

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

RE: COUPE, ROBERT E.  
LETTER OF NON COMPLIANCE

AAD NO. 14-001/ENE

DECISION AND ORDER

This matter came before the Administrative Adjudication Division on the Respondent Robert E. Coupe's Appeal filed February 20, 2014, concerning his culpability regarding payment of the sum of One Thousand Two Hundred Dollars (\$1200.00) pursuant to Paragraphs Nine and Ten of a Consent Agreement dated September 25, 2013 attached hereto and made a part hereof as Exhibit 1. The Consent Agreement was signed and entered by the parties in a previous case captioned *Re: Coupe, Robert E.*, AAD NO. 13-010/ENE. The Hearing was limited to the narrow issue concerning payment as a result of an Order entered on April 24, 2014 by this Hearing Officer granting the Division of Law Enforcement's ("the Division") Motion in Limine filed March 25, 2014. Respondent filed no objection to the Division's Motion in Limine.

The Hearing was transcribed by stenographic means but the parties advised that they would not be providing a copy of the transcript for review.

JURISDICTION

The within proceeding was conducted in accordance with the statutes governing the Administrative Adjudication Division for Environmental Matters (R.I. General Laws §43-17.7-1 et. seq.); the *Administrative Procedures Act* (R.I. General Laws §42-35-1 et. seq.); the *Administrative Rules of Practice and Procedure for the Department of Environmental Management, Administrative Adjudication Division for Environmental Matter* (AAD Rules); and R.I. General Laws §4-19-1 et. seq.

**BURDEN OF PROOF**

The parties agreed at the outset of the Hearing, on the record, that the Burden of Proof in this matter rested with the Division of Law Enforcement to demonstrate, by a preponderance of the evidence, that the Respondent breached his obligations under the Consent Agreement.

**FACTS AND TRAVEL**

The Parties executed a Consent Agreement on September 25, 2013 in a previous case captioned *Re: Coupe, Robert E.*, AAD No. 13-010/ENE.

Pursuant to Paragraph #10 of that Consent Agreement, the Respondent was obligated to

“remit to the Division by check or money order payable to the DEM for deposit in the 804 Shellfish and Marine License Account, a total of One Thousand Two Hundred (\$1,200.00) Dollar in ten installments of One Hundred Twenty (\$120.00) Dollars – the first installment required to be paid Ten (10) Days of the entry of the Consent Agreement (September 25, 2013) and the remaining nine payments due to be paid in successive monthly installments beginning on or before November 1, 2013”.

The Division of Law Enforcement alleged that the Respondent failed to make any payments to the Division in satisfaction of his obligations set forth in Paragraph #10 of the Consent Agreement.

Pursuant to Paragraph #8 of the Consent Agreement, the Parties agreed that a finding that the Respondent has not complied with Paragraphs #7 or #10 of the Agreement shall constitute a default of the Agreement thereby resulting in the imposition of the suspension order.

Paragraph #6 of the Consent Agreement defines suspension order to mean that “Respondent’s Principal Effort License # 001556 and any and all commercial fishing licenses and permits issued by the Department of Environmental Management to the Respondent or any corporation in which the Respondent owns a majority interest shall be suspended for a period

of Twenty (20) days.”

The Respondent denied owing any sums to the Division and alleged that the Consent Agreement contained terms and conditions to which he did not agree.

### HEARING

The Division of Law Enforcement presented two witnesses. The first was Officer Mark Saunders, a thirty (30) year employee of the Division. He is responsible, among other things, for reviewing and monitoring terms of Consent Agreements entered into between Respondents and the Division. He testified that the Respondent’s Consent Agreement required him to make ten (10) monthly payments of One Hundred and Twenty Dollars (\$120.00) for a total of One Thousand and Two Hundred (\$1200.00) Dollars. After doing a thorough investigation within the Division, Officer Saunders determined that Respondent has not made any payments to the Division in accordance with the Consent Agreement. The next witness was Ms. Rose-Ann Daignault, Programming Services Officer, Office of Management Services. She has been with the Department of Environmental Management for thirty-four (34) years. She manages all of the Consent Agreements the Department enters into along with processing payments that are forwarded to the General Treasurer. She testified that she and clerks in her department conducted a search within the past thirty (30) days by name, case number, etc. which revealed no payments made by the Respondent. The Division rested its case after her testimony. The Division offered three exhibits, all of which were admitted as Full exhibits: the Consent Agreement dated September 25, 2013 was entered as Division’s Exhibit 1 – Full; the letter dated February 11, 2014 to the Respondent from the Office of Legal Services was entered as Division’s Exhibit 2 – Full; and the letter from the Respondent to Mr. Powers dated

February 17, 2014 was entered as Division's Exhibit 3 – Full. The Respondent moved the admission of his twenty (20) page credit report dated June 3, 2014 which was allowed over the objection of the Division as Respondent's Exhibit 1 – Full. The Respondent also offered an affidavit from Mr. Luca Razza which was marked as Respondent's Exhibit 2 for Identification only.

Respondent, who represented himself, had his wife Dale Jane Coupe testify first. She said her husband told her he was on probation for one year and she also talked about the manner in which bills are paid in their household. She said that such a large penalty, if owed, would have been discussed by her and the Respondent and paid promptly. Mr. Steven E. Thomas testified next and said the Respondent is honorable and that they have fished together for many years and the Respondent never did anything illegal. Respondent offered his credit report (Respondent's Exhibit 1 – Full) to demonstrate that he pays his bills on time and that if he owed the penalty to the Division, he would have paid it. Respondent admitted that he did not make any payments.

This Hearing Officer then asked the Respondent if he took the Consent Agreement home, reviewed it, and signed it on September 27, 2013. (Chief Steven H. Hall of the Division signed it on September 25, 2013.) The Respondent said he did take it home, reviewed it and then signed it. He then reversed course and said he signed it when he met with legal counsel for the Division but did not read it as he relied on what the Division's counsel told him what the provisions were. Respondent said the contents of the Consent Agreement "is not what I agreed to".

DISCUSSION

The Consent Agreement's provisions are clear and unambiguous. The Consent Agreement was prepared and signed by the Division and Respondent after settlement discussions took place concerning alleged Violations committed by Respondent regarding a Notice of Violation dated July 5, 2013. That Notice of Violation notified Respondent that his Principal Effort License #001566 would be suspended for twenty (20) days due to his alleged violation of R.I.G.L. §20-2-8 and Commercial Fishing Regulations §6.7.11 due to the fact the Respondent signed an Affidavit in support of an application for the issuance of a commercial fishing license to Mr. Luca Razza which contained false or inaccurate information.

Respondent had the presence of mind to respond to the Notice of Violation by contacting and negotiating an Agreement with the Division that obligated him to pay a penalty in exchange for the Division refraining from suspending his Principal Effort License for twenty days.

The Consent Agreement detailed payment of the penalty, the specific date payment was to be made, where payment was to be made, the fact that payment was to be made by check or money order, etc. The provisions concerning the penalty and its payment are spelled out in four pages of the eight page Consent Agreement. The Respondent's Argument that "its not what I agreed to" does not carry any weight. He risked having his multipurpose license suspended for twenty days. It was therefore incumbent upon him to make sure the terms of the Consent Agreement were reduced to writing accurately before signing it. Respondent did not claim that he was operating under any type of disability when he signed the Consent Agreement.

I find that the Division's witnesses, their testimony and documentary evidence were

credible. I also find that the Division sustained its burden of proving, by a preponderance of the evidence, that the Respondent breached his obligations under the Consent Agreement signed by Chief Hall on 9/25/13 and Respondent on 9/27/13. Specifically, Respondent is in default of his obligations pursuant to paragraph 8 of the Consent Agreement thereby resulting in the imposition of the Suspension Order.

**FINDINGS OF FACT**

1. The Division and Respondent executed a Consent Agreement on September 25, 2013 in case captioned RE: Coupe, Robert E., AAD NO. 13-010/ENE
2. The Consent Agreement signed by the Parties provided in paragraph #10 that the Respondent was obligated to pay the sum of One Thousand Two Hundred Dollars (\$1200.00) in ten equal installments of One Hundred Twenty Dollars (\$120.00) per month with the first installment due ten days after the entry of the Consent Agreement.
3. Pursuant to the testimony of the Division's witnesses, Officer Mark Saunders and Rose-Ann Daignault, after searching all relevant Records, they stated the Respondent has failed to make any payments pursuant to the Consent Agreement.
4. The Respondent admitted he failed to make any payments pursuant to the Consent Agreement.
5. The Respondent testified he did not make any payments pursuant to the Consent Agreement because he did not agree to make such payments.
6. The Respondent admitted that he signed the Consent Agreement.
7. The Respondent said he reviewed the Consent Agreement prior to signing it on September 27, 2013.
8. The Respondent then testified that he did not review the Consent Agreement before he signed it.
9. The Respondent did not claim he was operating under any type of disability when he signed the Consent Agreement.

CONCLUSIONS OF LAW

1. The within proceeding was conducted in accordance with the statutes governing the Administrative Adjudication Division for Environmental Matters (R.I. General Laws §43-17.7-1 et. seq.); the *Administrative Procedures Act* (R.I. General Laws §42-35-1 et. seq.); the *Administrative Rules of Practice and Procedure for the Department of Environmental Management, Administrative Adjudication Division for Environmental Matter* (AAD Rules); and R.I. General Laws §4-19-1 et. seq.
2. The Burden of Proof was on the Division of Law Enforcement to prove, by a preponderance of the evidence, that the Respondent breached his obligations under the Consent Agreement.
3. The Division sustained its burden of proof and demonstrated, by a preponderance of the evidence that the Respondent breached his obligations under the Consent Agreement by failing to pay the sum of One Thousand Two Hundred (\$1200.00) Dollars.
4. The Respondent's failure to pay the sum of One Thousand Two Hundred (\$1200.00) Dollars constituted a default of the Consent Agreement pursuant to paragraph 8.
5. The Respondent's Principal Effort License # 001556 and any and all commercial fishing licenses and permits issued by the Department of Environmental Management to Respondent or any corporation in which the Respondent owns a majority interest shall be suspended for twenty (20) days in accordance with paragraph 6 of the Consent Agreement.

Wherefore, it is hereby **ORDERED** that:

1. Respondent's Appeal is **DENIED** and **DISMISSED**.
2. The Respondent's Principal Effort License # 001556 and any and all commercial fishing licenses and permits issued by the Department of Environmental Management to Respondent or any corporation in which the Respondent owns a majority interest shall be suspended for twenty (20) days in accordance with paragraph 6 of the Consent Agreement.

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Entered as an Administrative Order this 8<sup>th</sup> day of July, 2014.



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David M. Spinella  
Hearing Officer  
Administrative Adjudication Division  
One Capitol Hill, 2<sup>nd</sup> Floor  
Providence, RI 02908  
(401) 574-8600

**CERTIFICATION**

I hereby certify that I caused a true copy of the within Order to be forwarded by first-class mail to: Robert E. Coupe, 85 Windsong Road, Cumberland, RI 02864; via interoffice mail to Gary Powers, Esquire, DEM Office of Legal Services, 235 Promenade Street, Providence, RI 02908 on this 8<sup>th</sup> day of July, 2014.



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**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.