

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

IN RE: John Huling, Sr.
Notice of Violation No. C89-0168

ORDER

This matter came before Hearing Officer McMahon on March 19, 1992 pursuant to the Motion for Sanctions and Memorandum in Support Thereof filed by Respondent on March 11, 1992. Objections were due March 18, 1992.

The Division's Objection to Motion for Sanction and its Memorandum in Support of the Division's Objection to Respondent's Motion for Sanctions were hand-delivered to the Offices of DEM Administrative Adjudication Division on March 18, 1992. Both documents were time-stamped at 4:11 p.m.

A review of the pertinent Rules indicates that the Objection cannot be considered to have been timely filed.

Rule 5.00 of the Administrative Rules of Practice and Procedure for the Department of Environmental Management Administrative Adjudication Division for Environmental Matters (AAD Rules) requires that papers must be filed with the Clerk at the Administrative Adjudication Division Office within the time limits for such filings. Further, it specifically states:

Papers filed in the following manner shall be deemed filed as set forth herein:

1. Hand-delivery: Papers hand delivered during regular business hours shall be deemed filed on the date of hand-delivery. Papers delivered by

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hand at times other than during regular business hours shall be deemed filed on the next regular business day when stamped by the Clerk of the Administrative Adjudication Division (emphasis added).

Paragraph 16 of Rule 2.00 identifies the Division's regular business hours:

16. "Regular Business Hours". Papers will be deemed filed during regular business hours if received during the hours of 8:30 a.m. to 4:00 p.m. Monday through Friday. The department's date stamp shall be presumptive of the actual date and the time of filing. Filing by telecopier or facsimile is prohibited (emphasis added).

In light of the clear provisions of Rules 2.00 and 5.00, the Division's Objection and Memorandum must therefore be deemed to have been filed on March 19, 1992, and thus were not filed within seven (7) days after the motion was filed with the Administrative Adjudication Division as required under Rule 8.00 of the AAD Rules. Pursuant to Rule 8.00 and numerous decisions of this tribunal as well as by Final Order of the Director, the late filing of the Objection is deemed a waiver of said objection. Carol Anne Mancini, AAD No. 91-039/IE (Department's Motion to Dismiss granted 1/13/92); Fredric Dupuis Spotless Cleaners, AAD No. 92-001/AHE (Respondent's Motion to Dismiss granted 2/3/92); Fairlawn Oil Service, AAD No. 91-003/GWE

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(Respondent's Motion to Compel granted 2/13/92); Richard and Ernestine Fryburg, NOV Nos. C89-0106 and C89-0108 (Petition to Intervene granted 3/19/92).

It should be noted that the Rules provide a remedy when filings are expected to be late but it must be exercised prior to the expiration of the time limit. Rule 5.00 (c) allows the Hearing Officer, for good cause shown, to extend time limits in appropriate circumstances. No such extension was sought in this matter.

Respondent has requested oral argument on his Motion for Sanctions, but after reviewing his submission as well as all pertinent AAD Rules, the Superior Court Rules of Civil Procedure and the statutes cited below, I have determined that oral argument would not advance my understanding of the issues and therefore is not warranted in this instance. Rule 8.00 (a)3.

Respondent has cited Rule 11 of the R.I. Rules of Civ. P. (presumably the Superior Court Rules of Civil Procedure), R.I. Gen. Laws § 2-29-21 (sic), R.I. Gen. Laws § 9-29-21 and R.I. Gen. Laws § 9-20-21 (sic) in support of his request for sanctions. In a review of his locatable cites, the R. I. Administrative Procedures Act (specifically § 42-35-9 et seq.), and R. I. Gen. Laws Title 42 Chapter 17.7 which established the

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Administrative Adjudication Division for Environmental Matters,
I can find no authority for this body to issue sanctions in an
appropriate case.

Further, the provisions of §42-17.7-8 entitled "Oaths--
Subpoenas--Powers of hearing officers." would suggest that this
tribunal has no such jurisdiction. While not precisely on
point, the section requires application to the Superior Court in
matters of contempt and clearly leaves this tribunal without
such equity powers.

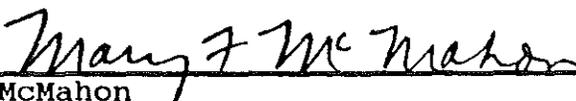
Accordingly, I find that there is no authority for this
tribunal to impose sanctions, even in the unlikely event that
the facts herein would support such sanctions.

Wherefore it is hereby

ORDERED

The Respondent's Motion for Sanctions is denied.

Entered as an Administrative Order this 23rd day of
March, 1992.



Mary F. McMahon
Hearing Officer
Department of Environmental Management
Administrative Adjudication Division
One Capitol Hill, 4th floor
Providence, RI 02908

032392

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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 John B. Webster, Esq., Adler Pollock & Sheehan Incorporated, 2300 Hospital Trust Tower, Providence, RI 02903 and via interoffice mail to Catherine Robinson Hall, Esq., Office of Legal Services, 9 Hayes Street, Providence, RI 02908 on this 24th day of March, 1992.

Tracy Shields