

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

**IN RE: Heirs of Albert J. Browning, Jr.  
Lorna C. Browning**

**FILE NO.: OCI-OWTS- 14-85**

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 DEM's jurisdiction.

B. Administrative History

On March 21, 2011, DEM issued a written informal notice to the owners of the property that is the subject of this Notice of Violation (“NOV”). The notice stated that, in accordance with the *Rhode Island Cesspool Act of 2007*, if the property has a cesspool and is in an area subject to the Act, the plumbing for the dwelling on the property must be connected to public sewers by January 1, 2014 or, if public sewers are not available, apply to DEM for a new onsite wastewater treatment system (“OWTS”) and install the system within 1 year of DEM’s approval. On May 31, 2011, in response to the notice, DEM received a form that was signed by Albert J. Browning (“A. Browning”). The form stated that A. Browning and Lorna Browning (“L. Browning”) own the property and that the property has a cesspool and is in an area subject to the Act. A. Browning and L. Browning failed to otherwise comply with the notice. On April 29, 2014, DEM issued an Expedited Citation Notice (“ECN”) to A. Browning and L. Browning by certified mail for the alleged violation that is the subject of the NOV. The ECN required specific actions to correct the violation. On May 7, 2014, the ECN was delivered. A. Browning and L. Browning failed to comply with the ECN, and the ECN expired. Respondents submitted 3 applications to DEM to install a new OWTS at the property. DEM approved each application; however, a new OWTS was not installed, and the applications expired.

C. Facts

- (1) The property is located at 1113 Succotash Road, Assessor’s Plat I-J, Lot 48 in Narragansett, Rhode Island (the “Property”). The Property includes a 3-bedroom dwelling (the “Dwelling”).
- (2) Respondents own the Property.

- (3) On May 31, 2011 and December 30, 2013, DEM received written certifications from A. Browning that the Property has a cesspool that is located 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).
- (4) On April 23, 2015, A. Browning applied to DEM (application no. 1520-0290) to install a new OWTS at the Property. On April 28, 2015, DEM approved the application. The system was not installed, and the application expired.
- (5) On April 11, 2017, L. Browning applied to DEM (application no. 1520-0290) to install a new OWTS at the Property. On April 13, 2017, DEM approved the application. The system was not installed, and the application expired.
- (6) On September 26, 2019, L. Browning applied to DEM (application no. 1520-0290) to install a new OWTS at the Property. On October 2, 2019, DEM approved the application. The system was not installed, and the application expired.
- (7) As of the date of the NOV, Respondents have failed to install a new OWTS and abandon the cesspool.

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 January 1, 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) **Rhode Island’s *Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems (the “OWTS Regulations”)* [effective July 9, 2012 to July 16, 2014], Rule 53.3.3** – requiring by January 1, 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.
- (3) **OWTS Regulations [effective July 16, 2014 to June 27, 2016], Rule 53.3.3** – requiring by January 1, 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.

- (4) **OWTS Regulations [effective June 27, 2016 to November 25, 2018], Rule 53.3.3** – requiring by January 1, 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.
- (5) **OWTS Regulations [effective November 25, 2018 to December 28, 2021], Part 6.57(C)(3)** – requiring by January 1, 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.
- (6) **OWTS Regulations [effective December 28, 2021 to January 4, 2022], Part 6.57(C)(3)** – requiring by January 1, 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.
- (7) **OWTS Regulations [effective January 4, 2022 to Current], Part 6.57(C)(3)** – requiring by January 1, 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. 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 use of the cesspool. No further use of the cesspool is allowed.
- (2) **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 DEM to replace the cesspool in accordance with the OWTS Regulations [effective January 4, 2022 to Current] (the “2022 Application”). The list of licensed OWTS designers can be obtained from DEM’s web page at:  
[www.dem.ri.gov/programs/benviron/water/licenses/isds/pdfs/deslist.pdf](http://www.dem.ri.gov/programs/benviron/water/licenses/isds/pdfs/deslist.pdf).

- (3) The 2022 Application shall be subject to DEM's review and approval. Upon review, DEM shall provide written notification 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 2022 Application**, submit to DEM a modified proposal or additional information necessary to correct the deficiencies.
- (4) **Within 120 days of DEM's approval of the 2022 Application**, complete all work in accordance with the approval as evidenced by the issuance of a Certificate of Conformance by 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:

**\$7,000**

- (2) The proposed administrative penalty is calculated pursuant to Rhode Island's *Rules and Regulations for Assessment of Administrative Penalties* [effective January 4, 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 – Water and Air Protection Program** 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 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.
- (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, 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).
  - (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 January 4, 2022 to Current].
- (2) A copy of each request for hearing must also be forwarded to:

Tricia Quest, Esq.  
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 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 Narragansett, 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 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 DEM's Office of Legal Services at (401) 222-6607 or at [tricia.quest@dem.ri.gov](mailto:tricia.quest@dem.ri.gov). All other inquiries should be directed to Stephen Tyrrell of DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 2777406 or at [stephen.tyrrell@dem.ri.gov](mailto:stephen.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  
DEM Office of Compliance and Inspection

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

CERTIFICATION

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

Heirs of Albert J. Browning, Jr.  
1113 Succotash Road  
Narragansett, RI 02882

Lorna C. Browning  
1113 Succotash Road  
Narragansett, RI 02882

by Certified Mail.

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## ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, OWTS  
 File No.: OCI-OWTS-14-85  
 Respondents: Heirs of Albert J. Browning, Jr., and Lorna C. Browning

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) through D (7) – Failure to Abandon Cesspool	Type I <i>(\$1,000 Max. Penalty) *</i>	Major	\$1,000	7 years	\$7,000
<b><i>SUB-TOTAL</i></b>					<b>\$7,000</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 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 = \$7,000**



# PENALTY MATRIX WORKSHEET

CITATION: Failure to Abandon Cesspool

VIOLATION NOs.: D (1) through D (7)

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><b>FACTORS CONSIDERED:</b></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</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> The Rhode Island Cesspool Phase Out Act requires that cesspools located 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) be abandoned. Respondent/s failed to remove and properly abandon the cesspool on the Property.</li> <li>(2) <b>Environmental conditions:</b> The cesspool is in a densely populated neighborhood and 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).</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> Wastewater 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.</li> <li>(5) <b>Duration of the violation:</b> Approximately 7 years, 2 months – the cesspool was required to be removed by January 1, 2014.</li> <li>(6) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</li> <li>(7) <b>Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:</b> Respondents failed to take reasonable and appropriate steps to prevent and/or mitigate the noncompliance by removing and properly abandoning the cesspool. A. Browning certified that a cesspool was servicing the Property, and A. Browning and L. Browning received a written notice from DEM on March 21, 2011 and the ECN requiring that they do so.</li> <li>(8) <b>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:</b> Considered, but not utilized for this calculation.</li> <li>(9) <b>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:</b> Respondents had full control over the violation. The violation was foreseeable.</li> <li>(10) <b>Any other factor(s) that may be relevant in determining the amount of a penalty:</b> The ECN stated the penalty could be up to \$1,000 per day.</li> </ol>		
<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	<b>MAJOR</b>	\$800 to \$1,000 <b>\$1,000</b>	\$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