

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

**RE: PATRIOT HAULING CO., INC. and
JOSEPH & NINA VINAGRO
NOTICE OF VIOLATION OC&I/SW 99-063& 00-050**

**AAD No. 00-023/WME
AAD NO. 00-061/WME
(consolidated cases)**

DECISION AND ORDER

This matter came before the Administrative Adjudication Division for Environmental Matters ("AAD") of the Department of Environmental Management ("Department" or "DEM") pursuant to Respondents' requests for hearing on Notice of Violation and Order issued by the DEM Office of Compliance and Inspection ("OCI") on March 21, 2000 ("NOV1") and Notice of Violation and Order issued by the OCI on December 13, 2000 ("NOV2"). At the request of the parties the aforesaid matters were consolidated pursuant to Order of the AAD dated March 15, 2001. The hearing was held on February 13, 14, 19, 20, 21, 24, 27 and 28, 2003.

Following the conclusion of testimony on February 28, 2003, the Hearing Officer ordered post-hearing memoranda to be filed on or before March 28, 2003 and response memoranda to be filed on or before April 11, 2003. The dates for submission of memoranda and responses to memoranda were later extended to May 2, 2003 and May 16, 2003, respectively. Both memoranda were filed on or prior to May 2, 2003. OCI filed its response memorandum on May 16, 2003. The Respondents filed a statement waiving the filing of their "reply memorandum" on May 19, 2003. John A. Langlois, Esq. represented OCI and Fred J. Volpe, Esq. represented Respondents.

The within proceeding was conducted in accordance with the statutes governing the AAD (R.I. GEN. LAWS § 42-17.7-1 *et seq.*); Chapter 17.6 of Title 42 entitled "Administrative Penalties for Environmental Violations"; the Administrative Procedures

**RE: PATRIOT HAULING CO., INC. and
JOSEPH & NINA VINAGRO
NOTICE OF VIOLATION OC&I/SW 99-063& 00-050
PAGE 2**

**AAD No. 00-023/WME
AAD NO. 00-061/WME
(consolidated cases)**

Act (R.I. GEN. LAWS § 42-35-1 *et seq.*); the Administrative Rules of Practice and Procedure for the AAD (“AAD Rules”); and the Rules and Regulations for Assessment of Administrative Penalties (“Penalty Regulations”).

NOV1 was issued to Respondents on March 21, 2000 and cites Respondents for the following violations on October 7, 1999: (1) R.I. GEN. LAWS § 23-18.9-8 relating to operating a solid waste management facility without a license and (2) R.I. GEN. LAWS § 23-18.9-5 relating to disposal of solid waste at other than a licensed solid waste management facility. NOV1 alleges that the subject property is located at 116 Shun Pike, Johnston, R.I., otherwise identified as Johnston Assessor’s Plat 32, Lot 20 (the “Property”); that the Property is owned by Nina and Joseph L. Vinagro; that Patriot Hauling Co., Inc., a Rhode Island corporation of which Joseph R. Vinagro is President, operates a recycling business on the Property; that during a complaint investigation conducted on the Property by DEM personnel on October 7, 1999, DEM personnel observed approximately six hundred (600) cubic yards of construction and demolition (C&D) debris and approximately six hundred (600) cubic yards of animal manure mixed with soil disposed of at the Facility, and also observed on site was a trammel screen and a shredder; and that Respondents do not have a license, registration, or approval from the DEM to operate any kind of solid waste management facility, including a C&D debris processing facility or a composting facility on the Property.

NOV1 ordered Respondents to immediately cease the acceptance and/or disposal of solid waste on the Property, and to immediately cease operation of a solid waste management facility; to submit within ten (10) days of receipt of the NOV a written

**RE: PATRIOT HAULING CO., INC. and
JOSEPH & NINA VINAGRO
NOTICE OF VIOLATION OC&I/SW 99-063& 00-050
PAGE 3**

**AAD No. 00-023/WME
AAD NO. 00-061/WME
(consolidated cases)**

plan and schedule for solid waste removal from the Property for OCI's approval; to remove the solid waste and dispose of it at a licensed solid waste management facility within ninety (90) days; to submit to the OCI documentation of the disposal at a licensed solid waste management facility within ten (10) days of the completion of the solid waste removal; and to pay an administrative penalty in the amount of \$2,606.00.

NOV2 was issued to Respondents on December 13, 2000, and involves the same Property owners and operator of the recycling business as NOV1. NOV2 cites Respondents for violations of the same sections of R.I. GEN. LAWS viz. §§ 23-18.9-8 and 23-18.9-5 on August 22, 2000. NOV2 alleges that on March 21, 2000 the DEM issued NOV1; that on August 22, 2000 DEM personnel conducted a compliance inspection on the Property and observed equipment processing construction and demolition (C&D) debris and approximately 55,000 cubic yards of mixed solid waste on the ground; and that the Respondents do not have a license, registration, or approval from DEM to operate any kind of solid waste management facility, including a C&D debris processing facility, a composting facility, or a landfill, on the Property.

NOV2 ordered the Respondents to immediately cease the acceptance and/or disposal of any solid waste and to immediately cease the operation of a solid waste management facility; to submit within ten (10) days of receipt of the NOV a written plan and schedule for solid waste removal from the property for OCI's approval; to complete the removal of all solid waste from the Property and dispose of it at a licensed solid waste management facility within ninety (90) days; to submit to the OCI documentation of disposal at a licensed solid waste management facility within ten (10) days of the completion of the solid waste disposal; and to pay an administrative penalty in the

amount of \$206,737.00.

A prehearing conference was held on May 3, 2001. At the conference, the parties agreed to the following stipulations of fact:

1. The subject property is located at 116 Shun Pike in Johnston, Rhode Island.
2. Nina and Joseph L. Vinagro are the owners of the subject property.
3. Patriot Hauling Co., Inc. is a Rhode Island corporation and Joseph R. Vinagro is the president of the corporation.

The list of exhibits, marked as they were admitted at the hearing, are attached to this Decision as Appendix A. None of Respondents' exhibits were introduced as full exhibits.

At the hearing, the OCI called five (5) witnesses: **James M. Ashton**, a Principal Environmental Scientist in the DEM Office of Compliance and Inspection; **Walid M. Ali**, a Sanitary Engineer in the DEM Office of Waste Management; **Donald Squires**, an Engineering Technician IV in the DEM Office of Compliance and Inspection; **Joseph R. Vinagro**, the president of Respondent Patriot Hauling Co., Inc.; and **Joseph L. Vinagro**, a Respondent and an owner of the subject property. James M. Ashton, Donald Squires and Walid M. Ali were each qualified by agreement as experts in waste management and the solid waste regulatory requirements as they relate to this matter.

Respondents called two witnesses: **Joseph R. Vinagro** and **Joseph L. Vinagro**.

It is OCI's contention that it has met its burden of proving the facts alleged in both NOV1 and NOV2 by a preponderance of the evidence. OCI maintains that the Respondents have provided no reasonably acceptable defense to the allegations

contained in the NOVs; and that based upon the stipulations of record, the testimonial and prehearing conference admissions by Joseph R. Vinagro and Joseph L. Vinagro, and the expert testimony of OCI's witnesses, OCI has proven by a preponderance of the evidence that Respondents violated R.I. GEN. LAWS § 23-18.9-5 and R.I. GEN. LAWS § 23-18.9-8 as set forth in the NOVs.

OCI also contends that it has proven by a preponderance of the evidence that the penalties proposed in both NOVs were calculated in accordance with the applicable Penalty Regulations and statutes. OCI maintains that the proposed penalty amounts and their calculation were established in evidence through the introduction of copies of the NOVs with the attached Penalty and Worksheet, as well as by the testimony of OCI's expert witness, Mr. James Ashton.

The OCI also maintains that the proposed penalty assessments, the Type and Deviation from Standard were established in evidence, as was Respondents' economic benefit from noncompliance with the statutes and Solid Waste Regulations. OCI asserts that the Respondents did not introduce any evidence whatsoever that OCI's determination of the violations as Type 1 Major Deviation from Standard was not in accordance with the Penalty Regulations.

The OCI, in its Response Memorandum, controverted the arguments in Respondents' Posthearing Memorandum seeking a reduction in the penalties, viz., (1.) That they should be credited the alleged \$517,638 expended by Joseph R. Vinagro to clean up the subject site after the NOVs; and (2.) That they should be credited the \$207,879 expended by Joseph R. Vinagro to clean up the so called Recchia site in Johnston, R.I. The OCI argues that these issues raised by Respondents are

misinterpretations of the evidence; and that the issue at the AAD is whether the penalties in the NOV's were correctly calculated on the dates that the NOV's were issued. The OCI asserts that events that occurred years after the dates of issuance of the NOV's are irrelevant, and should not be considered in this matter. The OCI argues that Respondents have failed to meet their burden of proving that the penalty and/or economic benefit portion of the penalty was not assessed in accordance with the Penalty Regulations; that the OCI's penalty calculations stand unrefuted; and that the OCI has proven by a preponderance of the evidence that the penalties proposed in both NOV's were calculated in accordance with the applicable Penalty Regulations and statutes.

Respondents do not dispute that OCI has established that more than three (3) cubic yards of solid waste was located on the subject site at each of the inspections conducted by OCI. Respondents, however, challenge the correctness of the Tax Assessors lot number (i.e. Lot No. 20) as well as OCI's calculations as to the amount of solid waste that was present at the time of each of the inspections. Respondents maintain that the OCI did not use the best measurement procedures, and that the OCI has failed to delineate and adequately establish the basis for its penalty calculations.

Respondents aver that because some of the material on the site would be salvaged for sale, the subject facility would not be the final destination of that material, and therefore the solid waste on the subject property could not be considered "disposed" because OCI could not prove that the material located on site was the "final disposition" of the material. Respondents also assert that the allegations of two distinct violations in a NOV is a wrongful double violation of the same issue.

It is argued by Respondents that they acted in good faith at all times concerning

the events in both NOVs, and that it was always their intention to comply with the pertinent rules and regulations. Respondents further argue that they should be credited for their alleged expenses and/or expenditures to clean up the site (after the NOVs were issued), and for their monetary contribution to resolve criminal charges for the violations which are the subject matter in the instant proceedings, as well as for their expenditures to assist the Attorney General's office in the cleanup and remediation of the so called Recchia site in Johnston, R.I.

The OCI has the burden of proving the alleged violation by a preponderance of the evidence. Once a violation is established and the OCI has discharged its initial duty of establishing in evidence the penalty amount and its calculation, the Respondents then bear the burden of proving by a preponderance of the evidence that the OCI failed to assess the penalty and/or the economic benefit portion of the penalty in accordance with the Penalty Regulations, or that the penalty is excessive.

§ 23-18.9-8 provides as follows:

23-18.9-8. Licenses. - (a)(1) No person shall operate any solid waste management facility or construction and demolition (C&D) debris processing facility or expand any existing facility unless a license therefor is obtained from the director. The director shall have full power to make all rules and regulations establishing standards to be met for the issuance of the licenses.

§23-18.9-5 provides as follows:

23-18.9-5. Disposal of refuse at other than a licensed facility. - (a) No person shall dispose of solid waste at other than a solid waste management facility licensed by the director.

(b) The phrase "dispose of solid waste", as prohibited in this section, refers to the depositing, casting, throwing, leaving or abandoning of a quantity greater than three (3) cubic yards of solid waste. Used asphalt, concrete, Portland concrete cement, and tree stumps, and solid waste temporarily in a vehicle or proper receptacle at a licensed place of business of a licensed solid waste hauler for a

period not to exceed seventy-two (72) hours shall not be considered solid waste for purposes of this chapter.

23-18.9-7 contains the following definitions:

“Construction and demolition (C&D) debris” means nonhazardous solid waste resulting from the construction, remodeling, repair, and demolition of utilities and structures; and uncontaminated solid waste resulting from land clearing. Such waste includes, but is not limited to wood (including painted, treated and coated wood and wood products), land clearing debris, wall coverings, plaster, drywall, plumbing fixtures, nonasbestos insulation, roofing shingles and other roof coverings, glass, plastics. . .

Specifically excluded from the definition of construction and demolition debris is solid waste (including what otherwise would be construction and demolition debris) resulting from any processing technique, other than that employed at a department-approved C&D debris processing facility, that renders individual waste components unrecognizable, such as pulverizing or shredding.

“Solid waste” means garbage, refuse and other discarded solid materials generated by residential, institutional, commercial, industrial and agricultural sources, but does not include solids or dissolved material in domestic sewage or sewage sludge, nor does it include hazardous waste as defined in chapter 19.1 of this title, nor does it include used asphalt, concrete, Portland concrete cement, or tree stumps.

“Solid waste management facility” means any plant, structure, equipment, real and personal property, except mobile equipment or incinerators with a capacity of less than one thousand pounds (1,000 lbs.) per hour, operated for the purpose of processing, treating, or disposing of solid waste but not segregated solid waste.

The parties stipulated in the Prehearing Conference Record as to the location of the subject property and as to Nina and Joseph L. Vinagro’s ownership of same. It was also stipulated that Patriot Hauling Co., Inc. is a Rhode Island corporation and that Joseph R. Vinagro is the president of same. The location of the subject property was sufficiently established both by the stipulation of the parties and the evidence introduced at the hearing. The testimony of OCI’s witness, Mr. James Ashton, that “Plat 32, Lot 20” was confirmed with the Johnston Tax Assessor’s office was most credible, and was

confirmed by the testimony of Mr. Joseph R. Vinagro that Lot 20 was included on their applications for a C & D processing facility license. Assuming arguendo, that the Property was misidentified as Tax Assessor's Lot No. 20 in the NOV's, this would not harm or prejudice the Respondents in any way since Respondents stipulated as to the location of the subject property. There was no genuine dispute as to the location where the alleged violations occurred, and Respondents were not prejudiced in any way by the mention of Tax Assessor's Lot 20 in the NOV's.

The fact that the Respondents were operating a recycling business on the subject property was established by the expert testimony of OCI's expert witnesses as well as by the testimonial admissions of the Respondents. Joseph R. Vinagro testified that the recycling operation that was being carried on at the Property was essentially identical to the recycling operation that was being conducted on the Property by its predecessor, Liberty Disposal, for the previous five or six years.

The testimony of OCI's expert witnesses, as well as the admissions of Respondents' witnesses, established that OCI conducted a complaint investigation on the Property on October 7, 1999, and that on site there was 600 cubic yards of C&D debris, 600 cubic yards of animal manure mixed with soil disposed of at the facility, and a trommel screen and a shredder.

The evidence introduced by OCI also established that the OCI conducted a compliance inspection on the Property on August 22, 2000; that C&D debris was being processed by the equipment on the Property at said time; that there was 55,028 cubic yards of mixed solid wastes deposited on the ground on said date; and that the Respondents did not have a license, registration or approval from the DEM to operate

any kind of solid waste management facility, including a C&D debris processing facility or a composting facility on the Property.

The evidence introduced by OCI was certainly sufficient to prove by a preponderance of the evidence that Respondents violated R.I. GEN. LAWS Section 23-18.9-5 relating to disposal of solid waste at other than a licensed solid waste management facility as alleged in both NOV's. The Respondents attempted to show through cross-examination of OCI's expert witnesses that the OCI failed to prove that the solid waste in question was "finally disposed" at the Property. Respondents argument is based on the definition of "disposal" that is contained in Solid Waste Regulation at SW 1.3.57. However, this argument is flawed since the NOV's allege that the Respondents violated the Refuse Disposal Act, and not the Solid Waste Regulations. Section 23-18.9-5(b) of the Refuse Disposal Act specifically provides that the phrase "dispose of solid waste" as prohibited in this section, refers to the depositing, casting, throwing, leaving or abandoning of a quantity greater than three (3) cubic yards of solid waste. In order to prove that Respondents disposed of solid waste, the OCI is certainly not required to prove what the Respondents' ultimate plans were for the final disposition of the material. The Respondents offered no testimony as to their own measurements of the piles; and the measurement procedures employed by OCI's expert witnesses were those commonly used to determine the amount of solid waste, and undoubtedly sufficed to make the requisite determinations and calculations. The fact the Respondents disposed of solid waste at other than a licensed solid waste management facility in violation of Section 23-18.9-5 of the Refuse Disposal Act as alleged in each of the NOV's was clearly established by the OCI, as well as by the Respondents own admissions.

The OCI also proved by a preponderance of the evidence that Respondents violated R.I. GEN. LAWS Section 23-18.9-8 relating to operating a solid waste management facility without a license as alleged in both NOV's. § 23-18.9-8(a)(1) expressly prohibits the operation of a solid waste management facility or construction and demolition (C&D) debris processing facility or the expansion of an existing facility without a license.

The evidence introduced by OCI, clearly establishes that the Respondents were operating a solid waste management facility without a license or registration at 116 Shun Pike, Johnston, Rhode Island on October 7, 1999 and August 22, 2000. The Respondents' arguments that they did not need a license or a registration, or that they assumed that they had such a license or registration both lack merit. The necessity for a license and/or registration under the circumstances in this matter is clearly mandated by statute as well as regulation. Although notice of same should not be necessary, the Respondents were unequivocally notified by the OCI inspectors at both inspections, as well as by both NOV's, that they did not have the requisite license and/or registration. The evidence amply demonstrates that the Respondents knowingly and intentionally chose to ignore these obligations, and that they willfully continued to operate without a license or registration after being told to stop by Mr. Ashton, Mr. Ali and Mr. Squires, and after NOV1 and NOV2 ordered them to stop. It is significant to note that at the time of the second inspection, the amount of solid waste on the property increased from 1200 cubic yards to 55,028 cubic yards. By Respondents own admissions on the witness stand, the Respondents continued to process C&D at the subject location after both inspections and until March of 2001 when they were shut down by DEM Criminal Investigators.

Contrary to Respondents' assertion, the allegations of two distinct violations in a NOV is not a wrongful double violation of the same issue. OCI's three solid waste experts, testified that in their expert opinion the solid waste was disposed of at the facility, and also there was an unlicensed C&D processing operation ongoing at that location. This testimony was not only unrefuted, but was agreed to by the Respondents at the hearing. Consequently, the allegations of two separate and distinct violations in these matters can hardly be considered wrongful or improper, since there were in fact two illegal activities at the facility: (1) the C&D processing operation was a violation for operating without a license, and (2) depositing more than three cubic yards of solid waste at the facility constituted illegal disposal of solid waste.

Based on the stipulations of record, the testimonial and prehearing conference admissions by Joseph R. Vinagro and Joseph L. Vinagro, the unrefuted testimony of OCI's expert witness, and the documentary evidence submitted by the OCI, the OCI has met its burden of proving by a preponderance of the evidence that Respondents violated both R.I. GEN. LAWS § 23-18.9-5 and R.I. GEN. LAWS § 23-18.9-8 as set forth in both NOVS.

NOV1 and NOV2 both state that the administrative penalties were assessed pursuant to R.I. GEN. LAWS § 42-17.6-2 and that said penalties were calculated pursuant to the Penalty Regulations.

§ 42-17.6-2 provides that the Director of DEM may assess an administrative penalty for failure 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.

Section 10 of the Penalty Regulations states that the amount of the penalty is to be calculated based on the factors enumerated therein and that the factors set forth in R.I.G.L. § 42-17.6-6 shall be considered when calculating the Type of Violation and Deviation from the Standard as set forth therein. The penalty is based on the gravity of the violation as calculated according to the "Penalty Matrix" developed for each regulatory program of DEM. The applicable penalty range is reached by first determining the "Type of Violation" and the "Deviation from the Standard" of the alleged violation.

"Type of Violation" refers to the nature of the legal requirement allegedly violated. Type I Violations include those violations of legal requirements which are directly related to the protection of the public health, safety, welfare or environment and include, but are not necessarily limited to, acts which pose an actual or potential for harm to the public health, safety, welfare or the environment.

"Deviation from the Standard" refers to the degree to which the violation is out of compliance with the legal requirement allegedly violated, and is based upon an evaluation of one or more of the factors specified therein except to the extent already considered.

The penalty amount and the calculation thereof were established in evidence through the introduction of copies of the NOVs with the attached Penalty Summary and Worksheet, as well as by the testimony of the OCI's expert witness, Mr. James Ashton. Mr. Ashton testified that he participated in the drafting of both NOVs, and that he has vast experience in the drafting of NOVs. Despite the extensive cross-examination of Mr. Ashton, he remained steadfast in his expert opinions as to the nature of the legal requirements allegedly violated, as well as the penalty amounts and the calculation of

same. Mr. Ashton explained that the operation of a solid waste management facility without a license is by definition a Type I violation and was directly related to protecting the health, safety, welfare or environment. The NOV1 and NOV2 Penalty Summary and Worksheets, as well as the uncontradicted expert opinion of Mr. Ashton, established that the violations in both NOVs were all Type I Major Deviations from the Standard; and that the total administrative penalties of \$2,606.00 for NOV1 and \$206,737.00 for NOV2 were calculated in accordance with applicable statutes and regulations.

Mr. Ashton testified that the NOV1 penalty amount was calculated at \$1,000.00 per violation from the Miscellaneous Penalty Matrix because NOV1 was drafted before a statutory change authorized penalties of up to \$25,000.00 per violation. NOV2 was drafted after the statutory change and calculated using the \$25,000.00 per violation penalty matrix.

It was Mr. Ashton's testimony that the economic benefit from noncompliance portion of the penalty in NOV1 was calculated to be \$606.00. He explained that this sum was derived from an EPA computer model that calculated how much it would have cost to properly dispose of the solid waste involved in NOV 1. Mr. Ashton further testified that the economic benefit from noncompliance portion of the penalty in NOV2 was calculated to be \$156,737.00. He explained that this sum was derived from an EPA computer model that calculated how much it would have cost to properly dispose of the solid waste involved in NOV 2. The economic benefit analysis in NOV2 also included the \$10,000.00 economic benefit realized by the Respondents not having paid the \$10,000.00 application fee required to operate a C&D processing facility.

OCI's witnesses' testimony was never refuted by similarly qualified experts.

Indeed, the Respondent's did not call any expert witnesses of their own, but instead chose to rely upon cross examination of OCI's witnesses in an effort to discredit OCI's testimony and evidence. However, the Respondents' extensive cross-examination of OCI's witnesses failed to elicit any inconsistencies or inaccuracies as suggested by Respondents, but only served to demonstrate the accuracy of OCI's solid waste measurements, the consistency of OCI's calculations and delineations, and the basis for OCI's penalty calculations and determinations. The Respondents offered no evidence whatsoever as to the calculation of the penalty or to contradict or discredit Mr. Ashton's testimony. I found the testimony of Mr. Ashton to be clear, consistent, credible, and persuasive. It was uncontradicted and adequately establishes that the violations should be considered Type I Major Deviation from Standard, and that the penalties in both NOVs as well as the Respondents' economic benefit from noncompliance with the statutes and Solid Waste Regulations were established in evidence.

The evidence introduced by the OCI clearly establishes that the penalty and economic benefit portion of the penalty as set forth in both NOVs were assessed in accordance with the Penalty Regulations, and should be imposed in the matter. Respondents offered no tangible or credible evidence, nor were any valid arguments advanced by Respondents, which warrants a cancellation or reduction of the administrative penalties. Contrary to Respondents arguments, they should not be credited for the money allegedly expended by Joseph R. Vinagro to perform remedial work at the site some several years after the NOVs were issued (and which Respondent acknowledged had not been completed as of the time of the hearing). Also, they should not be credited for the monetary contribution to resolve criminal charges, nor for their

expenditures to assist the Attorney General in the cleanup and remediation at the Recchia site.

The Respondents undeniably ignored OCI's orders to cease the further acceptance and/or disposal of solid waste on the property and to immediately cease the operation of a solid waste management facility; and Respondents remained in violation for several years. There were no valid arguments advanced to support Respondents claims that they should be entitled to the credits sought toward the penalties and/or economic benefits assessments. The remediation, contribution, and assistance at the Recchia site claims were not presented as issues in the Prehearing Conference Record; and assuming arguendo that this omission was overlooked, the Respondents have failed to prove that they are entitled to the credits sought. It appears these activities and expenditures for which Respondents seek credit were only undertaken by Respondents when they were confronted with criminal charges by the Attorney General's Office, and after Respondents were advised that an application for a license would be denied if the Respondent had any pending violations. In any event, the Respondents failed to introduce sufficient and detailed proof to support their claim for the credits sought, and no documentary proof was submitted to substantiate said claims.

The issue presented in this matter concerning the proposed penalty (as set forth in the Prehearing Conference Record dated May 9, 2001) is "Whether the Department calculated the penalty in accordance with statutory and regulatory authority". Under the specific circumstances of this case, events that occurred several years after the issuance of the NOVs and/or were ongoing at the time of the hearing, are irrelevant, and are not considered by the Hearing Officer. Also, the material had not been removed when the

NOVs were issued, consequently the Respondents realized an economic benefit at that time. The evidence clearly demonstrates that the penalty was calculated properly and in accordance with the statutory authority on the dates that the NOV's were issued.

The OCI has clearly met its burden of proving by a preponderance of the evidence that Respondents violated R.I. GEN. LAWS §§ 23-18.9-8 and 23-18.9-5 as alleged in the NOVs, and more than satisfied its initial duty of establishing in evidence the penalty amount and its calculation. The Respondents clearly failed to meet their burden of proving by a preponderance of the evidence that the penalty and/or the economic benefit portion of the penalty was not assessed in accordance with the Penalty Regulations, or that the penalty is excessive. Based on the entire hearing record, the OCI has proved the alleged violations by a preponderance of the evidence and also proved that the penalties were calculated in accordance with the applicable statutes and regulations. Wherefore, the NOVs and the penalties should be upheld.

FINDINGS OF FACT

After considering the stipulations of the parties and the documentary and testimonial evidence of record, I find as a fact the following:

1. The subject property is located at 116 Shun Pike in Johnston, Rhode Island (the "Property").
2. The Property is owned by Nina A. and Joseph L. Vinagro.
3. Patriot Hauling Co., Inc. is a Rhode Island corporation and Joseph R. Vinagro is the President.
4. On October 7, 1999 and August 22, 2000, Patriot Hauling Co., Inc. operated a recycling business on the Property.
5. On October 7, 1999, DEM personnel conducted an inspection of the Property.

6. On October 7, 1999, DEM personnel observed approximately six hundred (600) cubic yards of C&D debris and approximately six hundred (600) cubic yards of animal manure on the Property.
7. On October 7, 1999, DEM personnel observed the Respondents processing C&D on the Property.
8. On October 7, 1999, DEM personnel observed Respondents disposing of solid waste on the Property.
9. On October 7, 1999, Respondents did not have a license, registration of approval from the Department to operate any kind of solid waste management facility on the Property including a C&D processing facility or a solid waste disposal facility.
10. On August 22, 2000, DEM personnel conducted a compliance inspection of the Property.
11. On August 22, 2000, DEM personnel observed approximately 55,000 cubic yards of solid waste on the Property.
12. On August 22, 2000, DEM personnel observed the Respondents processing C&D on the Property.
13. On August 22, 2000, DEM personnel observed Respondents disposing of solid waste on the Property.
14. On August 22, 2000, Respondents did not have a license, registration of approval from the Department to operate any kind of solid waste management facility on the Property including a C&D processing facility or a solid waste disposal facility.
15. The Property is not part of a licensed solid waste management facility.
16. The OCI established in evidence that Respondents' violation of R.I. GEN. LAWS § 23-18.9-5 and R.I. GEN. LAWS § 23-18.9-8 was determined to be Type I, Major Deviations from Standard.
17. The OCI established in evidence the amount of the gravity component of the penalty in NOV1 was \$2,000.00.
18. The OCI established in evidence the amount of the economic benefit component of the penalty in NOV1 was \$606.00.
19. NOV1 served notice of the intent to assess an administrative penalty in the amount of \$2,606.00.

20. An administrative penalty in the amount of \$2,606.00 for operating a solid waste management facility without a license and disposing of solid waste at other than a licensed facility is not excessive.
21. The OCI established in evidence the amount of the gravity component of the penalty in NOV2 was \$50,000.00.
22. The OCI established in evidence the amount of the economic benefit component of the penalty in NOV2 was \$156,737.00.
23. NOV2 served notice of the intent to assess an administrative penalty in the amount of \$206,737.00.
24. An administrative penalty in the amount of \$206,737.00 for operating a solid waste management facility without a license and disposing of solid waste at other than a licensed facility is not excessive.

CONCLUSIONS OF LAW

After due consideration of the documentary and testimonial evidence of record and based upon the findings of fact as set forth herein, I conclude the following as a matter of law:

1. The OCI has proved by a preponderance of the evidence that the animal manure on the Property is "solid waste" as defined in R.I. GEN. LAWS § 23-18.9-7.
2. The OCI has proved by a preponderance of the evidence that the C&D material on the Property is "solid waste" as defined in R.I. GEN. LAWS § 23-18.9-7.
3. The OCI has proved by a preponderance of the evidence that an amount of solid waste greater than three (3) cubic yards existed on the Property on October 7, 1999 and August 22, 2000 in violation of R.I. GEN. LAWS § 23-18.9-5.
4. The OCI has proved by a preponderance of the evidence that Respondents were operating a solid waste management facility without a license in violation of R.I. GEN. LAWS § 23-18.9-8(a).
5. The OCI has proved by a preponderance of the evidence that Respondents were disposing of solid waste at other than a licensed solid waste disposal facility in violation of R.I. GEN. LAWS § 23-18.9-5.

6. The OCI established in evidence the penalty amount and its calculation as set forth in both Notices of Violation.
7. Respondents have failed to prove by a preponderance of the evidence that OCI's determination of the violation as a Type I Major Deviation from Standard was not in accordance with the Penalty Regulations.
8. Pursuant to the requirements of R.I. GEN. LAWS § 42-17.6-3, NOV1 served notice of the intent to assess an administrative penalty in the amount of \$2,606.00.
9. Respondents have failed to prove by a preponderance of the evidence that the assessment of an administrative penalty in the amount of \$2,606.00 is not in accordance with the Penalty Regulations.
10. Pursuant to the requirements of R.I. GEN. LAWS § 42-17.6-3, NOV2 served notice of the intent to assess an administrative penalty in the amount of \$206,737.00.
11. Respondents have failed to prove by a preponderance of the evidence that the assessment of an administrative penalty in the amount of \$206,737.00 is not in accordance with the Penalty Regulations.
12. The assessment of an administrative penalty in NOV1 against Respondent in the amount of \$2,606.00 is in accordance with the Penalty Regulations.
13. The assessment of an administrative penalty in NOV2 against Respondent in the amount of \$206,737.00 is in accordance with the Penalty Regulations.

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby

ORDERED

1. That the Notice of Violation and Order Nos. OC&I/SW 99-063 & 00-050 issued to the Respondents on March 21, 2000 and December 13, 2000, respectively, are both SUSTAINED.
2. That the Respondents shall jointly and severally pay a total of Two Hundred Nine Thousand, Three Hundred Forty-three (\$209,343.00) Dollars in administrative and economic benefit penalties as follows;
 - (a) NOV OC&I/SW 99-063 the amount of Two Thousand Six Hundred Six (\$2,606.00) Dollars
 - (b) NOV OC&I/SW 00-050 the amount of Two Hundred Six Thousand, Seven Hundred Thirty-seven (\$206,737.00) Dollars.
3. The aforesaid penalties shall be paid within ten (10) days of the entry of the Final Agency Order in this matter, and shall be in the form of a certified check or money order, made payable to the "General Treasury- Environmental Response Fund Account" and shall be forwarded to:

Office of Management Services
RI Department of Environmental Management
235 Promenade Street, Room 340
Providence, Rhode Island 02908
Attention: Glen Miller

Entered as an Administrative Order and herewith recommended to the Director for issuance as a Final Agency Decision and Order this 20th day of January, 2004.

Joseph F. Baffoni
Hearing Officer
Administrative Adjudication Division
Department of Environmental Management
235 Promenade Street, Third Floor
Providence, Rhode Island 02908
(401) 222-1357

RE: PATRIOT HAULING CO., INC. and
JOSEPH & NINA VINAGRO
NOTICE OF VIOLATION OC&I/SW 99-063& 00-050
PAGE 22

AAD No. 00-023/WME
AAD NO. 00-061/WME
(consolidated cases)

Entered as a Final Agency Decision and Order this 13th day of February,
2004.

Frederick J. Vincent
Acting Director
Department of Environmental Management
235 Promenade Street, 4th Floor
Providence, RI 02908

CERTIFICATION

I hereby certify that I caused a true copy of the within Order to be forwarded by first-class mail, postage prepaid, to Fred J. Volpe, Esquire, Mosca and Volpe, P.O. Box 444, 130 Tower Hill Road, North Kingstown, RI 02852; via interoffice mail to John Langlois, Esquire, Office of Legal Services and Dean H. Albro, Chief, Office of Compliance and Inspection, 235 Promenade Street, Providence, RI 02908 on this 13th day of February, 2004.

If you are aggrieved by this final agency order, you may appeal this final order to the Rhode Island Superior Court within thirty (30) days from the date of mailing of this notice of final decision pursuant to the provisions for judicial review established by the Rhode Island Administrative Procedures Act, specifically, R.I. Gen. Laws §42-35-15.

APPENDIX A

LIST OF EXHIBITS

FOR OCI:

- | | |
|----------------------------------|---|
| OCI 1
Full (a thru j) | Copy of Inspection Report dated November 5, 1999 with ten (10) photographs (four pages); |
| OCI 2
Full (a thru or) | Copy of Inspection Report dated August 22, 2000 with fifteen (15) photographs and three pages of handwritten notes. |
| OCI 3
Full | Resume of James Ashton |
| OCI 4
Full | Resume of Donald Squires |
| OCI 5
Full | Resume of Walid Ali |
| OCI 6
Full | Copy of Notice of Violation dated March 21, 2000 |
| OCI 7
Full | Copy of Respondent's Request for Hearing on the March 21, 2000 NOV |

FOR RESPONDENTS:

- | | |
|-----------------------------|--|
| RESPONDENTS' 1
ID | Copy of Commercial Recycling Program, Materials Recycling Facility Registration Application of Patriot Hauling Co., Inc., 116 Shun Pike, Johnston, RI. |
| RESPONDENTS' 2
ID | Resume of Richard J. Cohen |
| RESPONDENTS' 3
ID | Resume of Thomas Nicholson, P.E. |
| RESPONDENTS' 4
ID | Copy of application for a license or registration for C&D processing facility. |

**RE: PATRIOT HAULING CO., INC. and
JOSEPH & NINA VINAGRO
NOTICE OF VIOLATION OC&I/SW 99-063& 00-050
PAGE 24**

**AAD No. 00-023/WME
AAD NO. 00-061/WME
(consolidated cases)**

- RESPONDENTS' 5** Copy of letter dated August 17, 2000 from DEM to Joseph L.
ID Vinagro, Patriot Disposal Co., Inc. Re: Legislative changes in
registration concerning solid waste facilities.
- RESPONDENTS' 6** Copy of application for registration for C&D processing for no
ID no more than 50 tons per day.
- RESPONDENTS' 7** Witness statement of James Ashton dated September 26, 2000.
ID