

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

IN RE: 129 Properties LLC

FILE NO.: OCI-SW-20-9

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Department of Environmental Management (the “Director” of “DEM”) has reasonable grounds to believe that the above-named party (“Respondent”) has violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Administrative History

On 25 February 2020, DEM issued a *Letter of Non-Compliance* (“LNC”) by certified mail to Respondent for the alleged violations that are the subject of this *Notice of Violation* (“NOV”). The LNC required specific actions to correct the violations. The LNC was delivered to Respondent’s resident agent on 2 March 2020. As of the date of the NOV, Respondent has failed to respond to or comply with the LNC.

C. Facts

- (1) The subject property is located at 129 Brookside Avenue, Assessor's Plat 6, Lot 1060 in West Warwick, Rhode Island (the “Property”).
- (2) Respondent owns the Property.
- (3) Respondent has neither sought nor obtained an approval, permit, or license from DEM to operate a solid waste management facility on the Property.
- (4) On 18 February 2020, DEM inspected the Property. The inspection revealed approximately 328 cubic yards of solid waste mixed with soil deposited on the ground (approximately 10 cubic yards of solid waste was visible). The solid waste consisted of lumber, pipe, cardboard, plywood, paint cans, roofing compound cans and other containers, plastic film, fluorescent light fixtures, wiring, and other mixed solid waste.
- (5) On 8 October 2020, DEM inspected the Property. The inspection revealed approximately 333 cubic yards of solid waste mixed with soil deposited on the ground and partially buried. The solid waste consisted of wood, plastic, and glass.

- (6) On 18 August 2021, DEM inspected the Property. The inspection revealed approximately 150 cubic yards of solid waste mixed with soil deposited on the ground and partially buried. The solid waste consisted of wood, metal, plastic, and glass.
- (7) As of the date of the NOV, Respondent has failed to remove the solid waste from the Property.

D. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes:

- (1) **R.I. Gen. Laws Section 23-18.9-5** – prohibiting the disposal of solid waste at other than a solid waste management facility.
- (2) **R.I. Gen. Laws Section 23-18.9-8** – prohibiting the operation of a solid waste management facility without first obtaining a license from DEM.

E. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), you are hereby ORDERED to:

- (1) **IMMEDIATELY** cease the disposal of solid waste on the Property.
- (2) All buried and partially buried solid waste shall be excavated in preparation for removal from the Property. All excavated soils may be screened to remove the solid waste from co-mingled soil.
- (3) **Within 60 days of receipt of the NOV**, remove all solid waste from the Property and dispose of it at a licensed solid waste management facility. The solid waste shall not be burned or buried.
- (4) **Within 10 days of completion of the removal of the solid waste**, submit written verification to DEM that the solid waste was disposed of at a licensed solid waste management facility or recycling facility.

F. Penalty

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:

\$5,000

- (2) The proposed administrative penalty is calculated pursuant to Rhode Island's *Rules and Regulations for Assessment of Administrative Penalties* [effective 4 January 2022 to Current] (the "Penalty Regulations") and must be paid to DEM within 30 days of your receipt of the NOV. Penalty payments shall be by one of two methods:
- (a) By certified check, cashier's check, or money order made payable to the **General Treasury – Environmental Response Fund** and forwarded to:
- Administrator, DEM Office of Compliance and Inspection
235 Promenade Street, Suite 220
Providence, RI 02908-5767.
- (b) By wire transfer in accordance with instructions provided by DEM.
- (3) Penalties assessed against Respondent in the NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if DEM determines that reasonable efforts have been made to comply promptly with the NOV.

G. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before DEM's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through F above. All requests for hearing MUST:
- (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b).

- (b) Be **RECEIVED** by DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of the NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
235 Promenade Street, Suite 350
Providence, RI 02908-5767.

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b).
- (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Part 1.7(B) of Rhode Island's *Rules and Regulations for the Administrative Adjudication Division* [effective 4 January 2022 to Current].
- (2) A copy of each request for hearing must also be forwarded to:

Tricia Quest, Esquire
DEM - Office of Legal Services
235 Promenade Street, Suite 425
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner regarding any violation set forth herein, then the NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (vi) and 42-17.6-4(b) and (c).
- (5) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) An original signed copy of the NOV is being forwarded to the Town of West Warwick, Rhode Island wherein the Property is located, to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and Section 23-18.9-13, as is or as amended.
- (7) This NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Tricia Quest of DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey D'Amadio Tyrrell of DEM's Office of Compliance and Inspection at (401) 222-1360, ext. 2777407 or at tracey.tyrrell@dem.ri.gov.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section G above.

FOR THE DIRECTOR

By: _____
David E. Chopy, Administrator
Office of Compliance and Inspection

Dated: _____

CERTIFICATION

I hereby certify that on the _____ day of _____
the within Notice of Violation was forwarded to:

129 Properties LLC
c/o Richard E. Palumbo, Jr., Resident Agent
481 Atwood Avenue
Cranston, RI 02920

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, SOLID WASTE
 File No.: OCI-SW-20-9
 Respondent: 129 Properties LLC

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D (1) – Disposal of Solid Waste at Other Than a Licensed Solid Waste Management Facility	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$2,500	1 violation	\$2,500
D (2) – Operating a Solid Waste Management Facility Without a License from DEM	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$2,500	1 violation	\$2,500
SUB-TOTAL					\$5,000

*Maximum Penalties represent the maximum penalty amounts per day, per violation.

ECONOMIC BENEFIT FROM NON-COMPLIANCE
<p>COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT COMPLY. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:</p> <ul style="list-style-type: none"> - THERE IS NO IDENTIFIABLE BENEFIT FROM NON-COMPLIANCE, OR - THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED.
<p>A review of the record in this matter has revealed that Respondent has either enjoyed no identifiable benefit from the non-compliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.</p>

COST RECOVERY
<p>ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.</p>
<p>A review of the record in this matter has revealed that DEM has not incurred any additional or extraordinary costs during the investigation, enforcement, and resolution of this enforcement action (excluding non-overtime personnel costs), for which the State is not otherwise reimbursed.</p>

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$5,000

PENALTY MATRIX WORKSHEET

CITATION: Disposal of Solid Waste at Other Than a Licensed Solid Waste Management Facility
 VIOLATION NO.: D (1)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.
DEVIATION FROM THE STANDARD THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10(A)(1)(b) of Penalty Regulations.</p> <p>(1) The extent to which the act or failure to act was out of compliance: Respondent disposed of or allowed for the disposal of solid waste on the Property. Mixed solid waste was buried on the Property. Prohibiting the disposal of solid waste at other than a licensed solid waste management facility is of prime importance to the regulatory program. Failure to comply may result in threats or harm to public health and safety and the environment.</p> <p>(2) Environmental conditions: The Property is utilized for industrial/commercial purposes; however, it abuts several residential properties. The Property is in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. Regulated freshwater wetland is located within 700 feet of the disposal area. The Property is located within 1,200 feet of Pawtuxet River and within its watershed.</p> <p>(3) Amount of the pollutant: Approximately 150 cubic yards of solid waste mixed with soil (as of 18 August 2021).</p> <p>(4) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.</p> <p>(5) Duration of the violation: Full duration unknown. DEM only considered the duration of the violation since the 18 August 2021 inspection due to a July 2021 statutory amendment.</p> <p>(6) Areal extent of the violation: Approximately 1,350 square feet.</p>		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent the non-compliance (either by not disposing of solid waste on the Property or not prohibiting the disposal of solid waste on the Property). Respondent has yet to mitigate the non-compliance despite receiving the LNC from DEM, which required that it do so.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondent for the failure to comply with Rhode Island's *Refuse Disposal Act*. Respondent, as owner of the Property, had complete control over the occurrence of the violation.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	MODERATE	<u> X </u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250 \$2,500	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Operating a Solid Waste Management Facility Without a License from DEM
 VIOLATION NO.: D (2)

TYPE		
<u> X </u> TYPE I DIRECTLY related to protecting health, safety, welfare, or environment.	<u> </u> TYPE II INDIRECTLY related to protecting health, safety, welfare, or environment.	<u> </u> TYPE III INCIDENTAL to protecting health, safety, welfare, or environment.
DEVIATION FROM THE STANDARD THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of Penalty Regulations.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent disposed of or allowed for the disposal of solid waste on the Property. Prohibiting the operation of a solid waste management facility without a license or approval from DEM is of prime importance to the regulatory program. DEM’s licensing process ensures that solid waste management facilities are appropriately located and operated in strict compliance with Rhode Island’s <i>Rules and Regulations for Solid Waste Management Facilities and Organic Waste Management Facilities</i>. Failure to comply will likely result in threats or harm to public health and safety and the environment. (2) Environmental conditions: The Property is utilized for industrial/commercial purposes; however, it abuts several residential properties. The Property is in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. Regulated freshwater wetland is located within 700 feet of the disposal area. The Property is located within 1,200 feet of the Pawtuxet River and within its watershed. (3) Amount of the pollutant: Approximately 150 cubic yards of solid waste mixed with soil (as of 18 August 2021). (4) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation. (5) Duration of the violation: Full duration unknown. DEM only considered the duration of the violation since the 18 August 2021 inspection due to a July 2021 statutory amendment. (6) Areal extent of the violation: Approximately 1,350 square feet. 		
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	MINOR	\$2,500 to \$6,250 \$2,500	\$1,250 to \$2,500	\$250 to \$1,250