

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

IN RE: Jose Arruda
FWWL Notice of Violation No. C-2423

ORDER

This matter is before the hearing officer on the objection of Respondent to the Division's amendment of its prehearing memorandum filed with the AAD on February 14, 1992.

Prehearing procedures are governed by R.I.G.L. § 42-17.7-5 and the Rules of Practice and Procedure of the Administrative Adjudication Division for Environmental Matters ("Rules"). R.I.G.L. § 42-17.7-5 states in pertinent part:

42-17.7-5. Prehearing procedure - Depositions - Exhibits - Formulating issues - Other procedures -
(1) Prior to the commencement of any hearing, the hearing officer may in his or her discretion direct the parties or their attorneys to appear before him or her for such conferences as shall be necessary. At such conferences the hearing officer may order any party to file, prior to the commencement of any formal hearing, such exhibits said party intends to use in the hearing and the names and addresses of witnesses such party intends to produce in its direct case together with a short statement of the testimony of each witness. Following entry of such an order, a party shall not be permitted, except in the discretion of the hearing officer, to introduce into evidence in said party's direct case exhibits which are not filed in accordance with the order.

The prehearing conference was held on January 10, 1992 and the prehearing conference record was entered on January 15, 1992. The amended prehearing memorandum was filed on February 14, 1992. R.I.G.L. § 42-17.7-5 provides that the introduction of documents in a party's direct case may be barred

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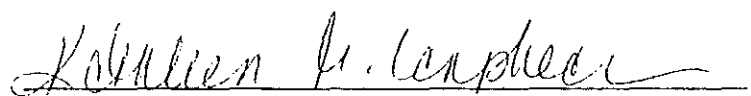
if they are not filed in accordance with the prehearing order. It is clear from the statute that documents may be identified by a party for introduction in its direct case subsequent to the prehearing but that the hearing officer at his or her discretion may allow or bar such documents.

In the instant matter Respondent has been advised of such proposed exhibits for two months. The case has not yet been reached. Respondent has demonstrated no prejudice if the exhibits are added to the list of Division's proposed exhibits. Accordingly, in my discretion I will allow the Division to amend its prehearing memorandum as indicated in its February 14, 1992 filing. Based upon the foregoing, it is hereby

ORDERED

1. That the Division's prehearing memo is amended as set forth in its February 14, 1992 filing.
2. The exhibits set forth in the amended prehearing memo shall be forwarded to Respondent's counsel forthwith and filed with AAD forthwith.
3. Such exhibits shall be for identification only at this juncture and absent agreement their admissibility will be determined during the regular course of the hearing.

Entered as an Administrative Order this 27th day of
April, 1992.


Kathleen M. Lanphear
Chief Hearing Officer
Department of Environmental Management
Administrative Adjudication Division
One Capitol Hill, 4th Floor
Providence, RI 02908

CERTIFICATION

I hereby certify that I caused a true copy of the within
Order to be forwarded via regular mail, postage prepaid to Sean
O. Coffey, Esq., Licht & Semonoff, One Park Row, Providence, RI
02903 and via interoffice mail to Catherine Robinson Hall, Esq.,
Office of Legal Services, 9 Hayes Street, Providence, RI 02908
on this 27th day of April, 1992.

