unsuccessful attempts to contact Mr. Romanoff. Finally on August 15 or 16, 1994 Mr. Giuliano again attempted to contact Mr. Romanoff and spoke with an individual who answered the call by verbally identifying himself as Richard Romanoff. Mr. Romanoff admitted that he performed the job as a favor to his mother-in-law but never should have become involved. Mr. Giuliano testified that he told Mr. Romanoff to return to 74 Zinnia Drive and clean up the property and that Mr. Romanoff stated that he was not going to do it. As of the date of the hearing the property remained contaminated with paint debris, sand, trash

bags and plastic.

Respondent's counsel cross-examined Mr. Giuliano concerning his efforts to verify the information provided by Mr. Coon and his efforts, if any, to seek independent verification of the responsible party. Although Counsel highlighted a number of ways in which the Division could have bolstered its evidence, cross-examination did not impeach or contradict Mr. Giuliano's testimony on direct examination. The Division rested at the conclusion of Mr. Giuliano's testimony.

The Respondent did not call any witnesses.

FINDINGS OF FACT

After review of the documentary and testimonial evidence of record, I find as fact the following.

1. The Notice of Violation and Penalty was issued by the Department and served upon the Respondent in accordance with all statutory and regulatory requirements.

2. That on August 5, 1994, the seven violations of Air Control Regulation No. 24 alleged in the NOVAP No. 94-23-AP occurred at 74 Zinnia Drive in Cranston, Rhode Island.

3. That the penalty assessed in NOVAP No. 94-23-AP is not excessive and was assessed in conformance with statutory and regulatory authority.

4. That the Respondent disputes its liability for the violation and penalty and the only issue to adjudicate at hearing is the liability of Richie Construction Corporation.

5. Garret Coon was an employee of Richie Construction Corporation on August 6, 1995 in the capacity of foreman.

6. Garret Coon was acting in his capacity as an employee of Richie Construction Corporation when he was observed sandblasting the building located at 74 Zinnia Drive, Cranston, Rhode Island.

7. Richard Romanoff is the owner of Richie Construction Corporation and directed the sandblasting operations performed at 74 Zinnia Drive, Cranston, Rhode Island which are the subject of the NOVAP.

CONCLUSIONS OF LAW

Based on the foregoing stipulations and findings of fact I conclude the following as a matter of law.

1. The NOVAP was issued by the Department and served upon the Respondent in accordance with all statutory and regulatory requirements.

2. Garret Coon was acting as an agent of Richie Construction Corporation on August 5, 1994 when he performed sandblasting operations at 74 Zinnia Drive, Cranston, Rhode Island.

3. The Division proved by a preponderance of the evidence that the Respondent Richie Construction Corporation violated, in seven instances, Air Pollution Control Regulation No. 24 entitled "Removal of Lead Based Paint From Exterior Surfaces" as alleged in the NOVAP.

4. The penalty assessed in the NOVAP was assessed in conformance with statutory and regulatory authority and is not excessive.

Based on the foregoing Findings of Fact and Conclusions of Law it is hereby

ORDERED

1. The Notice of Violation and Order and Penalty No. 94-23-AP issued by the Division of Air Resources on September 14, 1994 is **SUSTAINED**.

2. Within thirty (30) days of the issuance of a Final Agency Order in this matter the Respondent shall ensure that any and all lead paint related wastes generated from lead paint removal operations conducted by Respondent at 74 Zinnia Drive, Cranston, Rhode Island are properly collected and stored in appropriate containers.

3. Within thirty (30) days of the issuance of a Final Agency Order in this matter Respondent shall ensure proper disposal of all lead paint related wastes referenced in paragraph two (2) above.

4. Within thirty (30) days of the issuance of a Final Agency Order in this matter the Respondent shall remit to the Office of Business Affairs an administrative penalty in the amount of three thousand five hundred dollars ($3,500.00).

Payment shall be in the form of a certified check made payable to the order of the General Treasurer, State of Rhode Island and sent directly to:

R. I. Department of Environmental Management
Office of Business Affairs
Attention: Glenn Miller
22 Hayes Street
Providence, Rhode Island 02908

Entered as a Recommended Final Agency Order this 3rd day of January, 1996.

Kathleen M. Lanphear
Chief Hearing Officer
Administrative Adjudication Division
Department of Environmental Management
One Capitol Hill, Third Floor
Providence, RI 02908
(401) 277-1357

I hereby adopt the foregoing as a Final Agency Order this 18th day of January, 1996.

Timothy R. E. Keeney, Director
Department of Environmental Management
9 Hayes Street
Providence, Rhode Island 02908

CERTIFICATION

I hereby certify that I caused a true copy of the within Decision and Order to be forwarded, via regular mail, postage prepaid to Raymond R. Pezza, Esq., 259 Wayland Ave., Providence, Rhode Island 02906 and via interoffice mail to John A. Langlois, Esq., DEM/Office of Legal Services, 9 Hayes Street, Providence, RI 02908 on this 24th day of January, 1996.

Denise L. Stewart