

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: David Ciampi

FILE NO.: OCI-OWTS-16-11

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 24 February 2016, the DEM issued a Notice of Intent to Enforce ("NOTICE") to Respondent for the violation that is the subject of this Notice of Violation ("NOV"). The NOTICE required specific actions to correct the violation. On 16 March 2016, Respondent spoke with a DEM agent in response to the NOTICE. Respondent stated that he was working with his engineer and installer to resolve the violation. As of the date of the NOV, Respondent has failed to fully comply with the NOTICE.

C. Facts

- (1) The property is located at 486 Atlantic Avenue, Assessor's Plat 155, Lot 65 in the Town of Westerly, Rhode Island (the "Property").
- (2) The Property includes a single-family dwelling (the "Dwelling").
- (3) Respondent owns the Property.
- (4) On 5 September 2002, Respondent applied to the DEM to construct an onsite wastewater treatment system (the "OWTS") on the Property. The plan submitted with the application did not show any drinking water lines within 25 feet of the OWTS.
- (5) On 28 December 2005, the DEM issued a Certificate of Conformance ("COC") for the OWTS.

- (6) On or about 24 February 2014, the DEM received a letter and sketch from the OWTS designer, Eugene Spring (“Spring”), regarding the OWTS. The letter and sketch included the following information:
 - (a) There was an additional water service connection that was not discovered prior to the approval;
 - (b) The existing water line located east of the OWTS that serves the Dwelling (“Water Line 1”) is greater than 12 feet from the OWTS;
 - (c) The proposed installation of a sleeve on Water Line 1;
 - (d) Respondent was contacted regarding the installation of the sleeve; and
 - (e) Respondent agreed to provide this work.
- (7) On 1 May 2014, the DEM received electronic correspondence that included a plan for the Property titled “EXISTING CONDITIONS Right of Way Encroachment UP DATED APRIL 2014” that was stamped and signed by Wesley Grant from Environmental Planning & Surveying, Inc. The plan showed:
 - (a) Water Line 1;
 - (b) An existing water line located west of the OWTS that serves 2 dwellings to the rear of the Property (“Water Line 2”);
 - (c) Water Line 1 is 17.23 feet from the OWTS; and
 - (d) Water Line 2 is approximately 20.5 feet from the OWTS.
- (8) On 8 June 2016, Respondent applied to the DEM (the “Application”) to alter the OWTS. The plan submitted with the Application showed:
 - (a) Water Line 1 is approximately 11 feet from the OWTS;
 - (b) Water Line 2 is approximately 9 feet from the OWTS;
 - (c) The installation of a sleeve for Water Line 1; and
 - (d) The installation of a trench barrier between the OWTS and Water Line 2.
- (9) On 21 July 2016, the DEM forwarded review comments regarding the Application to Spring (the “Review Comments”).

- (10) On 23 October 2017, the DEM received a revised plan in response to the Review Comments. The plan showed the following:
 - (a) Replacement of Water Line 1 and installation of a sleeve around the water line in accordance with the DEM's *Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems* (the "OWTS Regulations"); and
 - (b) The abandonment of Water Line 2, and the installation of new water lines for the 2 dwellings to the rear of the Property.
- (11) On 14 November 2017, the DEM approved the Application (the "Approval").
- (12) The OWTS has been in use from January 1, 2014 to present.

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) **DEM's OWTS Regulations, July 9, 2012, Rule 8.4.3** – prohibiting use of an OWTS in a manner that does not conform with the terms of an approval.
- (2) **DEM's OWTS Regulations, July 2014, Rule 8.4.3** – prohibiting use of an OWTS in a manner that does not conform with the terms of an approval.
- (3) **DEM's OWTS Regulations, June 2016, Rule 8.4.3** – prohibiting use of an OWTS in a manner that does not conform with the terms of an approval.

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 **within 120 days of receipt of the NOV**, complete work on the project in accordance with the Approval as evidenced by the issuance of a Certificate of Conformance from 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:

\$12,800

- (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:

Christina Hoefsmit, 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 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) Christina Hoefsmit 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. 7400.

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:

David M. Ciampi
199 Bella Vista Drive
Watertown, CT 06795

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, OWTS
 File No.: OCI-OWTS-16-11
 Respondent: David M. Ciampi

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), (2) and (3) – Use Of OWTS In Nonconformance With Approval	Type I (\$1,000 Max. Penalty) *	Major	\$800	16 months ¹	\$12,800
SUB-TOTAL					\$12,800

*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 can not 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 = \$12,800

¹ Water records show that most of the water usage for 2014 through 2016 occurred from June 2nd through December 2nd. For this calculation, it was assumed that the OWTS was used from June through September for 2014, 2015, 2016 and 2017.

PENALTY MATRIX WORKSHEET

CITATION: Use Of OWTS In Nonconformance With Approval

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

TYPE		
<input checked="" type="checkbox"/> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<input type="checkbox"/> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<input type="checkbox"/> TYPE III <u>INCIDENTAL</u> 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><u>FACTORS CONSIDERED:</u></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 OWTS was used in nonconformance with the COC. Compliance with an approval issued by the DEM is of major importance to the regulatory program.</p> <p>(B) Environmental conditions: The Dwelling is served by a water line that is located approximately 11 feet from the OWTS. There is a second water line that serves 2 dwellings located to the rear of the Property that are not owned by Respondent. This water line is located approximately 9 feet from the OWTS. The setback requirements in the DEM's OWTS Regulations require 25 feet from an OWTS to a water line.</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 humans.</p> <p>(E) Duration of the violation: Full duration unknown – at least 16 months. Documents provided to the DEM show that Respondent was aware of the violation on or about February 2014. Water records show that most of the water usage for 2014 through 2016 occurred from June 2nd through December 2nd. For this calculation, it was assumed that the OWTS was used from June through September for 2014, 2015, 2016 and 2017.</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: The DEM is unaware of what steps, in any, Respondent took to prevent the noncompliance. On 23 October 2017, Respondent filed a revised application with the DEM to mitigate the noncompliance.</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 NIE required Respondent to mitigate the noncompliance on or about 1 July 2016. The NIE stated the penalty could be up to \$1,000 per day.</p>		
<input checked="" type="checkbox"/> 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 \$800	\$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