

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF COMPLIANCE & INSPECTION

IN RE: ALJOKE, LLC.

FILE NO.: SW 2014-18

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 the DEM's jurisdiction.

B. Administrative History

The Respondent leased its property to Complete Waste & Recycling Services, LLC to operate a solid waste transporter business. On 10 June 2014, the DEM issued a Letter of Non-Compliance ("LNC") to the Respondent by certified mail for violations of Rhode Island's *Refuse Disposal Act*. The LNC required specific actions to correct the violations. On 12 June 2014, the LNC was delivered to the Respondent. On 16 June 2014, the DEM received a written response by electronic mail from the Respondent's legal counsel. The DEM was informed that all the solid waste referenced in the LNC was properly disposed and that the issues that caused the violation were resolved. Follow up inspections by the DEM revealed that the Respondent failed to comply with the LNC. On 6 November 2014, Complete Waste & Recycling Services, LLC was placed into temporary receivership by the Rhode Island Superior Court.

C. Facts

- (1) The property is located at 90 Reservoir Avenue, Assessor's Plat 125, Lot 134 in the city of Providence, Rhode Island (the "Property").
- (2) The Respondent owns the Property.
- (3) On 20 May 2014 and 23 May 2014, the DEM Office of Compliance and Inspection (the "OC&I") inspected the Property. The inspections revealed the following:
 - (a) 19 roll-off containers filled with approximately 315 cubic yards of mixed solid waste that had been stored on the Property for more than 72 hours. The solid waste included plastic bags filled with mixed solid waste, gypsum wall board, processed wood, vinyl siding, foam insulation, windows, roofing material, corrugated paperboard, furniture, plastic waste,

asphalt shingles, mattresses, plastic tarps, household refuse, wooden pallets, wooden fence posts and rails, carpeting, doors, fabric, appliances, used tires, plastic fuel tanks, ceiling tiles, insulation, a television (cathode ray tube), tree waste and other mixed solid waste; and

- (b) 23 used tires that had been deposited on the ground (totaling 4 cubic yards).
- (4) On 22 September 2014 and 26 September 2014, the OC&I inspected the Property. The inspections revealed 25 roll-off containers filled with mixed solid waste that had been stored on the Property for more than 72 hours. The OC&I also observed 7 roll-off containers filled with the same mixed solid waste that they were holding on 20 May 2014. The solid waste included plastic bags filled with mixed solid waste, gypsum wall board, processed wood, PVC pipe, household refuse, Styrofoam, windows, roofing material, corrugated paperboard, used furniture, plastic waste, asphalt shingles, mattresses, plastic tarps, household refuse, wooden pallets, carpeting, tile, fluorescent lamps, 2 television sets, sod, soil and other mixed solid waste.
- (5) The fluorescent lamps are universal waste lamps as per Rules 13.1(D) and 13.2 of the DEM's *Rules and Regulations for Hazardous Waste Management* (the "Hazardous Waste Regulations") and Title 40 of the Code of Federal Regulations, Part 273, Section 5 ("40 CFR 273.5").
- (6) The television sets are universal waste cathode ray tubes as per Rules 13.1(D) and 13.2 of the DEM's Hazardous Waste Regulations") and 40 CFR 273.5.
- (7) The recyclable materials in the containers are co-mingled with solid waste and/or exposed to the elements and, therefore, do not comply with the DEM's *Rules and Regulations for Reduction and Recycling of Commercial and Non-Municipal Residential Solid Waste* and are considered solid waste.
- (8) The Respondent has neither sought nor obtained an approval, permit or license from the DEM to operate a solid waste management facility at the Property.
- (9) As of the date of this Notice of Violation ("NOV"), upon information and belief, the Respondent has failed to cease the disposal of solid waste at the Property.
- (10) As of the date of this NOV, upon information and belief, the Respondent has failed to cease the operation of a solid waste management facility at the Property.

D. Violation

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

- (1) **R.I. Gen. Laws Section 23-18.9-5** – prohibiting the disposal of solid waste at other than a solid waste management facility licensed by the DEM.
- (2) **R.I. Gen. Laws Section 23-18.9-8** – prohibiting the operation of a solid waste management facility unless a license is obtained from the DEM.
- (3) **DEM’s Solid Waste Regulation No. 1, Section 1.4.01** – prohibiting any person from constructing, developing, establishing, managing, owning, maintaining or operating a solid waste management facility without first having obtained approval from the DEM.
- (4) **DEM’s Hazardous Waste Regulations, Rule 13.5(H) and 40 CFR 273.13** – requiring that universal waste used cathode ray tubes be stored inside an enclosed weatherproof structure and that the universal waste lamps be stored in containers or packages that are structurally sound and adequate to prevent breakage.
- (5) **DEM’s Hazardous Waste Regulations, Rule 13.5(I) and 40 CFR 273.14** – requiring that stored universal waste cathode ray tubes be labeled or clearly marked with one of the following phrases: “Universal Waste-Cathode Ray Tubes”, “Waste Cathode Ray Tubes” or “Used Cathode Ray Tubes” and that universal waste lamps be labeled or marked clearly with one of the following phrases: “Universal Waste – Lamps”, “Waste Lamps” or “Used Lamps”.
- (6) **DEM’s Hazardous Waste Regulations, Rule 13.5 and 40 CFR 273.15** – requiring universal waste handlers to be able to demonstrate the length of time that universal waste has been accumulated and restricting storage time to 1 year or less.

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 operation of a solid waste management facility at the Property.
- (2) **IMMEDIATELY** dispose of any universal waste cathode ray tubes or universal waste lamps at a licensed solid waste management facility or universal waste handling facility in full compliance with Section 13.0 of the DEM’s Hazardous Waste Regulations and 40 CFR 273.

- (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 the removal of the solid waste and universal waste**, submit to the OC&I written verification that the solid waste and universal waste has been disposed of at a licensed solid waste management facility and/or universal waste management 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:

\$24,000

- (2) The proposed administrative penalty is calculated pursuant to the DEM's *Rules and Regulations for Assessment of Administrative Penalties*, as amended, and must be paid to the DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a certified check, cashiers check or money order made payable to the "General Treasury - Environmental Response Fund," and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against the Respondent in this 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 the DEM determines that reasonable efforts have been made to comply promptly with this 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 the 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 the DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
One Capitol Hill, 2ND Floor
Providence, RI 02903

- (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); **AND**
- (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 Rule 7.00(b) of the DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters*.
- (2) A copy of each request for hearing must also be forwarded to:

Tricia Quest
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 the 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 with regard to any violation set forth herein, then this 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 (v) 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 this NOV is being forwarded to the city of Providence, 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 at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey D'Amadio Tyrrell of the DEM Office of Compliance and Inspection at (401) 222-1360 ext. 7407.

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

David E. Chopy, Chief
DEM Office of Compliance and Inspection

Date: _____

CERTIFICATION

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

ALJOKE, LLC.
c/o Stephen C. Mackie, Esq., Registered Agent
681 Smith Street
Providence, RI 02908

by Certified Mail.



| ADMINISTRATIVE PENALTY SUMMARY | |
|---------------------------------------|--|
| Program: | OFFICE OF COMPLIANCE AND INSPECTION, SOLID WASTE |
| File No.: | SW 2014 – 18 |
| Respondent: | ALJOKE, 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 (\$25,000 Max. Penalty)* | Moderate | \$10,000 | 1 violation | \$10,000 |
| D(2) and (3) – Operation of a solid waste management facility without obtaining a license from the DEM | Type I (\$25,000 Max. Penalty)* | Major | \$14,000 | 1 violation | \$14,000 |
| SUB-TOTAL | | | | | \$24,000 |

*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 ARE IN COMPLIANCE. 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 the 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 the 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= \$24,000

PENALTY MATRIX WORKSHEET

| | |
|----------------|--|
| CITATION: | Disposal of solid waste at other than a licensed solid waste management facility |
| VIOLATION NO.: | D (1) |

TYPE

 X **TYPE I**
DIRECTLY related to protecting health, safety, welfare or environment.

 TYPE II
INDIRECTLY related to protecting health, safety, welfare or environment.

 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.

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondent disposed of or allowed for the disposal of solid waste at the Property by placing containers filled with mixed solid waste on the property for more than 72 hours. Prohibiting the disposal of solid waste at other than a licensed solid waste management facility is of significant importance to the regulatory program. Unlawful disposal of solid waste bypasses the public health and safety and environmental safeguards obtained by limiting disposal of solid waste to compliantly operated solid waste management facilities.
- (B) **Environmental conditions:** The property is located in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. The property is located in the Pawtuxet River watershed and within 1,200 feet of Mashapaug Pond.
- (C) **Amount of the pollutant:** About 319 cubic yards of solid waste were observed on the property on 23 May 2014 and about 547 cubic yards of solid waste was observed on the property on 26 September 2014.
- (D) **Toxicity or nature of the pollutant:** Much of the solid waste is combustible, which presents a fire hazard. The containers filled with solid waste may provide harborage to rodents or disease vectors.
- (E) **Duration of the violation:** Full duration unknown - at least 14 months. The DEM first observed the solid waste on 23 May 2014.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** The Respondent failed to prevent the non-compliance by removing all containers filled with mixed solid waste from the property within 72 hours of arrival. The Respondent failed to mitigate the non-compliance despite receiving the Letter of Noncompliance from the DEM dated 10 June 2014, which required that it do so.
- (H) **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
- (I) **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 the Respondent for the failure to comply immediately with the requirements set forth in Rhode Island's *Refuse Disposal Act*. The Respondent, as owner of the property, had complete control over the occurrence of the violation. Disposal of solid waste at other than a licensed solid waste management facility is expressly prohibited by the General Laws of Rhode Island.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

| | | |
|--------------|-------------------------------------|--------------|
| MAJOR | <u> X </u> MODERATE | MINOR |
|--------------|-------------------------------------|--------------|

| 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 \$10,000 | \$2,500 to \$6,250 | \$1,250 to \$2,500 |
| | MINOR | \$2,500 to \$6,250 | \$1,250 to \$2,500 | \$250 to \$1,250 |

PENALTY MATRIX WORKSHEET

| | | |
|----------------|---|-----|
| CITATION: | Operation of a solid waste management facility without a license from the DEM | |
| VIOLATION NO.: | D | (2) |

| 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.

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondent operated or allowed for the operation of a solid waste management facility without applying for and obtaining a license from the DEM. Licensing the operation of solid waste management facilities is of significant importance to the regulatory program. Unlawful operation of a solid waste management facility bypasses the public health and safety and environmental safeguards obtained by limiting disposal of solid waste to licensed, compliantly-operated solid waste management facilities.
- (B) **Environmental conditions:** The property is located in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. The property is located in the Pawtuxet River watershed and within 1,200 feet of Mashapaug Pond.
- (C) **Amount of the pollutant:** About 319 cubic yards of solid waste were observed on the property on 23 May 2014 and about 547 cubic yards of solid waste was observed on the property on 26 September 2014.
- (D) **Toxicity or nature of the pollutant:** Much of the solid waste is combustible, which presents a fire hazard. The containers filled with solid waste may provide harborage to rodents or disease vectors.
- (E) **Duration of the violation:** Full duration unknown - at least 14 months. The DEM first observed the solid waste on 23 May 2014.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to prevent the non-compliance by applying for and obtaining a license to operate a solid waste management facility on the property from the DEM. The Respondent failed to mitigate the non-compliance despite receiving the Letter of Noncompliance from the DEM dated 10 June 2014, which required that it do so.
- (H) **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.
- (I) **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 the Respondent for the failure to comply immediately with the requirements set forth in Rhode Island's *Refuse Disposal Act*. The Respondent, as owner of the property, had complete control over the occurrence of the violation. The operation of a solid waste management facility without a license from the DEM is expressly prohibited by the General Laws of Rhode Island and the DEM's Solid Waste Regulations.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

| | | |
|----------------|----------|-------|
| <u>X</u> MAJOR | MODERATE | MINOR |
|----------------|----------|-------|

| 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 \$14,000 | \$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 | \$1,250 to \$2,500 | \$250 to \$1,250 |