

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

IN RE: Muratore Realty Corporation AAD No. 92-019/IE  
ISDS NOV CI91-329

DECISION ON DIVISION'S MOTION TO DISMISS

This matter came before Hearing Officer McMahon on April 12, 1993 for oral argument pursuant to the Motion to Dismiss filed by the Division of Groundwater and ISDS ("Division") on December 30, 1992. Said Motion represented that the DEM Administrative Adjudication Division ("AAD") lacked subject matter jurisdiction herein due to an untimely request for hearing. Respondent has filed an objection.

This matter was previously the subject of a final agency order of dismissal which was vacated on March 15, 1993; oral argument on the Division's motion was subsequently rescheduled.

Background

The Notice of Violation and Order herein contained an Immediate Compliance Order requiring Respondent to immediately take steps to reduce the discharge of sewage from the disposal system and have the system pumped as needed in order to prevent the system from overflowing until it could be permanently repaired; it further set forth a timetable for Respondent to have the system inspected, to submit a system assessment and plan to the Division, and to complete the work in accordance with an approved plan.

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The Notice of Violation and Order also assessed an administrative penalty in the sum of Three Thousand (\$3,000.00) Dollars, on which matter Respondent could request a hearing before the AAD.

Arguments

The Division, represented by John Langlois, Esq., argued that Respondent was served the above-referenced Notice of Violation and Order on October 15, 1992, but that Respondent's request for hearing was not filed with the AAD until November 20, 1992, and was thus untimely. Respondent's counsel did not dispute the delayed filing of the request for hearing.

DECISION AND ORDER

Section 42-17.6-4 of the Rhode Island General Laws provides in pertinent part:

(a) A person shall be deemed to have waived his or her right to an adjudicatory hearing unless, within ten (10) days of the date of the director's notice that he or she seeks to assess an administrative penalty, the person files with the director or the clerk of the administrative adjudication division a written statement denying the occurrence of any of the acts or omissions alleged by the director in the notice, or asserting that the money amount of the proposed administrative penalty is excessive.

. . . .

(b) If a person waives his or her right to an adjudicatory hearing, the proposed administrative penalty shall be final immediately upon the waiver.  
(emphasis added)

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By the Division's count, Respondent's request for hearing was filed thirty-six (36) days following receipt of the Notice of Violation and Order and, based on the above statutory provision, was thus untimely and improper.

Since this evidence is undisputed, I conclude that the Administrative Adjudication Division is without jurisdiction to consider the subject matter of the Notice of Violation. Cumberland Park Homes, Inc., AAD No. 91-017/FWA (Appeal dismissed 11/14/91).

Wherefore, it is hereby

ORDERED

That the Division's Motion to Dismiss is herewith Granted. Respondent has waived its right to an adjudicatory hearing; the proposed administrative penalty was final immediately upon the waiver of the right to an adjudicatory hearing.


Entered as an Administrative Order this 13th day of April, 1993.

*Mary F. McMahon*

Mary F. McMahon  
Hearing Officer  
Department of Environmental Management  
Administrative Adjudication Division  
One Capitol Hill, Third Floor  
Providence, RI 02908

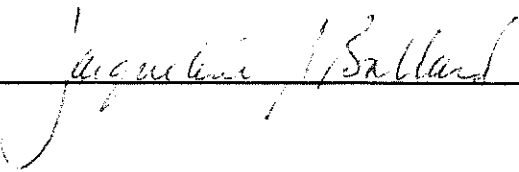
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Entered as a Final Agency Order this 15<sup>th</sup> <sup>OL</sup> day of  
April, 1993.

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

CERTIFICATION

I hereby certify that I caused a true copy of the within  
Order to be forwarded via regular mail, postage prepaid to  
Joseph R. Muratore, Jr., Esq., 875 Centerville Road, Warwick,  
RI 02886; Muratore Realty Corp., 766 West Shore Road,  
Warwick, RI 02886 and via interoffice mail to John Langlois,  
Esq., Office of Legal Services, 9 Hayes Street, Providence,  
RI 02908 on this 15<sup>th</sup> day of April, 1993.

  
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