

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF COMPLIANCE & INSPECTION**

IN RE: Michael Brennan

FILE NO.: OCI-OWTS-14-83

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

On 22 November 2013, the DEM issued a written final informal notice to Respondent regarding the property that is the subject of this Notice of Violation (“NOV”). Previous informal notices were sent to Respondent on or about 10 June 2011 and 16 April 2012. The final informal notice advised Respondent that, in accordance with the Rhode Island Cesspool Act, if the property has a cesspool and is in an area subject to the Act he must connect to public sewers by 1 January 2014 or, if public sewers are not available, submit an onsite wastewater treatment system (“OWTS”) application to the DEM and install the system within 1 year of the DEM’s approval. On 27 December 2013, the DEM received a written certification from Respondent that the property has a cesspool and is in an area subject to the Act. Respondent failed to comply with the final informal notice. On 1 May 2014, the DEM issued an Expedited Citation Notice (“ECN”) to Respondent that included an administrative penalty of \$200. The ECN required Respondent to connect to public sewers within 30 days or, if public sewers are not available, submit an OWTS application to the DEM and install the system within 14 days of the DEM’s approval. As of the date of the NOV, Respondent has failed to respond to or comply with the ECN.

C. Facts

- (1) The property is located at 21 Breach Drive, Assessor’s Plat 156, Lot 38 in the Town of Westerly, Rhode Island (the “Property”).
- (2) Respondent owns the Property.
- (3) On 27 December 2013, the DEM received a written certification from Respondent that the Property has a cesspool and is in an area subject to the Rhode Island Cesspool Act.
- (4) The cesspool is located within 200 feet of the inland edge of a shoreline bordering a tidal water (corresponding to the jurisdiction of the Rhode Island Coastal Resources Management Council).

- (5) As of the date of the NOV, Respondent has failed to either connect the plumbing for the dwelling on the Property to the public sewers or submitted an OWTS application to the DEM.

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 23-19.15-6 (b)(3)** – prohibiting the use of cesspools and requiring by 1 January 2014 the proper abandonment of cesspools located within 200 feet of a public drinking water well, or within 200 feet of the inland edge of a shoreline bordering a tidal water area (corresponding to the jurisdiction of the Rhode Island Coastal Resources Management Council), or within 200 feet of a surface drinking water supply.
- (2) **DEM’s Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems (the “OWTS Regulations”), Rule 53.3.3** – requiring by 1 January 2014 the proper abandonment of cesspools located within 200 feet of a public drinking water well, or within 200 feet of the inland edge of a shoreline bordering a tidal water area (corresponding to the jurisdiction of the Rhode Island Coastal Resources Management Council), or within 200 feet of a surface drinking water supply.

E. Required Actions

Based upon the violations alleged above, the following actions are required for you to comply with the above-referenced statutes or regulations:

- (1) If public sewers are available, **within 30 days of receipt of the NOV**, connect the plumbing for the dwelling to the public sewerage system and properly abandon the cesspool in accordance with Rule 52 of the DEM’s OWTS Regulations.
- (2) If public sewers are not available, **within 30 days of receipt of the NOV**, retain a licensed OWTS designer and have the licensed OWTS designer submit a formal application and plan to the DEM to replace the cesspool in accordance with the DEM’s OWTS Regulations (the “Application”). The list of licensed OWTS designers can be obtained by contacting Deb Knauss at 222-4700, Ext. 7612 or from the DEM’s web page at:
www.dem.ri.gov/programs/benviron/water/licenses/isds/pdfs/deslist.pdf.
- (3) The Application shall be subject to the DEM’s review and approval. Upon review, the DEM shall provide written notification to you either granting formal approval or stating the deficiencies therein. Within 7 days (unless a longer time is specified) of receiving a notification of deficiencies in the Application, you must

submit to the DEM a modified proposal or additional information necessary to correct the deficiencies.

- (4) **Within 14 days of the DEM's approval of the Application**, complete all work in accordance with the approval as evidenced by the issuance of a Certificate of Conformance by the DEM.

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:

\$4,000

- (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 - Water & Air Protection Program Account," and shall be forwarded to the DEM's Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (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 the 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 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 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
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 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:

Tricia Quest, Esq.
DEM - Office of Legal Services
235 Promenade Street, 4TH 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) An original signed copy of the NOV is being forwarded to the Town of Westerly, 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 42-17.1-2(13), as amended.

- (7) The NOV does not preclude the DEM 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 the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Stephen Tyrrell of the DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 7406.

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, Chief
Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

Michael Brennan
2A Fir Tree Lane
Sandy Hook, CT 06482

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, OWTS
 File No.: OCI-OWTS-14-83
 Respondent: Michael Brennan

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) and (2) – Use Of Cesspool	Type I <i>(\$1,000 Max. Penalty) *</i>	Major	\$1,000	4 years	\$4,000
<i>SUB-TOTAL</i>					\$4,000

*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 Respondent has 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 = \$4,000

PENALTY MATRIX WORKSHEET

CITATION: Use Of Cesspool

VIOLATION NO.: D (1) and (2)

TYPE		
<u> X </u> 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 VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10A.1.b of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: The Rhode Island Cesspool Phase Out Act requires that cesspools located within 200 feet of a public drinking water well, or within 200 feet of the inland edge of a shoreline bordering a tidal water area (corresponding to the jurisdiction of the Rhode Island Coastal Resources Management Council), or within 200 feet of a surface drinking water supply be abandoned. Respondent failed to remove and properly abandon the cesspool on the Property.</p> <p>(B) Environmental conditions: The cesspool is in a densely populated neighborhood and within 200 feet of the inland edge of a shoreline bordering a tidal water (corresponding to the jurisdiction of the Rhode Island Coastal Resources Council).</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Sewage contains many kinds of bacteria, viruses, and parasites that can cause serious or fatal diseases in both humans and animals, and contains pollutants that can cause groundwater and surface water impacts.</p> <p>(E) Duration of the violation: 4 years, 2 months – the cesspool was required to be removed by 1 January 2014.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p> <p>(G) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance: Respondent failed to remove and properly abandon the cesspool despite certifying that a cesspool was servicing the Property and being advised by the DEM in notices issued on or about 22 June 2011, on or about 16 April 2012, on 22 November 2013, and on 1 May 2014 that the cesspool needed to be removed.</p> <p>(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.</p> <p>(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: Respondent had full control over the violation. The violation was foreseeable.</p> <p>(J) Any other factor(s) that may be relevant in determining the amount of a penalty: The notice issued on 1 May 2014 stated the penalty could be up to \$1,000 per day.</p>		
<u> X </u> MAJOR	MODERATE	MINOR

Penalty Matrix where the applicable statute provides for a civil penalty up to \$1,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$800 to \$1,000 \$1,000	\$600 to \$800	\$400 to \$600
	MODERATE	\$600 to \$800	\$400 to \$600	\$200 to \$400
	MINOR	\$400 to \$600	\$200 to \$400	\$100 to \$200