

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Town of Barrington  
J.H. Lynch & Sons, Inc.**

**FILE NO.: OCI-WP-17-4  
X-ref. RIPDES RIR101411 and  
WQC 16-079**

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 parties (“Respondents”) have violated certain statutes and/or administrative regulations under the DEM’s jurisdiction.

B. Facts

- (1) The Town of Barrington, Rhode Island (“Barrington”) owns property located on Upland Way that has an inactive municipal landfill.
- (2) On or about 25 July 2016, Barrington signed a contract with J.H. Lynch & Sons, Inc. (“Lynch”) to close the landfill.
- (3) On 7 September 2016, the DEM issued a Rhode Island Pollutant Discharge Elimination System General Permit for Stormwater Discharge Associated with Construction Activity (No. RIR101411) and a Water Quality Certificate (No. 16-079) to Barrington (collectively, the “Permit”) to close the landfill.
- (4) The Permit required Barrington and Lynch to:
  - (a) Maintain effective erosion, runoff and sediment controls (“E&S Controls”) in accordance with the Rhode Island Soil Erosion and Sediment Control Handbook (“RISESC”) and the Rhode Island Stormwater Design and Installation Standards Manual (“RISDISM”);
  - (b) Prevent daily construction activities from causing pollution; and
  - (c) Ensure that E&S Controls remain in effective operating condition and are protected from activities that would reduce their effectiveness.

- (5) On 24 January 2017, the DEM inspected the Property and surrounding area during a rainstorm. The inspection revealed the following:
  - (a) Sediment laden stormwater flowing past E&S Controls located adjacent to the construction entrance, down Upland Way for approximately 300 feet, and discharging into Volpe Pond through the existing roadway drainage system; and
  - (b) A silty, turbid appearance in Volpe Pond caused by the stormwater from the Property.
- (6) On 25 January 2017, the DEM inspected the Property and Volpe Pond. The inspection revealed that Volpe Pond had a silty turbid appearance.
- (7) On 30 January 2017, the DEM collected water samples from Volpe Pond and a tributary stream to Volpe Pond (used as natural background) and had the samples analyzed for turbidity. The results were 22 Nephelometric Turbidity Units (“NTU”) and 57 NTU in the stream and pond, respectively.
- (8) On 3 February 2017, the DEM inspected the Property. The inspection revealed that Barrington and Lynch failed to provide adequate E&S Controls in accordance with the RISESC and sections 3.3.7.2 and 3.3.7.5 of the RISDISM as evidenced by:
  - (a) Land disturbance over the entire 10.6 acres of the Property without adequate soil stabilization in phase 1 of the project prior to initiation of work in the phase 2; and
  - (b) Vegetative and non-vegetative cover was not established prior to the end of the 2016 construction season.
- (9) On 7 February 2017, the DEM sent electronic correspondence to Barrington and Lynch (the “February 7<sup>TH</sup> Notification”) requiring specific actions to properly stabilize the soil on the Property. These actions included spreading mulch over the entire Property and installing erosion control blankets as necessary to adequately stabilize the soil.
- (10) On 21 February 2017, the DEM inspected the Property. The inspection revealed that Barrington and Lynch failed to fully stabilize the Property as required in the February 7<sup>TH</sup> Notification. Specifically, most of the Property had not been stabilized, including the steeper sloped areas.
- (11) On 23 February 2017, the DEM sent electronic correspondence to Barrington and Lynch (the “February 23<sup>RD</sup> Notification”) requiring specific actions to properly stabilize the soil on the Property. These actions included spreading mulch over the entire Property and installing erosion control blankets as necessary to adequately stabilize the soil.

- (12) On 27 February 2017 and 28 March 2017, the DEM inspected the Property. The inspections revealed that Barrington and Lynch failed to fully stabilize the Property as required in the February 23<sup>RD</sup> Notification. Specifically, the soil was not stabilized over the entire Property.
- (13) On 3 April 2017, the DEM collected water samples from Volpe Pond and a tributary stream to Volpe Pond (used as natural background) and had the samples analyzed for turbidity. The results were 1.6 NTU and 33 NTU in the stream and pond, respectively.
- (14) Volpe Pond is classified in the DEM's *Water Quality Regulations* as Class B. Among other uses, these waters are designated for fish and wildlife habitat and primary and secondary contact recreational activities. These waters shall have good aesthetic value.
- (15) The water quality criteria for turbidity for Class B waters as specified in Section 8.D(2) of the *Water Quality Regulations* states that:
  - (a) No turbidity is allowed in such concentration that would impair any uses assigned to this class; and
  - (b) No turbidity is allowed that exceeds 10 NTU over natural background.
- (16) Barrington and Lynch failed to comply with the Permit.

C. 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 46-12-5(b)** – requiring the discharge of any pollutant into waters of the State comply with the terms and conditions of a permit and applicable regulations.
- (2) **DEM's *Water Quality Regulations***
  - (a) **Rule 8(D)(1)(b)(iii)** – requiring that all waters of the State be free from pollutants in concentrations or combinations that change the color of the receiving water.
  - (b) **Rule 9(A)** – prohibiting the discharge of pollutants into any waters of the State or any activity alone or in combination which the Director determines will likely result in the violation of any State water quality criterion or interfere with one or more of the existing or designated uses assigned to the receiving waters.
  - (c) **Rule 11(B)** – requiring the discharge of pollutants into the waters of the State comply with the terms and conditions of a permit issued by the DEM.

- (d) **Rule 13(A)** – prohibiting the discharge of any pollutant into or conducting any activity which will likely cause or contribute pollution to the waters of the State.
  - (e) **Rule 16(A)** – mandating compliance with all terms, conditions, management practices and operation and maintenance requirements set forth in a permit.
- (3) **DEM's Regulations for the Rhode Island Pollutant Discharge Elimination System**
- (a) **Rule 14.02(a)** – requiring the permittee to comply with all conditions of the permit.
  - (b) **Rule 14.05** – requiring the permittee to take all reasonable steps to minimize or prevent a discharge in violation of the permit.
  - (c) **Rule 14.06** – requiring the permittee to maintain in good working order and operate as efficiently as possible all treatment works to achieve compliance with the permit.

D. 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:

**\$25,000**

- (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 this Notice of Violation (“NOV”). Payment shall be in the form of a check made payable to the “General Treasury - Water & Air Protection Program Account” 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 Respondents 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.

E. 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 D 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 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, Room 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); **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 Part 1.7(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:

Joseph J. LoBianco, Esquire  
DEM - Office of Legal Services  
235 Promenade Street, 4<sup>TH</sup> Floor  
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 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 the NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) The 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) Joseph J. LoBianco of the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to David E. Chopy of the DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 7119.

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 F above.

FOR THE DIRECTOR

By: \_\_\_\_\_  
David E. Chopy, Chief  
Office of Compliance and Inspection

Dated: \_\_\_\_\_

CERTIFICATION

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

Town of Barrington  
C/o James J. Cunha, Town Manager  
283 County Road  
Barrington, RI 02806

J.H. Lynch & Sons, Inc.  
C/o Lawrence P. McCarthy, III, Registered Agent  
50 Lynch Place  
Cumberland, RI 02864

by Certified Mail.

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# ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution  
 File No.: OCI-WP-17-4 X-ref. RIPDES RIR101411 and WQC 16-079  
 Respondents: Town of Barrington & J.H. Lynch & Sons, Inc.

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	
C (1), C (2) and C (3) – Permit Noncompliance	Type I (\$25,000 Max. Penalty) *	Major	\$25,000	1 violation	\$25,000
<b><i>SUB-TOTAL</i></b>					<b>\$25,000</b>

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

## ECONOMIC BENEFIT FROM NONCOMPLIANCE

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:

- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR
- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.

A review of the record in this matter has revealed that Respondents have either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.

## COST RECOVERY

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.

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.

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$25,000**



# PENALTY MATRIX WORKSHEET

CITATION: Permit Noncompliance

VIOLATION NO.: C (1), C (2), and C (3)

TYPE		
<p style="text-align: center;"><u>  X  </u> <b>TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ <b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ <b>TYPE III</b></p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Part 1.10A.1.b of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <ol style="list-style-type: none"> <li>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondents failed to comply with the terms and conditions of the Permit which resulted in an unauthorized discharge of sediment laden water to Volpe Pond. Prevention of pollutant discharges to waters of the State is the primary purpose of the stormwater permit and is of major importance the regulatory program.</li> <li>(2) <b>Environmental conditions:</b> The Property is an inactive municipal landfill.</li> <li>(3) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> Fine grained soil used to construct the landfill cover. Turbid water affects the physical and biological characteristics of a waterbody which negatively impacts fish and wildlife and aesthetics.</li> <li>(5) <b>Duration of the violation:</b> The DEM first observed Permit violations on 24 January 2017. The DEM also observed Permit violations on 3 February 2017, 21 February 2017, 27 February 2017 and 28 March 2017.</li> <li>(6) <b>Areal extent of the violation:</b> The surface of Volpe Pond, approximately 1.5 acres (7,357 square yards), was discolored on 24 January 2017 due to the discharge of sediment laden water from the Property. The impact to Volpe Pond (turbid water) was still visible on 3 April 2017.</li> </ol>		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the non-compliance by complying with the terms and conditions of the Permit. Respondents also failed to abide by the Soil Erosion and Sediment Control Plan and failed to follow standard practices required in the RISDISM. More specifically, Respondents failed to retain sediment on the Property, failed to stabilize one area of the Property prior to disturbing additional areas and failed to establish adequate cover to prevent soil erosion prior to any cessation of construction activities for the winter season. Respondents took actions to mitigate the noncompliance after being notified by the DEM, but failed to fully mitigate the noncompliance.
- (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:** Respondents had full control of the Property and the E&S Controls. Negligence is attributable to Respondents for the failure to comply with the Permit, Soil Erosion and Sediment Control Plan, and the RISDISM.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Respondents were specifically notified by the DEM on 7 February 2017 and 23 February 2017 that additional E&S Controls were required in accordance with the Permit. Subsequent inspections conducted by the DEM on 21 February 2017, 27 February 2017 and 28 March 2017 showed that Respondents failed to fully comply with the DEM notices.

<u>  X  </u> MAJOR	MODERATE	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	<b>MAJOR</b>	\$12,500 to \$25,000 <b>\$25,000</b>	\$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