

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

**RE: TOWN OF JOHNSTON
NOTICE OF VIOLATION OC&I/UST 99-01401**

AAD NO. 99-029/WME

DECISION AND ORDER

This matter is before the hearing officer on the Motion to Dismiss ("Motion") filed by the Office of Compliance and Inspection ("OCI") in the above-entitled matter. The Town of Johnston ("Respondent") filed no objection to the Motion. As is AAD's practice, however, oral argument was scheduled on this dispositive motion for March 27, 2000 at the Offices of the Administrative Adjudication Division for Environmental Matters ("AAD"). Notice of the oral argument on the Motion to Dismiss was mailed to the parties by the Clerk of AAD on March 13, 2000. The Respondent failed to appear and counsel for the OCI proceeded with argument. Brian A. Wagner, Esq., represented the Office of Compliance and Inspection.

The Respondent, Town of Johnston, was issued a Notice of Violation ("NOV") concerning alleged violations of underground storage tank regulations. The NOV was issued on September 17, 1999. The NOV was sent to the Respondent by certified mail and signed for at Johnston Town Hall with the date of delivery as September 20, 1999. A request for hearing was received and date stamped by the Clerk of AAD on October 4, 1999.

The Office of Compliance and Inspection asserts that the Respondent's request for hearing should be dismissed as untimely. OCI argues that, based upon the date of Respondent's receipt of the Notice of Violation, the ten day deadline for filing of an administrative appeal expired on Thursday, September 30, 1999. Respondent's hearing request was not filed with AAD until Monday, October 4, 1999.

OCI contends that, as a result of the town's untimely filing, the NOV, pursuant to Rhode Island

General Laws §42-17.1-2(u)(1), automatically becomes a final compliance order enforceable in Superior Court. Accordingly, OCI argues that AAD is divested of subject matter jurisdiction to hear and issue a recommended decision in regard to the allegations raised in the NOV.

The time limit for filing of a hearing request is determined by the controlling statute or regulation. In this case, R.I. Gen. Laws §42-17.1-2(u) provides a ten day period for filing a request for hearing on an alleged violation. The time period requires that the hearing request be filed within ten days after service of the notice. It further provides that if no written request for hearing is made to the Director within ten days of service of the notice, the notice shall automatically become a compliance order. The Administrative Rules of Practice and Procedure adopted by the Administrative Adjudication Division for Environmental Matters ("AAD Rules") provide the manner in which time is computed and what actions constitute a filing. Rule 5.00 (a) of the AAD Rules entitled "Timely Filing" states:

5.00 Time

- (a) Timely Filing. Papers required or permitted to be filed under these regulations, or any provision of the applicable law, must be filed with the clerk at the Administrative Adjudication Division office within the time limits for such filings as are set by Department regulation, or the hearing officer, or other provision of law.

Rule 5.00 (a) continues to specifically address the filing of documents deposited in the mail. Rule 5.00 a)2 states:

- 2. Mailing: Papers deposited in the U.S. mail shall be deemed filed on the date stamped

by the Clerk of the Administrative Adjudication Division. In the event that no date stamp by the clerk appears, papers shall be deemed filed on the date so postmarked. All papers shall show the date received by the Administrative Adjudication Division.

. . .

The AAD Regulations, Rule 5.00 (b) also provides the manner in which the time of filing is computed. It provides:

- (b) Computation of Time. Unless otherwise specifically provided by law or these rules, computation of any time period referred to in these rules shall begin with the first day following the act which initiates the running of the time period. The last day of the time period so computed is to be included unless it is a Saturday, Sunday, or legal holiday or any other day on which the Administrative Adjudication Division is closed, in which event, the period shall run until the end of the regular business hours of the next following business day. When the time period is less than seven (7) days, intervening days when the Administrative Adjudication Division is closed shall be excluded in the computation.

Computing the appeal period from the day following receipt of the Notice of Violation, namely September 20, 1999, the appeal period expired on Thursday, September 30, 1999. The request for hearing was received by the Administrative Adjudication Division and date stamped by the Clerk on October 4, 1999 at 3:10 p.m. Consequently, the appeal was filed four days after the expiration of the appeal period.

Once the appeal period lapsed, R.I. Gen. Laws §42-17.1-2(u)(1) took effect and the Notice of Violation *automatically* became a compliance order divesting AAD of subject matter jurisdiction.

Based on the foregoing it is hereby

ORDERED

That the Motion to Dismiss Request for Hearing filed by the Office of Compliance and Inspection in the above-entitled matter is GRANTED.

Entered as a Recommended Decision and Order this _____ day of April, 2000.

Kathleen M. Lanphear
Chief Hearing Officer
Department of Environmental Management
Administrative Adjudication Division
235 Promenade Street, Third Floor
Providence, Rhode Island 02908
401-222-1357

Entered as a Final Agency Order this _____ day of _____ 2000.

Jan H. Reitsma
Director
Department of Environmental Management
235 Promenade Street, 4th Floor
Providence, Rhode Island 02908

CERTIFICATION

I hereby certify that I caused a true copy of the within Order to be forwarded by first-class mail, postage prepaid, to John M. Verdecchia, Esquire, Town Solicitor, Office of Town Solicitor, Town Hall, 1385 Hartford Avenue, Johnston, RI 02919; via interoffice mail to Brian Wagner, Esquire, Office of Legal Services, and Dean H. Albro, Chief, Office of Compliance and Inspection, 235 Promenade Street, Providence, RI 02908 on this _____ day of _____, 2000.
