

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

**RE: ARAM SARKISIAN
NOTICE OF VIOLATION NO. OC&I/UST 99-01767**

AAD NO. 99-011/WME

DECISION AND ORDER

This matter is before the hearing officer on the Motion to Dismiss ("Motion") filed by the Office of Compliance and Inspection ("OCI") in the above-entitled matter. Aram Sarkisian ("Respondent") did not file an objection to the motion. As is AAD's practice, however, oral argument on this dispositive motion was set down for October 1, 1999. Notice of the oral argument was mailed to the parties by the Clerk of AAD on September 24, 1999. On the date of oral argument, the Respondent failed to appear, however, the Respondent later notified the Clerk by telephone that he had experienced car trouble and subsequently filed a written request asking that oral argument be rescheduled. Respondent was accommodated and on October 29, 1999 a Notice of Hearing on the Motion was mailed to the parties. On November 12, 1999 oral argument on the Motion was held at the offices of the Administrative Adjudication Division. Brian A. Wagner, Esq., represented OCI and Aram V. Sarkisian appeared *pro se*.

OCI argues that Respondent's appeal should be dismissed as untimely. In the present matter, the Notice of Violation and Order ("NOV") was issued on April 15, 1999. The NOV and cover letter that accompanied it clearly state that any request for hearing must be in writing and received by the Administrative Adjudication Division within ten days of the Respondent's receipt of the NOV. The Notice of Violation was mailed to Aram V. Sarkisian at his last known address, Gansett Sunoco, 1101 Newport Avenue, Pawtucket, Rhode Island 02860. The certified letter was

received at that address and signed for by an individual other than the Respondent on April 22, 1999. Based upon the date of receipt of the NOV at the Respondent's last known address, OCI asserts that the ten day deadline for filing of the hearing request expired on May 2, 1999.¹ Respondent's hearing request was filed and date stamped by the Clerk of AAD on May 17, 1999. OCI argues that based upon R.I. Gen. Laws §42-17.1-2(u), the NOV became a compliance order automatically upon the expiration of the ten day appeal period. Consequently, OCI asserts that AAD is without subject matter jurisdiction to entertain the appeal.

Respondent did not present any argument to dispute the date of the filing of the hearing request. He did state that he was not the individual who signed the return receipt. He did acknowledge, however, that this was the address provided to the Department in his regulatory dealings with DEM.

The time limit for filing of a hearing request is determined by the controlling statute or regulation. In this case, R.I. Gen. Laws §42-17.1-2(u) provides a ten day period for filing a request for hearing on an alleged violation. The time period requires that the hearing request be filed within ten days after service of the notice. It further provides that if no written request for hearing is made to the Director within ten days of service of the notice, the notice shall *automatically* become a compliance order. The Rules of Practice and Procedure adopted by the Administrative Adjudication Division for Environmental Matters ("AAD Rules") provide the manner in which time is computed and what actions constitute a filing. Rule 5.00 (a) of the AAD Rules entitled "Timely Filing" states:

¹ The Department's contention that the appeal period expired on Monday, May 2, 1999 is in error. May 2, 1999 was a Sunday. Pursuant to AAD Rules, the appeal period would be extended into the next business day, which would have extended the appeal period through Monday, May 3, 1999. This error in dates is inconsequential to OCI's argument.

5.00 Time

- (a) Timely Filing. Papers required or permitted to be filed under these regulations, or any provision of the applicable law, must be filed with the clerk at the Administrative Adjudication Division office within the time limits for such filings as are set by Department regulation, or the Hearing Officer, or other provision of law.

Rule 5.00 (a) continues to specifically address the filing of documents deposited in the mail. Rule 5.00 a)2 states:

. . .
2. Mailing: Papers deposited in the U.S. mail shall be deemed filed on the date stamped by the clerk of the Administrative Adjudication Division. In the event that no date stamp by the clerk appears, papers shall be deemed filed on the date so postmarked. All papers shall show the date received by the Administrative Adjudication Division.
. . .

The AAD Regulations, Rule 5.00 (b) also provides the manner in which the time of filing is computed. It provides:

- (b) Computation of Time. Unless otherwise specifically provided by law or these rules, computation of any time period referred to in these rules shall begin with the first day following the act which initiates the running of the time period. The last day of the time period so computed is to be included unless it is a Saturday, Sunday, or legal holiday or any other day on which the Administrative Adjudication Division is closed, in which event, the period shall run until the end of the regular business hours of the next following business day. When the time period is less than seven (7) days, intervening days when the Administrative Adjudication Division is closed shall be excluded in the computation.

Computing the ten day appeal period from the day following receipt of the Notice of Violation, namely April 22, 1999, the appeal period would have expired on Sunday, May 2, 1999. Because Saturday and Sunday are excluded from the computation pursuant to AAD Rule 5.00, the appeal period actually expired on Monday, May 3, 1999. It is undisputed that the appeal in this matter was filed on May 17, 1999. As a result, the appeal was filed fourteen days after the expiration of the appeal period.

In this instance, service of the NOV was in accord with the governing statute.

R.I. Gen. Laws §42-17.1-2(u)(1) states:

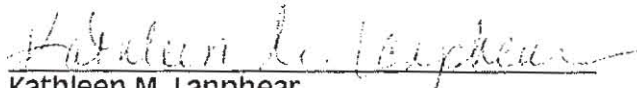
(1)The Notice shall provide for a time within which the alleged violation shall be remedied, and shall inform the person to whom it is directed that a written request for hearing on the alleged violation may be filed with the Director within ten (10) days after service of the Notice. The Notice will be deemed properly served upon a person if a copy thereof is served him or her personally, *or sent by registered or certified mail to his or her last known address*, or if he or she is served with notice by any other method of service now or hereafter authorized in a civil action under the laws of this state. If no written request for hearing is made to the Director within ten (10) days of the service of notice, the Notice shall automatically become a compliance order. (emphasis added)

Based on the foregoing the request for hearing filed by the Respondent in this matter was untimely and the Administrative Adjudication Division lacks subject matter jurisdiction to hear and issue a Recommended Decision on the Notice of Violation and Order. Therefore it is

ORDERED

That the Motion to Dismiss Request for Hearing filed by the Office of Compliance and Inspection is GRANTED.

Entered as a Recommended Decision and Order this 9th day of April, 2000.



Kathleen M. Lanphear
Chief Hearing Officer
Department of Environmental Management
Administrative Adjudication Division
235 Promenade Street, Third Floor
Providence, Rhode Island 02908
401-222-1357

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Entered as a Final Agency Order this 11th day of April 2000.



Jan H. Reitsma
Director
Department of Environmental Management
235 Promenade Street, 4th Floor
Providence, Rhode Island 02908

CERTIFICATION

I hereby certify that I caused a true copy of the within Order to be forwarded, via regular mail, postage prepaid to: Aram Sarkisian, 59 Rankin Avenue, Providence, Rhode Island, 02908; and via interoffice mail to Brian A. Wagner, Esquire, DEM Office of Legal Services, and Dean H. Albro, Chief, Office of Compliance and Inspection, 235 Promenade St., Providence, RI 02908; on 11th day of April, 2000.

