

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

IN RE: Wayne Sullivan
ISDS No. CI91-461

AAD No. 92-003/IE

DECISION AND ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

This matter is before the Hearing Officer on the Motion for Summary Judgment filed by the Division of Groundwater and ISDS ("Division"). Wayne Sullivan ("Respondent") filed a timely objection and requested oral argument. Oral argument was held on May 29, 1992 at the Offices of the Administrative Adjudication Division for Environmental Matters ("AAD"). This Decision and Order has been held for several weeks at the oral request of the parties to allow time for an amicable resolution of the within matter. This hearing officer sent written correspondence to the parties on July 21, 1992 affording them until August 5, 1992 to request a further stay or enter a consent agreement. Neither party responded. Accordingly, this Decision and Order is issued.

Respondent was issued a Notice of Violation ("NOV") by the Division on December 18, 1991 (File No. CI91-461, AAD No. 92-003/IE). Respondent filed a request for hearing as required by statute to contest the alleged violations set forth in the NOV. Setting aside the lengthy history of Respondent's involvement with the Division of Freshwater Wetlands, the instant matter involves the alleged violation of Rules SD 2.01 (a) and SD 2.05 (a) of the Rules and Regulations
081992

Wayne Sullivan
AAD No. 92-003/IE
ISDS No. CI91-461
Page 2

Establishing Minimum Standards Relating to Design, Construction and Maintenance of Individual Sewage Disposal Systems ("Rules").

Those Rules state as follows:

SD 2.01 (a) APPROVAL OF AN INDIVIDUAL SEWAGE DISPOSAL SYSTEM

No person shall install, construct, alter or repair or cause to be installed, constructed, altered or repaired any individual sewage disposal system, nor shall any person begin construction of any property improvement from which sewage will have to be disposed of by means of an individual sewage disposal system without obtaining the written approval of the Director of the plans and specifications for such work.

SD 2.05 (a) CERTIFICATION OF CONSTRUCTION

The construction, alteration, or reconstruction of any individual sewage disposal system shall be performed by an installer licensed under Chapter 5-56 of the General Laws of Rhode Island, as amended, or a master plumber licensed under Chapter 5-20 of the General Laws of Rhode Island, as amended. The installer of the system shall certify that the system was installed in conformance with the permit and plans for such system approved by the Director and any terms stipulated by the Director as part of the approval.

After reviewing the pleadings, memoranda, affidavits and oral argument of counsel in the light most favorable to Respondent, I find as fact the following:

1. A Notice of Violation was issued to Wayne Sullivan on December 18, 1992 from which an appeal was taken to the Administrative Adjudication Division.
2. The Division moved for summary judgment, an objection was timely filed and oral argument was heard on May 29, 1992.
3. Wayne Sullivan is the owner of the subject property.

Wayne Sullivan
AAD No. 92-003/IE
ISDS No. CI91-461
Page 3

4. A sewage disposal system ("system") comprised of a composting toilet for black waste and a bucket for gray waste disposal is presently being used by Mr. Sullivan at the subject property.
5. No license or permit for this system was ever issued by the Director.
6. The "system" was not installed by an installer licensed under Chapter 5-56 of the General Laws of Rhode Island or by a master plumber licensed under Chapter 5-20 of the Rhode Island General Laws.

Although summary judgment is an extreme remedy and must be applied cautiously, it is properly applied where there exists no genuine issue of material fact. Mulholland Construction Co. v. Lee Pare and Associates, Inc., 541 A.2d. 855 (R.I. 1988), Brill v. Citizens Trust Co., 492 A.2d. 1215 R.I. (R.I. 1985). In the instant matter, Respondent's affidavit raises no dispute as to any genuine issue of material fact and in argument, Respondent concedes that the facts are not in dispute.

Based on the foregoing facts and review of the pleadings, memoranda, affidavits and argument in the light most favorable to Respondent, I conclude that there is no dispute as to any genuine issue of material fact, and the Division is entitled to judgment as a matter of law with respect to the violations set forth in the NOV.

Therefore, it is

ORDERED

1. The Notice of Violation is SUSTAINED.

Wayne Sullivan
AAD No. 92-003/IE
ISDS No. CI91-461
Page 4

2. The Respondent is ordered to comply with the ORDERED portion of the Notice of Violation as issued by the Division.

I hereby recommend the foregoing Decision and Order to the Director for issuance as a Final Agency Order.

August 19, 1992
Date

Kathleen M. Lanphear
Kathleen M. Lanphear
Chief Hearing Officer
Administrative Adjudication Division
Department of Environmental Management
One Capitol Hill
Providence, RI 02908
(401) 277-1357

The within Decision and Order is hereby adopted as a Final Agency Decision and Order.

August 22, 1992
Date

Louise Durfee
Louise Durfee
Director
Department of Environmental Management
9 Hayes Street
Providence, RI 02908

Wayne Sullivan
AAD No. 92-003/IE
ISDS No. CI91-461
Page 5

CERTIFICATION

I hereby certify that I caused a true copy of the within Final Agency Decision and Order to be forwarded via regular mail, postage prepaid to Ralph J. Perrotta, Esq., 171 Congdon Street, Providence, RI 02906 and via interoffice mail to Brian A. Wagner, Esq., Office of Legal Services, 9 Hayes Street, Providence, RI 02908 on this 27th day of August, 1992.


