

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

IN RE: Itrot Realty
Freshwater Wetlands Enforcement C-1208

DECISION AND ORDER

This matter is before the Hearing Officer on the Motion to Dismiss filed by the Division of Freshwater Wetlands on July 12, 1991. No objection to the motion was filed.

As grounds therefore the Division represents that Notice of Violation C-1208 was served on Respondent by certified mail on August 22, 1984. The Division has supplied a copy of the signed return receipt card in support of its position. The Division further states that no request for hearing was ever received by the Department.

Based on the foregoing and the requirements of R.I.G.L. § 42-17.1-2, the Division requests that this matter be dismissed.

R.I.G.L. § 42-17.1-2 (u) authorizes the Director:

"(u) To give notice of an alleged violation of law to the person responsible therefor whenever the director determines that there are reasonable grounds to believe that there is a violation of any provision of law within his or her jurisdiction or of any rule or regulation adopted pursuant to authority granted to him or her, unless other notice and hearing procedure is specifically provided by that law. Nothing in this chapter shall limit the authority of the attorney general to prosecute offenders as required by law.

(1) The notice shall provide for a time within which the alleged violation shall be remedied, and shall inform the person to whom it is directed that a written request for a hearing on the alleged violation may be filed with the director within ten (10) days after service of the notice.

The notice will be deemed properly served upon a person if a copy thereof is served him or her personally,

or sent by registered or certified mail to his or her last known address, or if he or she is served with notice by any other method of service now or hereafter authorized in a civil action under the laws of this state. If no written request for a hearing is made to the director within ten (10) days of the service of notice, the notice shall automatically become a compliance order (emphasis added).

* * *

(5) Whenever a compliance order has become effective, whether automatically where no hearing has been requested, where an immediate compliance order has been issued, or upon decision following hearing, the director may institute injunction proceedings in the superior court of the state for enforcement of the compliance order..."

The Administrative Adjudication Division acquires jurisdiction over the subject matter of notices of violation upon the timely filing of a request for hearing. See e.g., North American Broadcasting, AAD No. 91-035/AHE, Decision issued June 26, 1991. As no hearing request was ever filed on behalf of Itrot Realty, the Notice of Violation, by operation of law, became a compliance order enforceable in Superior Court. Accordingly, the AAD is without jurisdiction to consider the subject matter of the NOV.

Based on the foregoing, I conclude that the Administrative Adjudication Division is without jurisdiction over this matter and therefore it is hereby

ORDERED

That the Motion to Dismiss is granted.

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

July 21, 1991
Date

Kathleen M. Lanphear
Kathleen M. Lanphear
Chief Hearing Officer
Department of Environmental Management
Administrative Adjudication Division
One Capitol Hill, 4th Floor
Providence, RI 02908
(401) 277-1357

The within Decision and Order is hereby adopted as a final agency Decision and Order.

July 30, 1991
Date

Louise Durfee
Louise Durfee
Director
Department of Environmental Management

CERTIFICATION

I hereby certify that I caused a true copy of the within to be forwarded regular mail, postage pre-paid to Emmanuel Torti, Itrot Realty, 1135 Plainfield Pike, Johnston, Rhode Island 02919; and via inter-office mail to Catherine Robinson Hall, Esq., Office of Legal Services, 9 Hayes Street, Providence, Rhode Island 02908 on this 31st day of July, 1991.

Jaqueline Balla