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

RE: DARYL JOHNSON AAD NO. 93-028/AHE NOTICE OF VIOLATION NO. SW-93-19

ORDER OF DISMISSAL

This matter is before the hearing officer on the Motion to Dismiss filed by the Division of Waste Management on August 10, 1993. The Motion asserts that Respondent's request for hearing was untimely, and accordingly, AAD lacks jurisdiction to entertain the appeal.

In support of its Motion, the Division has supplied a copy of the return receipt card indicating that Respondent received the Notice of Violation ("NOV") on July 16, 1993. The request for hearing was filed with the Clerk on July 27, 1993, eleven (11) days after receipt of the NOV.

The Administrative Adjudication Division ("AAD") and the Director have consistently ruled in prior matters that the ten-day appeal requirement is jurisdictional and absent a timely filing, AAD lacks jurisdiction to entertain the appeal. See <u>Edmund Guglielmi</u>, AAD No. 93-040/IE. The AAD lacks jurisdiction in the instant matter since the appeal was not filed until one (1) day after expiration of the appeal period. Cumberland Park Homes, Inc., AAD No. 91-017/FWA

Rule 8.00 of the Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters states that a party opposing a Motion must file a written objection within seven (7) days, and provides that failure to file a written objection within the DARYL JOHNSON AAD NO. 93-028/AHE PAGE 2

prescribed time period will be deemed a waiver of the objection. Respondent's objection was due August 17, 1993, however no objection has been filed. Consequently, Respondent's objection is deemed waived. <u>Edmund Guglielmi</u> AAD n. 93-040/IE and <u>Frederic Dupuis Spotless Cleaners</u>, AAD No. 91-001/AHE.

Based on the foregoing, it is hereby

ORDERED

1. That the within appeal is <u>DISMISSED</u>.

I recommend the foregoing to the Director for adoption as

a final agency order.

Entered as a Recommended Administrative Order this $\underline{3 \ \underline{4}}$ day of September, 1993.

Joseph F. Baffoni

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

I adopt the within Order of Dismissal this 13 day of September, 1993.

Louise Durfee Director Department of Environmental Management 9 Hayes Street Providence, RI 02908 DARYL JOHNSON AAD NO. 93-028/AHE PAGE 3

CERTIFICATION

I hereby certify that I caused a true copy of the within order to be forwarded, via regular mail, postage prepaid to Neal R. Haber, Esq., Haber Law Associates, 200 Centerville Road, Warwick, RI 02886 and via interoffice mail to Patricia C. Solomon, Esq., Office Legal Services, 9 Hayes Street, Providence, RI 02908 on this _____ day of September, 1993.

man and the