

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

IN RE: Muratore Realty Corporation
ISDS NOV CI91-329

AAD No. 92-019/IE

DECISION ON DIVISION'S MOTION TO DISMISS

This matter came before Hearing Officer McMahon on February 3, 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 Respondent's request for hearing was untimely.

Respondent subsequently filed an objection but failed to state the grounds therefor. Notice of hearing on the motion was sent to the parties. John Langlois, Esq., appeared on behalf of the Division, but Respondent failed to appear to press his objection.

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.

FILED DEMAND

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Muratore Realty Corporation
AAD No. 92-019/IE
ISDS NOV CI91-329
Page 2

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 Administrative Adjudication Division ("AAD").

The Division's Motion represents that Respondent was served the above-referenced Notice of Violation and Order on October 15, 1992. Respondent's request for hearing was filed with the AAD on November 20, 1992.

DECISION AND ORDER

§ 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)

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.

Muratore Realty Corporation
AAD No. 92-019/IE
ISDS NOV CI91-329
Page 3

Having before me only the evidence presented in the Division's Motion to Dismiss, 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 and the proposed administrative penalty shall be final and become a compliance order immediately upon the entry of the Final Order herein.

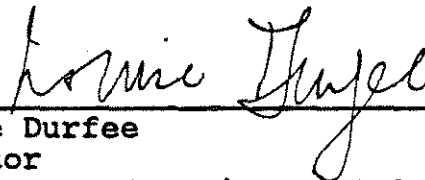
Entered as an Administrative Order this 4th day of February, 1993.



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

Muratore Realty Corporation
AAD No. 92-019/IE
ISDS NOV CI91-329
Page 4

Entered as a Final Agency Order this 8th day of
February, 1993.



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
Decision and 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 9th day of February, 1993.

