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

RE: CHARLES T. COVE & COVE METAL CO. AAD NO. 01-003/SRE
NOTICE OF VIOLATION OC&I/LUST 01-328

DECISION AND ORDER

This matter came before the Department of Environmental Management, Administrative Adjudication Division for Environmental Matters ("Administrative Adjudication Division") pursuant to Respondents' request for hearing on the Notice of Violation and Order ("NOV") issued by the DEM Office of Compliance and Inspection ("OCI") dated July 24, 2001. The hearing was held on September 10, 11 and 16, 2002. Bret Jedele, Esq. represented the Office of Compliance and Inspection and James Higgins, Esq. represented Charles T. Cove and Cove Metals Co. ("Respondents" or "Cove").

Following the hearing, both the OCI and Respondents filed post-hearing briefs. The hearing was considered closed on December 27, 2002.

The within proceeding was conducted in accordance with the statutes governing the Administrative Adjudication Division for Environmental Matters (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 Act (R.I. GEN. LAWS § 42-35-1 *et seq.*); the Administrative Rules of Practice and Procedure for the Department of Environmental Management, Administrative Adjudication Division for Environmental Matters ("Administrative Adjudication Division Rules"); and the Rules and Regulations for Assessment of Administrative Penalties ("Penalty Regulations"). The Office of Compliance and Inspection bears the burden of proving by a preponderance of the evidence the allegations set forth in the

Notice of Violation. Once the violations are established, Rule 12(c) of the Penalty Regulations provides that the burden shifts to the Respondents to prove that the Director failed to assess the penalty in accordance with the Penalty Regulations.

PREHEARING CONFERENCE

A prehearing conference was conducted on April 5, 2002. At the conference, the parties agreed to the following stipulations of fact:

1. The subject property is located at 65 Mill Street in the Town of Burrillville, Rhode Island, otherwise identified as Burrillville Assessor's Map 179, Lot 59 (the "Property" or "Facility").

2. Charles T. Cove is the owner of the Property.

3. DEM retained the services of Clean Harbors Environmental Services, Inc. ("CHES") to contain the spill and undertake emergency remedial actions.

4. DEM personnel conducted an inspection of the Property and observed that water had entered and filled two 30,000-gallon fuel oil tanks causing the oil to flow into a former building foundation. DEM personnel observed oil emanating from the retaining wall of the tail race, which is immediately downslope of the foundation and contiguous with the Branch River.

5. The USTs were used for storage of petroleum products and were subject to the *Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the "UST Regulations").

6. The USTs were not registered with DEM until 5/15/01.

7. The capacity of Tank 003 is five hundred (500) gallons.

8. The USTs were removed from the ground and permanently closed in May 2001.

9. On 16 May 2001, a quantity of solid waste was on site.

10. That on or about July 1, 1993, Charles Cove entered into a written agreement with Leo P. Sweeney to remove all debris, rubbish and waste on the subject property and to remove the underground storage tanks located on the subject property.

11. That Charles T. Cove has filed a civil lawsuit against Leo Sweeney in Providence County Superior Court, Civil Action No. 96-2127, which lawsuit is pending and has not been heard.

A list of exhibits, marked as they were admitted at the hearing, is attached to this Decision as Appendix A.

The issues for determination at the hearing are as follows:

1. Whether or not the Respondents were in violation of Rhode Island General Laws §§46-12-5(a) & (b), 46-12-28, 46-12.5.1-3 and Oil Pollution Control Regulations §6(a), by releasing petroleum products into the waters of the State.

2. Whether or not the Respondents were in violation of Rhode Island General Laws §23-18.9-5(a) for illegal disposal of solid waste on the subject property.

3. Whether or not the Respondents were in violation of UST Regulations §8.00 by failing to register four USTs.

4. Whether or not the Respondents were in violation of UST Regulations §15.02(A) by maintaining four USTs in an abandoned state for more than 180 days.

5. Whether the penalty assessed is excessive.

HEARING SUMMARY

At the hearing, the OCI called three (3) witnesses: **Tracey Tyrrell**, a Principal Environmental Scientist in the OCI's Underground Storage Tank Section who testified at length concerning the assessment of the administrative penalty; **John P. Leo**, an engineer in the Office of Compliance and Inspection who testified concerning his response at the site and his observations; and **David Foss**, Senior Project Manager for Resource Control Associates who testified concerning his role as Project Manager for Resource Control.

The Respondents called two (2) witnesses: **Clifford Matthews** of Cove Metal Co. who testified concerning his role as a representative of Cove; and **David Foss** whose testimony again centered on his role as Project Manager for Resource Control Associates.

The property is located at 65 Mill Street in the Town of Burrillville, Rhode Island. According to the NOV, four (4) underground storage tanks ("USTs") had been located on the site. On April 13, 2001 DEM personnel responded to a complaint of oil in the waters of the Branch River in Burrillville, R.I.

John Leo arrived at the site and observed large piles of demolition debris including parts of cranes, bricks and concrete on a wide-open vacant lot. He observed a significant amount of oil emanating from the retaining wall on the property and flowing into the river. Mr. Leo walked the property and determined that underground storage tanks and piping were on the site. Oil was showing up in an area that once served as the boiler room and had appeared in the waters of the Branch River approximately six miles down river from the site. At that time, he was unable to determine the precise source of the oil and decided that Michael Mulhare, then a Supervising Sanitary Engineer with OCI, needed to be present at the site. He further concluded that because of the quantity of oil he observed, and the fact that it was a very pristine area, cleanup could not wait and an immediate and full response was required to stop oil from reaching the river. Clean Harbors Inc., a state contractor for emergency responses, was immediately called in. Both hard booms and absorbent booms were employed to contain the extent of oil flowing into the river and to soak up oil already in the river. On this first day of response, four to five hundred feet of containment booms were used and absorbent booms were changed every couple of hours as the absorbent pads became saturated with oil.

Between April 13, 2001 and April 18, 2001, containment and cleanup activities at the site continued. On Saturday, April 14th, activities centered on collection points where the millrace intersects the river and in the area from the foundation to the millrace. Mr. Leo testified that the goals for that day were to "kill" the source of the oil, intercept the flow and clean what was already contaminated.

To accomplish this, response personnel dug an intercept trench[1] to catch oil before it reached the river. Two fract tanks, with a capacity of 20,000 gallons each, were brought to the site to expedite work. The mixed oil and water transferred to the fract tanks came from the #2 fuel oil boiler area, the tanks on the upper portion of the site and from the intercept trench.

Mr. Leo was present at the site on Sunday, April 15, 2001 and Clean Harbors, Inc. remained on the property. Booms continued to be replaced and the intercept trench was pumped out continuously to keep pressure off the millrace to reduce oil flow into the river.

On Monday, April 16, 2001, pumping continued in the intercept trench and the boiler room was excavated to locate the pipes leading to the river. Approximately 9,700 gallons of an oil/water mix was shipped off site for disposal. Of this total amount, approximately 4,200 gallons was oil.

Clifford Matthews, representing Charles T. Cove and Cove Metals, Inc. arrived at the site at approximately 9:00 to 9:30 a.m. on April 16, 2001 with a representative of TMC, a contractor that performs environmental remediation services. Mr. Matthews and Mr. Leo discussed the situation. At that juncture, Mr. Matthews was unable to contact Mr. Cove and did not yet have the authority to commit to a cleanup. It is undisputed that Mr. Matthews was to contact John Leo to advise him when and if TMC would take over the cleanup on behalf of Cove. There is conflicting testimony from Mr. Leo and Mr. Matthews concerning the telephone numbers supplied to Mr. Matthews by Mr. Leo and whether Mr. Leo was contacted at all concerning TMC's takeover of the cleanup. That dispute aside, TMC appeared at the site on April 17 at approximately 8:30 a.m. with a full complement

[1] The intercept trench is also referred to as the "cutoff trench" or "slit trench".

of personnel and equipment to assume cleanup responsibilities. Mr. Leo indicated that the main effort for the day was to effect a smooth cleanup transition from Clean Harbors, Inc. to TMC. Mr. Leo's field notes (OCI F full) reflect that the contractors worked together to excavate the boiler room floor and locate buried fuel lines.

Mr. Leo testified that he returned to the site on April 18, 2001 and that Respondents' contractor took over most of the work that day. They excavated the boiler room floor and stockpiled the contaminated soil. According to Mr. Leo, approximately six (6) cubic yards of sludge was recovered from the tanks, manifested and sent off site for disposal. This material was recovered from the boiler room floor and the slit trench and equaled approximately 1600 gallons of liquid oil.

Upon direct examination Mr. Leo was asked to describe the nature of the spill based upon his previous experience in responding to such sites. Mr. Leo characterized the spill as significant based upon the quantity of oil that reached the river, the very pristine nature of the area, the fact that trout season was about to open, the potential threat to the environment and that, initially, there was no control over the flow of oil into the river.

Mr. Leo further testified that he was on site in May of 2001 on the date that the tanks were closed. On that date he observed sizeable amounts of solid waste including demolished wood, metal, window frames, drums, building demolition materials and pieces of crane equipment. Based on his experience Mr. Leo testified that the amount of solid waste on site was "absolutely" in excess of three cubic yards.

Cross-examination revealed that Mr. Leo had visited the site on a few occasions prior to April 2001. His first visit was in response to a complaint regarding drums on the property sometime in the 1980's. At that time he observed

a mill operation that performed repair work on machinery. No enforcement action resulted. His next visit was in 1993 when there was a fire on site. There was extensive fire damage to a portion of the building in the millrace area, some of the flooring had collapsed and there were some drums on site that were incinerated. DEM took no enforcement action as the machinery on site was still operating. Mr. Leo responded to the property again in 1995 for a fire in demolition debris. At that time, he found Mr. Sweeney on the site. Mr. Sweeney was hired by Charles T. Cove to remove debris from the site. Mr. Sweeney was in the process of taking down the mill structures and salvaging the lumber. Mr. Leo was on the property for approximately 2 ½ hours. He saw no indication of any underground storage tanks. He did observe a quantity of solid waste. Upon inquiry by Mr. Higgins, Mr. Leo indicated that no enforcement action was issued by DEM at that time because it appeared that Mr. Sweeney was salvaging material and would properly dispose of the remainder.

In response to further questioning regarding the spill, Mr. Leo reiterated that the flow of oil into the river did not stop until April 17th or 18th. The unrestricted flow of oil slowed on April 14th but product did not stop leaking out of the retaining wall and into the river until the 18th when the slit trench was deepened.

Mr. Higgins questioned the witness extensively regarding the response of Respondents' representatives. Mr. Leo concurred that Mr. Matthews (Cove's general manager) was concerned and cooperative. He agreed that Mr. Matthews and Respondents' engineer responded appropriately and that DEM was satisfied with their response action as the cleanup continued. Although Mr. Leo initially testified that TMC's "unannounced" arrival on site caused a duplication of effort and implied that it adversely affected the transition, upon cross-examination, he conceded that this did not hamper cleanup efforts and may have, in fact, enhanced

efforts. Overall, the witness concurred that the cleanup was expensive and that neither DEM nor EPA had to pay for any cleanup costs including any duplication of effort on the 17th.

OCI called David Foss to testify. Mr. Foss is currently a Senior Project Manager for Resource Control Associates, an environmental consulting firm engaged by Cove to respond to the spill. Mr. Foss prepared the Closure Assessment Report identified as Joint Exhibit 1. Mr. Foss testified that he first visited the site on April 17, 2001. As Project Manager, he managed implementation of the cleanup process with TMC Associates and Clean Harbors. Mr. Foss testified that the number of persons involved in the cleanup varied from April 17th forward. The range was between six and 10 persons for each contractor (Clean Harbors and TMC). He testified that various types of equipment were necessary including excavators to move soil and debris; vacuum trucks; booms; and a pump and treat system. He, like Mr. Leo, indicated that all recovered oil was commingled and that manifests prepared for Clean Harbors and TMC do not segregate the source of the recovered oil (ie: the slit trench, the river, the boiler room floor) but that USTs #1 and #2 were the original source of all recovered oil.

The Office of Compliance and Inspection called Tracey Tyrrell to testify concerning issuance of the NOV and the assessment of an administrative penalty. Ms. Tyrrell has served as a Principal Environmental Scientist within the OCI since March of 2000. Her duties include supervising staff responsible for inspecting hazardous waste facilities and sites with underground storage tanks. She has charge of the preparation of various enforcement actions including the assessment of administrative penalties. She has prepared over one hundred Notices of Violation involving underground storage tanks.

Ms. Tyrrell testified that she was responsible for issuance of this Notice of Violation. She reviewed the facts using the reports of emergency responders and drafted the NOV. She then conferred with the Chief of the Office of Compliance and Inspection regarding the violations and assessed the penalty. The witness stated that she authored the Penalty Summary Worksheet (OCI Exhibit G) and that it was prepared in accordance with the Rules and Regulations for the Assessment of Administrative Penalties.

She testified that violations numbered one through three in the NOV involved the release of petroleum product into the waters and groundwaters of the state. Ms. Tyrrell concluded that these violations are directly related to the protection of public health, safety and the environment and therefore constitute Type I violations. She next considered the extent to which the violations deviated from the standard. For each of these three violations, she took into account the type of pollutant, the amount released into the environment, the groundwater classification of the area and the other factors set forth in Exhibit G. These other factors include: the extent to which the act or failure to act was out of compliance; whether reasonable steps were taken to prevent and/or mitigate the noncompliance; how much control the violator had over the occurrence; and whether the violation was foreseeable. In reaching her decision concerning the extent to which these violations deviated from the standard, she relied on John Leo's field inspection report (OCI Exhibit F) and the receipts generated by Clean Harbors, Inc.[2], the state contractor that commenced the initial emergency response. These invoices provided specific information regarding the quantities of oil and water removed from site. She characterized the release, which commenced

[2] These reports were admitted as Respondents' Exhibit G.

on April 13th, as significant, testifying that she could not recall any NOVs which she reviewed or drafted with a petroleum release this significant. After weighing all of these considerations and those set forth in OCI Exhibit G, Ms. Tyrrell determined that these violations (#1 - #3) constituted a major deviation from the standard. For a Type I Major violation there exists a range of $12,500.00 to $25,000.00 for each violation. The highest amount in the range was chosen based on the considerations articulated by Ms. Tyrrell.

The penalty on the solid waste violation was discussed next. Ms. Tyrrell testified that the stockpiled solid waste at the site constituted a Type I Major violation. Ms. Tyrrell characterized the statute violated by Respondents as directly relating to the protection of public health, safety and the environment. In determining the deviation from the standard, Ms. Tyrrell again considered factors such as the extent to which the violation was out of compliance, the environmental conditions and the amount and nature of the pollutant. Ms. Tyrrell indicated that the factors she weighed in reaching her decision are set forth in OCI Exhibit G. Again the penalty for a Type I Major violation ranged from $12,500.00 to $25,000.00. The lowest amount in the range ($12,500.00) was selected based on the above factors and those set forth in OCI Exhibit G.

The fifth violation for which a penalty was assessed was failure to register the USTs as required by § 8.00 of the UST Regulations. Ms. Tyrrell characterized this violation as Type II Moderate. Type II status was assigned as registration is considered an indirect threat to public health, safety and welfare. Since the tanks were not registered, DEM's Office of Waste Management was unaware of their existence. The violation was deemed moderate, again, based on the factors enumerated in OCI Exhibit G -- the nature of the site, the fact that it was a petroleum release, the quantity of oil released, and the duration of the violation.

OCI assessed the lowest penalty in the Type II Moderate violation range ($2,500.00).

The sixth penalty amount was assessed for violations of UST Regulations § 15.02 A, abandonment of four USTs on the property. Ms. Tyrrell's testimony on direct examination indicated that these violations were Type II violations, indirectly related to the protection of public health, safety and the environment. OCI Exhibit G, at the top of page 11, also reflects that this is a Type II violation. However, the penalty matrix on the bottom of OCI Exhibit G, at numbered page 11, defines the violation as a Type I violation. When this inconsistency was raised in cross-examination, Ms. Tyrrell corrected her earlier testimony and confirmed that abandonment of USTs is a Type I violation. On redirect, the witness again admitted that her direct testimony was in error and that the abandonment of USTs is properly a Type I violation. Ms. Tyrrell's testimony was consistent throughout regarding the degree to which this violation was out of compliance, describing the abandonment as moderate. She assigned this level to the violation based upon the proximity of the USTs to the river; the toxicity of the pollutant; that petroleum products cause significant groundwater contamination; that the tanks are in a GAA groundwater classification area; that the USTs were not in use since 1973; the quantity of petroleum-contaminated water that was recovered; the amount of sludge removed from the abandoned USTs and other factors outlined in OCI Exhibit G (at numbered page 11). The penalty for a Type I Moderate violation ranges from $6,250.00 to $12,500.00. Based on the factors articulated by Ms. Tyrell, OCI assessed a penalty of $7,500.00.

Under lengthy cross-examination Ms. Tyrrell responded to inquiries regarding the process used in assessing the penalty and issuing the NOV. After conferring with DEM emergency response personnel, Dean Albro, Chief of the

Office of Compliance and Inspection, directed Ms. Tyrrell to prepare a Notice of Violation. She prepared the NOV relying primarily on the facts set forth in the field inspection report prepared by John Leo (OCI Exhibit F full). She also consulted the Rules and Regulations for the Assessment of Administrative Penalties and the compliance file. She made the initial penalty assessment. Subsequently, and in the normal course, it was then reviewed by the Chief of the Office of Compliance and Inspection and the Associate Director for Air, Waste and Compliance. She testified that the NOV was issued without change.

She agreed that she has flexibility in determining the amount of the penalty within each range as well as enforcement discretion concerning which violations to include or exclude in an NOV. She conceded that less severe enforcement actions are sometimes employed but she disagreed that a lesser enforcement action would have been appropriate in this case in light of the magnitude of the violations.

With respect to the degree to which these violations deviated from the standard, Ms. Tyrrell indicated that she looks at the overall picture, trying not to accord more weight to a particular factor because one factor alone can skew the picture. She explained that a Type I violation is appropriate for both actual and potential threats to protection of public health, safety or the environment.

On redirect, Ms. Tyrrell confirmed that the process followed for issuance of the NOV in this matter was consistent with the way other cases are handled.

Respondents called Clifford Matthews as their first witness. Mr. Matthews has been in the employ of Cove Metal Co. for twenty (20) years. Cove is in the business of rebuilding wire machinery and operates at three locations; Bellingham, Massachusetts, Pawtucket, Rhode Island and the subject site. He currently serves as general manager of the Bellingham, Massachusetts facility.

Mr. Matthews worked at the site during 1992 and 1993 until a fire at the facility substantially damaged a portion of the building. Inventory was lost and the remainder was to be transferred to the Bellingham facility, and the remaining building on the property was to be demolished. To accomplish this, Charles Cove entered into a contract with Leo P. Sweeney on July 1, 1993. (admitted in full as Respondents' Exhibit A). Mr. Sweeney was to demolish the mill building at the site, remove all debris, rubbish and waste from the site and properly dispose of it and remove an underground fuel tank at the site. The contract was to be completed within eighteen (18) months. Mr. Matthews testified that Mr. Sweeney removed a great deal of machinery and commenced demolition of the mill building. While Mr. Sweeney was on site, another fire broke out in 1995, causing extensive damage and destroying all remaining structures. Shortly thereafter, according to Mr. Matthews, Mr. Sweeney abandoned the site. Efforts to have him complete the work were fruitless. Finally, a five-count complaint was filed in Providence County Superior Court, C.A. No. 96-2127 alleging, *inter alia*, breach of contract. Since that time, the debris generated by Mr. Sweeney remains on site.

Mr. Matthews testified that he first became aware of the release of oil at the site on Good Friday, April 13, 2001 at approximately 5:00 p.m. when he received a telephone call from the Burrillville Police Department. After the fires at the site, Mr Matthews had been designated as the contact for that property. He proceeded to the site promptly, arriving between 5:30 and 6:00 p.m. He observed the hard and soft booms in the river at the edge of the property but characterized the site as otherwise unchanged. Mr. Matthews testified that he then left, proceeded to the police station to have his presence noted in the police log, and informed the dispatcher that he would return on Monday.

Between the time he left the property on April 13th and his return on April 16th, Mr. Matthews testified that he spoke with representatives of TMC to determine if they could accompany him to the site on Monday morning. TMC agreed to visit the site on Monday to assess the situation.

On Monday the 16th of April, Mr. Matthews arrived at the site at approximately 9:00 to 9:30 a.m. He observed emergency personnel and equipment and spoke with John Leo. As a result of his conversations with Mr. Leo, Mr. Matthews contacted Mr. Cove later that day and obtained authority to act on his behalf, to cooperate with the cleanup and to do what was necessary. Mr. Matthews asserts that he then called John Leo and left a voicemail message for him and for Jim Ball (Mr. Leo's supervisor). At the recommendation of TMC, he contacted a company named Resource Control Associates to move the cleanup forward and to ensure that it was done in compliance with the regulations, that sufficient resources would be employed and that the resources would be used efficiently.

On April 17, 2001, Mr. Matthews arrived on site with representatives of Resource Control Associates to take over the cleanup on behalf of Cove. Mr. Matthews characterized his behavior and that of Respondents' contractors as cooperative and prompt. Mr. Matthews offered that Cove has expended in excess of two hundred fifty thousand dollars ($250,000.00) to date for cleanup and associated costs. The Clean Harbors bill was paid directly by Cove as were all DEM invoices but for one laboratory invoice which he does not recall receiving. Cove has also paid for the services of TMC and Resource Control. Moreover, Mr. Matthews stated that Cove continues to move in the direction of cleaning the site and to that end has received estimates from other contractors for such activities as excavation and removal of remaining contaminated soil; asbestos removal; preparation of a site investigation report; excavation and backfilling and solid waste

disposal[3]. Copies of these estimates are admitted in full as Respondents' Exhibit F. The estimates total in excess of one hundred seventy five thousand dollars ($175,000.00).

Under cross-examination, Mr. Matthews did not know why Cove failed to engage another contractor to remove the solid waste and UST from the property. Mr. Matthews revealed that Charles Cove was out of the country at the time of the petroleum release. Mr. Matthews did not make any effort to determine if the tanks were in compliance with regulations and was not aware whether such an effort was undertaken by Mr. Cove.

The final witness for Respondents was David Foss. Mr. Foss expanded upon his previous testimony that he has been employed by Resource Control Associates for six and one half (6 ½) years in the design and management of environmental remediation. Most of Mr. Foss' testimony corroborated that of previous witnesses concerning response activities at the site. Mr. Foss added that he worked with John Leo, Jim Ball, TMC services and Clean Harbors' site supervisor Scott Metzger. Foss evaluated the site conditions and outlined a plan to clean the river, to remove existing tanks and to remove contaminated soil from the site. He solicited feedback from Mr. Leo and Mr. Ball as to what DEM wanted done. On the 18th, at a meeting held at the Burrillville Town Hall, he presented the outline and scope of work to be performed. All agreed it was the correct approach. That week Mr. Foss also provided oversight for an application to remove the underground tanks on site and for an application to the Office of Water Resources for a UIC (Underground Injection Control) Permit. Mr. Foss agreed that the flow of oil into the river abated on April 18, 2001.

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[3] Mr. Matthews testified that because of the pending lawsuit with Leo Sweeney, the solid waste remains on site.

With regard to the solid waste on the site, Mr. Foss indicated that, although he worked regularly with DEM personnel on site, he was not aware that it was an issue until the Notice of Violation was issued. He asserted that he was cooperative in all his dealings with DEM personnel. He further testified that Cove had representatives on the site and he (Foss) was directed through Mr. Cove's agents to put together a comprehensive response plan and to undertake whatever was necessary to clean the site.

Mr. Foss testified that the USTs were ultimately removed from the site on May 17, 2001. An application for removal was filed by Respondents and they were not removed as part of an emergency response. From April 17, 2001 to April 23, 2001 the contents of the tanks were removed and the interiors of the tanks were steam cleaned. At that point, the USTs were no longer a threat to the environment.

Mr. Foss indicated that at the time the NOV was issued, excellent progress toward remediation of the site had been made. The USTs were removed, there was a groundwater and product recovery system in place, contaminated soil was removed and actions were progressing for additional remedial response. The quarterly monitoring required in the NOV has been accomplished.

Upon cross-examination, Mr. Foss conceded that the tanks were abandoned as defined by the UST Regulations and that they were not in compliance with UST Regulations. The hearing concluded with the testimony of Mr. Foss.

The issues for determination are addressed separately below.

Did Respondents violate R.I. GEN. LAWS §46-12-5(a) and (b), 46-12.5.1-3 and Oil Pollution Control Regulations §6(a), by releasing petroleum product into the waters of the state?

On the hearing record and in their post-hearing brief, Respondents concede that the release that occurred on the property commencing on April 13, 2001

violated the above-cited statutes and Regulations. No further discussion of this issue is required. Respondents emphatically disagree with the penalty assessment for such violations and that issue will be addressed fully later in this Decision.

Did Respondents illegally dispose of solid waste on the site in violation of R.I. GEN. LAWS §23-18.9-5(a)?

R.I. GEN. LAWS §23-18.9-5(a) states in pertinent part:

> **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. . . .

The testimony of John Leo established that he observed solid waste, in the form of concrete, wood, metal, window frames, drums, and building demolition materials on site in May of 2001. Mr. Leo was unequivocal in his conclusion that the amount of solid waste was well in excess of three cubic yards. No testimony was presented that contradicted Mr. Leo's observations.

Counsel for Respondents argues that the Respondents did not dispose of solid waste on the site as defined by statute. Counsel asserts that proof of final abandonment is required. I disagree. Leaving an amount of solid waste in excess of three cubic yards on one's property constitutes disposal of solid waste under R.I. GEN. LAWS §23-18.9-5(a).

Did Respondents fail to register the four USTs on the property in violation of §8.00 of the UST Regulations?

Respondents concede that they violated this section of the UST Regulations. Respondents again maintain that the penalty assessment is excessive and that assertion will be discussed later in this Decision.

Did Respondents violate §15.02(A) of the UST Regulations by maintaining a UST facility with four USTs in an abandoned state for a period of more than 180 days?

UST Regulation §15.02(A) reads as follows:

15.02 Prohibitions:

(A) The abandonment of any UST or UST system is prohibited.

UST Regulations define abandonment, *inter alia*, as the action of taking a UST or UST system out of operation for a period of greater than 180 consecutive days without the prior permission of the Director. The testimony presented at the hearing establishes that the four unregistered tanks on the property were out of service for over 180 days. In their posthearing Memorandum at page 1, Respondents concede that the tanks were not in use for more than six months. Moreover, David Foss, Respondents' Project Manager testified that he is very familiar with the Underground Storage Tank Regulations and that the tanks at the site were, by definition, abandoned as they were out-of-service for a period in excess of one hundred eighty (180) days. The tanks were not properly filled or removed as required by regulation until after the release. It is clear from the evidence provided that the Respondents abandoned four USTs at the site in violation of §15.02(A) of the UST Regulations.

Were the penalties assessed by OCI excessive?

Although the hearing involved six alleged violations by Respondents, the focus of the hearing was the administrative penalty. The penalty assessment for each violation is discussed below.

Violations 1, 2 and 3 – The Water Pollution Violations. Respondents concede violations 1-3 but contest a number of the factors relied upon in assessing the penalty, including the amount of product released, the duration of the release and the degree to which OCI considered the Respondents' actions to take responsibility for the release as a mitigating factor.

I will first address the duration of the release. Testimony at the hearing established that there was an uncontrolled release of petroleum product from April 13, 2001 to April 18, 2001. Respondents contest the duration of the release and the amount of product released but offered no evidence to contradict the testimony of OCI's witnesses. To the contrary, Respondents' project manager, David Foss, agreed that the flow of oil was not stemmed for several days.

Regarding the amount of product released, Respondents are correct that no precise quantity of released oil was ever determined. When one considers the totality of the evidence presented at hearing, a determination of the precise number of gallons released is not crucial to a finding that this event was a major deviation from the standard. The uncontroverted documentary evidence establishes that over 19,350 gallons of petroleum-contaminated water were recovered from the site during the initial phase of remediation. Over 517 tons of petroleum-contaminated soil was removed from the property as part of the remediation. Substantial evidence in the hearing record supports the conclusion reached by OCI that a significant amount of petroleum product was released from the site constituting a major deviation from the standard.

Addressing the penalty mitigation issue, Respondents contend that the penalty amount should be lower as OCI did not adequately consider Respondents' actions to mitigate the release including the substantial financial resources committed to those efforts. Respondents point to their full cooperation in the cleanup, the substantial resources, both financial and manpower, that they committed to the project and the future expenses that they will incur to fully comply with DEM's cleanup requirements. Counsel contends that the proposed penalty is excessive and punitive in light of the financial resources already expended

(between $203,000.00 and $265,000.00) and the expected costs to clean the site as required by DEM (approximately an additional $175,000.00).

Respondents also argue that the penalty does not serve as a deterrent for future noncompliance as the costs expended by Respondents as a result of noncompliance have served as a powerful deterrent to future noncompliance. Moreover, argue Respondents, noncompliance in this case has been more costly than compliance. Counsel also posits that a penalty is not necessary to coerce Respondents to act as they behaved responsibly since they became aware of the release and have paid all response costs to date.

The testimony of Tracy Tyrell established that the violations were properly characterized as Type I Major. They are directly related to the protection of public health, safety and the environment. She correctly characterized the violations as major because of the extent to which the violation deviated from the standard in terms of the nature and quantity of the pollutant and the nature of the receiving waters including groundwater. After weighing all the factors she articulated in her testimony, the highest amount in the range was chosen ($25,000.00). She did note that the Regulations allow a per-day assessment of $25,000.00. Although the violation was ongoing from April 13th to April 18th, a one-day penalty was assessed.

Ms. Tyrell testified that in assessing the penalties for violations 1-3 she considered five factors as enumerated in the penalty worksheet (OCI G at numbered page 8). It is evident that OCI *did* consider Respondents' actions to mitigate the violation including the response actions instituted by Respondents. Cove's response to the release was weighed, but in the opinion of OCI the mitigation was, on balance, dwarfed by the magnitude of the violation and the fact that no reasonable or appropriate steps were taken to prevent the noncompliance.

Respondents failed to prove that the penalty calculation for these violations was not calculated in accordance with the Penalty Regulations or is excessive.

Violation 4 – Solid Waste Disposal Violations. Respondents contest the characterization of the violations as Type I Major. They challenge the amount of solid waste, the type of waste and its effects on the environment. They also argue that OCI did not adequately consider efforts to mitigate or prevent noncompliance.

Although Respondents dispute the amount of solid waste on site and its effects on the environment, they again failed to introduce evidence to contradict that offered by OCI witnesses. Specifically, Ms. Tyrell's testimony established that the disposal of solid waste on site is directly related to the protection of the public health, safety and the environment. OCI characterized this violation as a Type I Major violation. OCI weighed not only the actual harm caused by the violation, but also the potential for harm to the environment. The violations were characterized as a major deviation because approximately 1,000 cubic yards of solid waste was on the site; the combustible nature of the solid waste; the proximity of the solid waste within 100' of the Branch River and the fact that the solid waste overlays a GAA groundwater zone.

Cove argues that in arriving at the administrative penalty assessment for this violation, OCI failed to adequately consider actions taken to prevent and mitigate noncompliance. Respondents maintain that the waste was on the property in 1993, with DEM's knowledge, at which time Respondent Charles T. Cove contracted with Leo Sweeney to, *inter alia*, remove all debris from the site. Mr. Sweeney never completed removal and in 1996, Respondent Charles T. Cove initiated a breach of contract suit against Mr. Sweeney in Superior Court. Other than initiating suit, however, no further efforts were made to remove the waste and it remains on the property. Respondents assert that a lower penalty is appropriate

as they did take steps to prevent and mitigate noncompliance by hiring Mr. Sweeney to remove the debris as long ago as 1993.

I find this argument to be unpersuasive. Although Respondents did initially take steps to prevent and mitigate the noncompliance by hiring Mr. Sweeney, several years have passed since Mr. Sweeney abandoned the site. Respondents took no steps since initiation of a lawsuit in 1996 to remove the waste from the site. Respondents' own witness, Mr. Matthews, could offer no explanation as to why no additional efforts were made. The penalty worksheet for this violation acknowledges the efforts made in 1993 to remove the solid waste. Moreover, the Notice of Violation cites Respondents for disposal of solid waste on their property *as of May 2001*. It does not reference a violation prior to that time nor does the penalty assessment reflect a penalty for any period prior to May 2001. The duration of the violation was not a consideration in the assessment of the penalty. This is consistent with Mr. Leo's testimony that, although he observed solid waste on site in the 1990's, no enforcement action was recommended because the business was still operating and thereafter he believed that Respondents, through Mr. Sweeney, were taking steps to properly dispose of the solid waste. It is apparent that OCI considered Respondents' efforts and appropriately included such consideration in the issuance of the NOV and the penalty assessment.

The evidence supports OCI's characterization of this violation as a Type I Major violation. The amount of the penalty is the lowest amount indicated for a Type I Major violation and is not excessive. Based on the evidence presented, Respondents failed to prove that the penalty calculation for these violations was not calculated in accordance with the Penalty Regulations or is excessive.

Violation 5 – UST Registration Violations. Respondents contend that OCI's characterization of these violations as Type II should be lowered to a Type III

violation as it is more accurately characterized as a violation of a "reporting requirement". This conclusion defies the weight of evidence presented at hearing. On direct examination Ms. Tyrell testified that the failure to register the tanks indirectly related to the protection of public health and the environment. She stated that although registration may appear to be a simple notification requirement, it informs the Department of the existence of such tanks at a site and allows the Department to monitor compliance with regulations. Under cross-examination, Ms. Tyrell distinguished these violations from Type III violations, noting that Type III violations are merely incidental to the program and include such infractions as a failure to submit paperwork after a tank has actually been tested. She contrasted a "paperwork violation" from a failure to register tanks, again indicating the importance of notifying the Department that the tanks are in existence. The evidence presented by Respondents was insufficient to establish that the penalty for this violation was not calculated in accordance with the penalty regulations or was, under the circumstances, excessive.

Violation 6 – Abandonment of the Underground Storage Tanks.

Respondents' contentions regarding this penalty assessment are two-pronged. First, Respondents maintain that an error on the Penalty Matrix Worksheet (OCI G at numbered page 10) renders the penalty calculation for this violation clearly erroneous. Respondents assert, correctly, that a Notice of Violation must provide notice to a Respondent of the alleged violations so he or she can adequately defend against those allegations. In the instant matter, Respondents were adequately informed that the Department was alleging that Respondents abandoned four underground storage tanks in violation of §15.02(A) of the UST Regulations and the penalty amount set forth in the NOV is consistent with a Type I violation. At the top of the page, the Penalty Matrix Worksheet classifies these

violations as Type II violations, indirectly related to the protection of public health, safety, welfare or the environment. The actual matrix, at the bottom of the page, places the violation into the Type I category.

As discussed earlier in this decision, Ms. Tyrell was initially inconsistent in her testimony regarding this violation. She clarified that inconsistency in cross-examination and upon redirect. She admitted that her testimony on direct was in error and that the characterization of the violation as a Type II violation was a typographical error. Substantively, her testimony established that abandonment of USTs is directly related to protection of public health, safety and the environment. Consequently, abandonment of the tanks is a Type I violation. The typographical error at the top of the worksheet is not fatal to the penalty assessment. The body of the worksheet, including the penalty matrix and corresponding penalty are correctly typed and the Notice of Violation reflects the correct penalty calculation.

The Respondents make no assertion that they were prejudiced by the typographical error or that it misled them in preparing their case. To the contrary, counsel questioned this witness ably concerning the assessment of the penalty and the description of the type of penalty. I conclude that the reference to a Type II violation was a typographical error that did not prejudice the Respondents.

Respondents' second assault on this calculation relates to the deviation from the standard. OCI determined that the deviation from the standard was moderate. Respondents argue that OCI was incorrect in measuring the time of abandonment from 1973 (the date Respondent Charles T. Cove took title to the property). Factor (a) listed on The Penalty Matrix worksheet references that all four tanks were in an abandoned state since 1973. The evidence adduced at hearing by Respondents contradicts this factor with respect to Tank 1. The UST Closure Assessment Report prepared for Mr. Charles T. Cove and Cove Metals Company

by Resource Controls Associates (JT1) indicates that Tank 1 was last used in 1990. The report indicates that Tanks No. 2, 3, and 4 were last used "pre-1973". The tanks were not registered until 2001 (just prior to removal). OCI proved abandonment by a preponderance of the evidence and, with the exception of Tank 1, which was used until 1990, the evidence establishes that none of the remaining tanks was maintained or used by Respondents after they took title to the property in 1973.

OCI considered the length of abandonment as one factor in determining the deviation from the standard. The duration of abandonment for Tank 1, considered by OCI in assessing the penalty, was incorrect, but I cannot find that this discrepancy is a basis for reducing this penalty. The evidence established that Tank 1 had a capacity of 30,000 gallons and was last used for the storage of fuel oil sometime in 1990 while Cove conducted business on the site. Tank 1 then remained in an abandoned state for a minimum of ten years, until the release in April 2001 and its ultimate removal in May 2001. It was abandoned for a significant period of years and was a source of the release. The length of abandonment was only one of seven factors weighed by OCI in determining the deviation from the standard. Moreover, Tank 1 was only one of *four* USTs abandoned by the Respondents. Based on the evidence presented, Respondents failed to prove that the penalty calculation for these violations was not calculated in accordance with the Penalty Regulations or is excessive.

FINDINGS OF FACT

1. The subject property is located at 65 Mill Street in the Town of Burrillville, Rhode Island, otherwise identified as Burrillville Assessor's Map 179, Lot 59 (the "Property" or "Facility").

2. Charles T. Cove is the owner of the Property.

3. Cove Metal Co. operated a business on the site until a fire substantially damaged the building in 1993.

4. On April 13, 2001, DEM personnel responded to the site and observed a release of petroleum product from the property into the Branch River, adjacent to the property.

5. DEM personnel conducted an inspection of the Property and observed that water had entered and filled two 30,000-gallon fuel oil tanks causing the oil to flow into a former building foundation. DEM personnel observed oil emanating from the retaining wall of the tailrace, which is immediately downslope of the foundation and contiguous with the Branch River.

6. DEM retained the services of Clean Harbors Environmental Services, Inc. ("CHES") to contain the spill and undertake emergency remedial actions.

7. Mr. Matthews, a representative of Respondents, appeared at the site promptly after notification by the Burrillville Police on April 13, 2001.

8. Charles T. Cove was out of the country during the time of the incident.

9. Mr. Matthews took timely action to engage contractors and environmental consultants to visit and assess the site.

10. The first contact between the Respondents' representatives and DEM personnel (Mr. Leo) was on the morning of April 16, 2001 when Mr. Matthews again visited the site. As of that time, Respondent Cove had not authorized Mr. Matthews to accept responsibility for the cleanup.

11. After speaking with Mr. Leo, Mr. Matthews contacted Mr. Cove, who gave Mr. Matthews authority to act on his behalf and to cooperate and do what was necessary to clean the site.

12. That same day, Mr. Matthews retained the additional services of Resource Control Associates, Inc. to assume cleanup responsibilities on behalf of Respondents.

13. As of April 17, 2001, Resource Control Associates took on the project on behalf of Respondents, presented an action plan, which was reviewed and approved by DEM, to clean the river, remove the USTs and remove contaminated soil.

14. Petroleum products from the site were released into the Branch River in an uncontrolled manner from April 13, 2001 to April 18, 2001.

15. The groundwater in the vicinity of the site is classified GAA by DEM, which is the highest classification, suitable for drinking water without treatment.

16. The source of the release was two 30,000-gallon underground fuel oil tanks.

17. The release was a result of surface water entering these USTs and "floating" the fuel oil out of the tanks and into the piping or onto the ground surface. The fuel oil then traveled to the foundation of the former boiler house entering the foundation and drains. The oil then migrated through and around the underground piping in a southeasterly direction to the tailrace of the Branch River.

18. Because of the nature of the release and emergency efforts to clean up promptly to avoid further environmental damage, recovered product was not segregated from water and all sources of oil on site were commingled.

19. From July 27, 2001 through August 3, 2001, 517.63 tons of petroleum-contaminated soil were removed from the Mill Street property and disposed of off site.

20. Although the precise amount of oil released cannot be quantified, the amount of oil observed in the river, the amount of petroleum-contaminated soil removed from the site and the tens of thousands of gallons of oil and water mix recovered from the slit trench, tanks and boiler room, establish that there was a very significant release of petroleum product to the groundwater and Branch River.

21. A total of four USTs were on site: two (2) thirty thousand (30,000) gallon fuel oil tanks ("Tank 1 and Tank 2"); one 500-gallon gasoline tank ("Tank 3"); and one 275-gallon fuel oil tank ("Tank 4").

22. The four USTs were located within 250 feet of the Branch River.

23. The USTs were used for storage of petroleum products and were subject to the *Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the "UST Regulations").

24. Tank 1 was last used in 1990. Tanks 2, 3 and 4 were last used prior to 1973.

25. Charles T. Cove as property owner and Cove Metal Co. as operator of the Facility, had control over the occurrence of the failure to register the tanks and the failure to properly close the tanks.

26. At the time of the release at the facility, the four USTs were not registered with DEM and each had been out-of-service for more than 180 days without the approval of the director.

27. The USTs were not registered with DEM until 5/15/01.

28. The USTs were removed from the ground and permanently closed in May 2001.

29. To date, Respondents have paid the full costs of the petroleum cleanup, including invoices received from the state contractor, Clean Harbors, Inc. and DEM. This expenditure totals in excess of $250,000.00.

30. One invoice for $630.00 remains outstanding. Respondents did not receive this invoice but agree that, now notified, it will be paid.

31. That on or about July 1, 1993, Charles Cove entered into a written agreement with Leo P. Sweeney to remove all debris, rubbish and waste on the subject property and to remove the underground storage tanks located on the subject property.

32. The contract entered into with Mr. Sweeney required that these tasks be accomplished within eighteen months. The contract required Mr. Sweeney to obtain all necessary approvals or permits from government agencies.

33. Mr. Sweeney failed to remove the debris from the site and failed to remove a UST from the property.

34. Since 1995, Respondents took no further steps to remove the waste and debris and it remains on the site.

35. Over three cubic yards of solid waste was on the property on May 16, 2001 including demolition debris, parts of a crane, a pony boiler, drums, and structural members such as window frames. This debris was piled on site within 100 feet of the River.

CONCLUSIONS OF LAW

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

1. Respondents violated R.I. GEN. LAWS §46-12-5(a) and (b) by releasing petroleum products into the waters of the state.

2. Respondents violated R.I. GEN. LAWS §46-12.28 by releasing petroleum products into the waters of the state.

3. Respondents violated R.I. GEN. LAWS §46-12.5.1-3 and Oil Pollution Regulation §6(a) by releasing petroleum products into the waters of the state.

4. The debris observed on the property on May 17, 2001 meets the definition of construction and demolition debris set forth in R.I. GEN. LAWS §23-18.9-7-7.

5. Construction and demolition debris is a form of solid waste pursuant to R.I. GEN. LAWS §23-18.9-7.

6. OCI proved by a preponderance of the evidence that Respondents violated R.I. GEN. LAWS §23-18.9-5(a) by disposing of solid waste at other than a solid waste management facility licensed by the Director.

7. OCI proved by a preponderance of the evidence that Respondents violated Section 8.00 of the UST Regulations by failing to register the four USTs located on the site.

8. Charles T. Cove and Cove Metal, Co. are jointly and severally liable for violations of the UST Regulations.

9. OCI proved by a preponderance of the evidence that Respondents violated §15.02(A) of the UST Regulations by maintaining an unregistered UST Facility with four USTs in an abandoned state for more than 180 days.

10. OCI proved by a preponderance of the evidence that Respondents failed to properly close the USTs once they were out of service for more than one-hundred eighty (180) days.

11. The OCI established in evidence the penalty amount and its calculation for each violation.

12. Respondents failed to prove by a preponderance of the evidence that the penalties were not calculated in accordance with the Penalty Regulations or were excessive.

Wherefore, based upon the above Findings of Fact and Conclusions of Law, it is hereby

ORDERED

1. The Notice of Violation is **SUSTAINED.**

2. Within ninety (90) days of receipt of this Decision and Order remove all solid waste accumulated on the property, dispose of the solid waste in accordance with R.I. GEN. LAWS §23-18.9-5(a) and submit documentation of proper disposal to the Office of Compliance and Inspection, 235 Promenade Street, Providence, RI 02908-5767.

3. If required by the Office of Compliance and Inspection after review of the Closure Assessment Report, Respondents shall conduct a site investigation and submit a Site Investigation Report in accordance with Section 15.10 of the UST Regulations and the DEM UST Closure Assessment Guidelines, (October 1998).

4. Based upon information contained in the Site Investigation Report, DEM may require submittal of a Corrective Action Plan within a timeframe specified by DEM and in accordance with Sections 14.11 and 14.12 of the UST Regulations. The Corrective Action Plan must be implemented in accordance with the Order of Approval issued by DEM.

5. Continue operation of all remediation procedures specified in the remedial plan and continue submission of required status reports until the Director may determine that the soils/groundwater located on and around the Facility have been adequately treated. DEM may require a period of monitoring to ensure that standards have been met.

6. Continue submission of required quarterly status reports until such time that DEM issues written approval for termination of remedial activities at the Facility.

7. Reimburse DEM for any outstanding funds it has expended or may expend in the investigation and/or remediation of the contamination located at the Facility in accordance with R.I. GEN. LAWS §46-12.5-7.

8. An administrative penalty in the amount of Forty Eight Thousand One Hundred and Thirty Dollars ($48,130.00) is hereby ASSESSED jointly and severally against the Respondents.

9. Respondents shall make payment of the administrative penalty within thirty (30) days from the date of entry of the Final Agency Order in this matter. Payment shall be in the form of a certified check or money order made payable as follows:

   (a) Thirty-eight thousand one hundred and thirty dollars ($38,130.00) to the “General Treasury – Environmental Response Fund” and

   (b) Ten thousand dollars ($10,000.00) to the “General Treasury -- Water and Air Protection Program Account”

   and shall be forwarded to:

   R.I. Department of Environmental Management
   Office of Management Services
   235 Promenade Street, Room 340
   Providence, RI 02908-5767
   Attn: Glenn Miller

Entered as an Administrative Order this 31ST day of March, 2003 and herewith recommended to the Director for issuance as a Final Agency Order.

_____

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

Entered as a Final Agency Order this 1ST day of April, 2003.

_____

Jan H. Reitsma
Director
Department of Environmental Management
235 Promenade Street, Fourth Floor
Providence, Rhode Island 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 James T. Higgins, Esquire, 895 Mendon Road, Cumberland, RI 02864; via interoffice mail to Bret Jedele, Esquire, Office of Legal Services and Dean H. Albro, Chief, Office of Compliance and Inspection, 235 Promenade Street, Providence, RI 02908 on this 1st day of April, 2003.

_____

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

EXHIBIT LIST

JOINT EXHIBITS:

JT 1 Copy of November 13, 2001 UST Closure Assessment Report.

JT 2 Copy of May 15, 2001 Letter from James Ball to Respondent Charles T. Cove.

OFFICE OF COMPLIANCE AND INSPECTION EXHIBITS:

OCI A (FULL)	Copy of Curriculum Vitae of Sean Carney (2 pages).
OCI B (FULL)	Copy of Curriculum Vitae of Michael Mulhare (4 pages).
OCI C (FULL)	Copy of Curriculum Vitae of Jim Ball.
OCI D (FULL)	Copy of Curriculum Vitae of John Leo.
OCI E (ID)	Copy of May 17, 2001 UST Closure Inspection Checklist.
OCI F (FULL)	Copy of May 10, 2001 Field Inspection Report (4 pages).
OCI G (FULL)	Copy of Notice of Violation Penalty Summary and accompanying Worksheets (5 pages).
OCI H (FULL)	Copy of 2001 Profit Corporation Annual Report.
OCI I (ID)	Copy of Mitken Corporation Lab Workorder Invoice, dated May 17, 2001.
OCI J (ID)	Copy of Permanent Closure Application, dated May 3, 2001 (4 pages).
OCI K (FULL)	Copy of June 4, 2001 Letter from James T. Higgins, Esq. to Clean Harbors Environmental Services.
OCI L (FULL)	Color copies of forty-seven (47) photographs of the site taken on various dates, further marked as L-1 exhibits through L-47

RESPONDENTS' EXHIBITS:

Resp. A (FULL)	Agreement dated July 1, 1993 by and between Charles T. Cove and Leo P. Sweeney.
Resp. B (FULL)	Providence County Superior Court Complaint in the Matter of Charles T. Cove and Cove Metal Co., vs. Leo P. Sweeney, et al, CA No. 96-2127.
Resp. C (FULL)	Deposition of Leo P. Sweeney taken on August 22, 2001.
Resp. D (FULL)	Application for Underground Injection Control Approval, dated 4/19/01.
Resp. E (FULL)	Documentation of Disposal Letter dated 9/28/01.
Resp. F (FULL)	Copies of estimates received to date for remaining work to be performed on the site.
Resp. G (FULL)	Copies of invoices and canceled checks evidencing the costs of the on-site response action.