

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

IN RE: Barbara D'Allesandro AAD No. 91-006/GWE
Notice of Violation No. UST No. 91-00278

ORDER

This matter is before the hearing officer on the Motion for Leave to Assert a Third-Party Complaint filed by Respondent in the above-entitled matter. The Division filed a timely objection to Respondent's Motion.

By way of background, a Notice of Violation and Order (NOV) was issued to Respondent by the Underground Storage Tank Section of the Department of Environmental Management (DEM), FILE NO. UST 91-00278A. A timely hearing request was filed by Respondent. An almost identical Notice of Violation and Order was issued to Elizabeth Di Luglio, File No. UST 91-00278B. No request for hearing was filed by Elizabeth Di Luglio and accordingly, by operation of R.I.G.L. § 42-17.1-2(u)(1), (5) that Notice of Violation has become a compliance order enforceable in Superior Court. The requirements of the Order portion of each NOV is identical.

Respondent seeks to file a Third-Party Complaint against Elizabeth Di Luglio. The basis of Respondent's complaint is twofold. First, Respondent contends that Di Luglio, by way of a contract between herself and Ms. Di Luglio, is wholly responsible to the Division for the alleged violations outlined in the NOV. Alternatively, Respondent seeks a finding based on

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the existence of an alleged contract, that Di Luglio must pay any judgment and/or attorneys' fees incurred by Respondent as a result of Di Luglio's failure to comply with the Regulations.

The Rhode Island Supreme Court has addressed the filing of third-party complaints pursuant to Super. R. Civ. P. 14(a) in Iorio v. Chin, 446 A. 2d 1021 (R.I. 1982). Following its discussion of the evolution of third-party practice under the Federal Rules of Civil Procedure, the Court held that:

"[A] defendant may file a third party complaint only if the third party defendant is or may be liable to the original defendant. A defendant may not file such a complaint based solely on a third party defendant's liability to the original plaintiff." Id., at 1023.

The instant third-party complaint seeks a determination that Elizabeth Di Luglio is responsible to the Division for payment of all fines and penalties and for compliance with respect to the requirements of the Notice of Violation and Order. First, it is clear under Iorio, supra. that a third-party complaint is not proper where the original defendant seeks to implead a third-party solely because the third-party is liable to the original plaintiff. Noteworthy in this case is the fact that a substantially similar Notice of Violation and Order was issued to Elizabeth Di Luglio (File No. UST 01-00278B)

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from which no timely appeal was taken. The alleged violations and ORDER portion, including the penalty assessment, are identical and were uncontested by Respondent Di Luglio.

The NOV issued to Elizabeth Di Luglio has, by operation of law, become a compliance order enforceable in Superior Court. By virtue of that compliance order, she is already required to comply with the Ordered portion of UST 91-00278B which is identical to the Ordered portion of the instant NOV.

The second basis for Respondent's request to implead Di Luglio is that Di Luglio is liable to D'Allesandro for any fines, penalties and reasonable attorneys fees incurred by the Respondent as a result of Di Luglio's failure to comply with Department Regulations. Such a third-party complaint appears to comply with Super. R. Civ. P. Rule 14(a) as followed in the Superior Court. The jurisdiction of the Administrative Adjudication Division for Environmental Matters ("AAD"), however, is circumscribed by statute. R.I.G.L. § 42-17.7-2. Hearing officers and ultimately the Director are without jurisdiction to decide civil issues involving contract and indemnification claims and jurisdiction lies with the District of Superior Court after a final administrative adjudication to properly resolve such civil disputes.

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Based on the foregoing, Respondent's Request for Leave to
Assert a Third-Party Complaint is DENIED.

Entered as an Administrative Order this 8th day of
June, 1992.

Kathleen M. Lanphear

Kathleen M. Lanphear
Chief Hearing Officer
Department of Environmental Management
Administrative Adjudication Division
One Capitol Hill, 4th Floor
Providence, RI 02908

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CERTIFICATION

I hereby certify that I caused a true copy of the within
Order to be forwarded via regular mail, postage prepaid to David
H. Sholes, Esq., Sholes and Sholes, 1375 Warwick Avenue,
Warwick, RI 02888 and via interoffice mail to Gary Powers, Esq.,
Office of Legal Services, 9 Hayes Street, Providence, RI 02908
on this 8th day of June, 1992.

Bonnie L. Stewart