

Department of Environmental Management
Administrative Adjudication Division
State of Rhode Island
RE: Cory's Petroleum, Inc.
Notice of Violation OC&I 2007-441 OPC
AAD No. 08-006/WRE
August 2011

DECISION AND ORDER

This matter came before the Department of Environmental Management, Administrative Adjudication Division for Environmental Matters ("Administrative Adjudication Division") pursuant to Respondent's request for hearing on the Notice of Violation and Order ("NOV") issued by the DEM Office of Compliance and Inspection ("OC&I") dated June 19, 2008. The hearing was held on October 12 and 13, 2010. Susan B. Forcier, Esquire, represented the Office of Compliance and Inspection and Kevin A. McKenna, Esquire represented Cory's Petroleum, Inc. ("Respondent" or "Cory").

Following the hearing on October 15, 2010 OC&I filed a Motion to Reopen the Administrative Hearing Record to Introduce New Evidence. The matter was reopened to consider documentary evidence that addressed the credibility of witness Souhail Khoury. Respondent failed to appear at the scheduled hearing and evidence was admitted as DEM Exhibit # 22 Full. The parties were given the opportunity to file Post Hearing Memoranda in lieu of final argument. OC&I filed its Post Hearing Memoranda on March 25, 2011. Respondent did not file a Post Hearing Memorandum.

The within proceeding was conducted in accordance with the statutes governing the Administrative Adjudication Division for Environmental Matters (R.I. GEN. LAWS § 42-17.1-1 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 ("Administrative Adjudication Division Rules") The Oil Pollution Control Regulations ("Oil Regulations"); and the Rules and Regulations for Assessment of Administrative Penalties ("Penalty Regulations"). The Office of Compliance and Inspection bears the burden of proving, by a preponderance of the evidence, the allegations set forth in the Notice of Violation. Once the violations are established, Rule 12(c) of the Penalty Regulations provides that the burden shifts to the Respondents to prove that the Director failed to assess the penalty in accordance with the Penalty Regulations.

PREHEARING CONFERENCE

A Prehearing Conference was conducted on May 14, 2009. At the conference, the parties agreed to the following Stipulation of Fact:

- (1) The subject properties are located at 45 Oakwood Drive in the Town of Scituate, Rhode Island, otherwise identified as Scituate Tax Assessor's Plat 49, Lot 280 (the "Scituate Property") and at 19 St. James Lane in the Town of Glocester, Rhode Island, otherwise identified as Glocester Tax Assessor's Plat 18, Lot 146 (the "Glocester Property").
- (2) The Scituate Property is owned by Keith R. and Stephanie A. Parker.
- (3) The Glocester Property is owned by Robert B. Kelman.
- (4) Respondent is incorporated as a Rhode Island business corporation having a principal place of business at 676 Putnam Pike in the Town of Smithfield, Rhode Island.

(5) Cory's Petroleum admits that he has a delivery receipt for 400 gallons of heating oil dated March 6, 2007 delivered to the home of Keith R. and Stephanie Parker at 45 Oakwood Drive, Scituate, RI on March 6, 2007.

A List of Exhibits, marked as they were admitted at the hearing, is attached to the Decision as an Appendix.

The Issues for determination at the hearing are as follows:

- (1) Whether Respondent violated Section 46-12.5.1-3 of the R.I.G.L., prohibiting discharges of oil into or upon the waters or land of the State.
- (2) Whether Respondent violated Section 6(a) of the OPC Regulations, prohibiting the placement of oil pollutants into the waters or land of the State or in a location where they are likely to enter the waters of the State.
- (3) Whether Respondent violated Rule 12 (b) (2) of the OPC Regulations, requiring immediate containment and removal of oil and waste material following a release of oil.
- (4) Whether Respondent violated Rule 12(b) (3) of the OPC Regulations, requiring immediate notification of DEM when a release of oil has occurred.
- (5) Whether Respondent violated Rule 13 (a) (4) of the OPC Regulations, requiring submittal of laboratory analytical reports to DEM within 30 days of sample collection.
- (6) Whether Respondent violated Rule 13(a) (6) of the OPC Regulations, restricting temporary storage of oil spill cleanup debris to no more than 30 days.
- (7) Whether the issuance of the Notice of Violation and Order, with accompanying administrative penalty, is proper and should be affirmed.

HEARING SUMMARY

At the hearing, OC&I called two (2) witnesses: John P. Leo, an engineer in the Office of Compliance and Inspection who testified concerning his response at the subject properties and his observations; and Tracey Tyrell, a supervising environmental scientist with the Office of Compliance and Inspection who testified concerning the assessment of the administrative penalty. The Respondent called one (1) witness; Souhail Khoury, President of Cory's Petroleum, Inc. John P. Leo testified that he has been employed by the Department of Environmental Management as a member of the emergency response office since April of 1979. On March 12, 2007 he responded to an oil spill on a property in Scituate, Rhode Island. He had received a call from the Scituate Fire Department and responded to 45 Oakwood Drive in Scituate. At the property he met with the Scituate Fire Chief and the property owners, Keith and Stephanie Parker to review the status of the property.

Mr. Leo testified that he remained at the property for several hours. The owners advised him that there had been an oil delivery by Cory's Oil on March 6th. It wasn't until a few days later, on about the 10th, that they discovered the oil spill. Mr. Leo contacted Souhail Khoury, owner of Cory's at about 7:30 p.m. and he agreed to come to the property the next day to discuss the situation. Before leaving the property on the 12th he went into the basement to conduct an inspection. He observed that there were two 330 gallon oil tanks which were bulging from over pressurization. There were a couple of oil spots on the floor but no large amount of oil. Mr. Leo identified an Emergency Response Report dated March 14, 2007 which was marked and entered as DEM Exhibit # 4 Full.

Mr. Leo testified that the following day he returned to the Scituate property at 9:30 a.m. He was better able to observe the extent of the spill in the light of day. Mr. Khoury showed up with Jared of Western Oil. Mr. Leo explained to Mr. Khoury and Jared what needed to be done which was to remove the saturated material to prevent further movement. He explained to Mr. Khoury and Jared the steps and extent of the cleanup that is required by the regulations. Mr. Khoury said that he didn't know anything about the spill and that the driver never reported it to him. He said that

Jared and Western Oil is the company they had previously used for clean up. It was Mr. Leo's opinion that Cory's had hired Western Oil to handle the cleanup.

Mr. Leo returned to the Scituate property on several occasions to see how the cleanup was proceeding. He had received a complaint from a neighbor that he was concerned with the materials that were causing an obnoxious odor. (DEM Exhibit # 6 Full). Mr. Leo went back to the property on April 16, 2007 and his observations with pictures was marked and entered as DEM Exhibit # 8 Full. Soil had been deposited on the driveway but nothing seemed to be going on. Jared of Western Oil told him he had excavated the soil but not disposed of it because he had not been paid and was concerned about payment. Mr. Leo estimated that approximately 60 cubic yards of soil was deposited on the driveway. Mr. Leo identified an Emergency Response Report reflecting his April 17, 2007 observations with photographs which was marked and entered as DEM Exhibit # 9 Full.

Mr. Leo testified regarding his visit to the Scituate property on April 24, 2007. He wanted to observe how the disposition of soil was going. Western Oil was not handling the disposition and the owner, Mr. Parker, had hired a private contractor, Hoffman Environmental. Approximately 150 tons of contaminated soil had been generated by the clean up so far.

Mr. Leo identified DEM Exhibit # 13 which was subsequently marked as a Full Exhibit. He testified that this exhibit dealt with samples of oil from tank # 2 in the Parker's basement and a sample taken of the soil affected by the spill. He said that the spill appeared to be from the side of the deck where the vent comes out. He was trying to verify that the oil that was spilled matched the oil that was delivered. The chemical analysis is called fingerprinting. All oils have a different fingerprint based on contaminants in the oil. The samples were sent to a lab and the results showed that the two samples were identical.

Mr. Leo completed his direct examination relative to the Scituate property and on Attorney McKenna's request he was allowed to cross examine him prior to moving on to the second spill in Gloucester.

Respondent's Exhibits A, B and C and D were marked as Full Exhibits without objection.

Mr. Leo identified Respondent's Exhibits A, B, C and D as photographs he took in March or April of 2007. He testified that the two oil tanks in the Parker's basement were 330 gallon tanks and that 400 gallons were delivered. The tanks were bulged. The tanks are a new design called buffalo hide tanks. They are designed to resist breaking at the seams.

Mr. Leo was questioned about the fact that the Parkers ordered 400 gallons of oil from Cory's Petroleum. The Parkers indicated that they only had one delivery and it was the only delivery around that time period. There is a whistle in the oil tank which stops whistling when the tanks are full. The oil delivery company is not supposed to deliver oil if you can't hear the whistle. Mr. Leo did not test the whistle. Mrs. Parker was at the property at the time of the delivery on March 6th but they did not notice the spill until March 10th. Mr. Leo testified that, in his estimation, approximately 45 gallons of oil were released at the Parker's residence.

On re-cross examination Mr. Leo testified that, in his experience, a problem like this happens when the delivery person dials in the amount to be delivered and then gets back in the truck. This is not the way it should be done. No matter how many gallons are ordered when the whistle stops the delivery person is mandated to shut off the pump at the handle. He said that they don't hold a property owner responsible for ordering more gallons than their tanks will hold. He said the oil spill originated at the vent pipe on the side of the porch and flowed downhill by the tree line. He said he knows that the oil spill he saw on March 12th was fresh oil and wasn't sitting around from a prior delivery. Mr. Leo said that he would provide a CD of all color photographs and it was agreed that this would be marked as DEM CD Appendix.

OC&I began its direct examination of Mr. Leo regarding the Gloucester oil spill by asking him to identify DEM Exhibit #15 Full. He said that it was an Emergency Response Report prepared by him on June 23, 2007. On June 22, 2007 he had responded to 19 St. James Lane in Gloucester for a report of an oil spill. Upon arrival the property owner, Mr. Kelman, showed him an area where oil

had spilled out of the vent onto the gravel near the porch. The owner told him that Cory's Oil had recently delivered oil. Mr. Leo observed foot prints coming from the area of the spill across the lawn to the driveway. He estimated that the amount of oil spilled outside was approximately three (3) gallons.

Mr. Leo testified that he went to the basement where he observed oil on the floor which he estimated at about another three (3) gallons. There had been some gravel removed outside near the spill site but there was still oil under the ground and in the area on the grass. "Speedy Dry" an absorbent material had been spread by the owner when he discovered the spill. The owner said that he had notified Cory's of the spill immediately and was told that the spill had occurred due to a faulty whistle. Mr. Leo did not talk to Cory's. The owner said that Cory's credited the owner for the cost of the "Speedy Dry". Mr. Leo said that the oil company never reported the spill to DEM. He had no record of any clean up and did not conduct a follow up visit after June 22, 2007. On cross examination Mr. Leo said that on June 23, 2007 the only evidence he had that Cory's Oil had made the delivery was the statement of the owner. He said that Mr. Kelman did not give him a receipt from Cory's Oil and that he never spoke to Cory's. He did not make the decision to send a violation to Cory's but referred the issue to Compliance and Inspection. Mr. Leo read from Section 10 (b) of the regulations relative to the responsibility of the party delivering oil. This section puts the onus on the operator to make sure delivery can be made safely.

OC&I called Tracey Tyrrell as its next witness. Ms. Tyrrell identified herself as a supervising environmental scientist with OC&I. She has been employed by the department since 1989 and has been a supervisor since 1996. She described the inspection response and enforcement process. She testified that she has either drafted or reviewed hundreds of Notices of Violation.

Ms. Tyrrell identified a document as a Notice of Intent to Enforce dated July 27, 2007 which was marked as DEM Exhibit # 16 for identification. She drafted the document and Dean Albro, the chief of OC&I, signed it. Ms. Tyrrell next identified a document as a Notice of Violation issued in this matter dated June 19, 2008 which was marked as DEM Exhibit # 17 for identification. DEM Exhibit # 16 and # 17 were later entered as Full Exhibits without objection.

Ms. Tyrrell testified that she drafted the Notice of Violation and that the penalty section was drafted in accordance with the Rules and Regulations for the Assessment of Administrative Penalties ("Penalty Regs"). She went through each section of the penalty matrix and her calculation of penalty.

In cross examination Ms. Tyrrell said that she had no personal knowledge of the oil spill in Glocester. Her knowledge of the oil spill comes from Mr. Leo's report. She said that oil released into the environment would be considered oil pollution in accordance with the oil pollution control regulations. The person who spills the oil has the responsibility to report the spill, not the property owner. She said that she considered the discharge of oil at the Glocester property as oil pollution. She said she was not aware of any other evidence that Cory's Petroleum had delivered the oil except the property owners statement.

Ms. Tyrrell agreed that the Scituate property had been cleaned up but was unaware of any clean up in Glocester. She said that OC&I does not get involved unless there's a failure to act or timely action taken to clean up the situation at occurred. Respondent's counsel raised a question regarding Mr. Richard LeFabvre who works for OC&I. He argued that OC&I had a duty to produce Mr. LeFabvre as a witness. He argued that due process requires OC&I to produce the witness. The Hearing Officer ruled that there was no such requirement to produce cumulative witnesses and that the Respondent could bring in Mr. LeFabvre by subpoena if he wanted. The OC&I conducted a brief redirect and then submitted a CD with color photographs which was marked by agreement as an appendix to the exhibits. OC&I then rested.

The Respondent called Souhail Khoury as a witness. He identified himself as the president of Cory's Petroleum, Inc. an oil delivery service located at 676 Putnam Pike, Greenville, Rhode Island. He said that he as not familiar with a Mr. Kelman in Glocester, Rhode Island. He said that he had no record of delivering oil to a property in Glocester, Rhode Island owned by a Mr.

Kelman. He said that he has no knowledge of any of his drivers having spilled oil in any amount on property owned by a man named Kelman.

Mr. Khoury was familiar with the situation in Scituate. He said that the driver who delivered the oil is no longer employed by the company and that he doesn't remember his last name. He had interviewed the driver who denied any knowledge of the spill. He was told by the driver that the owner was on the porch at the time of the delivery and made no complaint at the time. She paid with a check when presented with the delivery slip.

On cross examination Mr. Khoury said that he did not hire Western Oil to clean up the Scituate property. Western oil was at the scene on the 14th when he went there at the request of the DEM representative. Upon the completion of Mr. Khoury's testimony the Respondent rested.

On October 15, 2010, two days after the completion of the Administrative Hearing, OC&I filed a Motion to "Reopen the Administrative Hearing Record to Introduce New Evidence". The Respondent filed an Objection on October 26, 2010. An Order was entered granting OC&I's Motion to Reopen to consider documentary evidence to rebut Mr. Khoury's sworn testimony. The matter was set down for November 29, 2010. On November 23, 2010 counsel for Respondent requested and received a continuance based on scheduling conflict to December 21, 2010. On December 20, 2010 counsel for Respondent requested and received a continuance based on scheduling conflict to January 26, 2011. The matter was continued again to February 9, 2011 on the initiative of the Hearing Officer.

On February 9, 2011 Counsel for Respondent failed to appear. An Order was entered on February 10, 2011 authorizing OC&I to file an affidavit with proposed documents intended to rebut Mr. Khoury's testimony. The Respondent was authorized to respond by affidavit on or before February 23, 2011. The Order also gave the parties until March 18, 2011 to file Post Hearing Memoranda. On February 16, 2011 OC&I filed an affidavit from John Leo with three (3) accompanying documents; a fax from Robert Kelman, an oil delivery slip from Cory Petroleum reflecting an oil delivery at 19 St. James Lane, Glocester, RI on June 13, 2007 and a note "signed by Donna" from Cory's. The Respondent did not file a contrary affidavit and the OC&I's submission was marked and entered in evidence as DEM Exhibit # 22 Full. OC&I filed its Post Hearing Memorandum on March 25, 2011. The Respondent did not file a Post Hearing Memorandum.

Analysis

The NOV alleged six (6) violations:

- (1) **Section 46-12.5.1-2 of the R.I.G.L.**, prohibiting discharges of oil into or upon the waters or land of the State;
- (2) **Section 6 (a) of the OPC Regulations** prohibiting the placement of oil or pollutants into the waters or land of the State or in a location where they are likely to enter the waters of the State;
- (3) **Rule 12 (b) (2) of the OPC Regulations** requiring immediate containment and removal Oil and waste material following a release of oil;
- (4) **Rule 12 (b) (3) of the OPC Regulations** requiring immediate notification of DEM when a release of oil has occurred;
- (5) **Rule 13 (a) (4) of the OPC Regulations** requiring submittal of laboratory analytical reports to DEM within 30 days of sample collection;
- (6) **Rule 13 (a) (6) of the OPC Regulations** restricting temporary storage of oil spill cleanup debris to no more than 30 days;

Liability

The burden of proof is on OC&I to establish the violations occurred by a preponderance of the evidence and by the same standard that they were committed by the Respondent.

Scituate Property

OC&I alleges that an oil spill occurred at property owned by Mr. and Mrs. Keith Parker ("Parkers") located at 45 Oakwood Drive in the Town of Scituate, Rhode Island ("Scituate Property") on March 6, 2007. The oil spill was brought to the attention of OC&I by the Scituate Fire Department on March 12, 2007. The Parkers had notified the Scituate Fire Department of oil spill. The Parkers advised OC&I that they had received a delivery of home heating oil by Cory's Oil on March 6, 2007 and provided OC&I with a delivery receipt from Cory's. (Respondent's Exhibit D. Full) which indicated that 400 gallons of home heating oil had been delivered on that date. Cory's admits that it delivered home heating oil to the Scituate property on March 6, 2007 but denies that it caused or allowed an oil spill.

The testimony of Mr. John Leo, an employee of OC&I, establishes that when he responded to the Scituate property on March 12, 2007 there was clear evidence of a recent oil spill which emanated from the area of the vent. His testimony and his reports indicate that the oil tanks in the Parker's basement were bulging and had been over pressurized from over filling. The testimony and reports of Mr. Leo document the extent of the spill at Scituate as very extensive. He estimated 45 gallons. The president of Cory's, Mr. Souhail Khoury ("Khoury") acknowledged in his testimony that his company delivered the oil but denies any knowledge of the spill.

Cory does not present much of a defense to the allegations contained in the NOV. It argues that the spill may have been caused by a prior oil delivery. This is disproved by two facts. The first is the eye witness testimony of Mr. Leo and the second is the Report of FJA Environmental Associates, Inc. (DEM Exhibit # 21 Full) which found that the oil spilled matches the oil delivered by Cory. Cory's next argument is that the homeowners should be held responsible not the oil company. This is not supported by any fact or regulatory requirement. It is clear that Cory caused the oil spill. It is suspected that Cory's delivery man began pumping the oil, set the delivery at 400 gallons and failed to stand by the delivery pipe to ensure an overflow did not occur.

Cory admits that it did not report the oil spill on the basis that it was not aware that it had occurred. I find its allegation of lack of knowledge as incredible based in part on the amount of oil spilled. Cory failed to immediately contain the oil after release. Cory did not submit any laboratory analytical report or conduct any clean up of the oil spill. Cory takes the position that it was not responsible for the spill and therefore was not required to take the steps required by the Regulations. OC&I has proven by a preponderance of the evidence that Cory caused the oil spill at the Scituate property. It has also proven by a preponderance of the evidence that Cory failed to immediately contain or remove the oil, notify DEM of the release, submit laboratory analysis or clean up the contaminant.

Glocester Property

The evidence presented by the testimony of John Leo indicates that on June 22, 2007 DEM received notification from a Robert Kelman that an oil spill had occurred on property owned by him at 19 St. James Lane, Glocester, Rhode Island ("Glocester Property"). Mr. Leo responded to the site later the same day and prepared a report which was admitted into evidence as DEM Exhibit # 15 Full. The property owner told him that he discovered evidence of spilled oil on June 13, 2007 both in his basement and in the area of the overflow vent on the rear of the house. He said that Cory's Petroleum had delivered oil on that day. He said that the oil company's only response was to pay him for "speedy dry" to clean up the spilled oil in the basement. The oil spilled at the Glocester Property was estimated at ten (10) gallons.

Cory's president, Souhail Khoury, testified that he had no record of any delivery of oil to a property in Glocester, Rhode Island owned by a man named Kelman. OC&I was allowed to

reopen its case to rebut Mr. Khoury's testimony. It submitted in the form of DEM Exhibit # 22 Full, a copy of fax from Robert Kelman which included a statement from Mr. Kelman, copy of oil delivery receipt reflecting a delivery on June 13, 2007 at 19 St. James Lane, Glocester, RI and a note purportedly from Cory's dated June 14, 2007.

The rebuttal evidence cast strong doubt as to the credibility of Mr. Khoury. OC&I has proven by a preponderance of the evidence that Cory permitted an oil spill to occur on June 13, 2007 at 129 St. James Lane, Glocester, Rhode Island. By denying any knowledge of the delivery, confirms OC&I's allegation that it failed to immediately notify DEM of the spill. Cory also failed to act to contain the spill, submit laboratory tests or clean up the contamination caused by the spill.

Administrative Penalty

OC&I presented evidence regarding the calculation of the Administrative penalty by testimony of Tracey Tyrrell. She explained that the Administrative Penalty had been drafted by her and was in accordance with the Penalty Regulations. The Administrative Penalty was established at Twelve Thousand Four Hundred and Thirty Seven Dollars and Sixty Six Cents (\$12,437.66).

Rule 12 (c) of the Penalty Regulations provides that "once the 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 economic benefit portion of the penalty in accordance with these Regulations".

OC&I presented at the very least a prima facie case regarding the Administrative Penalty. The Respondent did not present independent evidence to challenge the propriety of the penalty calculation. The Respondent has not proven by a preponderance of the evidence that the Director failed to assess the penalty in accordance with the Penalty Regulations and therefore the penalty stands.

Conclusion

OC&I has sustained its burden of proof by a preponderance of the evidence that the Respondent is liable for the violations as alleged in the NOV. The Respondent has failed to establish by a preponderance of the evidence that the Administrative Penalty was not properly assessed in accordance with the Penalty Regulations.

The Respondent's appeal is without merit and should be denied.

Findings of Fact

1. The subject properties are located at 45 Oakwood Drive in the Town of Scituate, Rhode Island, otherwise identified as Scituate Tax Assessor's Plat 49, Lot 280 (the "Scituate Property") and at 19 St. James Lane in the Town of Glocester, Rhode Island, otherwise identified as Glocester Tax assessor's Plat 18, Lot 146 (the "Glocester Property")
2. The Scituate Property is owned by Keith R. and Stephanie A. Parker.
3. The Glocester Property is owned by Robert B. Kelman.
4. Respondent is incorporated as Rhode Island business corporation having a principal place of business at 676 Putnam Pike in the Town of Smithfield, Rhode Island.
5. Cory's Petroleum admits that he has a delivery receipt for 400 gallons of heating oil dated March 6, 2007 delivered to the home of Keith R. and Stephanie Parker at 45 Oakwood Drive, Scituate, Rhode Island on March 6, 2007.
6. During the delivery of home heating oil by Cory's Petroleum to 45 Oakwood Drive, Scituate, Rhode Island on March 6, 2007 an oil spill occurred of approximately 45 gallons.
7. The oil spill at the Scituate, Rhode Island property occurred during the delivery by Cory.

8. The circumstance, including the amount of oil spilled, indicate that Cory knew or should have known about the oil spill on the Scituate Property.
9. Cory did not immediately contain or remove the oil or the waste material following the release of oil from the Scituate Property.
10. Cory did not immediately notify DEM when the release of oil occurred on the Scituate Property.
11. Cory has not submitted laboratory analytical reports to DEM within 30 days of sample collection from the Scituate Property.
12. Cory did not effectuate the removal of oil spill cleanup debris within 30 days from the Scituate Property.
13. Cory delivered home heating oil to 19 St. James Lane, Gloucester Rhode Island on June 13, 2007.
14. The circumstances indicate that during the delivery of home heating oil by Cory approximately 10 gallons spilled onto the land and into the basement.
15. Souhail Khoury, president of Cory's is without credibility when he denies knowledge of any delivery of home heating oil to the Gloucester Property.
16. Cory did not immediately contain or remove the oil or the waste material following the release of oil on the Gloucester property.
17. Cory did not immediately notify DEM when the release of oil occurred on the Gloucester Property.
18. Cory has not submitted laboratory analytical reports to DEM within 30 days of samples collected from the Gloucester Property
19. Cory did not effectuate the removal of oil spill cleanup debris within 30 days from the Gloucester Property.
20. The testimony of Souhail Khoury is not credible.

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. With regards to the "Scituate Property"
 - A. Respondent violated Section 46-12.5.1-3 of the R.I.G.L. prohibiting discharges of oil into or upon the waters or land of the State
 - B. Respondent violated Section 6 (a) of the OPC Regulations, prohibiting the placement of oil pollutants into the waters or land of the State or in a location where they are likely to enter the waters of the State.
 - C. Respondent violated Rule 12 (b) (2) of the OPC Regulations, requiring immediate containment and removal of oil and waste material following a release of oil.
 - D. Respondent violated Rule 12 (b) (3) of the OPC Regulations, requiring immediate notification of DEM when a release of oil has occurred.
 - E. Respondent violated Rule 13 (a) (4) of the OPC Regulations, requiring submittal of laboratory analytical reports to DEM within 30 days of sample collection.
 - F. Respondent violated Rule 13 (a) (6) of the OPC Regulations, restricting temporary storage of oil spill cleanup debris to no more than 30 days.
2. With regards to the "Gloucester Property"
 - A. Respondent violated Section 46-12.5.1-3 of the R.I.G.L. prohibiting discharges of oil into or upon the waters or land of the State
 - B. Respondent violated Section 6(a) of the OPC Regulations, prohibiting the placement of oil pollutants into the waters or land of the State or in a location where they are likely to enter the waters of the State.

- C. Respondent violated Rule 12 (b) (2) of the OPC Regulations, requiring immediate containment and removal of oil and waste material following a release of oil.
 - D. Respondent violated Rule 12 (b) (3) of the OPC Regulations, requiring immediate notification of DEM when a release of oil has occurred.
 - E. Respondent violated Rule 13 (a) (4) of the OPC Regulations, requiring submittal of laboratory analytical reports to DEM within 30 days of sample collection.
 - F. Respondent violated Rule 13 (a) (6) of the OPC Regulations, restricting temporary storage of oil spill cleanup debris to no more than 30 days.
- 3. OC&I has proven by a preponderance of the evidence that Respondent has committed the offenses alleged in the Notice of Violation dated June 19, 2008 (DEM Exhibit # 17 Full).
 - 4. OC&I established in evidence the penalty amount and its calculation for each violation.
 - 5. Respondent failed to prove by a preponderance of the evidence that the penalties were not calculated in accordance with the Penalty Regulations or were excessive.
- Wherefore based upon the Findings of Fact and Conclusions of Law, it is hereby

ORDERED

- 1. Respondent's appeal is **DENIED**.
 - 2. The violations alleged in that certain Notice of Violation dated June 19, 2008 (DEM Exhibit # 17 Full) is **SUSTAINED**
 - 3. Respondent shall make payment of the Administrative penalty in the amount of Twelve Thousand Four Hundred Thirty Seven Dollars and Sixty-Six Cents (\$12, 437.66) within thirty (30) days of the entry of this Order. Payment shall be in the form of a certified check or money order made payable to the "General Treasury — Water and Air Protection Program Account", and shall be forwarded to the DEM — Office of Management Services, 235 Promenade Street, Suite 340, Providence RI 02908-5767.
- Entered as an Administrative Order this _____ day of August, 2011.
David Kerins
Chief Hearing Officer