

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

**RE: COSTANTINO, GINO
NOTICE OF VIOLATION CI99-267**

AAD NO. 01-007/IE

DECISION AND ORDER

This matter came before the Department of Environmental Management, Administrative Adjudication Division for Environmental Matters ("AAD") pursuant to Gino Costantino's request for hearing on the Notice of Violation and Order ("NOV") issued by the DEM Office of Compliance and Inspection ("OCI") on June 11, 2001. Mr. Costantino ("Respondent") represented himself. The OCI was represented by Gregory S. Schultz, Esq.

The hearing was held on March 31 and April 2, 2003. No post-hearing briefs were filed and the hearing was considered closed on April 2, 2003.

The within proceeding was conducted in accordance with the statutes governing the Administrative Adjudication Division for Environmental Matters (R.I. GEN. LAWS § 42-17.7-1 *et seq.*); Chapter 17.6 of Title 42 entitled "Administrative Penalties for Environmental Violations"; the Administrative Procedures Act (R.I. GEN. LAWS § 42-35-1 *et seq.*); the Administrative Rules of Practice and Procedure of the Administrative Adjudication Division for Environmental Matters ("AAD Rules"); and the Rules and Regulations for Assessment of Administrative Penalties ("Penalty Regulations").

PREHEARING CONFERENCE

A prehearing conference was held on August 23, 2002 and a Prehearing Conference Record and Order was issued on December 5, 2002. The parties agreed to one stipulation of fact:

Gino Costantino is the owner of the real property located at 1A Snagwood Road, Foster, Rhode Island, Tax Assessor's Plat 13, Lot 27 (the "Property").

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

HEARING SUMMARY

At the hearing, the OCI called three (3) witnesses: **Robert Fritsche**, an Engineering Technician III in the DEM's Office of Compliance and Inspection; **David E. Chopy**, the Supervising Sanitary Engineer in the Office of Compliance and Inspection and a Registered Professional Engineer; and **Gino Costantino**, the Respondent in this matter.

Respondent presented one (1) witness: **Gino Costantino**.

I. The Notice of Violation

The NOV issued to the Respondent on June 11, 2001 identifies property located at 1A Snagwood Road, Foster, Rhode Island. According to the NOV, on three occasions, December 16, 1999, June 13, 2000 and March 20, 2001, a DEM inspector conducted an inspection of the property and found that sanitary sewage had been discharged to the surface of the ground from the septic system on the property. On or about December 27, 1999 and June 22, 2000, the DEM issued Notices of Intent to Enforce ("NOIs") that required Respondent to pump the septic system as necessary to prevent the overflow of sewage to the surface of the ground; to have the septic system inspected to determine the cause of the failure; and to submit a repair application to correct the failure, if necessary. As of the date of the issuance of the NOV, according to the NOV, Respondent had failed to adequately comply with the terms of the NOI.

The NOV cites Respondent for violating Section SD 2.08 of the Rules and Regulations Establishing Minimum Standards Relating to Location, Design,

Construction and Maintenance of Individual Sewage Disposal Systems (the “ISDS Regulations”).

That Rule provides in pertinent part as follows:

SD 2.08 Discharge on or to the Surface of the Ground

No person shall discharge or permit the overflow or spillage of any treated or untreated sanitary sewage on or to the surface of the ground unless permitted by the Director.

The order portion of the NOV requires Respondent to immediately pump the septic system to prevent sanitary sewage from overflowing on the property and to immediately take steps to reduce the discharge of sewage to the septic system, such as through the use of water conservation devices. Respondent is also required to submit to DEM a written proposal for the permanent solution to the septic system failure (the “proposal”). That proposal must include a system assessment prepared and signed by a licensed designer that sets forth the probable cause(s) for the failure and that proposes a plan for the correction of the septic system failure. For any proposed repair to the system, the system assessment must also include the submittal of a formal application and plan in accordance with the ISDS Regulations.

The order also sets forth a timetable for Respondent to cure any deficiencies the Department may find in the application and to commence and complete the work on the project.

For the three violations alleged in the NOV, the OCI seeks the assessment of a Three Thousand (\$3,000.00) Dollar administrative penalty.

II. Discharge of Sanitary Sewage

Robert Fritsche was called as OCI’s first witness. Mr. Fritsche testified that he has been an Engineering Technician III in the OCI for 3 ½ years. It is his responsibility to inspect complaints of sewage discharges or odors and he has conducted approximately 750 ISDS inspections. Prior to working at the Department, Mr. Fritsche

was employed by the Narragansett Bay Commission for approximately 14 years. As holder of a Class II Operator's license, Mr. Fritsche treated effluents and sewage at the Commission's Wastewater Treatment Facility. Following Respondent's *voir dire*, Mr. Fritsche was qualified as an expert in the identification of sanitary sewage.

Mr. Fritsche testified that on December 16, 1999, in response to a complaint (OCI 1), he first visited Mr. Costantino's property. Due to confusion as to the location of the problem, Mr. Fritsche also visited some nearby properties. He detected two areas of concern and noted them in his report (OCI 2A). One area, near pole #2 on Snagwood Road, contained a puddle extending about ten feet long and about 18 inches wide. Sewage smell was very evident. OCI 2A at 1. His investigation also led him to the yard of 1A Snagwood Road. There he found a very wet area about 20 to 30 feet from the septic tank. He described it as a "breakout of sewage", meaning the lowest area of the system and "the path of least resistance". As a result of his inspection, the first NOI was issued to Gino Costantino on December 27, 1999.

The NOI (OCI 3) required Respondent to immediately take steps to reduce the discharge of sewage to the disposal system, such as through the use of water conservation devices, and to have the system pumped as necessary to prevent the system from overflowing. It required Respondent to submit a plan for a permanent solution to the problem, either by connecting to a sewer if available, or by having a licensed designer conduct an inspection to determine the cause of the system's failure. That evaluation was to be submitted to the Department within fifteen days. The NOI provided that if a repair was necessary, then the repair application was to be submitted to the Department within twenty days; the approved repair must then be installed within 120 days of receiving the approval. *Id.* at 1.

Mr. Fritsche testified that, in response to the NOI, Respondent installed lowflow devices. A plan was never submitted.

Following receipt of another complaint (OCI 4), Mr. Fritsche visited the property on June 13, 2000. He again found the breakout of sanitary sewage approximately 20 feet down gradient from the septic tank, roughly in the same area of Mr. Costantino's yard as in the previous visit. He testified that the distinctive odor, the presence of flies and the discolored grass were indicators of sanitary sewage. He stated that there was "no question" that it was sanitary sewage. In the report of this inspection, Mr. Fritsche described the area 20 feet below the septic tank cover as "wet with ponding sewage". OCI 5A at 1.

(During this June 13th inspection, Mr. Fritsche sampled the fluids near pole #2. Although he had smelled sewage at that location, the testing results showed that the fecal coliform level was very low. Later, in David Chopy's testimony, it became clear that the OCI was not pursuing this possible source against Respondent. The violations identified in the NOV were for the breakout area near the septic system in Mr. Costantino's yard.)

As a result of the June 13th inspection, a second NOI (OCI 6) was issued to Mr. Costantino on June 22, 2000. This notice contained the same requirements as set forth in the first NOI.

Mr. Fritsche conducted a re-inspection of the site on March 20, 2001. He testified that although there was snowcover in most of the yard, there were two locations where snow was absent and fluids were present on the ground. In one section, the general area of the previously-observed breakout, there was "definitely sewage" odor. Mr. Fritsche stated that sanitary sewage appeared to be leaking from the tank. In his inspection report from this visit to the site, Mr. Fritsche noted that in the second area, further downgrade, no sewage odor was present. OCI 8A at 1.

The NOV was issued on June 11, 2001 (the cover letter is dated June 13, 2001). OCI 9.

On another visit, conducted on April 3, 2002, Mr. Fritsche noticed that a large area of the yard was wet. He noted the presence of the odor and fluid and testified that there was "no question" that it was sanitary sewage. It was the same area, 25 to 30 feet downgrade from the concrete septic tank, where he had previously observed the sewage breakout. He also noted, both in his testimony and in the inspection report, that the septic tank cover was "a little crooked" and was "not level". OCI 12 A at 1.

Another re-inspection was done on June 7, 2002. He testified that the sewage problem still existed in the same general area. As Mr. Fritsche set forth in his report, he and Mr. Costantino walked part of the area with a copy of the ISDS application sketch of the system that Mr. Costantino had provided. In one low area there was a shallow puddle where Mr. Fritsche detected a sewage odor. The report states that Mr. Costantino speculated that the odor was from an old overflow that had been reactivated by recent rainfall. OCI 16 at 1.

Mr. Fritsche's final visit to the site occurred four days prior to the commencement of this hearing. He testified that during the March 27th re-inspection, he observed that the ground was "very, very wet". He had checked for odor and concluded that it was sanitary sewage located in the same area as before. His report provides more specifics: that the area 30 feet downhill from the tank was wet and soggy; that fluid was observed on the surface of the ground; and that a sewage odor was detected. OCI 15 at 1.

The witness was questioned under cross-examination about the initial report of a pipe under Mr. Costantino's driveway and whether the sewage may have come from a neighboring property. See OCI 1 and OCI 2A at 1. Mr. Fritsche stated that the existence of such a pipe remained unconfirmed; he had poked around the driveway area but could not discover it.

Mr. Fritsche was also questioned about an abutting neighbor who apparently had been having difficulty with his septic system. Although he had been on Russell Smith's property during the December 16, 1999 investigation, he had not detected the sewage odor. Other than on that date, his visits to the neighbor's property were never on the occasions when he was re-inspecting Respondent's.

Mr. Fritsche also testified to Mr. Costantino's general cooperativeness. Respondent did not refuse admittance to the property and Mr. Fritsche, on at least one occasion, was allowed into the home to see that the sump pump had been disconnected from the septic system as David Chopy had previously recommended.

Although Mr. Fritsche had taken a fluid sample from the wet area near pole #2, he had not sampled the area in Mr. Costantino's yard. In redirect examination, the witness explained that it was the practice to sample only if there was a question as to the presence of sanitary sewage. If it was obviously sewage, then no sample was taken.

He also ruled out Neighbor Smith's property as the source of the sewage in Respondent's yard. He stated that any overflow from Smith's septic system would flow towards the road; in addition, Smith's system was in excess of 75 feet from the wet area in Respondent's yard.

David Chopy was also called as an OCI witness and was qualified as an expert in the areas of sanitary engineering and in the application of, and compliance with, the ISDS Regulations as they apply to enforcement matters. As a Supervising Sanitary Engineer, Mr. Chopy oversees a staff of thirteen individuals, covering four programs dealing with water pollution, septic systems, dams and wetlands. He supervises inspectors, signs enforcement letters and prepares NOVs for the Chief's signature.

In this matter, Mr. Chopy had reviewed the two NOIs with the file for accuracy, and then signed the NOIs. He stated that Respondent had failed to fully comply with

the required actions set forth in the NOIs: he did not pump the system often enough; he did not hire a licensed designer to inspect the system and determine the cause for its failure; and he did not file a plan.

Mr. Chopy testified that, based upon his review of the file, his discussions with Robert Fritsche, and the location of the sewage breakout to the septic system, he concluded that Mr. Costantino's septic system was not functioning properly. He stated that a high water table made septic systems "prone to failure". Other factors that could impact a system's functioning included how it was maintained, whether it was being operated in the manner in which it was designed, and whether the conditions of the site had changed.

David Chopy also explained the testing procedures for determining the presence of fecal coliform. He had instructed his inspectors that when sewage presence was suspected but there was no odor, they should take water samples.

During cross-examination, the witness was questioned about Mr. Costantino's response to the NOI. Mr. Chopy did not recall any response; rather, he noted that Respondent only responded after the NOV had been issued. Although Respondent had hired Scituate Cesspool to conduct an inspection on September 13, 2001, Mr. Chopy had rejected the results because Scituate Cesspool was not a designer licensed by the Department.

The report from Scituate Cesspool (Resp. 1) indicates that water saving devices were in use, such as low-flush toilets and low-flow shower heads. *Id.* at 2. At the time of the inspection, it was noted that there was no evidence of sewage surfacing and the form was checked that the grass was not greener over the drainfield. *Id.* at 3. Scituate Cesspool noted in the inspection form that the system passed the flow test on that date. *Id.* at 4.

Mr. Chopy was also questioned about the letter from Schultz Engineering¹, prepared on behalf of Respondent. Mr. Chopy acknowledged that Schultz Engineering had not found a problem with the system. His concern, however, was that Schultz Engineering had performed the inspection in July 2002, in the middle of a drought. David Chopy testified that he had spoken with Mr. Schultz who had agreed that the testing should be conducted in March or April, when the water table would be at its highest, to determine if the system was functioning properly.

The letter signed by Robert C. Schultz of Schultz Engineering, a licensed designer, represents that a visual inspection of the system was conducted. The septic tank appeared to be in a maintained condition and there was no evidence of hydraulic backflow into the septic tank. He also found no evidence of hydraulic failure from the disposal field or in the perimeter fill area of the system. The letter references the flow test results from the testing done by Scituate Cesspool in September of the previous year, but no independent testing was conducted by Schultz Engineering. Mr. Schultz concluded that the inspection showed no evidence of a failed system on the property.

Resp. 2.

Mr. Schultz' letter included the qualification, however, that the ISDS application, approved as a repair in 1980, lacked information regarding the relative elevations to the mean seasonal high water table or the separation of the leachfield bottom to that elevation. The letter also noted the presence of odors offsite indicating a system failure on other property. *Id.*

Mr. Chopy testified further under re-cross examination by Gino Costantino. The witness stated that Respondent had not had the system evaluated prior to the issuance of the NOV; well after its issuance, Respondent had the system inspected by a

¹ There is no relation to the OCI counsel Gregory Schultz.

licensed designer in July 2002. He was never provided information on the number of times Respondent may have had the system pumped. He acknowledged that Respondent had had the sump pump disconnected from the system.

Mr. Chopy was asked how the system could have an overflow if the house was not occupied. He speculated that water from the surface could enter the tank if it was cracked or if the tank was not properly sealed. The surface water would come in contact with effluent in the leachfield and then sewage could discharge to the surface of the ground.

The OCI called Mr. Costantino as its final witness. Mr. Costantino testified that he has been an owner of the property for 14 to 15 years. He currently is an owner of the property.

Respondent's only witness was Gino Costantino. Mr. Costantino presented his evidence in narrative form. He stated that he does not live at 1A Snagwood Road throughout the year; he lives at his beach property for three to four months during the year. Since August 2002, he has resided in Smithfield, Rhode Island. He concluded that the Snagwood property should not be having septic problems.

The final document offered into evidence by Respondent was the receipt from Scituate Cesspool dated March 29, 2002. It contains the notation that 800 to 1000 gallons had been pumped from the septic system. The receipt indicates that the system was overfilled and that water had been coming back from the drainfield. Resp. 7.

The OCI waived cross-examination of Gino Costantino.

Conclusion

The septic system inspection conducted by Scituate Cesspool on September 13, 2001 was performed by an unlicensed designer three months after the issuance of the NOV and presumably after Mr. Costantino had been away for the summer months

at his beach property. The inspection conducted by Schultz Engineering, based upon a flow test done by Scituate Cesspool, was provided over a year after the issuance of the NOV and was performed during the month of July 2002, during a drought and after Mr. Costantino had been away for the summer months at his beach property. I therefore can give the conclusions set forth in Respondent's exhibits 1 and 2 very little weight.

There may be many reasons Respondent was having difficulties with his septic system. A high water table, an exceptionally rainy period, surface water entering the septic tank or overloading the system by having the sump pump connected to it are only a few of the possible causes of the system's failure. Whatever the cause, however, the OCI clearly met its burden to show that sanitary sewage was being discharged to the surface of the ground on at least three different occasions. The OCI could have pursued the violations that occurred after the issuance of the NOV, but since they chose not to amend the NOV, the additional violations are not further considered in this decision.

The OCI has proved by a preponderance of the evidence that on December 16, 1999, June 13, 2000 and March 20, 2001 Respondent permitted the overflow of sanitary sewage to the surface of the ground in violation of SD 2.08 of the ISDS Regulations.

III. Assessment of an Administrative Penalty

As indicated in the NOV, the OCI seeks the imposition of an administrative penalty in the amount of Three Thousand (\$3,000.00) Dollars. The NOV states that the penalty was assessed pursuant to R.I. GEN. LAWS § 42-17.6-2 and was calculated pursuant to the Penalty Regulations.

§ 12(c) of the Penalty Regulations provides the following:

In an enforcement hearing the Director must prove the alleged violation by a preponderance of the evidence. Once a violation is established, the violator bears the burden of proving by a preponderance of the evidence that the Director failed to assess the penalty and/or the economic benefit portion of the penalty in accordance with these regulations.

The Department's interpretation of this provision requires the OCI to prove the alleged violation by a preponderance of the evidence and "includes establishing, in evidence, the penalty amount and its calculation." The violator then bears the burden of proving that the penalty and/or economic benefit portion of the penalty was not assessed in accordance with the Penalty Regulations. In Re: Richard Fickett, AAD No. 93-014/GWE, Final Decision and Order issued by the Director on December 9, 1995.

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 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 appropriate penalty matrix.

The penalty amount and its calculation were established in evidence through the introduction of the Notice of Violation with the attached Penalty Summary and Penalty Matrix Worksheet (OCI 9 at 9-10) and the testimony of David Chopy. Mr. Chopy testified that he used the Penalty Regulations to calculate the penalty and drafted the Penalty Summary. He determined that this matter was a Type I violation because it involved the discharge of sewage to the surface of the ground. The regulatory prohibition against such a discharge was directly related to protecting health, safety, welfare or the environment, so the discharge was a Type I violation. The witness explained further that sanitary sewage on the ground is a potential threat to public health because of the exposure to diseases associated with sewage, including cholera and gastroenteritis. Vectors, such as mosquitoes, rats, flies and mice, could transmit the diseases to the human population.

Mr. Chopy also testified that he drafted the Deviation from Standard and found that seven of the ten factors (listed in the Penalty Regulations) applied to this case. Under cross-examination he explained that he determined it was a Major violation due to the inspection reports prepared by Robert Fritsche and the fact that Respondent did not respond to either of the NOIs. He said that he had no information that Respondent did anything to address the problem prior to the issuance of the NOV.

Mr. Chopy stated that the maximum penalty allowed by statute was \$1,000 for each violation. The penalty range for a Major violation is established in the penalty matrix as \$800 to \$1,000. He determined that the maximum penalty was appropriate because there was sewage on the ground, the duration of the violation, the proximity to adjacent properties and the failure of Mr. Costantino to do anything to resolve the problem.

The Penalty Matrix Worksheet, attached to the NOV, identifies the seven factors that were considered. Those factors were: the extent to which the act or failure to act was out of compliance – sewage was discharged and preventing the discharge is a “primary objective of the ISDS Regulations”; environmental conditions – the overflow was near a public road in a residential area; the amount of the pollutant – the volume was unknown; the toxicity or nature of the pollutant – “sewage contains potentially pathogenic bacteria and viruses”; the duration of the violation – “at least 1½ years”; whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance – the system was not pumped as needed to prevent the overflow, a repair application was not filed, and no attempt was made to have the system evaluated; and whether the person has previously failed to comply with any regulation, order, statute, license, permit or approval issued or adopted by the Department or any law which the Department has the authority or responsibility to enforce – Respondent did not comply with two NOIs. OCI 9 at 10.

The NOV also established in evidence the amount of the penalty. It is set forth in the NOV as well as in the Penalty Summary attached to the NOV. The total penalty proposed under the Penalty Regulations was \$3,000.00. *Id.* at 9.

Gino Costantino testified on his own behalf. He stated that when he received the NOV, he checked the house and took care of almost everything he was asked. He excused the problem as it being the first time they had lived in a home with a septic system, instead of one connected to a sewer system, and that weather had been a factor.

Conclusion

Pursuant to § 12(c) of the Penalty Regulations, Respondent had the burden to prove by a preponderance of the evidence that the administrative penalty was not assessed in accordance with the Penalty Regulations. Based upon the testimonial and documentary evidence of record, I find that Respondent has not proved that the proposed \$3,000.00 administrative penalty was not assessed in accordance with the Penalty Regulations.

Prior to the issuance of the NOV, Respondent received two NOIs that required him to have the system inspected and evaluated by a designer licensed by the Department. He did not do so. The evidence strongly points to a system that has failed, yet Mr. Costantino has taken years to take any steps to adequately address the problem and has still not adequately addressed the problem. The violations were appropriately classified as Type I Major violations and the penalty assessed in the NOV was therefore warranted.

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

FINDINGS OF FACT

1. Gino Costantino was an owner of the property located at 1A Snagwood Road, Foster, Rhode Island for the dates cited below, and is a current owner of the property.
2. On December 16, 1999, June 13, 2000 and March 20, 2001, an inspector from the DEM conducted an inspection of the property located at 1A Snagwood Road, Foster, Rhode Island.
3. On December 16, 1999 sanitary sewage was found to have been discharged to the surface of the ground from the septic system on Respondent's property.
4. On December 27, 1999 a NOI was issued to Respondent for the discharge of sanitary sewage on the property. Among other provisions, the NOI required Respondent to have the system pumped as necessary to prevent the system from overflowing; and to submit a plan for a permanent solution to the problem, either by connecting to a sewer if available, or by having a licensed designer conduct an inspection to determine the cause of the system's failure. That evaluation was to be submitted to the Department within fifteen days.
5. On June 13, 2000 sanitary sewage was found to have been discharged to the surface of the ground from the septic system on Respondent's property.
6. On June 22, 2000 a second NOI was issued to Respondent for the discharge of sanitary sewage on the property. The NOI contained similar requirements as those set forth in the NOI issued on December 27, 1999.
7. On March 20, 2001 sanitary sewage was found to have been discharged to the surface of the ground from the septic system on Respondent's property.
8. Although required by both NOIs, Respondent did not have the system pumped as necessary to prevent the overflow of sewage to the surface of the ground.
9. Although required by both NOIs, Respondent did not submit a plan for a permanent solution to the problem, either by connecting to a sewer if available, or by having a licensed designer conduct an inspection to determine the cause of the system's failure.
10. The OCI established in evidence that each of the three violations was determined to be a Type I Major Deviation from Standard.
11. The OCI established in evidence the amount of the penalty as \$1,000.00 for each of the three violations, for a total administrative penalty of \$3,000.00.
12. An administrative penalty in the amount of \$3,000.00 for the three violations cited in the NOV 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 OCI has proved by a preponderance of the evidence that Respondent discharged or permitted the overflow of sanitary sewage to the surface of the ground on three occasions in violation of Section SD 2.08 of the ISDS Regulations.
2. The OCI established in evidence the penalty amount and its calculation.
3. Respondent has failed to prove by a preponderance of the evidence that OCI's determination that each of the three violations was a Type I Major Deviation from Standard was not in accordance with the Penalty Regulations.
4. Respondent has failed to prove by a preponderance of the evidence that the assessment of an administrative penalty in the amount of \$3,000.00 was not in accordance with the Penalty Regulations.
5. The assessment of an administrative penalty against Respondent in the amount of \$3,000.00 is in accordance with the Penalty Regulations.

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

ORDERED

1. Respondent shall take immediate action to pump the septic system as necessary to prevent any and all sanitary sewage from overflowing on the property, and continue such pumping until the system is permanently repaired.
2. Respondent shall immediately take steps to reduce the discharge of sewage to the septic system, such as through the use of water conservation devices.
3. Within thirty (30) days of the receipt of this Final Agency Order, Respondent shall submit to the DEM a written proposal for the permanent solution to the septic system failure (the "proposal") which must include an inspection of the septic system by a designer licensed by the department to determine the cause of the septic system failure (the "system assessment"). The system assessment must be signed by the designer who inspected the system, must set forth the probable cause(s) for the septic system failure, and propose a plan for the correction of the septic system failure. For any proposed repair to the system, the system assessment must include the submittal of a formal application and plan in accordance with the ISDS Regulations.
4. The proposal shall be subject to the DEM's review and approval. Upon review, the DEM shall provide written notification to the Respondent either granting formal approval or stating the deficiencies therein. Within fourteen (14) days (unless a

longer time is specified) of receiving a notification of deficiencies, the Respondent shall submit to the DEM a modified proposal or additional information necessary to correct the deficiencies.

5. Respondent shall commence work on the project in accordance with the method approved by the Director within twenty (20) days of approval (unless otherwise expressly authorized by the Director in writing to commence work at a later time), and complete such work within one hundred twenty (120) days of said approval or other date specified by the Director.
6. An administrative penalty in the amount of Three Thousand Dollars (3,000.00) is hereby ASSESSED against Respondent.
7. Respondent shall make payment of the administrative penalty within thirty (30) days from the date of entry of the Final Agency Order in this matter. Payment shall be in the form of a certified check or money order made payable to the "General Treasury -- Water & Air Protection Program Account", and shall be forwarded to:

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

Entered as an Administrative Order this 15th day of April, 2003 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, Third Floor
Providence, RI 02908
(401) 222-1357

Entered as a Final Agency Order this 17th day of April, 2003.

Jan H. Reitsma
Director
Department of Environmental Management
235 Promenade Street, Fourth Floor
Providence, Rhode Island 02908

CERTIFICATION

I hereby certify that I caused a true copy of the within Order to be forwarded by first-class mail, postage prepaid, to Gino Costantino, 14 Oneida Street, Cranston, RI, 02920; via interoffice mail to Gregory Schultz, Esquire, Office of Legal Services and Dean H. Albro, Chief, Office of Compliance and Inspection, 235 Promenade Street, Providence, RI 02908 on this _____ day of April, 2003.

If you are aggrieved by this final agency order, you may appeal this final order to the Rhode Island Superior Court within thirty (30) days from the date of mailing of this notice of final decision pursuant to the provisions for judicial review established by the Rhode Island Administrative Procedures Act, specifically, R.I. Gen. Laws §42-35-15.

APPENDIX A
LIST OF EXHIBITS

OCI'S EXHIBITS

- | | |
|------------------|--|
| OCI 1
Full | <u>Copy of Complaint Form</u> dated December 16, 1999, one page; |
| OCI 2
Full | Withdrawn (OCI 2A substituted for copy); |
| OCI 2A
Full | <u>Original Enforcement Inspection Report</u> dated December 16, 1999, two pages with three pages of photographs attached; |
| OCI 3
Full | <u>Copy of Notice of Intent to Enforce</u> dated December 27, 1999, with receipts for certified mail attached, two pages; |
| OCI 4
Full | <u>Copy of Complaint Form</u> dated May 23, 2000, one page; |
| OCI 5
for Id | Withdrawn (OCI 5A substituted for copy); |
| OCI 5A
Full | <u>Original Enforcement Inspection Report</u> dated June 13, 2000, two pages with three pages of photographs attached; |
| OCI 6
Full | <u>Copy of Notice of Intent to Enforce</u> dated June 22, 2000, with receipts for certified mail attached, two pages; |
| OCI 7
for Id | <u>Copy of Enforcement Inspection Report</u> dated January 10, 2001, two pages; |
| OCI 8
for Id | <u>Copy of Enforcement Inspection Report</u> dated March 20, 2001, two pages with two pages of photographs attached; |
| OCI 8A
Full | <u>Original Enforcement Inspection Report</u> dated March 20, 2001, two pages with two pages of photographs attached; |
| OCI 9
Full | <u>Copy of Notice of Violation and Order</u> dated June 13, 2001 with cover letter and receipts for certified mail attached, eleven pages; |
| OCI 10
for Id | <u>Copy of Enforcement Inspection Report</u> dated January 9, 2002, two pages; |
| OCI 11
for Id | <u>Copy of Enforcement Inspection Report</u> dated February 4, 2002, two pages with two pages of photographs attached; |
| OCI 12
for Id | <u>Copy of Enforcement Inspection Report</u> dated April 3, 2002, two pages with one page of photographs attached; |
| OCI 12A | <u>Original Enforcement Inspection Report</u> dated April 3, 2002, two pages |

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Full with one page of photographs attached;

OCI 13 Resume of Robert Fritsche, one page;
for Id

OCI 14 Resume of David Chopy, one page;
Full

OCI 15 Original Enforcement Inspection Report dated March 27, 2003, six
Full pages;

OCI 16 Original Enforcement Inspection Report dated June 7, 2002, five pages.
Full

RESPONDENT'S EXHIBITS

Resp 1 Copy of Statement and Inspection Form from Scituate Cesspool, Inc.
Full dated September 13, 2001, four pages;

Resp 2 Copy of letter from Schultz Engineering & Construction Management
Full to Gino Costantino dated July 22, 2002, one page;

Resp 3 Copy of Plan of dwelling and septic system; Copy of Interdepartmental
for Id I.S.D.S. Action Form dated September 25, 1980; Copy of ISDS Repair
Application dated September 25, 1980, three pages;

Resp 4 Copy of Cover Letter dated June 13, 2001 for Notice of Violation,
Full addressed to Gino Costantino, Copy of Letter from Gino Costantino to
Bonnie Stewart, Clerk, dated July 6, 2001, two pages;

Resp 5 Copy of Letter from Schultz Engineering & Construction Management
Full to Gino Costantino dated July 27, 2002, one page;

Resp 6 Copy of Letter from Gino Costantino, attention David E. Chopy, dated
Full September 27, 2001, one page.

Resp 7 Receipt from Scituate Cesspool, Inc. for pumping of system on March
Full 29, 2002.