

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

RE: DURASTONE COMPANIES AAD NO. 92-045/FWE
NOTICE OF VIOLATION NO. C92-0098V

ORDER VACATING DISMISSAL AND SCHEDULING ORAL ARGUMENT

This matter came before Hearing Officer McMahon pursuant to the Motion to Revoke Order Granting Third Party's Motion to Dismiss filed by Respondent Durastone on December 24, 1993. Said Motion sets forth certain bases for its request that the Order be revoked and oral argument be scheduled on the Motion to Dismiss or in the alternative, that Durastone be given a date certain to file its objection to the Motion to Dismiss.

There was no objection.

DECISION AND ORDER

Due to the statements set forth in the Motion to Revoke, I have reviewed the record and found the following:

1. The DOT filed a Motion to Dismiss on July 21, 1993. No objections were filed. No action was taken by the AAD.
2. A prehearing conference was conducted by this Hearing Officer on September 10, 1993. While not part of the record, my notes indicate that Respondent Durastone was to file its Amended Complaint by September 30, 1993 and that argument on the Motion to Dismiss would not be scheduled until after said date. The notes do not indicate an awareness that objections had not been filed.
3. The Amended Third Party Complaint was filed by Respondent Durastone on September 27, 1993.
4. DOT filed a Motion to Dismiss Respondent Durastone's Amended Third Party Complaint on September 30, 1993 and an Amendment requesting oral argument was filed on October 6, 1993. No objections having been filed, this Motion to Dismiss was granted on December 21, 1993.

Section 8.00(a) of the Administrative Rules of Practice and Procedure for the Department of Environmental Management Administrative Adjudication Division for Environmental Matters ("AAD Rules") provides in pertinent part:

8:00 Motions

- a) General Requirements.
 1. ***
 2. Presentation/Objection to Motions.

...Within seven (7) days after a written motion is filed with the Administrative Adjudication Division or AHO, a party opposing said motion must file a written objection to the allowance of the motion and shall, if desired, request oral argument. All motions and objections shall be accompanied by a written memorandum, specifying the legal basis and support of the party's position. Failure to file a written objection within the prescribed time period, will be deemed a waiver of the objection (emphasis added).

When an objection has not been timely filed with the AAD, motions have been granted on procedural grounds. Carol Anne Mancini, AAD No. 91-039/IE (Department's Motion to Dismiss granted 1/13/92); Fredric Dupuis Spotless Cleaners, AAD No. 92-001/AHE (Respondent's Motion to Dismiss granted 2/3/92); Block Island Power Company, AAD No. 92-002/GWE (Respondent's Motion to Dismiss granted 4/5/93). This same procedure of dismissing a matter absent an objection was followed in the Order Granting Third Party's Motion to Dismiss entered on December 21, 1993. Oral argument was not scheduled because objection to the motion was deemed to be waived pursuant to AAD Rule 8.00.

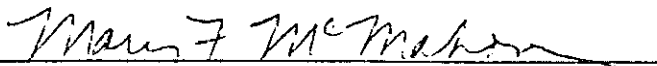
As for paragraphs two and three of the Motion to Revoke, the language "This matter came before Hearing Officer McMahon on December 20, 1993" merely refers to the fact that the Hearing Officer considered the Motion to Dismiss on said date, not that hearing on oral argument was scheduled for said date.

Having made the above clarifications and in light of AAD Rule 8.00's application to the pending motion (no objections having been filed), it is hereby

ORDERED

1. The Order Granting Third Party's Motion to Dismiss is herewith vacated;
2. Respondent Durastone shall file its Objection and supporting memorandum no later than January 14, 1994 or it shall be deemed waived and the Motion to Dismiss granted;
3. Assuming the objection and supporting memorandum are timely filed, this matter is herewith scheduled for oral argument on DOT's Motion to Dismiss Respondent Durastone's Amended Third Party Complaint on January 31, 1994 at 9:00 a.m. in the offices of the Department of Environmental Management, Administrative Adjudication Division, One Capitol Hill, Third Floor, Providence, RI 02908.

Entered as an Administrative Order this 4th day of January, 1994.


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

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CERTIFICATION

I hereby certify that I caused a true copy of the within order to be forwarded, via regular mail, postage prepaid to Thomas S. Hogan, Hogan & Hogan 201 Waterman Avenue, East Providence, RI 02914-3591; Veronica Ridolfi, Esq., RIDOT, Two Capitol Hill, Room 251, Providence, RI 02908 and via interoffice mail to Mary B. Shekarchi, Esq., Office Legal Services, 9 Hayes Street, Providence, RI 02908 on this 3th day of January, 1994.

