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

IN RE:

Lynn Audrey Booth AAD No. 93-002/IE

ISDS Notice of Violation No. CI91-49 ISDS Notice of Violation No. IS88-60

DECISION AND ORDER ON THE DEPARTMENT OF ENVIRONMENTAL MANAGEMENT'S MOTION TO DISMISS

This matter came before Hearing Officer Patricia Byrnes pursuant to the Department of Environmental Management's motion to dismiss the Respondent's appeal. As grounds for that request, the State alleges that the Administrative Adjudication Division ("AAD") does not have subject matter jurisdiction to hear the appeal. The Department alleges that Respondent did not request a hearing within 10 days of receipt of service as required under Rule 5.00 of the Administrative Adjudication Division of Environmental Matters Rules of Practice and Procedure ("AAD Rules").

The Respondent has not objected to the State's motion as required by AAD Rule 8.0(a)(2) and did not appear for oral argument on this motion.

A review of the AAD file and memorandum submitted by DEM counsel shows that the Respondent received the Notice of Violation ("NOV") on December 24, 1992. Pursuant to AAD Rule 5.00, the request for hearing should have been received by AAD on or before Monday, January 4, 1993. The NOV issued to Ms. Booth correctly notified her that any request for hearing must be made within 10 days of receipt of service. The request for 032693

Lynn Audrey Booth
AAD No. 93-002/IE
ISDS Notice of Violation No. CI91-49
ISDS Notice of Violation No. IS88-60
Page 2

hearing submitted by the Respondent was not received until February 12, 1993; 19 days after the deadline to appeal. This tribunal has previously held that any request for hearing not similarly filed is not within the jurisdiction of AAD. Cumberland Park Homes, Inc., AAD No. 91-017/FWA.

Therefore, the Hearing Officer makes the following findings of fact and law:

- 1. That pursuant to AAD Rule 8.00 and R.I.G.L. Section 42-17.1-2(u), a Respondent must file a request for adjudicatory hearing within 10 days of service.
- That Respondent filed a request for hearing 19 days after receipt of service.
- That Respondent did not file a timely request for hearing.
- 4. That pursuant to AAD Rule 8.0, the non-moving party must file a timely objection to that motion.
- 5. That Respondent filed no objection to the State's motion.
- That Respondent did not appear for oral argument on the motion.
- 7. That this tribunal lacks the required subject matter jurisdiction to hear this appeal.

Therefore, it is hereby ordered:

ORDERED

1. That the State's request to dismiss NOV No. CI91-4 IS 88-60, AAD No. 93-002/IE is granted.

Lynn Audrey Booth AAD No. 93-002/IE ISDS Notice of Violation No. CI91-49 ISDS Notice of Violation No. IS88-60 Page 3

Entered as an Administrative Order this 30 1/2 March, 1993.

> Hearing Officer Department of Environmental Management Administrative Adjudication Division One Capitol Hill, Third Floor Providence, RI 02908

DO. Entered as a Final Order this day 1993.

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 on the Department of Environmental Management's Motion to Dismiss to be forwarded via regular mail, postage prepaid to Lynn Audrey Booth, Six Prescott Drive, Johnston, RI 02919 and via interoffice mail to John A. Langlois, Esq., Office of Legal Services, 9 Hayes Street, Providence, RI 02908 on this ______ ____ day of March, 1993.

(147 What 1)

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