

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

IN RE: National Velour
Notice of Violation and Order and Penalty
dated June 5, 1990

DECISION AND ORDER

This matter is before the hearing officer on the Motion to Dismiss and Limit the Penalty filed by National Velour ("Respondent") and on the Motion for Summary Judgment filed by the Division of Air and Hazardous Materials ("Division"). Each party filed timely objections to the above-referenced motions. Respondent requested oral argument. Mark Siegars, Esq., represented the Division and Elaine Bucci, Esq., represented Respondent. Oral argument on each Motion was heard on November 1, 1991. Prior to the filing of the Motions, a status conference and prehearing were held. At the prehearing conference, Respondent appeared pro se. The hearing officer explained the importance and complexity of the instant matter and urged Respondent to consider seeking legal assistance. Respondent concurred and the prehearing was continued to afford Respondent time to obtain counsel. Respondent did, in fact, retain counsel and the pending motions and objections were subsequently filed.

A brief recitation of the background of this matter follows. On June 5, 1990 the Division issued a Notice of Violation and Order and Penalty ("NOVAP") to National Velour

Corporation. The Division alleged violations of Air Pollution Control Regulation 19, specifically Regulation 19.3.1 concerning emission limitations and Regulation 19.5.1 concerning reporting requirements. The alleged violations were based upon an inspection by Division personnel and reliance upon inventory information submitted by Respondent in response to an information request made by the Division. Based on the facts alleged in the Notice of Violation, the Division ordered Respondent, inter alia, to submit a specific plan for compliance with emission limitations and to remit payment of an administrative penalty in the amount of two hundred five thousand dollars (\$205,000.00). The NOVAP advised Respondent of its entitlement to request a hearing, the procedures for such a request and the ramifications of failure to request a hearing including that upon failure to request a hearing the NOVAP would become a compliance order and the administrative penalty would become final. The NOVAP continues and thereafter references a proposed administrative penalty. The NOVAP was issued after the Administrative Adjudication Division for Environmental Matters ("AAD") was created by the Legislature but two weeks prior to its commencing operations. Upon request by AAD for referral of all pending adjudicatory matters, the case was forwarded by the Division as a pending contested enforcement matter.

Respondent's Motion to Dismiss

Respondent has moved to dismiss the NOVAP or in the alternative to limit the penalty. Respondent's position is set forth in detail in its memorandum of law, but briefly stated, Respondent contends that dismissal should be granted on two grounds. First, Respondent asserts that the Division failed to follow the required procedure set forth in R.I.G.L. § 23-23-6. R.I.G.L. § 23-23-6 states in pertinent part:

23-23-6. Investigation and hearing of complaint of pollution--Public disclosure.--(a) If the director shall have cause to believe that any person is violating any provision of this chapter or rule or regulation or any order made hereunder, it shall be the duty of the director to cause the matter to be investigated. Except as provided in § 23-23-16 hereunder, before making any finding that a violation has occurred, that person shall be granted a hearing. At all hearings, the director shall receive evidence and hear witnesses in behalf of the person believed to be causing air pollution.

Respondent contends that the Division failed to investigate the matter and failed to grant a hearing prior to finding that a violation occurred. National Velour argues that the Division is required to hold a hearing prior to issuance of a Notice of Violation.

The Division has set forth its position in its memorandum of law which is likewise part of the record. Succinctly stated, the Division maintains that it has followed the procedure outlined in Section 23-23-6 of the General Laws. I agree.

It is clear from a review of the Notice of Violation that upon an inspection of the Respondent's facility and upon review of documents submitted by Respondent, the Division issued a NOVAP setting forth facts and circumstances which it alleges constitute violations of Air Pollution Regulations adopted pursuant to statute. The NOVAP specifically referenced the Regulations allegedly violated and clearly advised Respondent of its right to request a hearing and that failure to request a hearing would result in the order automatically becoming a compliance order and in the administrative penalty becoming final. The NOVAP continues and references a proposed administrative penalty. As the Division offers in its memorandum, the Division has not issued any order to National Velour which has become final. The Division has found the Respondent to be in violation of emission limitations and reporting requirements as outlined in the NOVAP but such allegations are not findings as referenced in R.I.G.L. § 23-23-6 until an administrative hearing is held as to the allegations in the NOVAP. Only after issuance of a final administrative decision upholding the NOVAP or after a respondent fails to file a hearing request would the allegations constitute a finding as referenced in R.I.G.L. § 23-23-6. I concur with the Division's assertion that Respondent is currently in the midst of the

hearing it claims it is due pursuant to R.I.G.L. § 23-23-6. Contrary to Respondent's contention, the procedure followed is likewise consistent with R.I.G.L. § 23-23-8 which reads in part:

23-23-8. **Investigations--Orders.**--(a) If any person is causing air pollution and if after investigation and hearing the director shall so find, he or she may enter an order directing that person to adopt or to use, or to operate properly, as the case may be, some practicable and reasonably available control system or device or means to prevent such pollution, having due regard for the rights and interests of all persons concerned. The order may specify the particular control systems, device, or means to be adopted, used, or operated; provided, however, that where there is more than one such practical and reasonably available system or means, the order shall give to the person complained of the right to adopt or use such one of the systems or means as he or she may choose. The order shall specify the time within which the system or means shall be adopted or used or the operation thereof shall be commenced . . .

(b) * * *

The NOVAP includes an Order portion concerning pollution control systems which is proposed but which, similarly, would only become final upon issuance of a favorable final administrative decision or if Respondent failed to request a hearing. For the foregoing reasons, Respondent's Motion to Dismiss the Violation portion of the NOVAP for failure to comport with R.I.G.L. § 23-23-6 is denied.

Respondent's second ground for dismissal is that pursuant to R.I.G.L. § 23-23 a penalty may only be assessed after there is a violation of an Order of the Director. Respondent maintains that R.I.G.L. § 23-23 is controlling and that its

clear language precludes the Division from issuing an order and a fine simultaneously. The language of R.I.G.L. § 23-23-14 follows:

23-23-14. **Penalties.**--(a) Any person who shall violate an order of the director shall be punished by a fine of not more than five hundred dollars (\$500) or by imprisonment for not more than thirty (30) days or by both such fine and imprisonment, and every person shall be deemed guilty of a separate and distinct offense for each day during which such violation shall be repeated or continued.

(b) The director or any agent or employee thereof or any person or his or her agent who shall, except in the enforcement of this chapter or in the performance of official duties hereunder, disclose any information relating to secret processes or methods of manufacture or production obtained in the course of inspecting or investigating any source or alleged source of air pollution, or who shall violate § 23-23-13 shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding five hundred dollars (\$500).

(c) Any person obstructing, hindering, or in any way causing to be obstructed or hindered, the director or any agent or employee thereof in the performance of their duties or who shall refuse to permit the director or any of his or her agents entrance into any premises, buildings, or other places belonging to or controlled by that person in the performance of his or her duties as such, or who shall refuse to furnish the information requested or to make a test provided for in this chapter shall be deemed guilty of a misdemeanor and shall be fined not more than five hundred dollars (\$500).

The Division maintains that although the alleged violations contained in the NOVAP concern violations of the Clean Air Act and the Regulations promulgated in accordance therewith, R.I.G.L. § 42-17.6 entitled, "Administrative Penalties for

Environmental Violations" is controlling on the issue of assessment of administrative penalties. R.I.G.L. § 42-17.6-2 states as follows:

42-17.6-2. Authority of director to assess penalty.-- The director may assess an administrative penalty on a person who fails to comply with any provision of any rule, regulation, order, permit, license, or approval issued or adopted by the director, or of any law which the director has the authority or responsibility to enforce. Any such penalty shall be an alternative to any other civil penalty that may be prescribed by law.

Respondent's argument is one of statutory construction. Respondent contends that R.I.G.L. § 23-23-14 and R.I.G.L. § 42-17.6 are in conflict and accordingly the special statute (R.I.G.L. § 23-23) governs over the general statute (R.I.G.L. § 42-17.6). A reading of both statutes, argues Respondent, illustrates an irreconcilable statutory conflict concerning the procedure and imposition of penalties. Respondent's recitation and analysis of statutory construction and case law are inapplicable to the two statutes at issue. I agree with Respondent's characterization of R.I.G.L. § 23-23 as clear and unambiguous. Specifically, R.I.G.L. § 23-23-14 unambiguously applies to instances where an order of the director has been violated. I agree with Respondent's argument that there has been no final order of the Director in the instant matter and hence, no violation upon which a penalty could be pursued under R.I.G.L. § 23-23-14.

The Division, however, referenced R.I.G.L. § 42-17.6 in the NOVAP as the basis for assessment of a penalty.

R.I.G.L. § 42-17.6-2 is likewise clear and unambiguous. It provides, inter alia, authority for the director to assess administrative penalties for failure to comply with, inter alia, any rule or regulation adopted by the director or any law which the director has authority to enforce. R.I.G.L. § 42-17.6-2 on its face applies to the administrative forum and provides authority for the assessment of an administrative penalty.

Such administrative penalty is clearly distinguishable from the civil penalty provided by R.I.G.L. § 23-23-14 and is an alternative to any other civil penalty provided by law.

R.I.G.L. § 42-17.6-2. There is a clear dichotomy between the statutes. Since the language of the statutes is clear and unambiguous and expresses a clear and definite meaning, there is no need to resort to statutory construction and the words must be given their plain and obvious meaning. O'Neil v. Code Commission for Occupational Safety and Health, (R.I. 1987) 534 A.2d 606. Applying the above-recited canon of statutory construction, R.I.G.L. § 23-23-14 has no application to the pending matter. Rather, R.I.G.L. § 42-17.6-2 is the controlling statute.

Even if I accept Respondent's argument that the statutes conflict and resort to statutory construction is necessary, I would arrive at the same result. Respondent asserts in its

brief that the two statutes at issue relate to the same or similar subject matter. As such, Respondent asserts that the two statutes cannot be read so as to give effect to both and accordingly, the special provision embodied in R.I.G.L. § 23-23 et seq. must prevail.

Experience demonstrates that when a legislature enacts a statute, it has available all other statutes and provisions which relate to the same subject matter. Sutherland Statutory Construction, § 51.01 (Singer, 5th Ed., 1992). Moreover, our Supreme Court has held that the legislature is presumed to understand the nature of prior legislation. Defenders of Animals v. Dept. of Environmental Management, 553 A.2d 541 (R.I. 1989). It is noted that a legislature does not deliberately enact inconsistent provisions when it is cognizant of both, unless it specifically acknowledges the inconsistency. Sutherland on Statutory Construction § 51.01 (Singer, 5th Ed., 1992).

Applying the above-recited canons to the two statutes at issue, one must conclude that they are not irreconcilably repugnant. Accordingly, in so construing these environmental penalty statutes, one must look at the intent of the legislature. Blanchette v. Stone 591 A.2d 785 (R.I. 1991). R.I.G.L. § 42-17.6 refers specifically to administrative penalties. Moreover, it dictates that such administrative penalties " . . . shall be an alternative to any other civil

penalty that may be prescribed by law." Since the legislature is presumed to understand the nature of prior legislation, including R.I.G.L. § 23-23-14, it is reasonable to conclude that the legislature intended R.I.G.L. § 42-17.6-2 to provide an alternative remedy to the penalties already provided for by R.I.G.L. § 23-23-14. Since the two statutes are not irreconcilably repugnant and they can be read in harmony so as to give effect to both, Respondent's reliance on Police and Firefighters Retirement Association of Providence v. Norberg, 476 A.2d 1034 (R.I. 1984) is misplaced.

Based on the foregoing, it is hereby

ORDERED

that Respondent's Motion to Dismiss is DENIED.

Division's Motion For Summary Judgment

The Division has moved for summary judgment asserting that there are no genuine issues of material fact and that the Division is entitled to entry of summary judgment as a matter of law on the issue of liability. In support of its Motion, the Division has filed the affidavit of Martha H. Larson. Ms. Larson's affidavit demonstrates her personal knowledge of the National Velour facility and details her calculation of VOC emissions by National Velour for the years 1982 through 1989. Ms. Larson based her calculations upon information submitted to her by Respondent and upon her personal inspection of the facility. The Respondent filed an objection to the summary

judgment motion and incorporated by reference all arguments contained in its Motion to Dismiss and accompanying memorandum of law. The Respondent filed no affidavits to dispute any of the facts set forth in the affidavit of Martha Larson. Oral argument on the Motion was heard contemporaneously with arguments on the Motion to Dismiss. As the moving party, the Division must demonstrate by affidavit and other documentary evidence before this administrative tribunal that it is entitled to judgment as a matter of law and that there exist no genuine issues of material fact. Palmisciano v. Burrillville Racing Assn., 603 A.2d 317 (R.I. 1992).

Upon deciding this motion for summary judgment, it is incumbent upon me to conduct an examination of the pleadings, affidavits, admissions and other appropriate evidence in the light most favorable to Respondent. Commercial Union Companies v. Graham, 945 A.2d 243, (R.I. 1985). Thereafter, summary judgment may only be granted if such review determines that no issue of material fact exists and the moving party is entitled to judgment as a matter of law. Blanchard v. Blanchard, 484 A.2d 904 (R.I. 1984).

As is required, I have reviewed the pleadings, affidavits, memoranda and other appropriate evidence in the pending matter. As stated previously, the affidavit of Martha Larson establishes numerous material facts which are undisputed by Respondent. Respondent filed no affidavits in support of its objection to

summary judgment. Respondent bears the burden of proving with competent evidence the existence of a disputed material fact and cannot rest upon mere denials, conclusions or legal opinions. Manning Auto Parts, Inc., v. Souza, 591 A.2d 34 (R.I. 1991), Golderese v. Suburban Land Co., 590 A.2d 395 (R.I. 1991). The party opposing summary judgment must assert facts that raise a genuine issue to be resolved. Sup. Ct. R. Civ. P. Rule 56, Holliston Mills, Inc. v. Citizens Trust Co., 604 A.2d 331 (R.I. 1992). The record, including the affidavit of Martha Larson, establishes by a preponderance of the evidence the facts necessary to prove the allegations set forth in the NOVAP. Respondent has not disputed any of those facts. Accordingly, I find that there exists no genuine issue of material fact and that the Division is entitled to judgment as a matter of law. This hearing officer's specific findings of fact and conclusions of law follow.

FINDINGS OF FACT

Based on my review of the record and viewed in the light most favorable to the Respondent, I make the following specific findings of fact:

1. National Velour has, since at least 1980, operated a surface coating operation located at 36 Bellair Avenue, Warwick, Rhode Island.

2. The pertinent Air Pollution Control Regulations including Regulation 19, adopted by the Department of Environmental Management became effective on November 13, 1977.

3. Air Pollution Control Regulation No. 19, Section 19.5.1. imposes certain annual registration and reporting requirements upon persons who use five gallons/day or more of a coating. It provides:

19.5.1. Any person who uses five gallons/day or more of a coating must register annually with the Division of Air and Hazardous Materials. No later than 45 days following the end of a calendar year, the following information must be submitted on forms supplied by the Director:

(a) The name and address of the company and the name and telephone of a responsible corporate official submitting the registration, and

(b) A description of all operations in the facility where volatile organic compounds are emitted, and

(c) Quantities of coatings, solvents, dissolvers, viscosity reducers, diluents, thinners, reagents, cleaning agents, enamels, lacquers or paints consumed during the calendar year of record, and

(d) The amount of volatile organic compound per gallon of coating solution (pounds per gallon) for each coating, enamel, lacquer or paint consumed at the facility during the calendar year of record.

4. On December 14, 1989, Martha Larson inspected the National Velour facility at 36 Bellair Avenue, Warwick, Rhode Island.
5. Subsequent to the inspection Martha Larson requested historical data from National Velour concerning the coatings used in its surface-coating operation.
6. By correspondence dated January 8, 1990, National Velour provided information requested by Ms. Larson.
7. On February 5, 1990, the Division through its engineer Martha Larson made an information request to National Velour for information pertaining to its use of coatings for the years 1980 through 1986.
8. In response to the Division's request National Velour submitted coating information, including the quantity of Volatile Organic Compounds (VOCs) utilized in its surface-coating operations.
9. Based upon analysis of this information, National Velour used more than five gallons per day of a coating containing VOCs through 1990.
10. On June 5, 1990, the Division issued the NOVAP to National Velour alleging violations on Air Pollution Control Regulation 19.

11. It is undisputed that National Velour did not submit to the Division annual registration statements or reporting information of its VOC emissions from its surface-coating operations at the end of each calendar year for the following years:

1980
1981
1982
1983
1984
1985
1986
1987

12. National Velour emitted VOCs in the following annual quantities:

1981	120 tons
1982	196 tons
1983	167 tons
1984	132 tons
1985	116 tons
1986	124 tons
1987	94 tons
1988	123 tons
1989	160 tons

13. The two-year average annual VOC emissions of National Velour for each of the years from 1981 - 1989 is in excess of 100 tons.

14. National Velour is a 100-ton source of air pollution.

15. Air Pollution Control Regulation 19.3 (effective November 13, 1979), specifically 19.3.1 reads:

19.3 Emission Limitations

19.3.1 As outlined in the following schedule, surface coating lines shall achieve the emission limitations set forth, except as provided in Subsection 19.3.3:

<u>Type of Surface Coating</u>	<u>Interim Emission Limitation (#VOC/gal sfc ctg-water) (Interim Compliance Date)</u>	<u>Final Emission Limitation (VOC/gal sfc ctg-water) (Final Compliance Date)</u>
Paper	4.0	2.9
Fabric	4.0	2.9
Vinyl	4.0	3.8

16. National Velour had VOC emissions from its surface-coating operations in 1981 as follows: 5.49 lbs. VOC/gal. for coating 182, 8.64 lbs. VOC/gal. coating for coating P857, 5.02 lbs. VOC/gal. coating for coating 1050, and 4.85 lbs. VOC/gal. coating for coating 1062.
17. National Velour failed to implement Reasonably Available Control Technology ("RACT") in its surface-coating operations so as to meet the interim emission limitation of 4.0 lbs. VOC/gal. coating of Air Pollution Control Regulation No. 19, section 19.3.1. in 1982. Specifically, National Velour had emissions of 5.38 lbs. VOC/gal. for coating 148, 5.49 lbs. VOC/gal. coating for coating 182, 8.64 lbs. VOC/gal. coating for coating P857, and 5.02 lbs. VOC/gal. coating for coating 1050 in 1982.

18. National Velour failed to implement RACT in its surface-coating operations so as to meet the interim emission limitation of 4.0 lbs. VOC/gal. coating of Air Pollution Control Regulation No. 19, section 19.3.1. in 1983. Specifically, National Velour had emissions of 4.21 lbs. VOC/gal. for coating 125, 5.38 lbs. VOC/gal. coating for coating 148, 5.49 lbs. VOC/gal. coating for coating, 182, 8.64 lbs. VOC/gal. coating for coating P857, 7.92 lbs. VOC/gal. coating for coating P899, 5.02 lbs. VOC/gal. coating for coating 1050, and 4.85 lbs. VOC/gal. coating for coating 1062 in 1983.
19. National Velour failed to implement RACT in its surface-coating operations so as to meet the interim emission limitation of 4.0 lbs. VOC/gal. coating of Air Pollution Control Regulation No. 19, section 19.3.1. in 1984. Specifically, National Velour had emissions of 4.21 lbs. VOC/gals. for coating 125, 5.49 lbs. VOC/gal. coating for coating 182, 8.64 lbs. VOC/gal. coating for coating P857, and 5.02 lbs. VOC/gal. coating for coating 1050 in 1984.
20. National Velour failed to implement RACT in its surface-coating operations so as to meet the final emission limitation of, 2.9 lbs. VOC/gal. coating for paper and fabric surface coating and 3.8 lbs. VOC/gal.

coating for vinyl surface coating of Air Pollution Control Regulation No. 19, section 19.3.1. in 1985. Specifically, National Velour had emissions of 5.49 lbs. VOC/gal. coating for coating 182, 8.64 lbs. VOC/gal. coating for coating P857, and 5.02 lbs. VOC/gal. coating for coating 1050 in 1985.

21. That National Velour failed to implement RACT in its surface-coating operations so as to meet the final emission limitation of 2.9 lbs. VOC/gal. coating for paper and fabric surface coating and 3.8 lbs. VOC/gal. coating for vinyl surface coating of Air Pollution Control Regulation No. 19, section 19.3.1. in 1986. Specifically, National Velour had emissions of 5.41 lbs. VOC/gal. coating for coating 182, 8.64 lbs. VOC/gal. coating for coating P857, and 5.02 lbs. VOC/gal. coating for coating 1050 in 1986.

22. National Velour failed to implement RACT in its surface-coating operations so as to meet the final emission limitation of 2.9 lbs. VOC/gal. coating for paper and fabric surface coating and 3.8 lbs. VOC/gal. coating for vinyl surface coating of Air Pollution Control Regulation No. 19, section 19.3.1. in 1987. Specifically, National Velour had emissions of 7.50 lbs. VOC/gal. coating for coating E2505, and 8.52 lbs. VOC/gal. coating for coating P857N in 1987.

23. National Velour failed to implement RACT in its surface-coating operations so as to meet the final emission limitation of 2.9 lbs. VOC/gal. coating for paper and fabric surface coating and 3.8 lbs. VOC/gal. coating for vinyl surface coating of Air Pollution Control Regulation No. 19, section 19.3.1. in 1988. Specifically, National Velour had emissions of 7.50 lbs. VOC/gal. coating for coating E2505, and 8.52 lbs. VOC/gal. coating for coating P857N 1988.
24. National Velour failed to implement RACT in its surface-coating operations so as to meet the final emission limitation of 2.9 lbs. VOC/gal. coating for paper and fabric surface coating and 3.8 lbs. VOC/gal. coating for vinyl surface coating of Air Pollution Control Regulation No. 19, section 19.3.1.1 in 1989. Specifically, National Velour had emissions of 7.50 lbs. VOC/gal. coating for coating E2505, 8.52 lbs. VOC/gal. coating for coating P857N, and 8.51 lbs. VOC/gal. coating of coating XS2878N in 1989.

CONCLUSIONS OF LAW

After review of the record including affidavits, pleadings and memoranda and viewed in the light most favorable to the Respondent, I make the following conclusions of law.

1. Air Pollution Control Regulation 19 is applicable to National Velour.
2. National Velour was required by Air Pollution Control Regulation No. 19, section 19.5.1. to submit an annual registration statement of VOC emissions from its surface-coating operations to the Division for each of the following years:

1980
1981
1982
1983
1984
1985
1986
1987

3. The failure of National Velour to submit the annual registration statement of VOC emissions from its surface-coating operations to the Department of Environmental Management at the end of each calendar year for the years 1980 - 1987 constitutes eight separate violations of the annual registration requirement of Air Pollution Regulation 19.5.1.
4. As a result of emitting in excess of 100 tons of VOCs annually since 1981, National Velour was required to achieve the interim emission limitations set forth in Air Pollution Control Regulation 19, section 19.3.1. (effective November 13, 1979) commencing in 1982.

5. National Velour was required to meet the interim VOC emission limitations of section 19.3.1. for each of the following years:

1982
1983
1984

6. Based upon the undisputed facts of record, National Velour violated the requirements of Air Pollution Control Regulation 19, specifically 19.3.1. concerning interim emission limitations for each of the following years:

1982
1983
1984

7. As a result of emitting in excess of 100 tons of VOCs annually on the final compliance date of July 1, 1985 as set forth in Regulation 19.3.1. (effective November 13, 1979), National Velour was required to meet the final emission limitations set forth in Regulation 19, section 19.3.1. immediately upon taking effect. National Velour was required to meet the final emission limitations of Regulation 19.3.1. for the following years:

1985
1986
1987
1988
1989

8. Based upon the undisputed facts of record, National Velour violated the requirements of Air Pollution Control Regulation 19, specifically 19.3.1. concerning final emission limitations for each of the following years:

1985
1986
1987
1988
1989

9. Ignorance of a duly-promulgated and published regulation is not a sufficient defense to liability. United States v. International Minerals Corp., 402 U.S. 558 (1971). Accordingly, ignorance of the Air Pollution Control Regulations, specifically Regulations 19.3.1. and 19.5.1. is not a defense to liability.
10. The Division properly followed the procedures set forth in R.I.G.L. § 23-23-6 and R.I.G.L. § 23-23-8.
11. R.I.G.L. § 42-17.6 is the controlling statute on the penalty issue for purposes of this administrative enforcement proceeding.

Based on the foregoing findings of fact and conclusions of law, it is hereby

ORDERED

1. Division's Motion for Summary Judgment is GRANTED as to the liability of National Velour for Violations of Air Pollution Control Regulation 19, specifically Regulation 19.3.1. and Regulation 19.5.1. as set forth in the Notice of Violation and Penalty dated June 5, 1990.
2. National Velour shall submit an approvable plan for compliance with the emission limitations in 19.3.1. on a facility-wide basis by January 29, 1993. This plan shall include details for reformulation of coatings or addition of control equipment, or a combination thereof, which demonstrates how the emission limitations of 19.3.1. will be met. The plan must include a schedule with dates for accomplishing compliance. Permits for control equipment must be submitted at this time if National Velour proposes to meet the emission limitations through addition of control equipment.
3. The remaining issue of the proposed administrative penalty will be set down for hearing. The Clerk will notify the parties of the hearing date.

Entered as a Decision and Order on the Motion to Dismiss and submitted to the Director as a Recommended Final Decision and Order on the Motion for Summary Judgment this 11th day of December, 1992.



Kathleen M. Lanphear
Chief Hearing Officer
Department of Environmental Management
Administrative Adjudication Division
One Capitol Hill, Third Floor
Providence, RI 02908

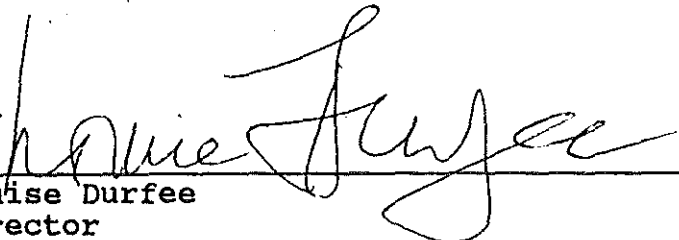
CERTIFICATION

I hereby certify that I caused a true copy of the within Decision and Order on the Motion to Dismiss and Recommended Decision and Order on the Motion for Summary Judgment to be forwarded via regular mail, postage prepaid to Elaine T. Bucci, Esq., Bucci Law Offices, 1920 Mineral Spring Avenue, North Providence, RI 02904 and via interoffice mail to Mark W. Siegars, Esq., Office of Legal Services, 9 Hayes Street, Providence, RI 02908 on this 11th day of December, 1992.



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I hereby adopt the within Decision and Order on the Motion for Summary Judgment as a Final Agency Order this 15th of December, 1992.



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 Elaine T. Bucci, Esq., Bucci Law Offices, 1920 Mineral Spring Avenue, North Providence, RI 02904 and via interoffice mail to Mark W. Siegars, Esq., Office of Legal Services, 9 Hayes Street, Providence, RI 02908 on this 15th day of December, 1992.

