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

RE: ANTHONY J., JOSEPH F., THOMAS R. CONNETTA/
MARGUERITE SWEENEY AAD NO. 94-020/SRE
NOTICE OF VIOLATION NO. LS 0721

DECISION AND ORDER

This matter came before the Department of Environmental Management, Administrative Adjudication Division for Environmental Matters ("AAD") pursuant to the Respondents' request for hearing on the Notice of Violation and Order ("NOV") issued by the Division of Site Remediation ("Division") on June 23, 1994.

The hearing was conducted on May 15, 1996. On May 13, 1996 Respondents' counsel, who had been representing Anthony J. Connetta, Joseph F. Connetta, Marguerite Sweeney and Thomas R. Connetta, moved to withdraw his appearance on behalf of Respondent Thomas R. Connetta. Thomas R. Connetta appeared at the hearing, had no objection to his counsel's withdrawal of representation and was ready to proceed with the hearing (Mr. Connetta is hereinafter referred to as "Respondent Connetta"). Anthony J. Connetta, Joseph F. Connetta and Marguerite Sweeney continued to be represented by counsel (the three individuals represented by counsel are hereinafter collectively referred to as "Connetta/Sweeney").

Following the hearing, post-hearing memoranda were filed by the Division and by Connetta/Sweeney. Respondent Connetta did not file a

post-hearing memorandum. Upon the filing of the final memoranda on July 12, 1996, the hearing was considered closed.

The within proceeding was conducted in accordance with the statutes governing the Administrative Adjudication Division for Environmental Matters (R.I. GEN LAWS Section 42-17.7-1 et seq), the Administrative Procedures Act (R.I. GEN LAWS Section 42-35-1 et seq), the Administrative Rules of Practice and Procedure for the Department of Environmental Management Administrative Adjudication Division for Environmental Matters ("AAD Rules") and the Rules and Regulations for Assessment of Administrative Penalties, May 1992 ("Penalty Regulations").

PREHEARING CONFERENCE

A prehearing conference was conducted on January 17, 1995 at which the parties agreed to the following stipulations of fact:

1. Respondents are the owners of certain real property located at 441 Dyer Avenue, Cranston, Rhode Island, otherwise identified as Cranston Assessor's Plat 8, Lot 844 (the "facility" or "site").

2. The facility abuts the Pocasset River.

3. On March 18, 1993, Harborline Environmental Services, Inc. removed from the facility (3) underground storage tanks ("USTs" or "tanks") formerly used for the storage of petroleum products.

4. On March 25, 1993, the Department received a "Tank Closure Assessment Report" prepared for Respondents by Harborline Environmental Services, Inc..

5. On June 25, 1993, a Site Assessment Report ("SIR") dated June 17, 1993, was submitted to the Department by Respondents' engineer, Hoffman Engineering, Inc. ("HEI").

6. Quarterly monitoring of groundwater was performed at the facility, the results of which were submitted to the Division on or about November 1, 1993; January 15, 1994; April 22, 1994; and July 19, 1994.

7. Respondents have submitted adequate documentation regarding the removal and disposal of the petroleum contaminated soils that were left on the facility following the removal of the USTs.

The list of exhibits, marked as they were admitted at the hearing, are attached to this Decision as Appendix A.

HEARING SUMMARY

In its opening statement, the Division considered that, based on the information contained in the Division's full exhibits, it had established the contamination of the site, Respondents' ownership of the site and Respondents' liability for the contamination at the facility. It concluded that the only remaining issue to be resolved was the proposed assessment of an administrative penalty. As a result, the Division called only one (1) witness to testify at the hearing: **Paul Guglielmino**[1], a senior sanitary engineer in the Division of Site Remediation, Leaking Underground Storage Tank Program (the so-called "LUST" Program). Mr. Guglielmino

[1]On May 8, 1996, the Division filed a Motion to Supplement Prehearing Memorandum to add Mr. Guglielmino as a witness and to identify a further document to be offered into evidence at the hearing, the NOV. The motion was addressed at the hearing. Respondents had no objection to the additional witness (which became the Division's only witness) and no objection to the admission of the NOV as a full exhibit (but not for the truth of the matters asserted therein).

testified regarding the calculation and amount of the proposed penalty and was not offered as an expert witness.

At the hearing, Connetta/Sweeney called as witnesses **Irving H. Levin**, who was qualified as an expert in real estate sales; **Anthony Connetta**; **Joseph F. Connetta**; and **Marguerite Sweeney**. Respondent **Thomas R. Connetta** presented himself as a witness.

I. BACKGROUND

The four named Respondents, who are brothers and sister, are the owners of property located at 441 Dyer Avenue, Cranston, Rhode Island. The property is situated in a densely developed, urban setting and abuts the east bank of the Pocasset River. A gasoline station is present on the site but had closed prior to the siblings obtaining the property from their mother's Trust.

Soon after acquiring the property in June 1989, the siblings determined that it should be sold. A prospective purchaser made an offer with the stipulation that the gasoline tanks and the pump be removed. Tr. May 15, 1996 at 58-59. During the tank removal conducted on March 12, 1993 (Div 3 Full at 1), contamination was discovered. The offer to purchase the property was withdrawn. Tr. May 15, 1996 at 61.

The Division of Site Remediation issued the Notice of Violation and Order to Respondents on June 23, 1994. The NOV alleges that one or more underground storage tanks ("USTs") were located at the facility; that a

representative of the Division was present prior to the removal from the site of three excavated USTs located at the facility; and that a Tank Closure Assessment Report prepared by Harborline Environmental Services, Inc. stated that contaminated soil was evident, particularly around the fill pipes and under the pump island. The Nov also alleged that DEM had imposed a timetable which required the removal of stockpiled soil on or before April 18, 1993, documentation in the form of a receipt of the final disposal of the soil forwarded to DEM on or before April 23, 1993 and the submission to DEM of a Site Investigation Report ("SIR") on or before May 13, 1993. (Stipulation #7 from the prehearing conference established that the stockpiled soils were removed and adequate documentation supplied to the Department; Stipulation #5 established that the SIR was submitted to the Department on June 25, 1993).

The NOV alleges that the confirmed release of petroleum products has resulted in pollutants entering the waters of the State; that the Respondents had failed to submit documentation verifying the final disposal of the stockpiled soil as required by Section 13 of the Oil Regulations (but see Stipulation #7); had not submitted to DEM a Corrective Action Plan ("CAP") relating to a confirmed release of petroleum products at the facility as described in Section 14.11 and 14.12 of the UST Regulations; and had failed to institute any corrective action relating to a confirmed release of petroleum products at the facility as described in

Section 14.14 of the UST Regulations.

II. LIABILITY

Based upon the Division's allegations in the NOV, Respondents have been cited for violating the following statutes and/or regulations:

1. R.I. Gen. Laws Sections 46-12-5(a) and (b) and 46-12-28, relating to the prohibition against pollutants entering the waters of the State, which provide:

> **46-12-5. Prohibitions** - (a) It shall be unlawful for any person to place any pollutant in a location where it is likely to enter the waters or to place or cause to be placed any solid waste materials, junk or debris of any kind whatsoever, organic or non organic, in any waters.
>
> (b) It shall be unlawful for any person to discharge any pollutant into the waters except as in compliance with the provisions of this chapter and any rules and regulations promulgated hereunder and pursuant to the terms and conditions of a permit.
>
> **46-12-28. Protection of Groundwaters.** - Groundwaters shall be and shall be deemed to be waters of the state and shall be protected pursuant to the provisions of this chapter with respect to the following activities, which shall be regulated by the director in accordance with the provisions of this chapter and chapter 13.1 of this title:
>
> (1) Discharge of pollutants onto or beneath the land surface; in a location where it is likely for the pollutants to enter the groundwaters of the state;
>
> (2) Subsurface containment systems used to store wastewaters, petroleum products, hazardous materials or other pollutants;
>
> (3) Facilities which treat or provide for disposal of petroleum products, hazardous materials, hazardous waste, solid waste or dredged material;

(4) Facilities with (sic) store bulk quantities of petroleum products, hazardous materials or hazardous waste;

(5) Facilities and activities which have caused or have the potential to cause a release of pollutants to groundwater;

(6) Activities undertaken to remediate groundwater quality.

2. R.I. Gen. Laws Sections 46-12.5-3, relating to the prohibition against oil discharges, which provides:

46-12.5-3. Prohibition against oil pollution. - (a) No person shall discharge, cause to be discharged, or permit the discharge of oil into, or upon the waters or land of the state except by regulation or by permit from the director.

(b) Any person who violates any provision of this chapter or any rule or regulation or order of the director issued pursuant to this chapter shall be strictly liable to the state.

3. Oil Regulations Section 6(a), relating to the prohibition against oil or pollutants entering the waters of the State, which provides:

Prohibited Activities.
(a) No person shall place oil or pollutants into the waters or land of the State or in a location where they are likely to enter the waters of the State, except in compliance with the terms and conditions of a permit or order issued by the Director. This prohibition shall include, but not be limited to, releases, discharges or placement of pollutants from:

(1) Storm water runoff from an oil refinery, oil storage tank farm, or oil manufacturing industry;

(2) Boat or ship repair and maintenance, including dry dock operations;

(3) Bilge or ballast water from any vessel;

(4) Exhaust steam from any coil or other device used to heat oil;

(5) Drainage from underground pipe gallery used as a conduit for oil pipes;

(6) Drainage from the floors of a boiler room;

(7) Drainage from dike areas around oil storage tanks;

(8) Drainage to unauthorized underground injection wells or lagoons;

(9) Drainage from automobile repair, maintenance or wrecking operations.

4. Oil Regulations Section 13, relating to removal of oil spill cleanup debris. The Division has stipulated that the removal of the petroleum-contaminated soils in issue was adequately documented to the Division following the issuance of the NOV. Tr. May 15, 1996 at 130; Division's Post-Hearing Memorandum, p.7, fn.3.

At the hearing Connetta/Sweeney stipulated to the levels of contamination as cited in the NOV. Tr. May 15, 1996 at 5-6. While Respondent Connetta did not make a similar admission, a review of the documentary evidence establishes the presence of petroleum product in the soil and groundwater.

As demonstrated by the evidence, there was both the initial source of contamination as well as an ongoing source of gasoline contaminants. Evidence of the source of the initial contamination is found in the four

reports discussed below and in the lay testimony from some of the Respondents regarding the perceived condition of the tanks upon their removal from the ground. The source of the continuing impact of pollutants on the soil and groundwater, which is referred to below as the "secondary source", is from the residual contaminated soils on site.

The first report to describe the possible source of the original contamination was the Tank Closure Assessment Report (Div 3 Full) prepared by Harborline Environmental Services, Inc. ("Harborline"). The report was generated on March 12, 1993 when the tanks were excavated and removed from the ground. Although the tanks contained some surface rust, they appeared to be in good condition with no apparent leaks. Div 3 Full, at 2. Harborline found the highest level of contamination to be in the area of the fill pipes and the pump island. The report speculated that the over-filling of tanks and minor spills were the cause of the pollutants entering the soil. at 2.

Due to the contamination found at the site, Respondents engaged Hoffman Engineering, Inc. to conduct a site assessment and prepare a report. As part of the assessment, HEI installed four groundwater monitoring wells and conducted groundwater sampling. HEI obtained soil samples during the drilling for the wells and the samples were screened for volatile organic compounds ("VOC"). HEI's report (Div 4 Full), dated June 17, 1993, concluded that soil contamination had been reported in

the vicinity of the UST fills and under the pump island and that the USTs and piping had been found to be in good condition. at 8. The report did not otherwise draw a conclusion regarding the source of the contamination.

HEI also submitted reports of the original and four quarterly groundwater monitoring test results. In the fourth quarter report (Div 8 Full), HEI summarized its findings from the five sampling rounds and concluded that the groundwater was continuing to be impacted by an ongoing source of gasoline contaminants, "presumably the residual soils". at 1. (It is this continuing impact of pollutants which I have referred to as the "secondary source" of contamination.) The report makes no reference to the initial source of the gasoline contamination.

HEI also conducted test pit explorations on the site. Those findings are set forth in the letter to Anthony Connetta dated August 31, 1994 (Resp 7 Full). The letter states that the original source of the contamination was apparently the result of leakage around the former pump island and the overfilling of gas tanks. at 1. The report notes that gasoline-contaminated soils were encountered in six of the seven test pits and that a large volume of gasoline-contaminated soil was encountered throughout the area of the former underground storage tanks and pump island. at 3 and 5. HEI recommended the excavation and removal of approximately 900 tons of soil in order to significantly reduce the

ongoing source of the residual contamination. at 5.

A review of the above evidence indicates that while the over-filling of tanks and minor spills may have been responsible for some of the contamination, it is unlikely that the extent of gasoline-contaminated soil found throughout the area of the former USTs and pump island could be solely attributed to over-filling mishaps. Overfilling tanks and minor spills would have occurred during the period the station was in operation, prior to the Respondents taking title to the property, and therefore the Respondents are not liable for those incidents. The additional, more serious source of contamination may have been from a leaking tank or leak somewhere else in the system or from a more significant spill.

Connetta/Sweeney, at hearing and in their memoranda, contend that the Division has failed to sustain its burden of proof and production, failed to demonstrate that any of the Respondents actively participated in any polluting activity, and failed to demonstrate whether the pollution occurred before or after the Respondents obtained title to the property[2]. Tr. May 15, 1996 at 32-33, 117; Post-Hearing Memorandum of Respondents Anthony J. Connetta, Joseph F. Connetta and Marguerite

[2]At the conclusion of the Division's case, Connetta/Sweeney moved for judgment as a matter of law based upon these arguments. That motion was denied. Tr. at 32-37. Connetta/Sweeney renewed their motion upon the completion of the case involving Anthony J. Connetta, Joseph F. Connetta and Marguerite Sweeney. Ruling on the motion was deferred and the issues are addressed in this Decision. Tr. at 117-118.

Sweeney ("Respondents' Memorandum"), p. 2.

The Division has argued that water in the USTs and gasoline contaminants in the soil could have been the result of one or more leaking tank and that no precision tests had been conducted by Respondents to indicate that the tanks were not leaking during the period of time they were owned by the Respondents. Tr. May 15, 1996 at 34. The Tank Closure Assessment Report, which contained the original notation of water in the tanks and gasoline in the area of the fill pipes and pump island, drew a different conclusion from this evidence, however. It speculated that the source of the contamination was likely the overfilling of tanks and minor spills; it did not consider water in the tanks to be an indication that they were the source of the contamination. Yet even if the tanks were the source of the discharge, no evidence was presented that the leak occurred or continued during the period Respondents owned the property. I therefore find that the OCI has not proven an essential element of their case to establish Respondents' liability for the initial contamination.

The Division has also argued, however, that the Respondents are liable for the secondary source of contamination. The Division's Post-Hearing Memorandum ("Division's Memorandum") describes substantial contamination existing at the Facility, "and that the contamination is moving towards the Pocasset River. It is this continuing migration of

petroleum contaminants both on and off of the Facility into the soils and waters of the state that the remedial requirements of the NOV seek to abate. In essence, the Facility itself has become a source of contamination that is threatening and/or impacting adjacent land, surface waters and/or groundwaters." at 6. The Division asserts that the statutes and regulations cited in the NOV not only prohibit the initial discharge of contaminants into the environment, but also prohibit owners of contaminated properties from maintaining their properties in a condition whereby the property itself becomes a source of contamination that threatens the soils, surface waters and groundwaters of the state. at 5.

While the existence of contamination at the site is not disputed, Connetta/Sweeney contend that when the facts are considered in light of the statutory and regulatory language, the NOV must be withdrawn. Respondents' Memorandum, p. 7. Their Memorandum asserts that the Division "offered no evidence whatsoever of any conduct by the Respondents that resulted in their placing, adding, spilling, releasing, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, spraying into the air, dumping, or disposing into the environment of oil, such that oil was likely to enter the groundwaters of the state." Respondents' Memorandum at 10. Principles of fairness and equity, according to Connetta/Sweeney, require that the Respondents be absolved of all liability because they had not "actively participated in or

contributed to the contamination of the groundwaters of the Premises." Respondents' Memorandum at 13.

Whether the statutes and regulations cited in the NOV require assertive action or active participation on the part of Respondents for there to be a violation is a matter of statutory interpretation. It is a primary canon of statutory construction that statutory intent is to be found in the words of a statute if they are free from ambiguity and express a reasonable meaning. The statutory terms must be given their plain and ordinary meaning unless a contrary intent is clearly shown on the face of the statute. Little v. Conflict of Interest Commission, 121 R.I. 232 (1979).

In construing a statute, it is necessary to establish and effectuate the legislature's intent through an examination of the language, nature and object of the statute. Brouillette v. DET, 677 A.2d 1344 (R.I. 1996). The statute itself must be viewed as a whole, and individual sections considered in the context of the entire statutory scheme. Sorenson v. Colibri Corp., 650 A.2d 125, 128 (R.I. 1994). The statutory meaning to be applied is that which is most consistent with the statute's policies or purposes. Bailey v. American Stores, Inc./Star Market, 610 A.2d 117, 119 (R.I. 1992). When the mechanical application of a statute produces an absurd result or defeats legislative intent, it is necessary to look beyond mere semantics and give effect to the purpose of the act. Labbadia v. State,

513 A.2d 18, 22 (R.I. 1986).

I have applied the above principles of statutory construction in my consideration of the parties' interpretations and in the examination of the language and intent of the statutes and regulation set forth below.

The issue of the legislative intent of §46-12-5 and §46-12.5-3 was previously addressed in the Decision and Order entered in the matter of In Re: Arpad Merva, AAD No. 93-024/GWE, Final Agency Order dated December 11, 1996. There, the Division had acknowledged that Respondent Merva was not responsible for the initial placing of oil/petroleum on the property, which had occurred prior to his ownership of the site, but argued that Respondent was responsible for permitting the contamination to leak, emit, discharge, escape and/or leach from the property into the surface and groundwaters of the State. *Id.* at 8-9. Respondent Merva maintained that the pertinent statutes and regulations do not, and were not intended to, impose liability on a property owner who did not engage in any affirmative action resulting in the discharge of petroleum product into the environment. Id. at 6.

The resolution of the Merva case turned on the same issues of statutory interpretation that have been raised in this matter. The Merva Decision considered the purpose of the Water Pollution Act (Chapter 12 of Title 46) to prohibit the unauthorized discharge of pollutants into the waters of the state, and the stated purpose of the Oil Pollution Control

Act (Chapter 12.5 of Title 46) to prohibit unauthorized discharges of oil into, or upon the waters or land of the state and to hold violators strictly liable to the state. The Hearing Officer concluded it was the legislature's concern that the discharge of oil in any quantity could have a substantial permanent or negative impact on the public health and environment and the economy of the state; and that the legislative intent of the chapter was that the Rhode Island citizenry should not have to pay for cleanups resulting from the discharge of oil. *Id.* at 18-19.

The Merva Decision found that Respondent's negative conduct in refusing to clean up known contamination that was having continuous on and off-site impacts constituted a violation of the laws cited in the NOV. "A holding to the contrary would create a result not intended by the Legislature." *Id.* at 19. Following an independent review of the statutes, and except for a more narrow interpretation of §46-12-5 (b), I have reached the same conclusion as that obtained in the Merva Decision.

I first considered the statutory provisions of Chapter 12 of Title 46 as they relate to the facts in this case. The language which requires interpretation is contained in the following phrases of R.I. GEN LAWS §46-12-5 (a) and (b):

> (a) It shall be unlawful for any person **to place** any pollutant in a location where it is likely to enter the waters...;
>
> and

> (b) It shall be unlawful for any person **to discharge** any pollutant into the waters except as in compliance with the provisions of this chapter and any rules or regulations promulgated hereunder and pursuant to the terms and conditions of a permit.

Chapter 12 contains a definition section which provides that in the chapter, where the context permits, the terms listed are to be construed in a specific manner. The term "Discharge" is to be construed to mean "the addition of any pollutant to the waters from any point source." §46-12-1 (4). "Point source" means "any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container,..." etc.. §46-12-1 (14).

Under §46-12-5 (b), a leak at the pump or tank could constitute a "discharge". The Division has not proven such a discharge occurred during Respondents' ownership of the property. Subsection (b), according to the definitions of "discharge" and "point source" in Chapter 12, does not contemplate the secondary source of contamination from the residual soils. Accordingly, the Division has not proved by a preponderance of the evidence that Respondents violated subsection (b) of §46-12-5.

Subsection (a) of §46-12-5 makes it unlawful **to place** a pollutant in a location where it is likely to enter the waters. The term "to place" is not defined in the chapter. The chapter does, however, define "Release". "Release" means "any spilling, leaking, pumping, pouring, emitting,

emptying, injecting, escaping, leaching, dumping, or disposing of any pollutant into a surface water or wetland, or onto or below the land surface." §46-12-1 (19).

The presence of the definition "Release" and the lack of a definition for "place" introduces an uncertainty and ambiguity as to the legislative intent for the prohibition contained in §46-12-5 (a).

Perhaps recognizing this ambiguity, the drafters of the Oil Pollution Control Regulations defined the two terms "place" and "release" to be used interchangeably. Pursuant to Section 5 of the Regulations, "**Place** or **Release** means adding, spilling, releasing, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, spraying into the air, dumping or disposing into the environment of oil, such that oil is likely to enter the waters of the State."

The Rhode Island Supreme Court has recognized that where the provisions of a statute are unclear or subject to more than one reasonable interpretation, the construction given by the agency charged with its enforcement is entitled to weight and deference as long as that construction is not clearly erroneous or unauthorized. Asadoorian v. Warwick School Committee, 691 A.2d 573, 577 (R.I. 1997); Gallison v. Bristol School Committee, 493 A.2d 164, 166 (R.I. 1985). The above regulatory definitions of place and release are consistent with the purposes of the statute and are a reasonable interpretation of the terms set forth in the

statute.

I have also considered the statutory provisions of Chapter 12.5 of Title 46 as they relate to the facts in this case. The language which requires interpretation is contained in the following phrases of R.I. GEN LAWS §46-12.5-3:

> (a) No person shall **discharge**, **cause to be discharged**, or **permit the discharge** of oil into, or upon the waters or land of the state...
>
> (b) Any person who violates any provision of this chapter or any rule or regulation or order of the director issued pursuant to this chapter shall be strictly liable to the state.

Although Chapter 12.5 contains a definition section, the term "discharge" is not defined[3]. The term "Release", however, is defined but is never used in the chapter other than in the definition section. "Release" is legislatively defined to mean any spilling, leaking, pumping, pouring, emitting, emptying, injecting, escaping, leaching, dumping, disposing or *discharging* into the environment.

In §46-12-5 the legislative intent was for the term "discharge" to encompass the addition of any pollutant to the waters from any point

[3]The definitions set forth in Chapter 12.5 provide an interesting comparison to those set forth in Chapter 12. Of the two definition sections, there are few terms that are defined in both sections and when the same term is listed in both, there is usually a difference in the term's scope. Because the two definition sections are separate and distinct, it would be inappropriate to assume it was the legislative intent for Chapter 12.5 to borrow definitions from a previous chapter.

source. But in §46-12.5-3 the term appears to mean "release". As the likely result of a similar interpretation of legislative intent, the drafters of the Regulations defined the term to include the two different actions.

The Oil Pollution Control Regulations define "Discharge" to mean the addition of any pollutant to the waters from any point source (which is how the term is used in §46-12-5) or the *placement* of a pollutant where it is likely to enter the waters of the state. As previously discussed, the regulations recognize the terms "place" and "release" as interchangeable. So, according to the regulations, "discharging" a pollutant can also be the release of a pollutant and includes leaking, emitting, escaping and leaching oil into the environment, such that oil is likely to enter the waters of the State. The agency's interpretation of the statute in this manner is consistent with the purposes of the statute and is a reasonable interpretation of the terms set forth in the statute.

The Division has also cited Respondents for violation of section 6(a) of the Oil Pollution Control Regulations. The Oil Pollution Control Regulations were promulgated under the authority granted to the Director in §46-12-28 and as authorized by other statutes. The language which requires interpretation is the following phrase from section 6 (a):

> **Prohibited Activities.**
> (a) No person shall **place** oil or pollutants into the waters or land of the State or in a location where they are likely to enter the waters of the State....

As previously discussed, the Oil Pollution Control Regulations define "place" to include leaking, emitting, discharging, escaping and leaching oil into the environment, such that oil is likely to enter the waters of the State.

The statutes' and Regulations' use of the terms "leaking", "emitting", "escaping" and "leaching" signify the intent of the statutes and Regulations to prohibit contaminants from entering the waters regardless of whether affirmative conduct is involved. As stated in Merva, §46-12-5, §46-12.5-3 and Oil Pollution Control Regulation Section 6(a) "should not be read so as to effectuate the absurd result that one who allows the continuing migration of pollutants from his property into the waters of this state can avoid responsibility therefore merely because he did not originally spill the pollutant." Merva, *supra*, at 24. I conclude that §46-12-5 (a), §46-12.5-3 and Oil Pollution Control Regulation Section 6 (a) do not require affirmative conduct for there to be a violation of law.

The evidence of record in this matter has established that during Respondents' ownership of the property, pollutants from the residual contaminated soils have been and are continuing to impact the groundwaters. Oil has been leaking, emitting, escaping and leaching to a location where it was likely to enter the waters of the State and, in fact, the oil in the residual contaminated soil did leak, emit, discharge (as interpreted in §46-12.5-3), escape and leach into the waters and land of

the State. By and through Respondents' failure to remove the known petroleum contamination from their property, they have violated §46-12-5 (a), §46-12.5-3 and Oil Pollution Control Regulation 6 (a). To determine otherwise would defeat the legislative intent of Chapters 12 and 12.5 of Title 46 and would be inconsistent with the construction of the statutes given by the agency charged with their enforcement.

I therefore find that the Division has met its burden to prove that Respondents violated §46-12-5 (a), §46-12.5-3 and Oil Pollution Control Regulation 6 (a) as alleged in the NOV.

III. REMEDIATION

The "Order" section of the Notice of Violation identifies the relief the Department seeks from Respondents, including a timetable and specific steps for investigation and remediation of the site. The Division has acknowledged that Respondents have already complied with certain of the requirements, particularly the preparation and submission of a site investigation report and the disposal of the stockpiled soil. Division's Memorandum at 10; Prehearing Conference Record, Stipulation # 7. The Division requests that, in this Decision and Order, Respondents be ordered to pay an administrative penalty (discussed below) and to develop, to submit for review, to obtain approval and to implement a Corrective Action Plan in accordance with Section 14.00 of the Regulations for Underground Storage Facilities Used for Petroleum Products and

Hazardous Materials (1993) as amended ("UST Regulations"). Division's Memorandum at 22.

Section 14.00 of the UST Regulations applies to all facilities, new, existing or abandoned, at which petroleum products are or have been stored in underground storage tanks. UST Regulations §§14.01 and 7.22. All owners of underground storage tank systems storing petroleum must report, investigate and clean up any spills, overfills or releases in accordance with Section 14.00 and other applicable provisions of local, state and federal statutes, rules and regulations. UST Regulations §14.02. §§14.11 through 14.16 concern the preparation, contents and approval of the Corrective Action Plan ("CAP").

At the hearing, Anthony Connetta testified that HEI had prepared a remediation plan with a projected cost of approximately $62,000.00. Tr. May 15, 1996 at 67. The plan, which is set forth in a letter addressed to Anthony Connetta dated August 31, 1994, recommends the excavation and disposal off-site of approximately 900 tons of soil in order to significantly reduce the on-going source of residual contamination. Resp. 7 Full, at 5.

Anthony Connetta testified that the HEI remediation plan was never implemented for financial reasons. Thousands of dollars had already been spent during the initial excavation and the siblings considered that the only financial means to remediate the site would be the proceeds from a

sale of the property[4]. Tr. May 15, 1996 at 67-68.

Under cross examination from the Division, Anthony Connetta acknowledged that there is a contamination problem on the property; that the contamination problem needs to be addressed; and that since the date of the NOV, no cleanup work has taken place. Tr. May 15, 1996 at 76.

I have considered Respondents' financial constraints and their difficulty in selling the property, and while their plight merits compassion, the regulations do not consider financial condition a factor in determining whether remediation is required. Pursuant to the UST Regulations, Respondents are required to conduct a clean-up of the contamination on the property.

§14.11 provides that, based upon the site investigation or other data, the Department may require the facility owner to prepare a CAP. If the owner is required to submit a CAP, the CAP must include a description of the proposed method for remediation, schedule for implementation and groundwater monitoring program. UST Regulations §14.12. In the NOV and by way of the Division's Memorandum, the Division seeks the submission of a CAP in accordance with the provisions of Section 14.00.

To determine if the submission of a CAP should be ordered, I have

[4]Irving Levin testified as to his considerable efforts in trying to market the property, without success.

reviewed the Limited Subsurface Environmental Site Assessment (Div 4 Full) prepared by HEI, the letter from HEI addressed to David Sheldon (Div 8 Full) which contains the 4th quarter groundwater monitoring results as well as a summary of the previous sampling rounds, and the HEI letter (Resp 7 Full) which details the results of the seven test pit excavations and concludes that approximately 900 tons of soil would need to be excavated and disposed of off site in order to significantly reduce the on-going source of residual contamination. at 5.

The above reports and their conclusions confirm the continued presence of contaminated soils and groundwater at the site. The Division's request that Respondents be ordered to submit a CAP and otherwise comply with the requirements of Section 14.00 is therefore warranted. Respondents shall submit a CAP, including a schedule for its implementation, within thirty (30) days of the entry of the Final Agency Order in this matter.

IV. ADMINISTRATIVE PENALTY

As indicated in the NOV, the Division seeks an administrative penalty of Ten Thousand ($10,000.00) Dollars to be assessed jointly and severally against each named Respondent. The NOV states that the penalty was calculated pursuant to the Rules and Regulations for Assessment of Administrative Penalties ("Penalty Regulations").

Section 10 of the Penalty Regulations provides for the calculation of

the penalty through the determination of whether a violation is a Type I, Type II or Type III violation and whether the Deviation from the Standard is Minor, Moderate or Major. Once the Type and Deviation from Standard are known, a penalty range for the violation can be determined by reference to the Site Remediation penalty matrix.

Mr. Guglielmino testified that he drafted the NOV (Div 11 Full) and determined the violation to be Type I with a Minor Deviation from Standard, resulting in a penalty of $10,000.00. Tr. May 15, 1996 at 11, 13.

Under the Penalty Regulations, the "Type of Violation" refers to the nature of the legal requirement allegedly violated. Type I violations include

> violations of legal requirements identified by the Director as directly related to the protection of the public health, safety, welfare or environment. Such violations include, but are not necessarily limited to, acts which pose an actual or potential for harm to the public health, safety, welfare or environment; acts or failures to act which are of major importance to the regulatory program; any failure to obtain a required permit, license or approval from the Director; any failure to report an unauthorized activity which actually or potentially threatens the public health,safety, welfare or environment; any failure to take remedial action to mitigate a known or suspected harm; and/or any failure to comply with an order of the Director which is presently enforceable. Section 10 (a) (1) (A).

Mr. Guglielmino stated that he had concluded the violation was Type I from his review of the information in the LUST files, particularly the reports submitted by the Respondents which indicated that there had been a release of petroleum product---gasoline---at the facility. Tr., May

15, 1996 at 14. He also explained that a Type I violation includes a failure to act, to take remedial action to mitigate a known harm. Id. at 28.

The Penalty Regulations also identify the manner in which to calculate the Deviation from Standard. Whether the violation is determined to be Minor, Moderate or Major depends upon the degree to which the violation is out of compliance with the legal requirement allegedly violated. The determination of the degree of deviation is through the evaluation of a list of factors set forth in Section 10 (a) (2) of the Penalty Regulations.

Mr. Guglielmino testified that he weighed those factors in determining the deviation. He considered the extent the violation was out of compliance: that the reports submitted by Respondents indicated a release of petroleum product and that contamination was present in the soil and groundwater; that the facility was never registered with the Underground Storage Tank Program; and that paperwork documenting the performance of tank tightness tests was never submitted to the Program. Tr., May 15, 1996 at 14-15.

The witness testified that he also considered the environmental conditions (the groundwater classification as GB; the fact that the groundwater would be flowing towards the Pocasset River; and the classification of the Pocasset River as B) and the toxicity of the pollutants (gasoline contains benzene, a known carcinogen). Id. at 16-17.

Mr. Guglielmino stated it was unclear the duration of the violation, but speculated that the tanks had contained gasoline upon their removal in 1993 and may have been releasing into the environment since the Respondents obtained title to the property in 1989[5]. Id. at 17. According to the witness, although the Respondents had a site investigation performed, submitted the report to the Department and conducted quarterly sampling of three of the four monitoring wells on site, no corrective action was performed to remove the contamination after the tanks were removed. Id. at 18.

He also considered the steps taken by Respondents to mitigate the violation, that is that the removal of the tanks was accomplished by their own initiative and not by order of the Department. In addition, Respondents disposed of the excavated, contaminated soil off-site in a proper manner. They failed, however, to submit a corrective action plan. Id. at 20.

Among other factors considered in determining the extent of deviation was Mr. Guglielmino's conclusion that although the violation was not willful, there was some degree of negligence in that the Respondents

[5]Mr. Guglielmino was not offered as an expert witness. His testimony regarding the source of the gasoline contamination, that is that he considered the gasoline may have been releasing from the tanks from 1989 through their removal in 1993, is only considered for the purpose of his calculation of the administrative penalty.

had been aware the facility was a gasoline station and did not remove the gasoline remaining in the tanks until the tanks' removal. Following the tank removal, Respondents did not undertake corrective action once it was determined there was contamination at the facility. Id. at 21-23.

Based upon his above conclusions, Mr. Guglielmino testified that he had determined the violation to be a "Minor" Deviation from Standard, the lowest degree of deviation. Id. at 13-14.

Although Mr. Guglielmino found the violation to be Minor, the penalty assessed in the NOV was the maximum penalty in the range provided for a Type I Minor violation. As provided in the Penalty Matrix, the range is from $4,400 to $10,000.

Based upon the testimonial and documentary evidence in the record, I find that the Division has established in evidence the penalty amount and its calculation. Pursuant to Section 12(c) of the Penalty Regulations, once the violations have been proved by a preponderance of the evidence and the penalty amount and its calculation have been established in evidence, the Respondents then bear the burden of proving that the penalty and/or the economic benefit portion of the penalty was not assessed in accordance with the Penalty Regulations. See In Re: Richard Fickett, AAD No. 93-014/GWE, Final Decision and Order issued by the Director on December 9, 1995.

A focus of the Respondents' case was their lack of financial

resources. Connetta/Sweeney assert in the Respondents' Memorandum, that the Division never considered the Respondents' inability to pay an administrative penalty. at 13. The Rhode Island General Laws provide that the financial condition of the person being assessed an administrative penalty is an element to be considered, to the extent practicable, in determining the amount of the administrative penalty. §42-17.6-6.

The Division admitted in the Division's Response to Respondents' Post-Hearing Memorandum ("Division's Response"), that it did not evaluate the Respondents' financial conditions and their abilities to pay an administrative penalty because it was not practicable to do so. As stated by the Division, prior to the issuance of the NOV, it has no means to compel a respondent to produce what could be sensitive, personal financial information. The Division suggests in its Response that

> [o]nce the NOV has been issued...this financial information, which in the exclusive possession and control of the violator, should be produced by the violator as part of its burden to prove that the proposed penalty is excessive and/or improperly calculated... In this way the violator's financial status can be effectively considered either as part of settlement negotiations... or at the hearing itself. at 11-12. (*parenthetical references omitted.*)

The Respondents individually testified about their financial status. A review of the testimony of the Respondents reveals that all are of modest financial means. Anthony Connetta, who retired in 1993 and is currently unable to work due to a deteriorated back, receives a monthly

Social Security check in the amount of $1,037.00. He testified that the Social Security check is his only source of income and does not even cover his monthly expenses. Although he owns a car, he does not own his home. Tr. May 15, 1996 at 69-71.

Joseph Connetta testified that he is permanently disabled due to heart problems; owns a mobile home but not the land on which it is situated; and receives a monthly disability check in the amount of $945.00. Mr. Connetta stated that he had recently taken a part-time job which pays approximately $100.00 per week. The disability check and the part-time job are his only source of income. Tr. May 15, 1996 at 83-85; 89-90.

Marguerite Sweeney testified that she and her husband own their home; that she is a retired secretary who receives a monthly Social Security check in the amount of $315.00; and that other than the Social Security check, her only other income is a small amount of bank interest. She stated that her husband has been disabled due to back problems for the past twenty years. Tr. May 15, 1996 at 92-95.

Thomas Connetta testified that while he and his wife own their home, he was currently unemployed and had just received his final unemployment check. Tr. May 15, 1996 at 123.

I have considered the arguments of the parties and reviewed the testimonial and documentary evidence of record (not all of which has been set forth herein, but which has all been weighed and considered) to

determine whether the Division properly classified the violations of §46-12-5 (a), §46-12.5-3 and Oil Pollution Control Regulation 6 (a) as Type I Minor. I conclude that the Type I Minor designation is consistent with the pertinent provisions of the Penalty Regulations and with the evidence presented in this case. Respondents have not proved by a preponderance of the evidence that the administrative penalty was improperly calculated.

Notwithstanding my conclusion that the penalty was properly calculated, I find that, under the circumstances as they were presented at the hearing, Respondents have met their burden to prove that the $10,000.00 administrative penalty is excessive. This conclusion is based upon my consideration of several factors.

First, the Division has not proved Respondents liable for the initial contamination. The determination of the amount of the administrative penalty was based in part upon the assumption that the USTs were the source of the original discharge and that the discharge occurred during the period Respondents owned the facility. Further, it was the Division's position that the original contamination was due to Respondents' failure to precision test or properly close the tanks. Since the Division did not present sufficient evidence to prove their premise, the assessment of the maximum penalty for a Type I Minor Violation should be re-examined.

Second, Respondents' failure to prevent the secondary

contamination appears to have been based upon their lack of financial resources. The Penalty Regulations Section 10(a)(2) allows the evaluation of the degree of wilfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation. In his testimony regarding the calculation of the penalty, Mr. Guglielmino stated that he had considered Respondents' failure to take corrective action to prevent the secondary contamination -- to control the occurrence of the violation -- once it was determined there was contamination at the facility.

Although Respondents' actions to conduct the site assessment, the quarterly monitoring, to excavate the test pits and to perform the necessary laboratory analyzes were only a prerequisite to remediating the site, they were a necessary prerequisite and demonstrate that Respondents were not indifferent to the need to take corrective action. Anthony Connetta testified that the remediation plan was never implemented for financial reasons-- "we didn't have any money to even think about removing the contamination"-- and that the only financial means available would be from the sale of the property. Tr. at 68. At an estimated cost of $62,640.00 to remove and dispose of the contaminated residual soil, the evidence reveals that they were essentially financially powerless to exert control over the secondary contamination.

Third, the Division was unable to consider Respondents' financial

status prior to the issuance of the NOV; therefore, their financial condition should be considered during the hearing process.

Since I have already determined that the Division properly calculated the violations as Type I Minor in accordance with the Penalty Regulations, the assessment of an administrative penalty should be from the range provided for a Type I Minor violation. As provided in the Site Remediation Penalty Matrix, the range is from $4,400 to $10,000. I find that under the circumstances in this case, the assessment of an administrative penalty in the amount of $4,400.00 is warranted and is not excessive.

Wherefore, after considering the stipulations of the parties and the testimonial and documentary evidence of record, I make the following:

FINDINGS OF FACT

1. Respondents are the owners of certain real property located at 441 Dyer Avenue, Cranston, Rhode Island, otherwise identified as Cranston Assessor's Plat 8, Lot 844 (the "facility" or "site") and have owned the property since June 6, 1989.

2. The gasoline station located on the property has not been in operation since prior to the Respondents obtaining title in June 1989.

3. On March 18, 1993, Harborline Environmental Services, Inc. removed from the facility (3) underground storage tanks ("USTs" or "tanks") formerly used for the storage of petroleum products.

4. On March 25, 1993, the Department received a "Tank Closure Assessment Report" prepared for Respondents by Harborline Environmental Services, Inc., which report indicated that gasoline-

contaminated soil had been discovered at the facility during the removal of the tanks.

5. The Tank Closure Assessment Report stated that the contamination was probably the result of over-filling and minor spills while filling cars.

6. Over-filling and minor spills would have occurred during the period the gasoline station was in operation.

7. On June 25, 1993, a Site Assessment Report ("SIR") dated June 17, 1993, was submitted to the Department by Respondents' engineer, Hoffman Engineering, Inc. ("HEI").

8. The facility abuts the Pocasset River.

9. The SIR found the groundwater to be flowing in a generally westerly direction towards the Pocasset River.

10. The SIR contains test results of the soil and groundwater and establishes that the soils and groundwater are contaminated with gasoline.

11. The Notice of Violation was issued to Respondents on June 23, 1994.

12. Following the issuance of the NOV, Respondents submitted adequate documentation regarding the removal and disposal of the petroleum contaminated soils that were left on the facility following the removal of the USTs.

13. HEI performed quarterly monitoring of groundwater contaminant levels at the facility, the results of which were submitted to the Division on or about November 1, 1993; January 15, 1994; April 22, 1994; and July 19, 1994.

14. The quarterly monitoring results indicated that the site's groundwater was continuing to be impacted by an on-going source of gasoline contaminants.

15. On August 30, 1994, HEI performed a series of seven test pit excavations. A large volume of gasoline-contaminated soil was encountered throughout the area of the former underground

storage tanks and pump island. HEI concluded that, at an estimated cost of $62,640.00, approximately 900 tons of soil would need to be excavated and disposed of off-site in order to significantly reduce the on-going source of contamination.

16. The extent of contamination encountered by HEI is not consistent with that caused solely by over-filling and minor spills while filling cars.

17. The extent of contamination encountered by HEI is consistent with a leaking tank, leak somewhere else in the UST system, or from a more significant spill.

18. No evidence was presented that this initial discharge or spill occurred during the period Respondents owned the property.

19. During Respondents' ownership of the property, oil in the residual contaminated soils has been leaking, emitting, escaping and leaching to a location where it was likely to enter the waters of the State.

20. During Respondents' ownership of the property, oil in the residual contaminated soils did leak, emit, escape and leach into the waters and land of the State.

21. Since on or about June 23, 1994, the date the NOV was issued, no clean up work has taken place to remediate the confirmed gasoline contamination at the Facility.

22. Testimonial and documentary evidence from the Division established that the violation was calculated to be a Type I Minor violation for which an administrative penalty was assessed, jointly and severally, against each named Respondent in the amount of Ten Thousand ($10,000.00) Dollars.

23. The Site Remediation Penalty Matrix in the Penalty Regulations provides a penalty range of $4400.00 to $10,000.00 for a Type I Minor violation.

24. The Division admits that it did not evaluate or consider Respondents' financial condition when it determined the amount of the administrative penalty.

25. The Division did not consider Respondents' financial limitations when determining how much control Respondents had over the occurrence of the secondary contamination.

26. Each of the Respondents are of modest financial means with incomes largely consisting of social security, disability, or unemployment payments. Respondents' financial assets are also very limited.

27. Under the circumstances in this case, an administrative penalty in the amount of $10,000.00 is excessive.

28. An administrative penalty in the amount of Four Thousand Four Hundred ($4,400.00) Dollars is warranted and is not excessive.

CONCLUSIONS OF LAW

After due consideration of the documentary and testimonial evidence of record and based upon the above findings of fact, I conclude the following as a matter of law:

1. The Division has proved by a preponderance of the evidence that Respondents placed a pollutant in a location where it was likely to enter the waters in violation of R.I. Gen. Laws §46-12-5 (a).

2. The Division has not proved by a preponderance of the evidence that Respondents discharged a pollutant into the waters in violation of R.I. Gen. Laws §46-12-5 (b).

3. The Division has proved by a preponderance of the evidence that Respondents discharged, caused to be discharged, or permitted the discharge of oil into, or upon the waters or land of the state in violation of R.I. Gen. Laws §46-12.5-3.

4. The Division has proved by a preponderance of the evidence that Respondents placed oil or pollutants into the waters or land of the State and/or in a location where they were likely to enter the waters of the State in violation of Oil Pollution Control Regulations Section 6(a).

5. Respondents are required to develop, submit for review and obtain approval of a Corrective Action Plan ("CAP") in accordance with Section 14.00 of the Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials ("UST Regulations").

6. Pursuant to Section 14.00 of the UST Regulations, Respondents are required to conduct a clean-up of the contamination at the site.

7. The Division established in evidence the penalty amount and its calculation.

8. Respondents have failed to prove by a preponderance of the evidence that the Division's calculation of the penalty--the determination that the violation was Type I with a Minor Deviation from Standard--was not in accordance with the Penalty Regulations.

9. Pursuant to R.I. Gen. Laws §42-17.6-6, in determining the amount of the administrative penalty, the Director shall consider, to the extent practicable, the financial condition of the person being assessed the administrative penalty.

10. Respondents have proved by a preponderance of the evidence that the Division did not consider Respondents' financial condition prior to its assessment of the administrative penalty in the NOV.

11. Pursuant to Section 10 of the Penalty Regulations, the amount of the penalty is to be calculated based upon several factors, including "the degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation...".

12. Respondents have proved by a preponderance of the evidence that the Division did not consider Respondents' financial limitations as it affected their lack of control over the continuing contamination from the residual soils on site.

13. Respondents have proved by a preponderance of the evidence that the Division's assessment of an administrative penalty in the amount of $10,000.00 is not in accordance with the Penalty Regulations.

14. The assessment of an administrative penalty against Respondents in the amount of Four Thousand Four Hundred ($4,400.00) Dollars is in accordance with the Penalty Regulations.

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

ORDERED

1. Respondents' counsel's motion for judgment, made at the hearing (and as noted in footnote 2 of this Decision), is herewith **Denied**.

2. Respondents shall, within thirty (30) days of the entry of the Final Agency Order in this matter, develop and submit for the Department's review a Corrective Action Plan ("CAP") in accordance with Section 14.00 of the Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials ("UST Regulations").

3. Respondents shall have until sixty (60) days from the entry of the Final Agency Order in this matter, to obtain the Department's Order of Approval and begin implementation of the CAP in accordance with Section 14.00 of the UST Regulations.

4. An administrative penalty in the amount of **Four Thousand Four Hundred ($4,400.00) Dollars** is hereby ASSESSED, jointly and severally, against each named Respondent.

5. Respondents shall, within thirty (30) days of the entry of the Final Agency Order in this matter, make payment of the administrative penalty in the form of a certified check, payable to "General Treasurer--Air and Water Protection Fund", and forward it to:

R.I. Department of Environmental Management
Office of Business Affairs
235 Promenade Street, Rm. 340
Providence, RI 02908
Attn: Glenn Miller

Entered as an Administrative Order this 8th day of August, 1997 and herewith recommended to the Director for issuance as a Final Agency Order.

Mary F. McMahon
Hearing Officer
Department of Environmental Management
Administrative Adjudication Division
235 Promenade Street
Providence, RI 02908

Entered as a Final Agency Order this 21 day of August, 1997.

Frederick Vincent
Acting Director
Department of Environmental Management
235 Promenade Street
Providence, RI 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 Anthony F. Muri, Esq., Douglas J. Emanuel, Esq., GOLDENBERG & MURI, 10 Weybosset St., Providence, RI 02903-2808; Thomas R. Connetta, 1355 Scituate Avenue, Cranston, RI 02921 and via interoffice mail to Brian A. Wagner, Esq., Office of Legal Services, 235 Promenade Street, Providence, Rhode Island 02908 on this 21st day of August, 1997.

Brian K. Stewart

APPENDIX A

The below-listed documents are marked as they were admitted into evidence:

DIVISION'S EXHIBITS:

DIV 1 FULL	Trustee's Deed - dated 6/6/89, 1 p.
DIV 2 FULL	Closure Inspection Report for Underground Storage Facilities - dated 3/18/93, 1 p.
DIV 3 FULL	UST Closure Assessment Report, received 3/25/93, prepared by Harborline Environmental Services, Inc., 9 pp..
DIV 4 FULL	Limited Subsurface Environmental Site Assessment - dated 6/17/93, 9 pp. plus tables, figures and appendices.
DIV 5 FULL	Correspondence from R.L. Hoffman to D. Sheldon - dated 11/1/93 with attached groundwater monitoring results, 2 pp.
DIV 6 FULL	Correspondence from R.L. Hoffman to D. Sheldon - dated 1/15/94, with attached groundwater monitoring results, 2 pp.
DIV 7 FULL	Correspondence from R.L. Hoffman to D. Sheldon - dated 4/22/94, with attached groundwater monitoring results, 2 pp.
DIV 8 FULL	Correspondence from R.L. Hoffman to D. Sheldon - dated 7/19/94, with attached groundwater monitoring results, 4 pp.
DIV 9 FULL	Resume of Bruce Catterall.
DIV 10 FULL	Resume of David Sheldon
DIV 11 FULL	Copy of NOTICE OF VIOLATION NO. LS 0721, issued to Anthony J. Connetta, Marguerite Sweeney, Joseph F. Connetta and Thomas R. Connetta, dated June 23, 1994.

RESPONDENTS' EXHIBITS:

RESP 1 FULL	Curriculum vitae of Robert L. Hoffman, P.E.
RESP 2 FULL	Correspondence dated June 25, 1993 from Anthony J. Connetta to Ms. Beverly Migliore of DEM.
RESP 3 FULL	Locus Plan of 441 Dyer Avenue, Cranston, RI dated July 14, 1993, prepared by Hoffman Engineering, Inc..
RESP 4 FOR Id	Correspondence dated July 29, 1993 from Anthony J. Connetta to Mr. David Sheldon of DEM.
RESP 5 FULL	Correspondence dated August 21, 1993 from Robert L. Hoffman, P.E. to Mr. David Sheldon of DEM.
RESP 6 FOR Id	Correspondence, with attachments, dated June 27, 1994 from the Respondents to Ms. Bonnie Stewart of DEM.
RESP 7 FULL	Correspondence, with attachments, dated August 31, 1994 from Robert L. Hoffman, P.E. to Anthony J. Connetta.
RESP 8 FULL	Map of the subject area.
RESP 9 FULL	Trust indenture between Carmela Connetta as Trustee and Carmela Connetta as Settlor, dated January 20, 1970.
RESP 10 FULL	Amendment to Trust Indenture, signed by Carmela Connetta as Trustee and Carmela Connetta as Settlor, dated May 19, 1988; and
RESP 11 FOR Id	Correspondence from Joan Taylor of DEM to Anthony Connetta, dated October 19, 1993.