

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

**RE: MILD, INC.
LUST NO. LS-1101**

AAD NO. 94-024/SRE

**DECISION AND ORDER IMPLEMENTING RECORD AGREEMENT
AS FINAL AGENCY ORDER**

This matter is before the hearing officer after oral argument held on October 7, 2002 for consideration of OC&I's Motion for Entry of Decision Implementing the Record-Agreement of October 1, 1996 (hereinafter referred to as "Motion"). No response to the Motion was filed by Mild, Inc. nor did anyone appear on their behalf. Brian Wagner, Esq. appeared on behalf of the Office of Compliance and Inspection. Ronald Mann appeared in an individual capacity.

The Motion requests that the hearing officer determine that the agreement entered into the record by counsel on October 1, 1996 constitutes a binding agreement; that the administrative record be reopened for the purpose of accepting evidence relating to compliance with the agreement; and *inter alia*, for the entry of a final written agency Decision and Order implementing the agreement as a final agency order.

After entertaining the arguments of counsel for OCI and allowing Mr. Mann, in his individual capacity, to place substantial comments into the record over the objection of OCI counsel, I make the following findings of fact:

1. An administrative hearing in the above-entitled matter was scheduled for October 1, 1996.
2. Prior to commencement of the hearing, counsel reached an agreement concerning the allegations and proposed penalty assessment contained in

- the Notice of Violation.
3. The administrative hearing commenced on October 1, 1996.
 4. A stenographer was present and prepared a transcript of the proceedings.
 5. Counsel for OCI read the terms of the parties' agreement into the record in the presence of the Chief Hearing Officer.
 6. Counsel for each party assented to those terms on the record.
 7. Counsel for Mild, Inc., indicated on the record that he had discussed the terms with his clients and that they consented to the terms of the agreement.
 8. Counsel agreed, on the record, that the timeframes recited into the record would run from October 1, 1996.
 9. Counsel concurred, on the record, that the agreement read into the record in the presence of the Chief Hearing Officer and assented to by counsel constituted a final administrative adjudication from which no appeal would lie.

Based on the foregoing facts, I conclude the following as a matter of law:

1. The agreement read into the record on October 1, 1996 and preserved in the transcript of proceedings constitutes a binding agreement of the parties.
2. The agreement constitutes a final agency adjudication of the within matter.

Accordingly, it is hereby

ORDERED

1. The transcript of proceedings dated October 1, 1996 is attached hereto and incorporated herein by reference as a binding agreement of the parties.
2. The agreement reached by counsel and memorialized in the attached transcript is hereby entered as a final agency order.
3. The remainder of the Motion is **DENIED**.

Entered as a Recommended Decision and Order this 11th day of October, 2002.

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

Entered as a Final Administrative Order this 11th day of October, 2002.

Jan H. Reitsma
Director
Department of Environmental Management
235 Promenade Street, 4th Floor
Providence, Rhode Island 02908

CERTIFICATION

I hereby certify that I caused a true copy of the within Order to be forwarded, via regular mail, postage prepaid to: Ronald L. Mann, P.O. Box 118, 376 William Reynolds Road, Exeter, RI 02822 and Carol J. Mann, Registered Agent for Mild, Inc., 376 William Reynolds Road, P.O. Box 118, Exeter, RI 02822; via interoffice mail to Brian Wagner, Esquire, Office of Legal Services and Dean H. Albro, Chief, Office of Compliance and Inspection, 235 Promenade Street, Providence, RI 02908 on this _____ day of October, 2002.

Procedures for appeal of final agency orders are set forth in The Rhode Island Administrative Procedures Act, specifically, R.I. Gen. Laws §42-35-15. Appeals must be filed with the Rhode Island Superior Court within thirty (30) days from the date of

mailing of a notice of final decision.