

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

**RE: RONALD J. ALMEIDA / RONALD J. ALMEIDA AAD NO. 01-014/WME
TRUCKING, INC. / ROSEMARY HALSTEAD / JOHN
ALMEIDA / MANUEL J. ALMEIDA
NOTICE OF VIOLATION OC&I/SW 01-048**

DECISION AND ORDER

This matter came before the Department of Environmental Management, Administrative Adjudication Division for Environmental Matters ("AAD") pursuant to requests for hearing filed by the Respondents on the Notice of Violation and Order ("NOV") issued by the DEM Office of Compliance and Inspection ("OCI") on September 6, 2001. The hearing was held on May 12, 2003. The Notice of Administrative Hearing and numerous administrative orders issued while this matter was pending at the AAD, were sent individually to the Respondents at the single address they had provided in their requests for hearing. Rosemary Halstead, John Almeida and Manuel J. Almeida did not appear at the hearing, however.

Ronald J. Almeida ("Respondent") appeared on behalf of himself and Ronald J. Almeida Trucking. Mr. Almeida was informed by this Hearing Officer on several occasions, and it was incorporated in at least two orders sent to all the Respondents, that he would be held to the same rules of AAD practice and procedure, as well as evidentiary rules, as if he were represented by an attorney. He stated on the record that the company was not incorporated and that the other Respondents, who are his brothers and sister, were aware of the hearing and that he was also appearing on their behalf. None of the Respondents were represented by legal counsel.

The OCI was represented by Bret Jedele, Esq..

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The OCI and Respondent filed post-hearing memoranda on June 27, 2003 and the hearing was deemed to have concluded on that date.

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 for the Department of Environmental Management, 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 conducted on August 7, 2002. Ronald J. Almeida appeared as a named Respondent and also as a principal of Ronald J. Almeida Trucking. None of the other named Respondents appeared at the prehearing conference. The parties then present agreed to the following stipulations of fact:

1. The subject property is located at 509 Brayton Road in the Town of Tiverton, Rhode Island, otherwise identified as Tiverton's Assessor's Map 3-8, Block 116, Lot 6 (the "property").
2. Ronald J. Almeida is an owner of the property.
3. Ronald J. Almeida is an operator on the property.
4. John Almeida is an owner of the property.
5. Rosemary Halstead is an owner of the property.
6. Prior to October 30, 1998, Manuel J. Almeida owned a ¼ interest in the subject property.

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7. On or about October 30, 1998, Ronald J. Almeida purchased Manuel J. Almeida's ¼ interest in the property.
8. Ronald J. Almeida Trucking, Inc. is a Rhode Island business and is an operator on 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 two (2) witnesses: **Ronald J. Almeida**, a Respondent in this matter; and **James M. Ashton**, a Principal Environmental Scientist and the supervisor of the OCI's Solid Waste Section. Mr. Ashton's testimony largely relied upon his review of the file and conversations with Donald Squires, the DEM employee who had conducted the inspections of the property.

Respondents presented one (1) witness: **Ronald J. Almeida**. Although Mr. Almeida had identified Donald Squires as a possible witness at the prehearing conference, and the OCI had agreed that he would be provided without the necessity of obtaining a subpoena, the individual was not called by either party to testify at the hearing.

I. The Notice of Violation

The NOV issued to Respondents on September 6, 2001 concerns property located at 509 Brayton Road in the Town of Tiverton, Rhode Island, otherwise identified as Assessor's Map 3-8, Block 116, Lot 6 (the "Property"). As a result of inspections conducted on October 4, 2000, March 2, 2001 and May 31, 2001, the NOV cites Respondents for violating R.I. GEN. LAWS § 23-18.9-5, relating to disposal of refuse at other than a licensed solid waste management facility, and for violating R.I. GEN. LAWS § 23-18.9-8, relating to operating a solid waste

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management facility without a license. The pertinent provisions of the two sections, and the statutory and regulatory definitions that are applicable to this matter, are set forth below.

23-18.9-5. Disposal of refuse at other than a licensed facility. -- (a) No person shall dispose of solid waste at other than a solid waste management facility licensed by the director.

(b) The phrase "dispose of solid waste", as prohibited in this section, refers to the depositing, casting, throwing, leaving or abandoning of a quantity greater than three (3) cubic yards of solid waste. Used asphalt, concrete, Portland concrete cement, and tree stumps, and solid waste temporarily in a vehicle or proper receptacle at a licensed place of business of a licensed solid waste hauler for a period not to exceed seventy-two (72) hours shall not be considered solid waste for purposes of this chapter.

23-18.9-8. Licenses. -- (a) (1) No person shall operate any solid waste management facility or construction and demolition (C&D) debris processing facility or expand an existing facility unless a license is obtained from the director

R.I. GEN. LAWS § 23-18.9-7 provides the following definitions:

"Construction and demolition (C&D) debris" means non-hazardous solid waste resulting from the construction, remodeling, repair, and demolition of utilities and structures; and uncontaminated solid waste resulting from land clearing

"Solid Waste" means garbage, refuse and other discarded solid materials generated by residential, institutional, commercial, industrial and agricultural sources, but does not include solids or dissolved material in domestic sewage or sewage sludge, nor does it include hazardous waste as defined in chapter 19.1 of this title, nor does it include used asphalt, concrete, Portland concrete cement, or tree stumps.

"Solid waste management facility" means any plant, structure, equipment, real and personal property, except mobile equipment or incinerators with a capacity or less than one thousand pounds (1,000 lbs.) per hour, operated for the purpose of processing, treating, or disposing of solid waste but not segregated solid waste .

Rule 1.3.121 of The Rules and Regulations for Composting Facilities and Solid Waste Management Facilities ("Solid Waste Regulations") provides the following definition:

"Operating a Solid Waste Management Facility" shall mean receiving solid waste at any facility, whether knowingly or unknowingly. For purposes of

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disposal, such receipt must be in an amount greater than three cubic yards, per Rhode Island General Laws § 23-18.9-5; and any property owner is considered to be operating a solid waste management facility if an amount of solid waste greater than three cubic yards exists on their property.

As a consequence of Respondents' alleged violations, the NOV ordered Respondents to immediately cease the acceptance and/or disposal of any solid waste on the property and to immediately cease operation of a solid waste management facility. Respondents were required to submit a written plan and schedule for solid waste removal from the property; to implement removal of all solid waste from the property within ten (10) days of OCI's approval of the plan; and to complete the removal within sixty (60) days of the plan's approval. The NOV also required the Respondents to submit to the OCI documentation of the disposal at a licensed solid waste management facility within ten (10) days of the completion of the solid waste removal. The NOV also ordered Respondents to pay an administrative penalty in the amount of Forty-Five Thousand (\$45,000.00) Dollars.

II. Disposal of Solid Waste; Operating a Solid Waste Management Facility

OCI's first witness was Ronald J. Almeida. Mr. Almeida later testified on his own behalf. A summary of the combined testimony is presented below.

Ronald J. Almeida testified that the 28-acre property had been a dairy farm at one time and that he had an ongoing project of building a tree farm. He stated that he has perhaps 15 pieces of equipment, such as trucks, trailers and backhoes, including a ten-wheeler dump truck. Although he mostly hauls material from this property to other sites, the witness admitted that he has used the truck to haul material to this site from other sites. He identified loam, rocks for crushing and tree waste as material brought onto this site. He stated that "most" of the construction and demolition debris ("C&D") is from on site.

He explained that he had already demolished some farm buildings and silos and there were two other buildings that remained to be torn down. As a result, some C&D materials were generated on site and were ground up with the tree waste in a \$52,000.00 tub grinder that he uses to grind brush and wood. Mr. Almeida had purchased the tub grinder in 1996 to address solid waste that he had been cited for in a Letter of Deficiency in 1995 (OCI 1)¹. He stated that when Mr. Squires had observed the C&D material in with the wood chips, the inspector assumed that the whole pile was solid waste. Mr. Almeida speculated that there was 3,300 yards of wood, "tainted by some C&D."

The wood chips had accumulated over a two or three year period and were being stockpiled for use as pine mulch or ground cover. The pine mulch was stockpiled since the trees for his tree farm were not yet in place. Additional tree waste was also stockpiled to be ground up for the same use.

Respondent was questioned regarding that which was depicted in the photograph on page 3 of the Field Inspection Report dated October 4, 2000 (OCI 5). Mr. Almeida identified the material as "probably a hundred yards" of C&D waste. In his opinion, it was a quantity greater than three cubic yards.

The witness also testified about the tires on the property. He stated that the tires were mostly generated from his business and that the ten-wheeler dump truck alone went through a set of tires every six months to a year. He agreed that at any given time there were usually 30 or more tires on the property. He stated that he could re-use half of the tires but that the remaining ones would be put aside until Bob's Tire sent a truck to pick them up, or until they got in his way and he hauled

¹ It is undisputed that that material had been addressed to the satisfaction of the Department in an inspection conducted in 1996.

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them for disposal. According to the witness, Bob's Tire would not send a truck until a truckload of approximately 50 tires had accumulated.

As for the scrap metal, Mr. Almeida stated that "most" of it was from machinery and trucks and the buildings on site, including pole barns, that had been demolished. Additional items included his son's bicycle and an old gas grill. He stated that when he accumulated enough to load the truck, he would take it to Mid-City Scrap Iron. If it was not a big pile, "it may sit there for an inordinate amount of time." He agreed that it could remain on site for a year. As of the date of the hearing, the scrap metal had still not been hauled away. In possible reference to the hand-drawn map set forth in the Field Inspection Report dated January 25, 2002 (OCI 14 at 3), the witness explained that the inspection report had noted 12 yards of scrap metal, and that that was not yet a truckload.

Finally, this Respondent testified that he is not operating a landfill or solid waste management facility, so he did not think he should need a license for one. Mr. Almeida stated that he was not disposing of refuse; that it was not being disposed of, rather it was "merely being stockpiled for future use."

The OCI's only other witness was James M. Ashton. Mr. Ashton is a Principal Environmental Scientist in DEM's Office of Compliance and Inspection and has been the supervisor of the Solid Waste Program for approximately 18 years. His duties include reviewing NOVs prior to their issuance and the files that contain the inspectors' reports. He also speaks with the inspectors. In this case he had reviewed the inspection reports prepared by Donald Squires and the photographs in the file and concluded that the material on site was solid waste and that there was a quantity greater than three cubic yards disposed or stored on the site at the time of the

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inspections. He had approved the NOV for the first violation dealing with disposal of solid waste at other than a licensed facility.

For the second violation, operating a solid waste management facility without a license, he stated that the OCI had considered that a license was required because waste generated off site had been brought onto the property; that it involved a quantity of waste greater than three cubic yards; and that C&D was being processed by a tub grinder on the property.

In cross-examination, the witness testified that he had not been to the site and that his knowledge was based upon the inspector's reports and the photographs. He stated that in 1995, when Mr. Almeida had obtained the tub grinder, you could legally chip brush and tree waste in a chipper. Mr. Ashton also explained that even if Respondents had torn down an old building on the farm, ground it up and taken it to the landfill, it would still be a violation because they would have been processing C & D material without a license.

In redirect examination by OCI counsel, the witness stated that while tree stumps were specifically excluded from the definition of solid waste under the statute, other tree waste was solid waste.

Conclusion

The OCI must prove by a preponderance of the evidence that each of the Respondents violated the statutes as alleged in the NOV.

First, I will address the issue of Respondent Manuel J. Almeida. As set forth in stipulations 6 and 7 from the prehearing conference, Manuel J. Almeida did not have an ownership interest in the property after October 30, 1998. Since the NOV's allegations resulted from inspections of the property on October 4, 2000 and afterwards, and with no other evidence to tie this Respondent to the two violations, I

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find that the OCI has failed to prove by a preponderance of the evidence that this individual violated those statutes as set forth in the NOV. The NOV is therefore dismissed as to Manuel J. Almeida.

As for the remaining Respondents, my analysis of the evidence focuses largely on the inspection reports that were admitted as full exhibits and on Mr. Almeida's testimony. I have not relied on the testimony of James Ashton since Mr. Almeida had agreed that all the OCI documents presented at the prehearing conference could be admitted as full exhibits (two other inspection reports were offered into evidence at the hearing but were marked for identification only) and Mr. Ashton's testimony was derivative in nature and merely repeated what was already in evidence. That is, he had no direct knowledge of the site, was not offered as an expert in this proceeding, and based his opinions on the same reports that have been admitted into evidence. Any questions about the reports would have had to been addressed by Donald Squires who was not called by either party as a witness.

The first Field Inspection Report prepared by Donald Squires was made pursuant to a complaint investigation conducted on October 4, 2000. He identified waste consisting of "processed C&D, tree waste, C&D, tires" on the property. The volume of the waste material was estimated to be approximately 3,306 cubic yards. OCI 5 at 1. A Letter of Non-Compliance was subsequently issued regarding the violation. OCI 6. On January 26, 2001, Mr. Almeida submitted a remediation plan to the Department that stated the cleanup would begin on March 1, 2001 and be completed within ninety (90) days. OCI 7.

The second Field Inspection Report was made pursuant to a re-inspection conducted on March 2, 2001. In the Report, Rosemary Halstead is identified as the contact person on the site. The report concludes that the cleanup had not begun and

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that the same volume of waste remained. The inspector references a conversation with "Ron" Almeida wherein Mr. Almeida stated that he was planning to begin the cleanup by the end of March. OCI 8 at 1.

The third Field Inspection Report was made pursuant to a re-inspection conducted on May 31, 2001. Rosemary Halstead was again identified as the contact person at the site. The report sets forth findings that the waste remains on site; that it consists of C&D, tree waste, tires and mixed solid waste; and that the volume is approximately 3,306 cubic yards. The inspector states that Mr. Almeida would remove the waste material starting the week of June 4, 2001. OCI 9 at 1. In an inspection conducted on June 19, 2001, Mr. Squires noted that while some waste had been removed, more tree waste had been dumped on site. He estimated the volume of waste material to be 2,955 cubic yards. OCI 10 at 1.

The NOV was issued on September 6, 2001. OCI 11 at 4. Notwithstanding the receipt of the Letter of Non-compliance in December 2000 and now the NOV in September 2001, Respondents continued to accumulate solid waste on the property. Donald Squires conducted a further inspection on January 25, 2002. Although he states in his Field Inspection Report that cleanup had begun, he also described an increase in the volume of waste material to approximately 4,591 cubic yards. OCI 14 at 1.

Ronald Almeida not only did not dispute the materials on site, he confirmed their presence in his testimony: tree waste (from on and off site), construction and demolition debris from buildings on the farm that were being demolished, wood chips, tires and scrap metal. He testified that the C&D waste was a quantity greater than three cubic yards; that at any given time there were usually 30 or more tires on the property; and did not dispute that there was 12 yards of scrap metal on the property.

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This witness also testified that he brought tree waste materials onto the property and used the tub grinder to process the C&D material as well as the tree waste.

Notwithstanding Mr. Almeida's activities on the property, he asserts in his Post Hearing Memorandum that he was not disposing of refuse, merely stockpiling the woodchips for future use as ground cover and erosion control on the tree farm project that had been in progress for six (6) years. *Post Hearing Memorandum* at 1.

OCI's Post-Hearing Memorandum discusses the documents and testimony presented or elicited at the hearing and does so in conjunction with the provisions of the two statutes the Respondents are alleged to have violated.

While I have considered what has been argued in both memoranda, my own conclusions are set forth below.

R.I. GEN. LAWS § 23-18.9-5 provides that no person shall dispose of solid waste at other than a licensed solid waste management facility. The statute defines "dispose of solid waste" to mean the depositing, casting, throwing, leaving or abandoning of a quantity greater than three (3) cubic yards of solid waste. While the interpretation of this statute was not argued by the parties in how it applied to each Respondent, the statute clearly contemplates the person who takes an active role in depositing, casting or throwing the waste. It may also, however, apply to the person who has knowledge of the waste's presence, bears some legal responsibility for its removal, and yet takes no action for the proper disposal of the waste; that is, the person "leaves" greater than three (3) cubic yards of solid waste at other than a licensed solid waste management facility. Neither the statute nor the Regulations define the term "leaving".

Black's Law Dictionary provides the following definition for "Leave":

to allow or cause to remain; to let remain unmoved or undone; to refrain from or neglect taking, doing or changing; to let stay or continue; to let be without interference; to suffer to remain subject to another's action, control, or the like; to suffer to be undisturbed in action.

Accepting this definition, § 23-18.9-5 applies to both the person who actually deposited the material on site, and to the person who has knowledge of its presence yet allows the waste to remain on the property.

For the first violation, Ronald J. Almeida's own testimony confirms that he and his trucking company deposited the waste on the property. The evidence also establishes that Rosemary Halstead was an owner of the property and was identified as the contact person on site during the field inspections conducted on March 2, 2001 (OCI 8 at 1) and May 31, 2001 (OCI 9 at 1). The Letter of Non-compliance dated December 19, 2000, is addressed to "Rosemary Halstead et al." and the attached copy of the "green card" indicates that she (as "Rose Marie" Halstead) signed the return receipt. That letter identifies the waste on the property. OCI 6 at 1,3.

Based upon the above facts, it is clear that Ronald J. Almeida and his trucking company, and Rosemary Halstead were aware that a quantity of solid waste in excess of three (3) cubic yards existed on the property and that they either actively deposited it there or knew of its presence and took little or no action for its removal. I conclude that the OCI has proved by a preponderance of the evidence that Respondents Ronald J. Almeida, Ronald J. Almeida Trucking and Rosemary Halstead violated R.I. GEN. LAWS § 23-18.9-5 as set forth in the NOV.

Other than the stipulation from the prehearing conference that John Almeida was an owner of the property, there was no evidence presented or elicited to prove

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that this Respondent disposed of solid waste in violation of the statute. I therefore conclude that the OCI has failed to prove that Respondent John Almeida violated R.I. GEN. LAWS § 23-18.9-5 as set forth in the NOV.

As for the second violation set forth in the NOV, R.I. GEN. LAWS § 23-18.9-8 prohibits the operation of a solid waste management facility without a license. Pursuant to R.I. GEN. LAWS § 23-18.9-7, structures, equipment, real and personal property are considered to be a solid waste management facility if they are operated for the purpose of processing solid waste. "Operating a Solid Waste Management Facility" is defined in Rule 1.3.121 of the Solid Waste Regulations to include "knowingly or unknowingly" receiving solid waste and any property owner is considered to be operating a solid waste management facility if an amount of solid waste greater than three cubic yards exists on their property. Under that Rule, operating a solid waste management facility does not require knowledge or intent of the property owner. Re: Louis Vinagro, Jr., AAD No. 99-033/WME; Final Agency Order entered February 10, 2003, at 12.

The OCI, through Ronald Almeida's testimony and the Field Inspection Reports, proved that equipment and property were being operated for the purpose of processing solid waste and that an amount of solid waste greater than three cubic yards existed on the property. Ronald Almeida's testimony and stipulations from the prehearing conference established that he and Ronald J. Almeida Trucking were operators on the property. The OCI, therefore, has met its burden to prove that Ronald J. Almeida and Ronald J. Almeida Trucking, as operators of a solid waste management facility, violated R.I. GEN. LAWS § 23-18.9-8 as set forth in the NOV

Pursuant to the Solid Waste Regulations, it does not matter whether the other Respondents were actively processing waste or even aware of the processing of

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C&D material and tree waste that was being conducted on the property, if the OCI can prove that they were property owners. By way of the stipulations at the prehearing conference, it was established in evidence that, in addition to Ronald J. Almeida, Rosemary Halstead and John Almeida were owners of the property. I conclude therefore that the OCI has proved by a preponderance of the evidence that these Respondents also violated R.I. GEN. LAWS § 23-18.9-8 as set forth in the NOV.

III. Assessment of an Administrative Penalty

As indicated in the NOV, the OCI seeks the assessment of an administrative penalty in the amount of Forty-Five Thousand Dollars (\$45,000.00), jointly and severally, against each named Respondent. 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. OCI 11 at 3.

§ 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 testimony of James Ashton and the NOV being admitted as a full exhibit. Mr. Ashton stated that he had determined the penalties and that Dean Albro, his supervisor, had the final approval. The NOV indicates that the first violation was calculated to be a Type I Major Deviation from Standard with a penalty in the amount of \$15,000.00. OCI 11 at 5. The second violation was also calculated to be a Type I Major Deviation from Standard. The penalty assessed in that instance was \$20,000.00. *Id.* For this second violation the Respondents were also assessed the sum of \$10,000.00 as the economic benefit from non-compliance with the statutory and regulatory requirements. *Id.* Mr. Ashton explained that this amount was assessed because Respondents were operating a solid waste management facility without a license, that a license was required because they were processing C&D on site, and that the application fee for such a license was \$10,000.00.

Under cross examination the witness stated that, in determining the penalty for the second violation, he had considered that the waste had been generated off-site and processed on-site.

Conclusion

Both the NOV and Mr. Ashton's testimony expand on how the penalty was calculated and what factors were considered to determine the Deviation from Standard. It is unnecessary to further discuss the evidence because the OCI

established in evidence the penalty amounts and their calculation and Respondents failed to present or elicit any evidence to refute that the calculations were proper.

The penalties imposed were mid-range in the penalty matrix. Respondent did not inquire as to the rationale for that determination nor did he offer any mitigating factors as provided by statute or Regulation.

Based upon the limited evidence presented, I have concluded that Respondents have failed to prove by a preponderance of the evidence that the assessment of an administrative penalty in the amount of \$45,000.00 was not in accordance with the Penalty Regulations. Since I have concluded that the OCI did not prove all of the violations against all of the Respondents, the penalty is to be assessed as follows:

1. The **\$15,000.00** administrative penalty for the first violation is assessed jointly and severally against **Ronald J. Almeida, Ronald J. Almeida Trucking and Rosemary Halstead;**
2. The \$20,000.00 administrative penalty, with an additional administrative penalty as the economic benefit from noncompliance in the amount of \$10,000.00, for a total penalty of **\$30,000.00** for the second violation, is assessed, jointly and severally, against **Ronald J. Almeida, Ronald J. Almeida Trucking, Rosemary Halstead and John Almeida.**

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

FINDINGS OF FACT

1. The subject property is located at 509 Brayton Road in the Town of Tiverton, Rhode Island, otherwise identified as Tiverton's Assessor's Map 3-8, Block 116, Lot 6 (the "property").
2. Ronald J. Almeida is an owner of the property.
3. Rosemary Halstead is an owner of the property.
4. John Almeida is an owner of the property.

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5. After October 30, 1998 Manuel J. Almeida was no longer was an owner of the property.
6. Ronald J. Almeida is an operator on the property.
7. Ronald J. Almeida Trucking is a Rhode Island business and is an operator on the property.
8. Ronald J. Almeida Trucking is owned by Ronald J. Almeida.
9. DEM personnel conducted inspections on the property on October 4, 2000, March 2, 2001, May 31, 2001, June 19, 2001 and January 25, 2002.
10. Rosemary Halstead was identified as the contact person on the site in the Field Inspection Reports prepared as a result of the inspections conducted on the property on March 2, 2001, May 31, 2001 and June 19, 2001.
11. During the inspections conducted on October 4, 2000, March 2, 2001 and May 31, 2001, materials consisting of C&D, processed C&D, tree waste, wood chips, tires and scrap metal were present on the property.
12. The waste material on the property was approximately 3,306 cubic yards.
13. The property is not a licensed solid waste management facility.
14. Ronald J. Almeida owns a tub grinder.
15. Ronald J. Almeida and Ronald J. Almeida Trucking brought tree waste onto the property.
16. Ronald J. Almeida used the tub grinder on the property to process C&D material and tree waste.
17. A Letter of Non-Compliance, dated December 19, 2000 was sent to "Rosemary Halstead et al." from the OCI. The letter set forth the findings of the October 4, 2000 investigation: approximately 3,306 cubic yards of solid waste deposited on the ground, including processed C&D. The letter stated that this was a violation of R.I. GEN. LAWS § 23-18.9-5 and § 23-18.9-8.
18. The Return Receipt accompanying the December 19, 2000 Letter of Non-Compliance was signed by Rose Marie Halstead.
19. No evidence was presented to establish that John Almeida had knowledge of the presence of solid waste on the property prior to the issuance of the Notice of Violation.
20. A Notice of Violation was issued against Rosemary Halstead, Ronald J. Almeida, Manuel J. Almeida, John Almeida and Ronald J. Almeida Trucking, Inc. [sic] on September 6, 2001.

21. The OCI established in evidence that the violation of R.I. GEN. LAWS § 23-18.9-5 was determined to be a Type I Major Deviation from Standard.
22. The OCI established in evidence the amount of the penalty for disposing of solid waste at other than a licensed solid waste management facility was \$15,000.00.
23. An administrative penalty in the amount of \$15,000.00 for disposing of solid waste at other than a licensed solid waste management facility is not excessive.
24. The OCI established in evidence that the violation of R.I. GEN. LAWS § 23-18.9-8 was determined to be a Type I Major Deviation from Standard.
25. The OCI established in evidence the amount of the penalty for operating a solid waste management facility without a license was \$20,000.00.
26. The OCI established in evidence that the economic benefit from non-compliance with the requirement to obtain a license to operate a solid waste management facility (i.e. construction and demolition debris processing facility) was \$10,000.00.
27. An administrative penalty in the amount of \$20,000.00 for operating a solid waste management facility without a license, and the assessment of the economic benefit portion of the penalty in the amount of \$10,000.00, for a total penalty for this violation of \$30,000.00, 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 Ronald J. Almeida and Ronald J. Almeida Trucking brought solid waste onto the property.
2. The OCI has proved by a preponderance of the evidence that an amount of solid waste greater than three (3) cubic yards existed on the Property.
3. The OCI has proved by a preponderance of the evidence that Respondents Ronald J. Almeida and Ronald J. Almeida Trucking disposed of solid waste at other than a licensed solid waste management facility in violation of R.I. GEN. LAWS § 23-18.9-5.

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4. The OCI has proved by a preponderance of the evidence that Respondent Rosemary Halstead disposed of solid waste at other than a licensed solid waste management facility in violation of R.I. GEN. LAWS § 23-18.9-5.
5. The OCI has failed to prove by a preponderance of the evidence that Manuel J. Almeida disposed of solid waste at other than a licensed solid waste management facility in violation of R.I. GEN. LAWS § 23-18.9-5.
6. The OCI has failed to prove by a preponderance of the evidence that Respondent John Almeida disposed of solid waste at other than a licensed solid waste management facility in violation of R.I. GEN. LAWS § 23-18.9-5.
7. The OCI has proved by a preponderance of the evidence that Ronald J. Almeida and Ronald J. Almeida Trucking operated equipment on the property for the purpose of processing solid waste.
8. The OCI has proved by a preponderance of the evidence that Ronald J. Almeida and Ronald J. Almeida Trucking operated a solid waste management facility without a license in violation of R.I. GEN. LAWS § 23-18.9-8.
9. The OCI has proved by a preponderance of the evidence that Rosemary Halstead and John Almeida operated a solid waste management facility without a license in violation of R.I. GEN. LAWS § 23-18.9-8.
10. The OCI has failed to prove that Manuel J. Almeida operated a solid waste management facility in violation of R.I. GEN. LAWS § 23-18.9-8.
11. The OCI established in evidence the penalty amount and its calculation for the violation of R.I. GEN. LAWS § 23-18.9-5.
12. Respondents have failed to prove by a preponderance of the evidence that OCI's determination of the violation of R.I. GEN. LAWS § 23-18.9-5 as a Type I Major Deviation from Standard was not in accordance with the Penalty Regulations.
13. Respondents have failed to prove by a preponderance of the evidence that the assessment of an administrative penalty in the amount of \$15,000.00 for the violation of R.I. GEN. LAWS § 23-18.9-5 is not in accordance with the Penalty Regulations.
14. The assessment of an administrative penalty against Respondents Ronald J. Almeida, Ronald J. Almeida Trucking and Rosemary Halstead in the amount of \$15,000.00 for the violation of R.I. GEN. LAWS § 23-18.9-5 is in accordance with the Penalty Regulations.
15. The OCI established in evidence the penalty amount and its calculation, including that portion of the penalty for the economic benefit from noncompliance, for the violation of R.I. GEN. LAWS § 23-18.9-8.

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16. Respondents have failed to prove by a preponderance of the evidence that OCI's determination of the violation of R.I. GEN. LAWS § 23-18.9-8 as a Type I Major Deviation from Standard was not in accordance with the Penalty Regulations.
17. Respondents have failed to prove by a preponderance of the evidence that the assessment of an administrative penalty in the amount of \$30,000.00 for the violation of R.I. GEN. LAWS § 23-18.9-8 is not in accordance with the Penalty Regulations.
18. The assessment of an administrative penalty against Respondents Ronald J. Almeida, Ronald J. Almeida Trucking, Rosemary Halstead and John Almeida in the amount of \$30,000.00 for the violation of R.I. GEN. LAWS § 23-18.9-8 is in accordance with the Penalty Regulations.

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

ORDERED

1. The Notice of Violation is **Dismissed** as to Manuel J. Almeida.
2. The Notice of Violation is **Sustained in full** as to Ronald J. Almeida, Ronald J. Almeida Trucking and Rosemary Halstead.
3. The Notice of Violation is **Sustained in part and dismissed in part** as to John Almeida.
4. Respondents shall immediately cease the acceptance and/or disposal of solid waste on the Property.
5. Respondents shall immediately cease operation of a solid waste management facility.
6. Within ten (10) days of the entry of the Final Agency Order in this matter, Respondents shall submit a written plan and schedule for solid waste removal from the Property. The plan shall be submitted to: RIDEM --- Office of Compliance and Inspection, 235 Promenade Street, Room 220, Providence, RI 02908-5767, ATTN: James M. Ashton. The plan must obtain the approval of the RIDEM.
7. Within ten (10) days of the RIDEM approval of the plan, Respondents shall implement removal of all solid waste from the Property. Respondents shall complete the removal of all solid waste from the Property and dispose of said waste at a licensed solid waste management facility within sixty (60) days of RIDEM's approval of the plan.

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8. Within ten (10) days of completion of the solid waste removal, Respondents shall submit documentation of disposal (receipts, bills, weight slips, etc.) at a licensed solid waste management facility to the RIDEM Office of Compliance and Inspection, 235 Promenade Street, Room 220, Providence, RI 02908-5767, ATTN: James M. Ashton.
9. An administrative penalty in the amount of Fifteen Thousand (\$15,000.00) Dollars for the violation of R.I. GEN. LAWS § 23-18.9-5, is hereby ASSESSED, jointly and severally, against Respondents Ronald J. Almeida, Ronald J. Almeida Trucking and Rosemary Halstead.
10. An administrative penalty in the amount of Thirty Thousand (\$30,000.00) Dollars for the violation of R.I. GEN. LAWS § 23-18.9-8, is hereby ASSESSED, jointly and severally, against Respondents Ronald J. Almeida, Ronald J. Almeida Trucking, Rosemary Halstead and John Almeida.
11. Respondents shall make payment of the administrative penalties 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 -- Environmental Response Fund 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 25th day of June, 2004 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, Rhode Island 02908
401-222-1357

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Entered as a Final Agency Order this 7th day of July, 2004.

Frederick Vincent
Acting 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 Decision and Order to be forwarded, via regular mail, postage prepaid to: Ronald J. Almeida, 509 Brayton Road, Tiverton, RI 02878, Rosemary Halstead, 509 Brayton Road, Tiverton, RI 02878, Manuel J. Almeida, 509 Brayton Road, Tiverton, RI 02878, and John Almeida, 509 Brayton Road, Tiverton, RI 02878 ; via interoffice mail to Bret Jedele, Esquire, Office of Legal Services, and Dean H. Albro, Chief, Office of Compliance and Inspection, 235 Promenade Street, Providence, RI 02908 on this 7th day of July, 2004.

APPENDIX A

LIST OF EXHIBITS

OCI'S EXHIBITS

- OCI 1 September 18, 1995 Letter of Deficiency (3 pages);
Full
- OCI 2 September 28, 1995 Plan of Remediation submitted by Ronald J.
Full Almeida (2 pages);
- OCI 3 July 22, 1996 Revised Plan submitted by Ronald J. Almeida
Full (1 page);
- OCI 4 November 4, 1996 RIDEM Inspection Report (1 page);
Full
- OCI 5 October 4, 2000 RIDEM Inspection Report (with color copies of 12
Full photographs) (5 pages);
- OCI 6 December 19, 2000 Letter of Non-compliance (3 pages);
Full
- OCI 7 January 26, 2001 Plan of Remediation submitted by Ronald J.
Full Almeida (1 page);
- OCI 8 March 2, 2001 RIDEM Inspection Report (with color copies of 3
Full photographs) (4 pages);
- OCI 9 May 31, 2001 RIDEM Inspection Report (with color copies of 6
Full photographs) (5 pages);
- OCI 10 June 19, 2001 RIDEM Inspection Report (with color copies of 5
Full photographs) (4 pages);
- OCI 11 September 6, 2001 NOTICE OF VIOLATION (8 pages);
Full
- OCI 12 September 27, 2001 Formal Request for a Hearing by Respondents
Full (1 page);
- OCI 13 January 23, 2002 Interrogatories propounded to Respondents (8 pages);
Full

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- OCI 14 January 25, 2002 RIDEM Inspection Report (photographs) (9 pages);
Full
- OCI 15 March 19, 2002 RIDEM Letter to Respondents (2 pages);
Full
- OCI 16 March 27, 2002 Respondents' Letter to RIDEM (2 pages);
Full
- OCI 17 April 18, 2002 RIDEM Letter to Respondents (3 pages);
Full
- OCI 18 UNDATED Letter from Respondents to RIDEM (1 page);
Full
- OCI 19 May 13, 2002 Hearing Transcript (15 pages);
Full
- OCI 20 June 17, 2002 Interrogatory answers of Respondents (2 pages).
Full
- OCI 21 Field Inspection Report dated July 23, 2002.
for Id
- OCI 22 Field Inspection Report dated September 19, 2002.
for Id

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NOTICE

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.