

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

RE: THOMAS & KAREN NUTINI - AAD NO. 92-024/IE

DECISION AND ORDER

This matter is before the hearing officer for a Recommended Final Decision and Order regarding the Notice of Violation and Order (CI92-98) ("NOVAO") issued to Karen and Thomas Nutini ("Respondents") by the Division of Individual Sewage Disposal Systems ("Division") dated November 24, 1992. The Respondents filed a request for hearing on December 7, 1992 with the Administrative Adjudication Division for Environmental Matters ("AAD"). A Prehearing Conference was held on July 21, 1993 wherein the parties agreed to certain stipulations of fact, the admission in full of documentary evidence, and agreement as to witness expertise. The hearing officer issued a written partial prehearing conference record on July 22, 1993 and afforded Respondent additional time until August 4, 1993 to list witnesses and submit documentary evidence, if any. A completed prehearing conference record was entered on August 26, 1993 in accordance with R.I.G.L. §42-17.7-5 . The hearing was governed by the Prehearing Conference Records.

On October 27, 1993 a Notice of Administrative Hearing was issued by AAD placing the matter down for hearing on November 15, 1993. The administrative record next reflects that the matter was rescheduled for hearing to February 14, 15 and 16, 1994. As the Order of Continuance issued on February

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15, 1994 indicates, a brief continuance to February 23, 1994 was granted at Respondents' request and over the objections of the Division. The hearing finally commenced on February 23, 1994. John J. Bevilacqua, Esq., represented the Respondents Karen and Thomas Nutini and John Langlois, Esq., represented the Division. Attorney Gary Powers was also present for the Division.

The NOVAO, by its own terms, provides that the orders contained in paragraph one are immediate compliance orders. There exists no right of appeal to AAD with respect to the issuance of compliance orders. (R.I.G.L. §42-17.1-2(u) (2) (A), and §42-17.1-2(u) (5)). Accordingly, the hearing officer informed the parties that the only issue before the AAD was the portion of the NOVAO which assessed the administrative penalty. In order for the penalty assessment to be sustained, however, the Division bore the burden of proving the alleged violation as set forth in the NOVAO by a preponderance of the evidence. Once the violation is established by the Division, Section 12 of the Rules and Regulations for the Assessment of Administrative Penalties ("Penalty Regulations") shifts the burden of proof to the violator to prove by a preponderance of the evidence that the Director failed to assess the penalty and/or economic benefit portion of the penalty in accordance with the Penalty Regulations.

The Division proceeded first and rested upon the

stipulations and agreed exhibits entered into evidence and reflected in the prehearing records issued by Hearing Officer Baffoni on July 22, 1993 and August 26, 1993 in accordance with R.I.G.L. §42-17.7-5.

The Respondent did not present any witnesses or documentary evidence.

The Respondent challenges the evidence introduced by the Division as inadequate as a matter of law to prove a violation of the Rules and Regulations Adopting Minimum Standards Relating to Location, Design, Construction and Maintenance of Individual Sewage Disposal Systems ("ISDS Regulations") as alleged in the NOVAO. The NOVAO alleges that Respondents have violated the following ISDS Regulations:

SD 2.07 Discharge to a Watercourse - No person shall discharge or permit the entrance of sanitary sewage, treated or untreated, into any watercourse, nor shall they discharge or permit the entrance of such sewage into any open or covered drain tributary to such waters, without having obtained an order for the Director approving the same.

SD 2.08 Discharge on or to the Surface of the Ground - No person shall discharge or permit the overflow or spillage of any treated or untreated sanitary sewage on or to the surface of the ground unless permitted by the Director. However, this shall not interfere with the spreading of animal manure on the surface of the ground in accordance with normal agricultural practices.

Specifically, Respondent asserts that the evidence is inadequate to sustain the Division's burden of proof that the admitted discharge constitutes "sanitary sewage" as defined by the Regulations. More narrowly stated, Respondent contends that laboratory analysis of the discharge is necessary to

prove by a preponderance of the evidence that the character of the discharge meets the regulatory definition of "sanitary sewage."

The Division maintains that the facts and documentary evidence of record clearly establish that sanitary sewage as defined in SD 1.00 of the ISDS Regulations was discharged by Respondent in violation of SD 2.07 and SD 2.08.

The evidence of record, as contained in the stipulations and exhibits, establishes that the Respondents' laundromat discharges wastewater onto the ground surface behind the Respondents' business. The wastewater is discharged from a PVC pipe which is connected to Respondents' building and discharges into a swamp.

The pertinent definitions contained in the ISDS Regulations are as follows:

SANITARY SEWAGE - The term, "sanitary sewage," shall be held to mean any human or animal excremental liquid or substance, any putrescible animal or vegetable matter and/or garbage and filth, including, but not limited to, any grey water or black water discharged from toilets, laundry tubs, washing machines, sinks, and dishwashers as well as the content of septic tanks, cesspools, or privies.

GREY WATER - The term "grey water," shall be held to mean any wastewater discharge from a structure excluding the waste discharges from water closets and waste discharges containing human or animal excrement.

STRUCTURE - The term, "structure" shall be held to mean any residence (as defined herein), building, garage, shack, trailer or other permanent or semi-permanent facility, whether commercial or noncommercial in use, which is proposed to be placed or has been built or otherwise placed on a parcel of real property.

I have considered Respondents' arguments and conclude that the uncontroverted evidence is sufficient to prove the violations alleged in the NOVAO.

FINDINGS OF FACT

After review of the stipulations of fact and documentary evidence of record, I make the following findings of fact:

1. The Respondents, Thomas and Karen Nutini, are the owners of real property and operate a laundromat located at the 6964 Post Road in North Kingstown, Rhode Island which is the subject matter of this hearing.
2. The Division has jurisdiction over the Respondent pursuant to Rhode Island General Laws Section 42-17.1-2 et seq.
3. On or about March 31, 1992, a Notice of Intent to Enforce was mailed to Respondents by the Department.
4. The Notice of Violation, numbered CI92-98 and dated November 24, 1992 was issued by the Department; served upon the Respondents; and recorded with the Office of Land Evidence in the Town of North Kingstown in accordance with all statutory and regulatory requirements.
5. The Notice of Violation was received by the Respondents and the Respondents filed a request for an administrative hearing.
6. The Regulations allegedly violated by the Respondents are:
 - (a) SD 2.08, relating the discharge of Grey Water to the surface of the ground; and
 - (b) SD 2.07, relating to the discharge of Grey Water to a watercourse.
7. On March 27, 1992, an inspector (Susan Fortin) with the ISDS section observed laundry waste being discharged from a PVC pipe into a swamp at 6966 Post Road, North Kingstown, RI.

8. The discharge observed on March 27, 1992 included soap suds and lint.
9. Inspections carried out by Division personnel on September 23, 1992 and October 20, 1992 indicate ponding at the back of the property with a septic odor indicated on both occasions.
10. Wastewater from the laundromat discharges onto the ground surface behind the laundromat from a PVC pipe connected to the Respondent's building;

CONCLUSIONS OF LAW

After review of the evidence of record and consideration of the legal arguments of counsel, I conclude the following as a matter of law:

1. The Respondents made a timely request for hearing pursuant to R.I.G.L. §42-17.1-2(u).
2. The AAD has jurisdiction over the Respondents pursuant to R.I.G.L. §42-17.1-2 et seq and R.I.G.L. §42-17.6 et seq.
3. The AAD has jurisdiction to hear and determine only the penalty assessment as set forth in the NOVAO issued to Respondents.
4. The Division bears the burden of proving, by a preponderance of the evidence, the allegations set forth in the NOVAO.
5. Pursuant to the Rules and Regulations for the Assessment of Administrative Penalties, once the Division sustains its burden of proof, the burden shifts to the Respondent to prove by a preponderance of the evidence that the Director failed to assess the penalty and/or the economic benefit portion of the penalty in accordance with the penalty regulations.
6. The discharge from Respondents' laundromat constitutes grey water as defined in ISDS Regulation 1.00.
7. The discharge from Respondents' laundromat constitutes sanitary sewage as defined in ISDS Regulation 1.00.

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8. The Division has proved by a preponderance of the evidence that the Respondents have violated SD 2.07 as alleged in the NOVAO.
9. The Division has proved by a preponderance of the evidence that the Respondents have violated SD 2.08 as alleged in the NOVAO.
10. The respondents failed to sustain their burden of proof, as is required by Section 12 of the Penalty Regulations, that the Director failed to assess the penalty and/or the economic benefit portion of the penalty in accordance with the penalty regulations.
11. Pursuant to conclusion of law No. 10 above and the requirements of Section 12 of the Penalty Regulations, the penalty assessed in the NOVAO is sustained.

Based on the foregoing stipulations, findings of fact and conclusions of law it is hereby

ORDERED

1. The administrative penalty is assessed, jointly and severally, against Thomas Nutini and Karen Nutini.
2. Respondents shall, within ten (10) days after the Final Agency Order is signed by the Director, pay the administrative penalty in the sum of Six Thousand (\$6,000.00) Dollars. Payment of this penalty shall be made by certified check, made payable to the "General Treasurer, State of Rhode Island" and sent to:

Rhode Island Department of Environmental Management
Attention: Robert Silvia
Office of Business Affairs
22 Hayes Street
Providence, Rhode Island 02908

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Entered as an Administrative Order this 22nd day of April, 1994 and herewith recommended to the Director for issuance as a Final Agency Order.

Kathleen M. Lanphear
Kathleen M. Lanphear
Chief Hearing Officer
Department of Environmental Management
Administrative Adjudication Division
One Capitol Hill, Third Floor
Providence, Rhode Island 02908

Entered as a Final Agency Order this 30th day of ^{May} April, 1994.

Michael Annarummo
Michael Annarummo
Director
Department of Environmental Management
9 Hayes Street
Providence, Rhode Island 02908

CERTIFICATION

I hereby certify that I caused a true copy of the within order to be forwarded, via certified mail, postage prepaid to John J. Bevilacqua, Esq., 380 Broadway, Providence, RI 02903 and via certified mail to Karen Nutini, 25 Edmund Drive, North Kingstown, RI 02852 and via certified mail to Thomas Nutini, 25 Edmund Drive, North Kingstown, RI 02852 and via interoffice mail to John A. Langlois, Esq., Office Legal Services, 9 Hayes Street, Providence, RI 02908 on this 30th day of April, 1994.

Jaqueline A. Sullivan