

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN RE: General Properties

FINAL AGENCY DECISION

For the reasons stated below, I hereby accept the hearing officer's assessment of witness credibility and adopt all of the recommended Findings of Fact. I also adopt the recommended conclusions of law numbered one (1) through ten (10). I do not, however, concur with Conclusion of Law numbered eleven (11).

For liability to be predicated in this case, the Division must demonstrate, by a preponderance of the evidence that General Properties placed a pollutant in a location where it is likely to enter waters of the state and that no permit for the discharge existed.

A reading of Findings of Fact numbered five (5) through fifteen (15) leads to the conclusion that during General Properties ownership and operation of the gasoline station there was a significant release of petroleum and some level of cleanup. This is also supported by Conclusions of Law numbered seven (7) through ten (10).

Conclusion of Law numbered eleven (11), however, is inconsistent with the Findings of Fact. Specifically, Finding of Fact numbered twenty-one (21) which indicates the presence of petroleum hydrocarbons in the groundwater. At hearing, conflicting explanations of this fact were offered. The Division, through its report and experts, offered its theory that the contamination was from the release in 1989 in

the tank grave area. The Hearing Officer gave great weight to the conclusions of the Division's experts, particularly Mr. Mountain, and did not accept any alternate theory of intervening sources of groundwater contamination presented during the course of the hearing. At Page 27 of the Decision the Hearing Officer concluded that "there is no evidence that they [other alleged sources] were the cause of the plume and test readings." Without a finding of an intervening source, the only logical conclusion based on the record is that the tank area is the source area.

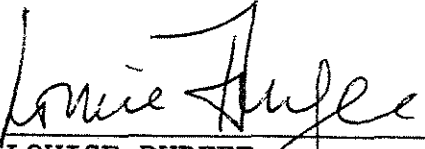
For these reasons, I do not adopt Conclusion of Law numbered eleven (11) and I conclude as a matter of law, based on the record, that the Division has met its burden with respect to the groundwater contamination.

Wherefore, it is hereby

O R D E R E D

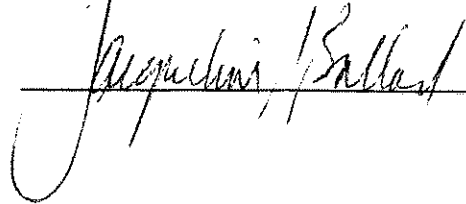
That this case is remanded to the Hearing Officer for a determination of the appropriate remedy under the circumstances.

8/13/93  
Date \_\_\_\_\_

  
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LOUISE DURFEE  
DIRECTOR  
Department of Environmental  
Management  
9 Hayes Street  
Providence, RI 02908  
(401) 277-6607

CERTIFICATION

I hereby certify that I caused a true copy of the within Director's Decision to be forwarded to Arlene Violet, Esquire, 147 County Road, Barrington, Rhode Island 02806; Daniel P. Carter, Esquire, 335-D Centerville Road, Warwick, RI 02886 and via interoffice mail to Kendra Beaver, Esquire, Office of Legal Services, 9 Hayes street, Providence, RI 02908 on this 16th day of August, 1993.

  
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