

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

IN RE: Fredric Dupuis Spotless Cleaners AAD NO: 92-001/AHE  
Notice of Violation No. 91-49

DECISION ON RESPONDENT'S MOTION TO DISMISS

Authority

This motion is properly before Hearing Officer McMahon pursuant to R.I.G.L. § 42-17.1-2 as amended, § 42-17.7-1 et seq. as amended, the Administrative Procedures Act § 42-35-1 et seq. as amended, the Hazardous Waste Management Act of 1978, Chapter 23-19.1 of the Rhode Island General Laws, as amended, the Rules and Regulations for Hazardous Waste Generation, Transportation, Treatment, Storage and Disposal and the Administrative Rules of Practice and Procedure for the Department of Environmental Management Administrative Adjudication Division for Environmental Matters ("AAD Rules").

Background

The within Notice of Violation and Order and Penalty (NOVAP) was issued on December 19, 1991, by the Division of Air and Hazardous Materials (DAHM) to Fredric Dupuis, Spotless Cleaners, Cumberland Plaza, Cumberland, Rhode Island. Respondent filed a request for formal hearing on January 6, 1992.

Respondent, through his attorney James Cardono, filed a Motion to Dismiss on January 13, 1992, representing that Dupuis Spotless Cleaners is not a sole proprietorship but is rather a corporation filed with the Secretary of State's office as "Dupuis Spotless Cleaners Inc." Further, Respondent states that the business operated at 2026 Mendon Road, Cumberland, Rhode Island, was at all times operated by the corporation and that Respondent has no knowledge of the disposal of any hazardous waste at the aforementioned location.

Objections were due January 21, 1992 (January 20, 1992 was a legal holiday, therefore, the time for filing objections was extended by one business day pursuant to Rule 5.00 b of the AAD Rules). No objection to Respondent's Motion has been filed.

#### DECISION AND ORDER

Under Rule 8.00 of the AAD Rules, the non-moving party must file a timely objection to the motion submitted. Failure to file a written objection within seven (7) days after the motion has been filed with the Administrative Adjudication Division is deemed a waiver of said objection. Carol Anne Mancini, AAD No. 91-039/IE (Department's Motion to Dismiss granted 1/13/92).

Since the DAHM has not filed an objection within the prescribed time period the Motion to Dismiss is granted.

Wherefore it is hereby

ORDERED

The Notice of Violation and Order and Penalty No. 91-49 is  
DISMISSED.

Mary F. McMahon

Mary F. McMahon  
Hearing Officer  
Department of Environmental Management  
Administrative Adjudication Division  
One Capitol Hill, 4th floor  
Providence, RI 02908  
(401) 277-1357

Entered as a Final Order on this 3<sup>rd</sup> day of  
February, 1992.

2/3/92

Date

Louise Durfee

Louise Durfee  
Director  
Department of Environmental Management  
Nine Hayes Street  
Providence, RI 02908

CERTIFICATION

I hereby certify that I caused a true copy of the within  
Decision on Respondent's Motion to Dismiss to be forwarded  
regular mail, postage prepaid to James Cardono, Esq., 36 Park  
Place, P. O. Box 36, Pawtucket, RI 02862-0036; and to Mark  
Siegars, Esq., Office of Legal Services, 9 Hayes Street,  
Providence, RI 02903 on this 3<sup>rd</sup> day of February,  
1992.

Neil Brown