

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

RE: PEOPLE'S COAL COMPANY : AAD No. 94-058/WME  
(NOV No. UST 00012) :

People's Coal Company  
55 Mill Street  
Cumberland, Rhode Island

**AMENDED DECISION & ORDER**

A. FINDINGS OF FACT

1. The respondent, People's Coal Company, is the owner of two (2) certain parcels of real property located at 75 Mill Street, Cumberland, Rhode Island, otherwise known as Cumberland Assessor's Plat 1, Lots 35 and 102 the ("Lot 35" and/or "Lot 102," respectively, or the "Facility").
2. The Division has jurisdiction over the subject matter of the Notice of Violation and Order ("NOV") and has personal jurisdiction over People's Coal Company.
3. The Facility included one (1), 5,000 gallon underground storage tank (UST) located on Lot 35, which was used to store diesel fuel.
4. The UST at the Facility was installed after January 1, 1965, in or about November of 1972.
5. The Facility's UST was properly registered with the Department pursuant to UST Regulation §8.00 and is identified as UST Facility Identification No. 00012.
6. Respondent did not conduct precision tightness testing on the UST located at the Facility during the years 1988, 1989, 1990, 1991, 1992 and 1993.
7. On August 18, 1994 the Department issued a Notice of Violation and Order (the "NOV") to the Respondent.
8. The NOV was served on the Respondent by certified mail, return receipt requested on August 23, 1994.

9. The UST located at the Facility was closed in accordance with Section §15.00 of the UST Regulations on November 16, 1994.

## B. CONCLUSIONS OF LAW

1. Pursuant to the following sections of the *REGULATIONS FOR UNDERGROUND STORAGE FACILITIES USED FOR PETROLEUM PRODUCTS AND HAZARDOUS MATERIALS (the "UST Regulations")*:
  - i. *1985 UST REGULATIONS §9(c)(ii) and §9(d)*;
  - ii. *1992 UST REGULATIONS §§10.05(B)(1) and (2)*; and
  - iii. *1993 UST REGULATIONS (August & December) §§10.06(B)(1) and (2)*

USTs installed after January 1, 1965 were required to have been precision tested within two (2) years of the effective date of the UST Regulations and, thereafter, during the 5<sup>TH</sup>, 8<sup>TH</sup>, 11<sup>TH</sup> and 13<sup>TH</sup> years following the year of the USTs installation and annually thereafter.

2. Based upon the UST Regulations, the UST at Respondent's Facility, which was installed during 1972, was required to be precision tested in 1987 and annually thereafter.
3. Respondent violated the UST Regulations by failing to conduct precision testing on the UST registered at its Facility during 1988, 1989, 1990, 1991, 1992 and 1993.

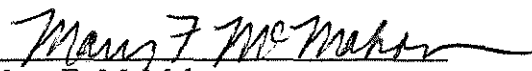
## C. ORDER

1. Respondent is ordered to convey to the Town of Cumberland (the "Town") that certain portion of Plat 1, Lot 102 ("Lot 102") as is identified in "Exhibit A" attached hereto. The portion of Lot 102 to be conveyed shall include that section of Lot 102 that abuts Plat 1, Lot 103 (now or formerly owned by the State of Rhode Island) ("Lot 103") and that abuts and encompasses a section of the Blackstone River and which is more particularly described as follows:
  - a. The riverbank area of the mainland portion of Lot 102, equal in width to the abutting mainland portion of Lot 103 as measured at the property line between Lot 102 and Lot 103, created by extending the property line between Lot 35 and Lot 103 the full length of Lot 102 along the Blackstone River;


- b. The section of waterway located within Lot 102, identified herein as the "Raceway," which Raceway is an extension of the Blackstone River and abuts a similar, contiguous section of waterway located within Lot 103; and
    - c. That portion of Lot 102 located in the Blackstone River (the "Island"), which portion abuts the Raceway on one side, the Blackstone River proper on the opposite side and a similar, contiguous portion of Lot 103 at one end.
2. Respondent's conveyance of the above described portion of Lot 102 to the Town shall be made with express covenants and restrictions that:
  - a. It will be incorporated into the Town's Valley Falls Heritage Park (the "Park"), otherwise identified as Cumberland Assessor's Plat 2, Lot 94;
  - b. The Town shall own, manage and maintain Lot 102 for the use and enjoyment of the public in a manner consistent with its ownership, management and maintenance of the Park; and that
  - c. Lot 102 shall be subject to the same easements, covenants or restrictions of record that are applicable to Lot 103.
3. Respondent shall provide the Department with all documentation verifying the conveyance of Lot 102, including but not limited to a copy of the recorded deed.
4. In order to facilitate the incorporation of Respondent's land into the Park, the Department shall convey to the Town that certain parcel of land identified as Cumberland Assessor's Plat 1, Lot 103, which parcel abuts both the Park and that portion of Respondent's Facility identified herein.
5. The Respondent shall record a copy of this Order in the Land Evidence Records of the Town of Cumberland.
6. The penalties assessed in the NOV relating to Respondent's failure to precision test its USTs shall be held in abeyance pending Respondent's compliance with the requirements of this Order.
7. The portion of Lot 102 to be donated by Respondent has a geographic nexus to the violations referenced in the NOV, which have been remediated by the removal of the offending UST.

8. There are no other USTs located at the Facility that might serve as subjects for a Supplemental Environmental Project ("SEP").
9. The Respondent's transfer of the subject portion of Lot 102 will benefit the State, the environment and the public by helping to protect and preserve open space, jurisdictional wetland areas and public access along the Blackstone River corridor.
10. Respondent's donation of the subject portion of Lot 102 to the Town, rather than to the Department, not only facilitates the required subdivision of Lot 102, but also incorporates the property into an existing adjacent municipal park, thereby increasing its accessibility to the public and the likelihood that the property will be properly maintained and preserved for the benefit of the public and the environment.
11. Upon Respondent's successful completion of the requirements of this Order, all remaining penalties assessed against Respondent in the NOV shall be waived.

Entered as a Recommended Decision and Order this 11<sup>th</sup> day of December, 1996.

  
Mary F. McMahon  
Hearing Officer  
Department of Environmental Management  
Administrative Adjudication Division  
One Capitol Hill, Third Floor  
Providence, RI 02908

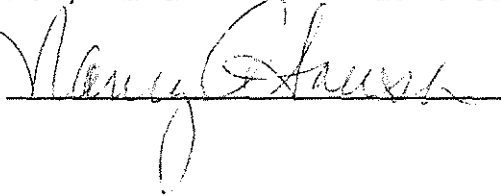
Entered as a Final Agency Order this 11<sup>th</sup> day of December, 1996.

  
Timothy R.E. Keeney, Commissioner  
Department of Environmental Management  
235 Promenade Street, Fourth Floor  
Providence, RI 02908

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**CERTIFICATION**

I hereby certify that I caused a true copy of the within Amended Decision and Order to be forwarded, via regular mail, postage prepaid to Paul A. Brule, Esq., P. O. Box 558, Pawtucket, RI 02862 and via interoffice mail to Brian A. Wagner, Esq., Office of Legal Services, 235 Promenade Street, Providence, Rhode Island 02908 on this 17th day of December, 1996.

  
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Nancy Starns