

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

RE: AUBREY, SIMON J. AND DALE ANN  
NOTICE OF VIOLATION OC&I/CI04-193

AAD NO. 07-010/IE

ORDER OF FINAL DISMISSAL

This matter was scheduled for Administrative Hearing on June 9, 2008 to consider Respondents' appeal from a Notice of Violation from the Office of Compliance and Inspection of the Department of Environmental Management (OC&I) dated June 27, 2007. Respondents filed their appeal by letter requesting hearing which was filed on July 16, 2007.

On July 23, 2007 an Order was issued setting the matter down for Status Conference on September 9, 2007. On September 9, 2007 Respondents failed to appear or otherwise obtain a continuance of the Status Conference. On September 10, 2007 a Conditional Order of Default was entered giving the Respondents seven (7) days to present "good cause" why a final judgment should not be entered. On September 18, 2007 Respondent filed a response listing reasons for non-attendance and requesting a hearing for late December. On October 11, 2007 OC&I filed an Objection with supporting Memorandum requesting that the Order of Default be finalized. On November 15, 2007 an Order was issued stating that the Conditional Order of Default would be held "in abeyance . . . on the condition that Respondents comply with all future Orders of the Adjudication Division, including attendance at conferences and hearings when notified" (emphasis added). The Order also scheduled a Prehearing Conference for December 21, 2007.

A Prehearing Conference was held on December 21, 2007 and a Prehearing Conference Record and Order was issued on January 4, 2008. On February 13, 2008 a Notice of Administrative Hearing was issued setting the matter down for Administrative Hearing on March 24, 25 and 26 of 2008. Respondents, by letter dated February 25, 2008, advised that the dates for hearing "are not feasible for us." Respondents requested a hearing in early June. On February 28,

2008 OC&I filed an Objection to Continuance with accompanying Memorandum. On March 25, 2008 a Notice "Rescheduling Administrative Hearing" was issued setting the matter down for hearing on June 9, 10, and 11, 2008.

On June 4, 2008 a note was received from Respondents advising, "I will not be attending the hearing scheduled for June 9<sup>th</sup>, 2008. A septic design has been submitted to your office." OC&I filed an Objection to any further continuance. Upon direction of the Hearing Officer the Clerk of the Administrative Adjudication Division called the Respondents and left a message that their attendance was required at the hearing and it was their duty to proceed with their appeal.

On June 9, 2008 the Administrative Hearing was convened. In attendance for OC&I were Gary Powers, Esq., Marisa DeSautel, Esq. and their witnesses. The Respondents did not appear. Hearing Officer reviewed the travel of the case for the record. Attorney for OC&I moved for an Order of final judgment dismissing Respondents' appeal due to their non appearance in violation of the Order entered on November 15, 2007.

#### FINDINGS OF FACT

1. The Administrative Adjudication Division for Environmental Matters (AAD) has jurisdiction of their matter.
2. The Office of Compliance and Inspection for the Department of Environmental Management (OC&I) issued a Notice of Violation (NOV) to the Respondents dated June 27, 2007 ordering remediation of failing septic system and imposition of a \$600 administrative penalty.
3. On July 16, 2007 the Respondents filed an appeal of the NOV to the AAD.
4. On September 9, 2007 Respondents failed to appear at a Status Conference without approval by the Hearing Officer.
5. On September 10, 2007 a Conditional Order of Default was entered against the Respondents.

6. On November 15, 2007 an Order was issued holding the Order of Default in abeyance on the condition that the Respondents attend future conferences and hearings when notified.
7. An Administrative Hearing was scheduled by Notice in June 9, 10 and 11, 2008.
8. Respondents filed a letter on June 4, 2008 advising the AAD that they would not be attending the hearing scheduled for June 9, 10 and 11, 2008.
9. OC&I filed an objection to further continuances.
10. The AAD clerk left Respondents a message that their attendance was required at the scheduled hearing.
11. On June 9, 2008 Respondents failed to appear for the Administrative Hearing.
12. OC&I made an oral Motion to Dismiss Respondents' appeal.
13. Respondents, by failing to appear at the Administrative Hearing scheduled for June 9, 10 and 11, 2008, are in violation of the conditions contained in the Order dated November 15, 2007.
14. Respondents are in default and have waived their rights to an appeal.

#### CONCLUSIONS OF LAW

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

1. The Administrative Adjudication Division has subject matter jurisdiction over this action and personal jurisdiction over the Respondents.
2. Respondents by failing to appear at the Administrative Hearing scheduled for June 9, 10 and 11, 2008 are in violation of the Order entered on November 15, 2007.
3. Respondents, having been determined to be in violation of the express terms of the Order entered November 15, 2007, are hereby found to be in default.
4. Respondents by virtue of their default have waived their right to an Administrative Hearing
5. Respondents have waived their right to an Administrative Appeal.

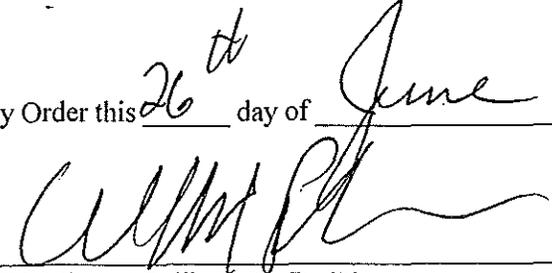
ORDERED

1. Respondents are in default and have waived their right to an Administrative Hearing.
2. Respondents have waived their right to an appeal.
3. Respondents' appeal is DISMISSED.
4. The terms and conditions of the NOV dated June 27, 2007 are hereby sustained.

Entered as an Administrative Order this 23<sup>rd</sup> day of June, 2008 and  
herewith recommended to the Director for issuance as a Final Agency Order.

  
\_\_\_\_\_  
David Kerins  
Acting 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 26<sup>th</sup> day of June, 2008.

  
\_\_\_\_\_  
W. Michael Sullivan, Ph.D., Director  
Department of Environmental Management  
235 Promenade Street, 4<sup>th</sup> Floor  
Providence, Rhode Island 02908