

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

RE: MANUEL FURTADO, JR. AND BRISTOL SANDBLASTING COMPANY  
AAD NO. 92-015/AHE NOTICE OF VIOLATION 92-111

DECISION AND ORDER

This matter is before this Hearing Officer pursuant to Chapter 19.1 of Title 23 of the R.I.G.L. entitled "Hazardous Waste Management Act of 1978" ("the Act"), as amended, R.I.G.L. §42-17.1-2 and Chapter 42-17.6, §42-17.7-1 et seq., the Administrative Procedures Act, R.I.G.L. §42-35-1 et seq, and the Rules and Regulations for Hazardous Waste Management adapted pursuant thereto ("Regulations"), and the Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters. The proceedings were conducted in accordance with the above-noted statutes and regulations.

The Division of Air and Hazardous Materials ("Division") of the Department of Environmental Management ("DEM" or "Department") issued a Notice of Violation and Order and Penalty ("NOVAP") to Manuel Furtado, Jr. and Bristol Sandblasting Company ("Respondents") on October 7, 1992.

The NOVAP alleged that on July 21, 1992 the Department conducted an inspection of Respondents' residential property in Warren, Rhode Island at 28 Birchswamp Road, (also known as Plat 22, Lot 8) and 20 Birchswamp Road, (also known as Plat 22, Lot 177) ("site") which inspection uncovered violations of Sections 23-19.1-8, 23-19.1-9 and 23-19.1-10(a) of the Act and Rules 7.01 and 7.09 of the Regulations. Specifically, Division

alleged that Respondents generated and improperly disposed of lead-contaminated spent sandblast grit at the site; that the Respondents never notified the DEM of such activities and did not request the proper permits, nor had DEM issued such permits to conduct such hazardous waste activities. Respondents duly filed a request for a hearing on the NOVAP.

George and Ruth Pereira, abutters, were granted intervention status.

Claude Cote, Esq., represented the Division; Stephen H. Burke, Esq., represented the Respondents; and Gerald J. Coyne, Esq., represented the Intervenors, George and Ruth Pereira.

The Division bore the burden of proving the alleged violations by a preponderance of the evidence. Once a violation is established, Respondents bear the burden of proving by a preponderance of the evidence that the Division failed to assess the penalty in accordance with the Rules and Regulations for Assessment of Administrative Penalties.

The Prehearing Conference was held on October 20, 1994 and the requisite Prehearing Conference Record was prepared by the Hearing Officer who conducted same. The hearing was conducted on March 15, 23 and 27, 1995. At the conclusion of the hearing, all parties elected not to present post-hearing briefs and none were required by the Hearing Officer.

Division submitted 41 exhibits, which by agreement of the parties, were all admitted as full exhibits. They are listed

in "Appendix A", attached hereto. No exhibits were introduced by Respondents or Intervenors.

The Hazardous Waste Management Act of 1978 governs the storage, transportation, treatment and disposal of hazardous waste within the State of Rhode Island, and authorizes and empowers the Director of DEM to adopt plans, rules, regulations, procedures, and standards, etc., and to exercise all powers to carry out the purposes of this Chapter.

R.I.G.L. §23-19.1-8 provides that:

It shall be unlawful for any person to generate, store, transport, treat, or dispose of hazardous wastes within the state of Rhode Island without complying with such requirements as the director by regulation may prescribe for:

- (1) The establishment of records;
- (2) The making of reports; the taking of samples, and the performing of tests or analyses;
- (3) The installing, calibrating, using, and maintaining of monitoring equipment or methods; and
- (4) The providing of such other information as may be necessary to achieve the purposes of this chapter.

R.I.G.L. §23-19.1-9 provides that:

It shall be unlawful for any person to generate hazardous wastes within the state of Rhode Island without complying with such requirements as the director by regulation may prescribe with respect to the manifest system, and for the containerization and labeling of the hazardous wastes.

R.I.G.L. §23-19.1-10(a) provides that:

After the taking effect of rules and regulations required to be promulgated under this chapter, no person shall construct, substantially alter, or operate any hazardous waste management facility, nor shall any person store, transport, treat, or dispose of any hazardous waste, except as exempted

by this section, without first obtaining a permit from the director for the facility or activity, nor shall any person accept or deliver hazardous waste from or to any person who does not possess a permit from the director for hazardous waste management, without the prior approval of the director, provided however that this section shall not be construed to require permits for the generation of hazardous waste.

Rule 7.00 provides:

ISSUANCE RENEWAL AND CONDITIONS OF FACILITY PERMITS: These rules shall apply to treatment, storage and disposal facilities, excluding facilities which accept, treat and/or store only precious metal bearing waste. Precious metal bearing waste facilities shall be subject to the requirements of 40 CFR 266 Subpart F, as is or as amended.

Rule 7.01 provides:

A. Permits and Approvals - All persons who shall construct, substantially alter or operate a hazardous waste treatment, storage or disposal facility or who shall treat, store or dispose of hazardous waste must first obtain an operating permit or approval from the Director for such activities and must have such permits during the active life of the facility, and for any unit which closes after 26 January 1983, for any post-closure care period required under these rules, except that the following shall not require a permit or approval, nor shall the following be required to be in compliance with Rule 9 of these regulations:

1. The storage of hazardous waste on site by a generator in accordance with Rule 5.02 of these regulations.
2. The re-use, recycling or reclamation of hazardous waste as referred to in Rule 3.25 of these regulations.
3. The treatment of waste at facilities which neutralize and/or treat aqueous waste at the site of generation where such treatment is subject to regulation under Section 402 or 307(b) of the Federal Clean Water Act, as

amended, and Section 46-12-5 of the General Laws of Rhode Island as amended unless otherwise required by the Director, except for those operations at the facility which are not covered by either of the aforementioned laws.

Note: Any sludge or other waste materials generated from the treatment of such aqueous waste must be managed as a hazardous waste if such sludge or waste material meets the criteria of a hazardous waste.

B. Permit Restrictions for Landfills and/or Incinerators

1. Operating permits will be granted only for those incinerator or landfill facilities for which the application can show, by a preponderance of evidence, will be located, designed, constructed and operated so as to prevent all of the following:
  - a. Endangerment of an underground drinking water source beyond the facility boundary.
  - b. Endangerment of an aquifer which has been designated by any federal or Rhode Island state agency as a sole source aquifer.
  - c. Contamination by discharge by any surface or sub-surface means causing a violation of any rule or regulation or standard of any federal or Rhode Island agency.
2. Operating permits will not be granted for incinerator and/or landfill facilities which are to be located or are located in a one hundred year flood plain, a wetland, the direct recharge area of an existing or planned surface or groundwater community water system, the direct recharge area of a sole source aquifer or a coastal high hazard area, an active fault area or critical habitat.
3. Operating permits will be granted only for those incinerator and/or landfill facilities for which an easement is granted to the state of Rhode Island. This easement shall be recorded in the land evidence records in the

city or town in which the land is located, shall describe the entire facility, and have as its purposes the identification of the facility and its use as a hazardous waste disposal facility and the allowance of access to the property by the Director for the purpose of inspection, testing and investigations relating to protection of public health and environment.

Rule 7.09 provides that:

Issuance, Denial, Revocation or Suspension of Permits

- A. The Director, after public notice and a public comment hearing as required by §23-19.1-10 of the Rhode Island General Laws, is authorized to issue, revoke, or suspend a permit, or the Director may deny a permit. In doing so, the Director shall follow procedures established by these rules and regulations and by the applicable portions of 40 CFR 124.3 and 124.5, as are or as amended.
- B. No person shall construct, substantially alter, or operate any hazardous waste management facility, nor shall any person store, transport, treat or dispose of any hazardous waste, except as exempted by these regulations, without first obtaining a permit from the Director for the facility or activity; nor shall any person accept or deliver hazardous waste from or to any person who does not possess a permit for hazardous waste management from the Director without the prior written approval of the Director. This section shall not be construed to require permits for the generation of hazardous waste.

The Hazardous Waste Management Act of 1978, specifically §23-19.1-4(4) defines hazardous waste as:

any waste or combination of wastes of a solid, liquid, contained gaseous, or semi-solid form which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:

- (A). Cause or significantly contribute to an increase in mortality or an increase in serious

irreversible or incapacitating reversible illness;  
or  
(B). Pose a substantial present or potential  
hazard to human health or the environment.

Such wastes include, but are not limited to, those  
which are toxic, corrosive, flammable, irritants,  
strong sensitizers, substances which are  
assimilated or concentrated in and are detrimental  
to tissue, or which generate pressure through  
decomposition or chemical reaction. In addition,  
such wastes include "industrial waste" as the term  
is used elsewhere, unless the context shall clearly  
indicate otherwise.

Rule 3.25 of the Hazardous Waste Management Rules and  
Regulations provides that:

Hazardous waste shall mean any waste or combination  
of wastes of a solid, liquid, contained gaseous, or  
semi-solid form which, because of its quantity,  
concentration, or physical or chemical  
characteristics, may cause or significantly  
contribute to an increase in mortality or an  
increase in serious irreversible or incapacitating  
reversible illness; or pose a substantial present  
or potential hazard to human health or the  
environment.

Such wastes include, but are not limited to, those  
which are toxic, corrosive, flammable, or reactive;  
and which are listed as "Rhode Island Wastes" in  
Rule 3.53 of these regulations.

Hazardous waste shall also mean any hazardous waste  
as defined in 40 CFR 261.1(c) and 261.3 as are or  
as amended, or is subject to regulation under 40  
CFR 261.7, as is or as amended. Where the phrase  
"solid waste" appears in the Code of Federal  
Regulations, the word "waste" may be substituted.  
The small quantity generator provisions of 40 CFR  
261.5 do not apply in Rhode Island. The provisions  
of the household waste exemption contained within  
40 CFR 261.4(b)(1) do apply in Rhode Island, except  
as limited by Rule 5.00 of these regulations.

Determination that a material is not a hazardous  
waste must be made in accordance with 40 CFR  
260.30, 260.31, and 260.33, as are or as amended.

Hazardous wastes that are recycled are subject to the provisions of 40 CFR 261.6 and the sections of 40 CFR Part 266 referenced therein, as are or as amended, except as limited by Section 23-19.1-10(f) of the Rhode Island General Laws and except as 40 CFR 261.6, as is or as amended, affects used oil that exhibits one or more of the characteristics of hazardous waste. The Director may also regulated certain recycling activities as provided by 40 CFR 260.40 and 260.41, as are or as amended.

Division listed four prospective witnesses in the Prehearing Conference Record; however, it called only two of said witnesses to testify. It was represented by Division that it relied heavily on its Documentary Exhibits to prove its case. Respondents listed three prospective witnesses in the Prehearing Conference Record; but, no witnesses were called by Respondents and no exhibits were presented by them. The Intervenors submitted the name of Respondent, Manuel Furtado, Jr., as a proposed witness; however, Intervenors called no witnesses and presented no exhibits.

Jeffrey Crawford was the first witness called by Division. He was qualified by agreement as an expert in the field of hazardous waste regulation and sampling. A review of his resume (Division's Exhibit 40) demonstrates that he is well-qualified as an expert by education and experience. I found his testimony to be straight-forward and credible.

Mr. Crawford testified that he is familiar with the site which is the subject of the NOVAP issued by Division to Respondents on October 7, 1992; that the NOVAP was issued to Respondents because they were operating a hazardous waste

facility without a permit, in that Respondents were storing and disposing of hazardous waste on the site without the requisite permit; and that the Division had a sampling analysis conducted on the soil samples taken at the subject site.

It was Mr. Crawford's testimony that the analytical results of the soil samples as shown in the August 11, 1992 Certificate of Analysis (Division's Exhibit 3) revealed lead levels, using the Toxicity Characteristic Leaching Procedure, at 130 ppm and 89.4 ppm. These lead levels are above the regulatory limit of 5 ppm for the Toxicity Characteristic of lead, which characterizes the sandblast grit and soil as hazardous waste.

Mr. Crawford explained the Field Investigation Report of the Division of Site Remediation (formerly the Division of Air and Hazardous Waste Management) dated December 6, 1993, which was prepared by Mr. Crawford and Gary Waldeck regarding Respondents' property (Division's Exhibit 21). This report stated that Division conducted a walkover of the subject property in order for Division's personnel to better understand where sampling locations are proposed. Sampling is required as part of the Remedial Investigation Work Plan ("RIWP").

The December 6, 1993 report contains a description of the subject property and the surrounding area. It identifies the

structures and driveways located thereon, and the various areas where black sandblasting grit was visible on the surface of said property. A two-story residential house is situated in the north-west section of the property, and a barn and adjacent concrete pad is situated in the eastern portion of the site. A "U" shaped gravel driveway extends from Birch Swamp Road to the area behind the barn and concrete pad in the rear of the site. The report states that grit was visible along the back of the barn next to the foundation. Also, there was a pile (approx. 3 cu. yards) of woodchips, grit and sand on the abutting property close to a space in the stone wall that separates the properties. The south leg of the gravel driveway appeared to be 3 - 8 inches lower than the ground to the north. Mr. Furtado appeared at the site during this investigation and stated that the driveway had been scraped and filled with offsite material. He also said that he had scraped both legs of the driveway.

The parties walked over the site, and small holes were dug with a hand auger to determine whether there was a layer of blasting grit below the surface. A map attached to the report shows the approximate location of the nine holes, and the report lists the material found in each of the holes. The report also states that the RIWP needs more detail (i.e. property lines, driveway); that more samples along the north and south portions of the driveway need to be proposed; and

also that the samples behind the barn need to be added.

The letter report from Certified Engineering dated July 6, 1994 (Division's Exhibit 33), details the soil sampling and testing activities performed by Recon Environmental Corporation ("Recon"), formerly Certified Engineering and Testing Company, Inc., at the subject site. This report states that as required, all work was performed in compliance with the RIWP prepared by Clean Harbors Environmental Services, Inc. dated October 29, 1993, and under the direction of Jeffrey Crawford and Gary Waldeck of DEM.

The July 6, 1994 letter report details the sampling procedures conducted by Recon at various locations at the site on June 1, 1994. A total of fifteen shallow soil samples (up to 13" below grade) and five deeper soil samples (up to 39" below grade) were collected by Recon personnel at various locations on the site and abutting residential properties in accordance with the Sampling Location Plan included in the RIWP, as modified in the field by Division. The sampling procedure utilized was described in detail, and a plan showing the revised sample locations was attached to said report. All soil samples were analyzed for total lead, and the laboratory results were summarized in Table 1 that was attached to this letter report. Said analysis indicated that the lead levels at the site ranged from 76 parts per million (ppm) to 18,202 ppm, which exceeds the 5 ppm allowed by the Regulations.

This demonstrated a lead content which is hazardous waste by definition, on various parts of the property.

Mr. Crawford testified that as of the date of the hearing, the site had not been remediated. He also explained how the administrative penalty was assessed by Division. The penalty was calculated using the State of Rhode Island Rules and Regulations for Assessment of Administrative Penalties. Respondents disposed of a hazardous waste without a permit or approval from Department, which is a Type I Violation. This violation, coupled with the fact that there are drinking-water wells on the properties, is considered a major deviation from the regulations, which represents a penalty amount of \$10,000.00.

Gary Waldeck was the second and final witness presented by Division. He was qualified by agreement as an expert in the field of hazardous waste regulation and sampling. His resume (Division's Exhibit 39) establishes that he is well qualified as an expert by education and experience. He testified briefly for Division and he was not cross-examined by either Respondents or Intervenors.

It was Mr. Waldeck's testimony that he is employed by DEM as a Sanitary Engineer; that he was present with Mr. Crawford when an inspection of Respondent's property was conducted because a work plan was supposed to have been submitted by Respondents; that he saw visible signs of

contamination on Respondents' property as well as the surrounding properties; that he was also present when sampling procedures were conducted as detailed in the Recon letter report dated July 6, 1994 (Division's Exhibit 33); and that the results of said sampling report indicate high levels of lead throughout Respondents' property. I found this witness to be straight-forward and credible.

The parties agreed (as specified in the Prehearing Conference Record) that the following is the issue to be considered at the hearing:

1. Whether for purposes of its case in chief, the Department issued a RCRA Notice of Violation and Order and Penalty to Manuel Furtado, Jr., and Bristol Sandblasting Company. The Division's case in chief will be through witness testimony that there is hazardous waste, lead contaminated soil, on site. Mr. Furtado had the obligation to test and dispose of the material in question and instead improperly handled and disposed of the material on site.

The uncontroverted testimony of Division's two witnesses establishes that there is hazardous waste, lead-contaminated soil, on site; that Respondents did not test and properly dispose of said hazardous waste material as required; and that instead Respondents improperly handled and disposed of the hazardous waste material on the site. This evidence was positive and not discredited either by other positive testimony or by circumstantial evidence, extrinsic or intrinsic, and therefore is deemed conclusive by this Hearing Officer as the trier of fact. State v. A. Capuano Bros.,

Inc., 120 R.I. 58 (1978).

The documentary evidence presented by Division, specifically Division's Exhibits 3, 4, 6, 21 and 23, as well as the testimony of its expert witnesses, Jeffrey Crawford and Gary Waldeck, clearly establishes that on July 21, 1992 the Division conducted an inspection of the subject premises in Warren, Rhode Island at 28 and 20 Birch Swamp Road (also respectively known as Lots 8 and 177 on Plat 22); that as part of said inspection, soil samples were taken from areas where sandblast grit had been disposed of on the ground of said premises; that the analytical results of said soil samples revealed lead levels, using the Toxicity Characteristic Reaching Procedure, at 130 parts per million ("ppm") and 89.4 ppm; that said lead levels are above the regulatory limit of 5 ppm for the Toxicity Characteristic of lead, therefore characterizing the sandblast grit and soil as hazardous waste; that the Department issued the instant Notice of Violation and Order and Penalty to Manuel Furtado, Jr. and Bristol Sandblasting Company; that there is hazardous waste, viz. lead-contaminated soil, on the subject property; that the Respondents had the obligation to test and dispose of the material in question and instead Respondents improperly handled and disposed of said hazardous waste materials on the subject site; that the Respondents never notified Department of such activities nor did they request the proper permits;

and that the Department did not issue the requisite permits to conduct said hazardous waste activities.

Respondents offered no evidence whatsoever to show that the penalty was assessed improperly or that it was excessive once the violations were established. Respondents therefore did not meet their burden of showing that the Division failed to assess the penalty properly. A review of the evidence establishes by a preponderance of the evidence that the penalty was properly assessed in accordance with the Rules and Regulations for Assessment of Administrative Penalties, and is certainly warranted under the circumstances.

Division's Exhibit 8 reviews certain events that transpired concerning the site both prior and subsequent to issuance of the NOVAP. It states that the date for submission of a RIWP was extended by Division to September 23, 1993; that pending a review of the RIWP, the work plan was to be implemented within 15 days of approval, and a Remedial Investigation Report ("RI Report") of the site was to be submitted to Division by December 10, 1993; and upon completion of Division's review of the RI Report, Respondent was to be prepared to submit for review a Remedial Action Work Plan for removal of on-site contamination.

Division's Exhibit 28 states that the RIWP was approved by Division on December 23, 1993; that the field work (which had been postponed to begin once weather conditions were

favorable) should be started no later than May 13, 1994, and then the RI Report with the analytical data was to be submitted to Division for review and comment.

Division's Exhibit 33 (letter report dated July 6, 1994), details the soil sampling and testing activities performed by Recon Environmental Corp. in accordance with the RIWP prepared by Clean Harbor's Environmental Services, Inc. dated October 29, 1993 and the analysis of the samples taken in June, 1994. The laboratory results of said analysis confirmed the presence of lead contamination on the subject premises.

Division's Exhibit 34 (letter dated July 7, 1994) confirms Division's instructions to Respondents to take immediate steps to restrict access to the contamination, to submit a Letter of Commitment by July 18, 1994; to submit a Remedial Action Work Plan ("RA Work Plan) to clean-up and dispose of all lead contaminated soil on site and offsite exceeding 150 ppm by August 16, 1994, and for Respondent to be prepared to implement the RA Work Plan within 10 days of approval by Division.

Division's Exhibit 35 (dated August 15, 1994) states that an inspection revealed that no fence was erected nor construction begun to restrict access to contaminated areas.

The documentary evidence introduced by Division shows that certain investigative work and analysis have been performed by Respondents after issuance of the NOVAP, but the

evidence clearly demonstrates that the site has not been remediated. The NOVAP therefore should be confirmed and (to the extent Respondent has not complied), Respondent should be ordered to comply fully with the Order portion of the NOVAP (except as modified herein as to dates and times).

FINDINGS OF FACT

After reviewing the documentary and testimonial evidence of record, I make the following findings of fact:

1. The Division of Air and Hazardous Waste Management ("Division") issued a Notice of Violation and Penalty ("NOVAP") to Manuel Furtado, Jr. and Bristol Sandblasting Company ("Respondents") on October 7, 1992.
2. Respondents filed a timely request for a hearing at the Administrative Adjudication Division ("AAD").
3. George and Ruth Pereira were granted intervention status in this administrative proceeding.
4. The Prehearing Conference in this matter was held on October 20, 1994 and the requisite Prehearing Conference

Record was prepared by the Hearing Officer who conducted same.

5. The hearing on the NOVAP was conducted on March 15, 23 and 27, 1995.
6. The Division presented two witnesses, Jeffrey Crawford and Gary Waldeck.
7. The Division's exhibits were admitted as Full Exhibits.
8. The Respondents presented no witnesses or documentary evidence.
9. The Intervenors, George and Ruth Pereira, presented no witnesses or documentary evidence.
10. On July 21, 1992, Inspectors conducted an inspection of the subject premises located at 28 and 20 Birch Swamp Road, in Warren, Rhode Island (also respectively known as Warren Tax Assessors Plat 22, Lot 8 and Plat 22, Lot 177).
11. As part of the July 21, 1992 inspection, the Division's inspectors took soil samples from the areas on the

subject site where sandblast grit had been disposed of on the ground by Respondents.

12. Division had an analysis of the soil samples taken from the subject site conducted by Alpha Analytical Laboratories, Inc. of Eight Walkup Drive, Westborough, Massachusetts.
13. The analytical results from the soil samples revealed lead levels, using the Toxicity Characteristic Leaching Procedure, at 130 ppm and 89.4 ppm.
14. The lead levels of the soil samples are above the regulatory limit of 5 ppm for the Toxicity Characteristic of lead, which characterizes the sandblast grit and soil as a hazardous waste.
15. Respondents generated and improperly disposed of lead-contaminated spent sandblast grit at 28 and 20 Birch Swamp Road, Warren, Rhode Island ("site"), which activities constituted the disposal of hazardous waste at the site.
16. Respondents failed to test the spent sandblast grit which they deposited on the site to determine whether it constituted hazardous waste.

17. Respondents failed to notify DEM that they were disposing of hazardous waste (re: lead-contaminated spent sandblast grit) at the subject site.
18. Respondents failed to request the proper approval or permits from DEM for hazardous waste activities conducted by Respondents at subject site.
19. DEM did not grant its approval for the disposal of the spent sandblast grit at the subject site; nor did DEM issue a permit for the hazardous waste activities conducted by Respondents at the subject site.
20. In December, 1992 (after issuance of the NOVAP), Respondents excavated the top six inches of a contaminated area on the subject premises and stockpiled the material on the site.
21. The excavation conducted by Respondents did not remove the contamination from the site, and did not comply with the Order portion of the NOVAP.
22. Certain soil sampling and testing activities were conducted on the site after issuance of the NOVAP.
23. Respondents commenced certain remedial activities pursuant to the NOVAP in that a RIWP for the site was submitted to Division.

24. The RIWP submitted for the subject premises was approved by Division on December 23, 1994.
25. Respondents have failed to implement the RIWP and have not completed remediation of the site in accordance with the NOVAP and/or directives of the Division.
26. The Order requested by Division in the October 7, 1992 NOVAP is necessary to assure compliance with the Statutes and Regulations.
27. The administrative penalty was assessed by Division in accordance with the Rules and Regulations for Assessment of Administrative Penalties.

CONCLUSIONS OF LAW:

Based upon the foregoing facts and testimonial and documentary evidence of record, I conclude as a matter of law that:

1. DEM has jurisdiction in this matter.
2. Division proved by a preponderance of the evidence that the Respondents, Manuel Furtado, Jr. and Bristol Sandblasting Company, deposited lead-contaminated spent sandblast grit at 28 and 20 Birch Swamp Road, Warren,

Rhode Island ("site"); that Respondents never notified DEM of such activities; Respondents did not request the proper permits for said activities; and DEM did not issue the requisite permits to conduct said hazardous waste activities.

3. Division proved by a preponderance of the evidence that Respondents violated R.I.G.L. Sections 23-19.1-8, 23-19.1-9 and 23-19.1-10(a) and Rules 7.01 and 7.09 of the Rules and Regulations for Hazardous Waste Management by generating and improperly disposing of lead-contaminated spent sandblast grit at the site.
4. Respondents failed to demonstrate by a preponderance of the evidence that the penalty was not assessed in accordance with the Rules and Regulations for Assessment of Administrative Penalties, as set forth in the NOVAP dated October 7, 1992.
5. The NOVAP dated October 7, 1992 should be affirmed in its entirety (except as modified herein as to dates and times).
6. The Department is entitled to the relief requested in the Order as set forth in the NOVAP dated October 7, 1992.

7. The administrative penalty of Ten Thousand Dollars (\$10,000.00) was properly assessed in accordance with the Rules and Regulations for Administrative Penalties and is not excessive.

Wherefore, it is hereby

ORDERED

1. That the Notice of Violation and Order and Penalty issued to the Respondents, Manuel Furtado, Jr. and Bristol Sandblasting Company, dated October 7, 1992, NOVAP #92-111 (AAD No. 92-015/AHE) is SUSTAINED.
2. That the Respondents shall fully comply with the requirements of the Order set forth in Sections A and B of the NOVAP issued to Respondents on October 7, 1992, (except as modified herein as to dates and times).
  - A. Respondents shall submit to Division for approval within five (5) days of receipt of the Final Decision and Order, a site characterization plan to characterize all areas where lead contamination and any other hazardous

waste constituents have been released. Upon approval of said plan by the Division, characterization must begin within seven (7) days. The plan must include, but not be limited to the following:

- a. Sampling and analysis plan to determine the real extent of contamination, including surface and subsurface parameters.
- b. Determination of clean-closure standards by establishing background levels for all constituents which characterize the material as a hazardous waste based on the Toxicity Characteristic Leaching Procedure (TCLP).

Sample results must be submitted to Division within 10 days of sampling. Based on the results of sample analysis, a remediation plan must be submitted within 20 days of receipt of results. Upon approval of the remediation plan by Division, remediation work is to begin within 10 days. The remediation plan must include, but not be limited to, the following:

- a. Remediation plan to remove all surficial and subsurficial contaminated sandblast grit and soil.
- b. Schedules and procedures for excavation and clean up of surficial and subsurficial contamination, to include storage, transportation and disposal plans.
- c. Final sampling analysis plan to confirm removal of all contamination, and decontamination procedure for equipment and personnel.
- d. Waste management plan to insure the prevention of further site contamination.

B. Respondents shall submit compliance certifications for all above requirements to Division subject to the penalties under 23-19.1-18 (H), within ten (10) days of compliance.

3. That the Respondents, Manuel Furtado, Jr. and Bristol Sandblasting Company, pay an administrative penalty for said violations, in the sum of Ten Thousand Dollars (\$10,000.00) no later than thirty (30) days after the date the Final Order is signed by the Director. Said payment shall be in the form of a certified check to the order of the General Treasurer of Rhode Island and sent directly to:

Rhode Island Department of Environmental Management  
Attention: Robert Silvia  
Office of Business Affairs  
22 Hayes Street  
Providence, Rhode Island 02908

Entered as a Recommended Decision and Order this 8th  
day of June, 1995.

*Joseph F. Baffoni*

Joseph F. Baffoni  
Hearing Officer  
Department of Environmental Management  
Administrative Adjudication Division  
One Capitol Hill, Third Floor  
Providence, Rhode Island 02908  
(401) 277-1357

Entered as a Final Agency Decision and Order this \_\_\_\_\_  
day of June, 1995.

*Timothy R. E. Keeney*

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

MANUEL FURTADO, JR./BRISTOL SANDBLASTING COMPANY  
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CERTIFICATION

I hereby certify that I caused a true copy of the within order to be forwarded, via regular mail, postage prepaid to Stephen H. Burke, Esq., Temkin & Stone, Ltd. 2500 Hospital Trust Tower, Providence, RI 02903; Gerald J. Coyne, Esq. Bristow & Coyne, 170 Westminster St., Suite 702, Providence, RI 02903 and via interoffice mail to Claude Cote, Esq., Office of Legal Services, 9 Hayes Street, Providence, RI 02908 on this 15<sup>th</sup> day of June, 1995.

  
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cc: Robert Silvia, Business Affairs

APPENDIX A

- Div. 1 Full Copy of Complaint Reports received by RIDEM (July 2, 1991 and July 10, 1991).
- Div. 2 Full Copy of letter to Louise Durfee, Director DEM, from Bristol County Water Authority (July 17, 1991).
- Div. 3 Full Copy of Certificate of Analysis of samples of site (TCLP lead at 130 ppm and 89 ppm) (August 11, 1992).
- Div. 4 Full Copy of RCRA NOVAP 92-111 issued to Manuel Furtado, Jr. (October 7, 1992).
- Div. 5 Full Copy of letter to RIDEM from Ferdinand A. Bruno, Esq. (November 10, 1992).
- Div. 6 Full Copy of "fax" received by RIDEM from Clean Harbors (July 13, 1993 at 7:28).
- Div. 7 Full Copy of "fax" received by RIDEM from Clean Harbors (July 13, 1993 at 7:25).
- Div. 8 Full Copy of LOR No. 93-020 issued by Division of Site Remediation ("DSR") to Manuel Furtado, Jr. (July 28, 1993).
- Div. 9 Full Copy of LOR No. 93-020 issued by Division of Site Remediation to Narragansett Electric Co. (July 28, 1993).
- Div. 10 Full Copy of letter to F.A. Bruno from RIDEM DSR (August 6, 1993).
- Div. 11 Full Copy of letter to RIDEM DSR from Narragansett Electric (August 6, 1993).
- Div. 12 Full Copy of letter to RIDEM from Ruth Pereira (August 12, 1993).

- Div. 13 Full Copy of letter to RIDEM DSR from Albert West (August 26, 1993).
- Div. 14 Full Copy of letter to RIDEM DSR from Sean Coffey (September 9, 1993).
- Div. 15 Full Copy of letter to RIDEM DSR from F.A. Bruno (October 14, 1993).
- Div. 16 full Copy of letter to F.A. Bruno from RIDEM DSR (October 15, 1993).
- Div. 17 Full Copy of letter to DEM Administrative Adjudication from Manuel Furtado, Jr. (October 22, 1993).
- Div. 18 Full Copy of letter to RIDEM DSR from Sean Coffey (October 28, 1993).
- Div. 19 Full Copy of letter to RIDEM DSR from Mark Laroche (November 1, 1993).
- Div. 20 Full Copy of letter to Mark Laroche from RIDEM DSR (November 24, 1993).
- Div. 21 Full Copy of Field Investigation Report, nine (9) photos (a thru i) taken at the site (December 6, 1993).
- Div. 22 Full Copy of letter to RIDEM legal from Mark Laroche (December 13, 1993).
- Div. 23 Full Copy of letter to RIDEM DSR from Mark Laroche (December 17, 1993).
- Div. 24 Full Copy of letter to Mark Laroche from RIDEM DSR (December 23, 1993).
- Div. 25 Full Copy of letter to Mark Laroche from RIDEM DSR (January 6, 1994).
- Div. 26 Full Copy of letter to RIDEM DSR from Mark Laroche (February 2, 1994).
- Div. 27 Full Copy of letter to Mark Laroche from RIDEM DSR (March 24, 1994).
- Div. 28 Full Copy of letter to Mark Laroche from RIDEM DSR (May 5, 1994).

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- Div. 29 Full Copy of letter to RIDEM DSR from Mark Laroche (May 13, 1994).
- Div. 30 Full Copy of letter to RIDEM DSR from Gerald Coyne (May 23, 1994).
- Div. 31 Full Copy of letter to Mark Laroche from RIDEM DSR (May 24, 1994).
- Div. 32 Full Ten (10) photos (a thru j), taken at the site (June 1, 1994).
- Div. 33 Full Copy of letter to RIDEM DSR from Certified Engineering (June 6, 1994).
- Div. 34 Full Copy of letter to Mark Laroche from RIDEM DSR (July 7, 1994).
- Div. 35 Full Copy of memo to file, four (4) photos (a thru d), taken at the site (August 15, 1994).
- Div. 36 Full Two (2) photos (a and b), taken at the site delivered to RIDEM DSR by Manuel Furtado, Jr. (August 31, 1994).
- Div. 37 Full Copy of letter to RIDEM from Clean Harbors (July 7, 1993).
- Div. 38 Full Resume of Cynthia M. Signore RIDEM Division of Site Remediation.
- Div. 39 Full Resume of Gary Waldeck RIDEM Division of Site Remediation.
- Div. 40 Full Resume of Jeffrey Paul Crawford RIDEM Division of Site Remediation.
- Div. 41 Full Resume of Beverly Milstone Migliore RIDEM Division of Waste Management.