

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

RE: ARPAD MERVA

AAD NO. 93-024/GWE

ORDER GRANTING DISMISSAL OF THIRD PARTY COMPLAINT

This matter is before the hearing officer on the Joint Motion of Exxon Corporation and Charter International Oil Company, successor to Northeast Petroleum Corporation (collectively, the "Third-Party Respondents"), to Dismiss the Third-Party Complaint filed by Respondent Arpad Merva ("Respondent" or "Merva"). Third-Party Respondents assert that the Administrative Adjudication Division ("AAD") has no statutory authority and, consequently, lacks jurisdiction to adjudicate the rights and liabilities of parties, such as the Third-Party Respondents, who are not subject to a Notice of Violation ("NOV") issued by the Department of Environmental Management ("DEM"). Additionally, Third-Party Respondents argue that the third-party complaint is a private cost recovery action solely between private parties, and its maintenance unconstitutionally deprives the Third-Party Respondents of their right to a jury trial.

The Respondent contends that the AAD has jurisdiction over the Third-Party Complaint; that the statutory purpose and public policy which drive the statutes and regulations allegedly violated are best served by the allowance of the Third-Party Complaint; and that given the relief actually sought by the Third-Party Complaint, the Third-party Respondents are not entitled to a trial by jury relative

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thereto.

It is argued by Respondent that the AAD has previously decided that it has authority to entertain third-party pleadings where the claims in the third-party complaint are derivative of the action pending between the DEM and a Respondent, citing language In re: Durastone Companies, AAD No. 92-045/FWE. Respondent alleges that his claims against the Third-Party Respondents derive directly from the NOV; and that the Third-Party Complaint seeks only an adjudication that others, and not he, are liable for the violations asserted in the NOV.

By way of background, the NOV in the instant matter was issued by the Division of Groundwater ("Division") to Merva on March 12, 1993. Respondent filed his request for an administrative hearing concerning the NOV. Subsequently the Respondent filed a motion to add Exxon and Northeast Petroleum as Third-Party Respondents based upon allegations that the proposed Third-Party Respondents are liable to Respondent for contribution and indemnification in the event that Respondent is found liable to DEM. No objection having been filed by Division, an Order was entered by the AAD granting leave to Respondent to add Exxon as a Third-Party Respondent. Merva then filed a Motion to Clarify and/or Correct Order to add Fuel Storage and Northeast Petroleum as Third-Party Respondents. These motions were granted by the AAD, and

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Respondent thereupon filed his Third-Party Complaint.¹

It is indeed unfortunate that the proceedings in this matter have progressed to this stage; however, neither previous decisions (nor the dicta in the Durastone matter) can supply jurisdiction not conferred by the Legislature. Lack of jurisdiction may be raised at any time, and the Joint Motion to Dismiss the Third-Party Complaint has appropriately raised this issue. It is a well-established principle of administrative law that agencies are a product of the enabling legislation that creates them. Agency action is only valid, therefor, when the agency acts within the parameters of the statutes that define their powers. In re Advisory Opinion to Governor, 67 A.2d 1246 (R.I. 1993).

Although the AAD looks to the Superior Court Rules of Civil Procedure for guidance where AAD Rules are silent, AAD can only apply those portions of the Superior Court Rules of Civil Procedure that are consistent with AAD's legislative authorization.

The jurisdiction of the AAD is circumscribed by statute. R.I.G.L. Section 42-17.7-2. The AAD has been empowered to conduct hearings concerning enforcement, licensing and administrative penalty proceedings in which the Divisions of the DEM are involved. AAD has not been empowered to hear

¹It does not appear from the record that Fuel Storage was made a Third-Party Respondent.

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claims for contribution or indemnification of the type as set forth in Respondent's Third-Party Complaint. Accordingly, AAD lacks authority to make awards or enter judgments in favor of the Third-Party Complainant against the Third-Party Respondents. Theodore Shulterbrandt/Buttwoods Cleaners & Tailors, Inc., AAD No. 92-035/AHE.

The statute creating AAD clearly indicates that its jurisdiction is restricted to administrative proceedings. Nowhere in its enabling statute is AAD vested with authority to hear and determine civil disputes. In previous administrative matters involving requests for leave to add a third-party, AAD has held that it is without jurisdiction to decide civil issues involving claims in the nature of indemnification or contract between private parties., Elite Development Co., Inc., AAD No. 94-002/SRE, Decision issued July 26, 1995; citing In re: Barbara D'Allesandro, AAD No. 91-006/GWE, Decision issued June 8, 1992, In re: Theodore Shulterbrandt/Buttwoods Cleaners and Tailors, Inc., AAD No. 92-035, Decision issued December 9, 1993.

Careful scrutiny of this matter demonstrates that the Third-Party Complaint against the Third-Party Respondents is not an administrative action, but rather is a civil action in the nature of a claim for contribution and indemnification in the event that Respondent is found liable to DEM. Jurisdiction for such claims rests with the Courts to properly resolve such

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civil disputes.

The Third-Party Complaint appears to comply with the Superior Court Rules of Civil Procedure, (which have been incorporated by the AAD Rules); however, the application of these rules cannot extend the jurisdiction of the AAD to adjudicate the rights and liabilities of parties who are not subject to an NOV issued by DEM. In view of the foregoing, it is unnecessary to consider the Third-Party Respondent's remaining arguments. Since AAD is without jurisdiction, the Third-Party action must be stricken.

Wherefore, it is hereby

ORDERED

1. The Joint Motion of Exxon Corporation and Charter International Oil Company to Dismiss the Third-Party Complaint is GRANTED and the Third-Party Complaint is hereby DISMISSED.

Entered as an Administrative Order this 11th day of October, 1995.

Joseph F. Baffoni

Joseph F. Baffoni
Hearing Officer
Department of Environmental Management
Administrative Adjudication Division
One Capitol Hill, Third Floor
Providence, Rhode Island 02908

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CERTIFICATION

I hereby certify that I caused a true copy of the within order to be forwarded, via regular mail, postage prepaid to Gregory L. Benik, Esq., Robin L. Main, Esq., 321 South Main St., Providence, RI 02903; Guido R. Salvadore, Esq., 123 Dyer St., Third Fl., Providence, RI 02903; Ralph T. Lepore, III, Esq., Deborah E. Barnard, Esq., Warner & Stackpole, 75 State St., Boston, MA 02109; Gerald J. Petros, Esq., Beth A. Carlson, HINCKLEY, ALLEN & SNYDER, 1500 Fleet Center, Providence, RI 02903 and via interoffice mail to Brian A. Wagner, Esq., Office of Legal Services, 9 Hayes Street, Providence, RI 02908 on this 11th day of October, 1995.

James L. Stewart