

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

IN RE: CORNELL ENTERPRISES, INC. (aka Abb Labs, Inc.)
 LEE ABBOTT AND RICHARD ABBOTT
 Notice of Violation No. ERB 91-09

DECISION AND ORDER

This matter was heard before the Administrative Adjudication Division for Environmental Matters ("AAD") of the Department of Environmental Management ("DEM"), or the ("Department"), Hearing Officer Patricia Byrnes presiding, on May 24, 1993 at the Administration Building, One Capitol Hill, Providence, Rhode Island. This action is the result of a timely appeal taken by the Respondents from a Notice of Violation and Penalty ("NOVAP") issued by the Division of Air and Hazardous Materials ("DAHM"), or the ("Division").

AUTHORITY

Said appeal is properly before the Hearing Officer pursuant to the Hazardous Waste Management Act R.I.G.L. Section 23-19.1-1 et seq. as amended; statutes governing the Department of Environmental Management R.I.G.L. Section 42-17.7-1 et seq. as amended and the Administrative Adjudication Division statutes R.I.G.L. Section 42-17.7-1 et seq. as amended; Rules and Regulations for Hazardous Waste Generator, Transportation, Treatment, Storage and Disposal ("DAHM Rules") promulgated September 15, 1987 and the Rules of Practice and Procedure for the Administrative Adjudication Division of the Department of Environmental Matters, ("AAD Rules") effective July 10, 1990.

REPRESENTATION

Richard Abbott, Esq., represented Respondents Cornell Enterprises and Richard Abbott. Mark Siegars Esq., appeared on behalf of the Division of Air and Hazardous Materials. Respondent Lee Abbott was unrepresented and did not appear at the hearing.

BACKGROUND

The Department of Environmental Management's Division of Air and Hazardous Materials (DAHM) issued a notice of violation and penalty (NOVAP) on May 2, 1991 to Cornell Enterprises, Lee Abbott and Richard Abbott for various violations of R.I.G.L. 23-19 et seq commonly referred to as the Hazardous Waste Management Act (the "Act") or ("HWMA") and corresponding regulations. In essence, the NOVAP alleged that the parties abandoned hazardous chemicals and did not follow state and federal regulations regarding storage and labeling of barrels of hazardous waste.

On February 5, 1991, DEM was notified by the Woonsocket Fire Department that a chemical spill and vapor release had occurred at a Woonsocket warehouse at 44 Hazel Street. Members of the Department's Emergency Response Team immediately arrived on the site. John Leo, DEM sanitary engineer and his partner Thomas Campbell, along with members of the Woonsocket Fire Department entered the building. In the warehouse the inspectors found approximately 20 drums in

various degrees of decay. Some barrels were leaking, including a barrel labeled "formaldehyde" and spillage was noticed from other containers. Field tests were conducted on some of the chemicals and samples from five barrels suspected to contain hazardous substances were sent to Rhode Island Analytical Laboratories, Inc., a private testing lab.

Present at the scene was a representative of Fleet National Bank ("Fleet"). Fleet was in the process of foreclosing on the equipment and assets of Cornell Enterprises.

The Department attempted to contact the alleged owners of the property, Lee and Richard Abbott to arrange for clean-up of the spilled matter. Mr. Richard Abbott responded to the scene but states he could not secure the necessary funds for the clean-up. Mr. Leo then notified Clean Harbors, a hazardous waste clean-up company, to clean the infected area.

After receiving the results from the laboratory tests, the Division issued a notice of violation and penalty against the Respondents and assessed an administrative fine of \$15,854.71.

Cornell Enterprises, Lee and Richard Abbott through attorney Richard Abbott, filed a timely request for hearing on May 8, 1991. Subsequently, a status conference was held on August 16, 1991 and a pre-hearing conference was conducted on May 15, 1992. The hearing was heard on May 24, 1993.

Prior to the hearing, counsel for DAHM requested the Hearing Officer to enter a default judgment against Respondent Lee Abbott. After ascertaining that Lee Abbott had made no attempt to respond to this tribunal the Hearing Officer entered a Conditional Order of Default against Respondent Lee Abbott on May 26, 1993. This order has since become a final order of default signed by the Director on July 7, 1993.

The parties did not stipulate to any witnesses as experts but did agree that Cornell Enterprises and Abb Labs were the same entity. No other factual agreements were made before the hearing.

HEARING SUMMARY

In accordance with RIGL 42-17.6-4. the burden of proof and persuasion for any alleged violation falls upon the State to show by preponderance of the evidence the occurrence of each act or omission alleged in the Notice of Violation and Penalty.

The Respondents are alleged to have violated state and federal statutes and the accompanying rules and regulations in the following instances:

- I. The Parties abandoned hazardous chemicals on the premises of 44 Hazel Street, Woonsocket as abandonment is defined in Rhode Island General Law, this activity constitutes illegal disposal of hazardous waste (R.I.G.L. 23-19.1-4(3), 23-19.1-10(a), DAHM Rule 5.03).

To establish a prima facie case for the alleged violations the State relied upon the testimony of John Leo, a sanitary engineer within the Division of Air and Hazardous Materials since 1979. Included in Mr. Leo's duties is the clean-up of hazardous waste spills throughout Rhode Island. As part of this responsibility, Mr. Leo responds to incidents involving suspected hazardous materials and assesses the situations actual and potential environmental impact.

The Hearing Officer found Mr. Leo to have impressive credentials and extensive on-the-job training. He had previously been qualified as an expert in hazardous waste in both state and federal court and was so qualified during this proceeding.

Having had the opportunity to hear his testimony and assess his demeanor, the Hearing Officer finds Mr. Leo to be an exceptionally knowledgeable and credible witness.

Mr. Leo testified that he was notified by the Woonsocket Police Department that a chemical spill had occurred at 44 Hazel Street. Entering the building, the engineer saw approximately 20 fifty-five gallon drums. These barrels were either made of rolled steel or cardboard. He stated that many of these drums were damaged from dampness and chemical corrosion. He also noticed leaking and spillage from some of the containers. He smelled a strong, pungent odor coming from one of the drums. Using his expertise and experience dealing

with 20 to 30 formaldehyde spills, John Leo identified the odor as formaldehyde. Mr. Leo explained that formaldehyde causes eyes to tear and burn, that the vapors cause coughing and that fumes or contact creates an acid reaction to skin. He further stated that he traced the odor to a container labelled "formaldehyde". The liquid from this container was leaking into the main part of the basement and spreading out over the floor (DEM 1, DEM 3).

In addition, Mr. Leo discovered an "enamel-like" material which appeared to be either nail polish or lacquer. After field testing this material by setting it on fire, Mr. Leo opined that the matter was hazardous. As the basis for his opinion the witness explained that state regulations classify any flammable substance which are substances having a flash-point of under 200 degrees F., as hazardous. Further, he explained that materials which are corrosive, toxic, flammable or reactive are all hazardous by statute and regulation.

Examining all the barrels he identified three other drums as possibly hazardous. Samples of all five barrels were sent to Rhode Island Analytical Laboratories, a private testing lab, for analysis.

Documentary evidence supplied by the state (DEM 8) showed that the lab analysis found formaldehyde in drum #1 and that the contents in barrel #4 had a flash-point less than 200 degrees F. Other samples were not found to be hazardous.

The Hazardous Waste Management Act specifically, R.I.G.L. 23-19-1.4 and DAHM Rule 3.25 defines hazardous waste as:

any waste or combination of wastes of a solid, liquid, contained gaseous, or semisolid form which because of its quantity, concentration, or physical, chemical or infectious characteristics may:

- A) Cause of significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
- B) Pose a substantial present or potential hazard to human health or the environment.

Such wastes include, but are not limited to, those which are toxic, corrosive, flammable, irritants, strong sensitizers, substances which are assimilated or concentrated in and are detrimental to tissue, or which generate pressure through decomposition or chemical reaction. In addition, such wastes include 'industrial waste' as the term is used elsewhere, unless the context shall clearly indicate otherwise.

Additionally, Federal regulations identify formaldehyde as a hazardous waste. (see 40 CFR 261.33, DEM 16) DAHM Rule 3.25 provides that "hazardous waste" shall also mean any hazardous waste as defined in 40 CFR 261 1(c) and 261.3 or is subject to regulation under 40 CFR 261.7.

Applying the definition of hazardous waste set forth in the statute and regulations and accepting the conclusions of Mr. Leo, the Hearing Officer finds that hazardous waste was found in the basement of 44 Hazel Street, Woonsocket, Rhode Island.

The Division alleges that Cornell Enterprises, Lee Abbott and Richard Abbott illegally disposed of hazardous waste by

abandoning hazardous waste chemicals in violation of the R.I.G.L. 23-19-1.4(3) 23-19.1-10(a) and DAHM Rule 5.03.

These statutes and regulations prohibit the "discharge, deposit, injection, dumping, spilling, leaking, abandoning,, or placing of any hazardous waste in, on, into or onto any land, other surface, or building, or into any water, stormwater system, or sewer system."

Mr. Leo testified that in his expert opinion the hazardous waste located in the basement had been abandoned. He arrived at his conclusion after assessing the condition of the barrels, the extent of the seepage onto the floor, the placement of the barrels in the area and the condition of other items located in the basement. To bolster Mr. Leo's testimony, the State provided the Hearing Officer with pictures of the barrels and basement area during the clean-up (DEM 10 A-H), and an administrative order issued on June 23, 1989 to Cornell Enterprises from the Waste Control Director of the City of Woonsocket. This order required Cornell Enterprises to dispose of chemical drums which were found to be in poor condition and to clean-up a chemical spill in the basement (DEM 9); the parties never complied with this order. Although the Division did not explicitly link the conditions existing at Cornell in 1989 with the conditions in the basement existing at the time of the violation, the description of the placement and conditions of the barrels are

strikingly similar to the conditions observed by Mr. Leo. The testimony and evidence presented on this issue was virtually un rebutted by the Respondents.

After reviewing the testimony of Mr. Leo and the documentary evidence supplied by DEM, the Hearing Officer finds that by preponderance of the evidence hazardous waste was abandoned in the basement of 44 Hazel Street, Woonsocket, Rhode Island.

The Division has the burden to establish who is responsible for abandoning this waste. Responsible parties are defined in R.I.G.L. 23-19.1-4(9) and DAHM Rule 3.50 as:

an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, the federal government or any agency or subdivision thereof, a state, municipality, commission, political subdivision of a state, or any interstate body;

Uncontroverted evidence was presented that prior to the spill Cornell Enterprises, Inc. existed as a manufacturer of various shampoos, gels and combs at 44 Hazel Street, Woonsocket, Rhode Island and that it used various chemicals to make these items, including the type of hazardous chemicals found on the site. (DEM 14) The Articles of Incorporation for Cornell Enterprises and annual reports from the Secretary of State for years 1987 - 1990, identify the company as a privately held corporation with Lee Abbott serving as President and registered agency and Richard Abbott as Vice-President.

This business is no longer in operation and Fleet Bank had foreclosed on the equipment and machinery. (DEM 2)

To establish ownership of the property, DEM has provided the Hearing Officer with certified copies of three deeds to the property located at 44 Hazel Street, Woonsocket, RI. The first deed is a Quit Claim Deed from Richard Abbott to Richard and Lee Abbott conveying the property on December 23, 1987. The other two deeds are a tax deed and a deed of foreclosure. Moreover, the Emergency Response Report compiled by Mr. Leo states that Mr. Richard Abbott arrived at the scene and identified himself as part owner of the company. (DEM 1) Through this evidence the State has proven by preponderance of the evidence that Respondents Richard Abbott and Lee Abbott owned the property at the time of the alleged violation.

Reviewing the testimonial and documentary evidence presented by the parties and the definition of "person" set forth in R.I.G.L. 23-19.1-4(9) and applicable regulations the Hearing Officer finds by preponderance of the evidence Cornell Enterprises, Richard Abbott and Lee Abbott are the parties responsible for the abandoned hazardous waste at 44 Hazel Street, Woonsocket, Rhode Island.

Therefore, the Hearing Officer finds by preponderance of the evidence that the Division of Air and Hazardous Materials has met its burden on this issue.

II. The Parties failed to obtain an EPA I.D. Number for the generation of hazardous waste (DAHM Rule 5.01, 40 CFR 262.12).

DAHM Rules 5.01 requires that any generator of hazardous waste obtain an EPA ID No. stating:

The generator shall apply for and obtain an EPA I.D. No. and shall not offer waste for shipment without an EPA I.D. No. Generators, other than those not covered by the federal system, must apply directly to the Regional Office of the Environmental Protection Agency. Small generators and others not included in the federal system but covered under Rhode Island rules and regulations must apply for an EPA I.D. No. through the Department. Temporary EPA I.D. No.'s may be obtained from the Department.

A "generator" of hazardous waste is defined in DAHM Rule 3.24 as:
any person, by site, who produces hazardous waste or imports hazardous waste from a foreign country or whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation.

Having determined hazardous waste was found on property owned by Lee and Richard Abbott and that hazardous waste was produced on that site by Cornell Enterprises, the Hearing Officer finds the Respondents met the definition of generator supplied in DAHM Rule 3.24.

Mr. Leo testified that he found no EPA ID numbers on any of the barrels located on the site. This testimony was unchallenged by the Respondents.

The Hearing Officer accepts Mr. Leo's testimony and finds by preponderance of the evidence that the State has met its burden on this issue.

III. The parties have been storing hazardous waste in containers for a period of time that exceeded the ninety (90) day requirement without obtaining the necessary permits or approvals (DAHM Rule 5.02, DAHM Rule 7.01A, 40 CFR 262.34(b)).

As previously stated, the Division has demonstrated through documentary evidence specifically DEM 1, 2, 8 and 10 and the testimony of Mr. Leo that hazardous waste was found in the basement of 44 Hazel Street and that this waste was abandoned. Mr. Leo described the condition of the hazardous waste barrels and other items in the basement. His testimony clearly establishes that the Respondents stored hazardous waste in containers for a period exceeding 90 days in violation of DAHM Rule 5.02.

The regulations further require that a permit be secured from DEM before hazardous waste is stored. DAHM Rule 701(A) and the applicable federal regulation specifically requires that:

All persons who shall construct, substantially alter or operate a hazardous waste treatment, storage or disposal facility or who shall treat, store or dispose of hazardous waste must first obtain an operating permit or approval from the Director for such activities.

No permit was ever produced. Accordingly, the Hearing Officer finds the State has met its burden on this issue.

IV. The Parties are storing hazardous waste without providing the required secondary containment of fifty-five (55) gallons or ten percent (10%) of the stored material, whichever is greater (DAHM Rule 5.02, 40 CFR 264.175).

State and federal regulations governing the storage of hazardous waste require that the hazardous waste is appropriately managed and contained. In this instance, providing secondary drums for the stored material was necessary. Mr. Leo testified as to the conditions of the hazardous waste drums. He specifically stated the formaldehyde drum was corroded and leaking. He explained that "corroded" meant deterioration of the shell on the drums. That the chemicals inside the barrel had caused a leak in the container and had deteriorated the thickness of the drum. He also found the other hazardous substance barrel containing an enamel-like substance had started to corrode. Although he found no spillage or leakage from this drum, Mr. Leo further testified that the hazardous waste substances were not in a separate containment area. Pictures of the drums (DEM 10 & 3) show that the hazardous waste barrels were in various stages of decay and located in the basement amidst other drums and equipment.

The Respondents did not dispute Mr. Leo's testimony.

The Hearing Officer finds by preponderance of the evidence that the hazardous waste was not stored in secondary containers in violation of the applicable statutes and rules.

As such, the Hearing Officer finds the State has met its burden on this issue.

- V. The Parties are storing hazardous waste in containers of poor condition which has allowed them to rupture and leak. (DAHM Rule 5.02, 40 CFR 264.173).

Evidence presented in this matter has already established that the hazardous waste drums were in deplorable condition. Mr. Leo's testimony and DEM exhibits 10 and 3 clearly shows that the formaldehyde barrel had leaked and seeped into the main part of the basement floor.

Accordingly, the Hearing Officer finds by preponderance of the evidence that the Respondents are storing hazardous waste in containers of poor condition in violation of the applicable rules and statutes and finds that the State has met its burden on this issue.

- VI. The Parties failed to attach hazardous waste labels to containers holding hazardous waste. (DAHM Rule 5.04, 40 CFR 262 Subpart C).

DAHM regulation 5.04 and the accompanying federal rule requires that a "generator shall label the side of all hazardous waste containers".

Mr. Leo testified that "no hazardous waste labels were on anything". This testimony was uncontested. The Hearing Officer accepts Mr. Leo's observations as accurate and true and finds by preponderance of the evidence that the parties have failed to attach labels to hazardous waste containers as

required by applicable state and federal regulations.

Therefore, the Hearing Officer finds the State has met its burden on this issue.

VII. The Parties failed to notify the Department that a hazardous material was released on the property (DAHM Rule 5.10).

DAHM Rule 5.10 requires that:

In the event of a spill or release of hazardous waste or material on the generator's property which presents a substantial risk of injury to health or the environment, the generator shall notify the Department immediately of the spill or release. In all cases of spills or releases, the generator shall immediately take steps to contain and clean up the hazardous waste or material.

Evidence presented on this issue shows that neither Cornell Enterprises, Richard Abbott or Lee Abbott contacted the authorities about the spill or arranged to clean up the hazardous waste. (DEM 2, 5).

Accordingly, the Hearing Officer finds by preponderance of the evidence that the Respondents have violated DAHM Rule 5.10 and finds the State has met its burden on this issue.

VIII. The Parties failed to determine if materials on-site met any of the definitions of hazardous waste (DAHM Rule 5.08, 40 CFR 69.11).

DAHM Rule 5.08 and the applicable federal regulations state:

The generator must determine if any of his wastes meet any of the definitions of a hazardous waste. He must first determine if his waste meets any of the federal definitions of hazardous waste as required by 40 CFR 262.11, or as is amended. If the waste does not meet any of the federal

definitions, the generator must then determine if any of the Rhode Island waste types apply, as defined by Rule 3.53 of these regulations. Regardless of any advisory opinions or statements from any laboratory or government agency, it remains the generator's responsibility to properly characterize his wastes. Testing employed by the generator to determine if a material is hazardous waste must be an approved method set forth in 40 CFR 260.11 or 40 CFR 261 Subpart C, as are or as amended. Equivalent testing methods are not allowed.

Having found that hazardous waste was found at 44 Hazel Street, Woonsocket, Rhode Island, that this waste was contained in decaying barrels, unlabeled and abandoned, that no permits existed for the use of the chemicals, that the parties failed to notify appropriate authorities and did not arrange to clean up the spill the Hearing Officer finds by preponderance of the evidence that Cornell Enterprises, Richard Abbott and Lee Abbott, did not meet their obligations set forth in DAHM Rule 5.08 to determine if on-site materials met any of the definitions of hazardous waste.

Therefore, the state has met its burden on this issue.

PENALTY ASSESSMENT

The Director of DEM is authorized by R.I.G.L. Section 42-17-6.2 to assess an administrative penalty to any person who fails to comply with any rule, regulation, order, permit license or approval issued by the Department or any law which the agency has the authority to enforce. In this case, the State assessed the Respondents an administrative penalty of \$15,854.71.

To explain how this penalty was calculated, the State

called Warren Angell, Supervising Engineer for DAHM. Mr. Angell testified that in his capacity as Supervisor, he oversees all complaints and compliance. He stated that he reviewed the penalty assessed in this matter and reduced the original \$25,000.00 penalty calculated by a staff engineer to approximately \$15,000.00. Mr. Angell testified that he calculated the amount of the penalty after reviewing the Department's rules for penalty assessment and the Hazardous Waste Management Act. He explained that the rules allow him to group common violations and to divide violations into particular categories of harm. He reviewed the violations and concluded that the violations referring to the abandonment of hazardous waste had a major potential for causing harm to humans and the environment, violations involving improper storage had a moderate potential for harm and failure of the Respondents to follow registration requirements for hazardous waste had a minor potential for harm. Mr. Angell also explained that the cost incurred by the Division for laboratory analysis and clean-up of the spill were included in the penalty.

A review of the Department of Environmental Management Rules and Regulations for the Assessment of Administrative Penalties promulgated August 1987, ("Penalty Rules") and the Administrative Penalties for Environmental Violations R.I.G.L. 42-17.7 et seq. shows that the penalty calculated by Mr.

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Angell is well within the parameters outlined in the penalty rules and statutes and is not excessive. As such, Hearing Officer accepts Mr. Angell's testimony and finds the state has met its burden on this issue.

FINDINGS OF FACT & CONCLUSIONS OF LAW

After carefully reviewing the testimonial and documentary evidence and assessing the credibility of the witnesses, the Hearing Officer using independent judgement makes the following specific Findings of Fact and Conclusions of Law.

Findings of Fact

1. The Division of Air and Hazardous Materials issued a Notice of Violation and Penalty to Cornell Enterprises, Lee Abbott and Richard Abbott on May 2, 1991.
2. A notice of appeal was filed by the Respondents on May 8, 1991.
3. A Status Conference on this violation was held on August 16, 1991, at One Capitol Hill, Providence, Rhode Island.
4. The Prehearing Conference took place on May 15, 1992, at One Capitol Hill, Providence, RI.
5. A Hearing on the violation was conducted on May 24, 1993 at One Capitol Hill, Providence, RI.
6. The hearing process was deemed closed by the Hearing Officer on May 28, 1993.
7. That the Department of Environmental Management presented two witnesses, John Leo and Warren Angell.

8. That the Department of Environmental Management exhibits were admitted as full exhibits.
9. That Respondents presented no witnesses or documentary evidence.
10. That hazardous waste was found in the basement of 44 Hazel Street, Woonsocket, Rhode Island.
11. That the hazardous waste was abandoned in the basement at 44 Hazel Street, Woonsocket, Rhode Island.
12. That Lee Abbott and Richard Abbott and Cornell Enterprises were responsible for abandoning hazardous waste at 44 Hazel Street, Woonsocket, Rhode Island.
13. That Richard Abbott and Lee Abbott owned the property located at 44 Hazel Street, Woonsocket, Rhode Island at the time of the alleged violation.
14. That Cornell Enterprises conducted a manufacturing business at 44 Hazel Street, Woonsocket, Rhode Island.
15. That Cornell Enterprises and Abb Labs are the same entity.
16. That John Leo is an expert in hazardous waste.
17. That John Leo's testimony was credible and reliable.

18. That Warren Angell's testimony was credible and reliable.
19. That Lee Abbott and Richard Abbott and Cornell Enterprises are generators of hazardous waste.
20. That Respondents failed to obtain an EPA ID number for generating hazardous wastes.
21. That Respondents stored hazardous waste in containers for a period that exceeded 90 days without obtaining necessary permits or approvals.
22. That Respondents provided no secondary containers for the hazardous waste.
23. That Respondents stored hazardous waste in containers of poor condition allowing them to rupture and leak.
24. That Respondents failed to attach hazardous waste labels to the containers holding the hazardous waste.
25. That Respondents failed to notify the Department of Environmental Management of the hazardous waste spill.
26. That Respondents failed to determine if materials on site met any of the definitions of hazardous waste.
27. The Department assesses the Respondents an

administrative penalty of \$15,854.71.

28. That the penalty calculated by the Department of Environmental Management was not excessive.

CONCLUSIONS OF LAW

1. This matter is properly before the Administrative Adjudication Division pursuant to the Hazardous Waste Management Act 23-19.1 et seq. as amended; statutes governing the Department of Environmental Management R.I.G.L. 42-17.1 et seq. as amended and the Administrative Adjudication Division statutes 42-17.7-1 et seq. as amended; Rules and Regulations for Hazardous Waste Generator, Transportation, Treatment, Storage and Disposal promulgated September 15, 1987 and the Rules of Practice and Procedure for the Administrative Adjudication Division of the Department of Environmental Matters effective July 1990.
2. That the Division of Air and Hazardous Materials issued a Notice of Violation and Penalty to Cornell Enterprises, Lee Abbott and Richard Abbott on May 2, 1991 pursuant to R.I.G.L. 42-17.1-2 and 23-19.1 et seq.
3. The Respondents filed a timely notice of appeal on May 8, 1991 pursuant to R.I.G.L. 42-17.1-2(u), 42-

17.7 & 42-35 et seq and AAD Rule 7.00.

4. That a Final Order of Default was entered against Lee Abbott on July 7, 1993.
5. That an evidentiary hearing on this issue in accordance with R.I.G.L. 42-17.7-1 et seq was conducted on May 24, 1993.
6. Pursuant to R.I.G.L. 42-17.6-4 the burden of proof and persuasion fall upon the Department of Environmental Management to show the occurrence of each and every allegation or admission alleged in the Notice of Violation and Penalty by preponderance of the evidence.
7. That by preponderance of the evidence the substance found in the basement at 44 Hazel St., Woonsocket, Rhode Island meets the definition of hazardous waste set forth in R.I.G.L. 23-19.1-4 and DAHM Rule 3.25
8. That by preponderance of the evidence hazardous waste chemicals were abandoned on the premises of 44 Hazel Street, Woonsocket, Rhode Island in violation of R.I.G.L. 23-19.1-4(3).
9. That by preponderance of the evidence, Richard Abbott and Lee Abbott and Cornell Enterprises are persons responsible for abandoning the hazardous waste pursuant to R.I.G.L. 23-19.1-4(9) and DAHM

Rule 3.50.

10. That by preponderance of the evidence Richard Abbott, Lee Abbott and Cornell Enterprises are generators of hazardous waste in accordance with DAHM Rule 3.24.
11. That by preponderance of the evidence the Respondents failed to obtain an EPA I.D. Number for the generation of hazardous waste in violation of DAHM Rule 5.01.
12. That by preponderance of the evidence the Respondents have been storing hazardous waste in containers for a period of time that exceeded the ninety (90) day requirement without obtaining the necessary permits or approvals in violation of DAHM Rule 5.02, DAHM Rule 7.01A.
13. That by preponderance of the evidence the Respondents are storing hazardous waste without providing the required secondary containment of fifty-five (55) gallons or ten percent (10%) of the stored material, whichever is greater in violation of DAHM Rule 5.02.
14. That by preponderance of the evidence the Respondents are storing hazardous waste in containers of poor condition which has allowed them to rupture and leak in violation of DAHM Rule 5.02.

15. That by preponderance of the evidence the Respondents failed to attach hazardous waste labels to containers holding hazardous waste in violation of DAHM Rule 5.04.
16. That by preponderance of the evidence the Respondents failed to notify the Department that a hazardous material was released on the property in violation of DAHM Rule 5.10.
17. That by preponderance of the evidence the Respondents failed to determine if materials on-site met any of the definitions of hazardous waste in violation of DAHM Rule 5.08.
18. That the Director of the Department of Environmental Management has the authority pursuant to R.I.G.L. 42-17.6-2 to issue administrative penalties.
19. That the Administrative Penalty issued in this matter was assessed in accordance with R.I.G.L. 42-17.6 et seq and the Department of Environmental Management Rules and Regulations for the Assessment of Administrative Penalties.
20. That the administrative penalty assessed in this matter is well within the parameters outlined in the Penalty Rules and R.I.G.L. 42-17.6 et seq and not excessive.

Therefore, the Hearing Officer enters the following orders:

ORDER

- 1) That the Notice of Violation and Penalty ERB #91-09, AAD No. 91-017/AHE, issued to Cornell Enterprises, Lee Abbott, Richard Abbott is SUSTAINED.
- 2) That the Administrative penalty of \$15,854.71 is SUSTAINED.
- 3) That the Respondents have thirty (30) days to remit the Administrative penalty.
- 4) That payment of the Administrative penalty should be mailed directly to Rhode Island Department of Environmental Management, Division of Business Affairs, 22 Hayes Street, Providence, RI 02908.

Entered as a recommended Administrative Order this 6th day of August 1993.



Patricia Byrnes
Hearing Officer
Department of Environmental Management
Administrative Adjudication Division
One Capitol Hill, Third Floor
Providence, Rhode Island 02908

Entered as a Final Agency Decision this 11 day of
August 1993.

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Louise Durfee
Louise Durfee
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
Decision and Order to be forwarded via regular mail, postage
prepaid to Richard Abbott, Esq., 316 Harvard Street,
Brookline, MA 02145 and via interoffice mail to Mark Siegars,
Esq., Office of Legal Services, 9 Hayes Street, Providence, RI
02908 on this 11th day of August, 1993.

Mark Siegars