

Department of Environmental Management  
Administrative Adjudication Division  
State of Rhode Island  
RE: SOLIS, HECTOR R.  
AAD NO. 04-030/WME  
NOTICE OF VIOLATION OC&I/RCRA NO. 04-064  
2005

**DECISION AND ORDER**

This matter came before the Department of Environmental Management, Administrative Adjudication Division for Environmental Matters ("AAD") for consideration of the Motion to Dismiss filed by the Office of Compliance and Inspection ("OCI") on November 15, 2004. Oral argument was heard on February 7, 2005. The OCI was represented by Bret Jedele, Esq. The Respondent appeared on his own behalf.

On December 8, 2004, following the filing of the Motion and Respondent's one sentence objection, a conference with the parties was held for the purpose of explaining AAD Rules and procedure. Respondent was informed of the possible effect of a determination on the jurisdictional issue raised by OCI's Motion. Respondent was again advised that he would be held to the same legal standards as if he were represented by an attorney.

Respondent continues to represent himself in this matter.

The OCI asserted in its Motion to Dismiss and in oral argument that the Respondent failed to request an administrative hearing within twenty (20) days of the receipt of the for hearing, the OCI concluded that Respondent's "opportunity for an administrative hearing was lost and the matter automatically became jurisdictional in Superior Court." *Memorandum of Law in Support of Motion to Dismiss* at 1.

Respondent's objection, although timely, did not address the merits of OCI's Motion. Respondent's argument at the hearing on the motion was similarly nonresponsive.

Prior to discussing OCI's jurisdictional argument, an explanation of the process by which the AAD opened an adjudicatory hearing file in this matter is in order. Following standard procedure, when a hearing request was received from Attorney William V. Devine, Jr. on July 13, 2004, the AAD Clerk opened a new hearing file. Mr. Devine's correspondence stated that he represented Respondent's company Mufflers Unlimited. Approximately two (2) weeks later Attorney Devine advised the AAD Clerk by letter that he did not represent Hector Solis and that an AAD Order had been sent to him in error.

In support of its Motion to Dismiss, the OCI cites R.I. GEN. LAWS § 42-17.7-9, which provides as follows:

**Uniform appeal period established.** --- Regardless of any other provision of the general laws to the contrary, all requests for an adjudicatory hearing within the department of environmental management must be in writing and must be filed with the clerk of the administrative adjudication division for environmental matters within twenty (20) calendar days of receipt of the contested agency action for all enforcement actions. All license and permit appeals must be filed with the clerk of the administrative adjudication division for environmental matters within thirty (30) calendar days of receipt of the contested agency action. Every notice of contested agency action shall provide notice of the twenty (20) day or thirty (30) day appeal period and of the procedures for filing an appeal. The time and manner of filing established in this chapter are mandatory and jurisdictional. (emphasis added).

The facts in this matter are undisputed. The Notice of Violation was issued to Hector R. Solis on June 22, 2004 and sent by certified mail. Mr. Solis received the Notice of Violation on or about June 28, 2004. As of the date of this Decision and Order, Mr. Solis has not filed a request for hearing at the AAD. As of the date of this Decision and Order, no one with authority from Hector R. Solis has filed on his behalf a request for hearing at the AAD.

Wherefore, I make the following

**FINDINGS OF FACT**

1. The Notice of Violation was sent by Certified Mail to Hector R. Solis on or about June 22, 2004.
2. Hector R. Solis received the Notice of Violation on or about June 28, 2004.
3. Hector R. Solis has not filed a request for hearing at the AAD.

## CONCLUSIONS OF LAW

Based upon the above Findings of Fact, I conclude the following as a matter of law:

1. Hector R. Solis has not requested an adjudicatory hearing in the time and manner required by R.I. GEN. LAWS § 42-17.7-9.
2. The Administrative Adjudication Division lacks jurisdiction to consider the Notice of Violation issued to Hector R. Solis.
3. Pursuant to R.I. GEN. LAWS § 42-17.1-2(u)(5) the Notice of Violation is a compliance order enforceable in Superior Court.

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

## ORDERED

1. The matter before the AAD is herewith DISMISSED.

Entered as an Administrative Order this \_\_\_\_\_ day of February, 2005 and herewith recommended to the Acting Director for issuance as a Final Agency Order.

Mary F. McMahon

Hearing Officer

Entered as a Final Agency Order this \_\_\_\_\_ day of \_\_\_\_\_ 2005.

Frederick Vincent

Acting Director