

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

**IN RE: D Construction, LLC
First Choice Construction, LLC**

FILE NO.: OCI-OWTS-17-52

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. Administrative History

On 7 July 2017, the DEM issued a Notice of Intent to Enforce ("NIE") to D Construction, LLC ("D Construction") for the property and violations that are the subject of this Notice of Violation ("NOV"). The NIE required specific actions to correct the violations. On 24 July 2017, the DEM received electronic correspondence from D Construction's agent, Kimberly De La Cruz ("Cruz"), in response to the NIE. Cruz requested advice on how to proceed. The DEM agent and Cruz corresponded by electronic correspondence over the next 2 months. On 22 September 2017, the DEM agent advised Cruz on the next action to take. On 25 September 2017, D Construction transferred title to the property to First Choice Construction, LLC ("First Choice"). As of the date of the NOV, the DEM has received no further communication from Respondents and Respondents have failed to comply with the NIE.

C. Facts

- (1) The property is located at 2558 Hartford Avenue, Assessor's Plat 46, Lot 120, in the Town of Johnston, Rhode Island (the "Property").
- (2) First Choice owns the Property. First Choice acquired title to the Property on 25 September 2017.
- (3) D Construction owned the Property from 16 September 2016 to 25 September 2017.
- (4) On 15 June 2017, the DEM inspected the Property. The inspection revealed that a concrete septic tank (the "Septic Tank") was being installed on the Property near the onsite wastewater treatment system ("OWTS").
- (5) D Construction did not obtain a permit from the DEM to install the Septic Tank.

- (6) Upon information and belief, the Septic Tank was installed by an individual who does not have a valid license from the DEM to perform this work.

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 *Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems* (the "OWTS Regulations")
 - (a) **Rule 8.2** – prohibiting the installation of an OWTS without a valid license from the DEM.
 - (b) **Rule 8.3** – prohibiting the installation of an OWTS without a permit from the DEM.

E. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), First Choice is hereby ORDERED to:

- (1) **Within 30 days of receipt of the NOV**, remove the Septic Tank and provide documentation to the DEM to show that the work was completed.
- (2) **Within 30 days of receipt of the NOV**, have the OWTS inspected by a licensed OWTS designer (the "System Assessment") and submit the System Assessment to the DEM. The System Assessment must be signed by the licensed designer who inspected the OWTS, must identify the size and location of the OWTS components, and propose a plan, including a proposed timetable, for any repair work. If it is determined that the OWTS needs repair and public sewers will not be available for connection within 1 year, a formal application and plan must be submitted to the DEM in accordance with the DEM's OWTS Regulations (the "Application"). **Any repairs or modifications to the OWTS require the prior approval of the DEM.** The list of licensed OWTS designers can be obtained by contacting Deb Knauss at 222-4700, Ext. 7612 or from the DEM's webpage 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 14 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) Commence work on the project in accordance with the method approved by the Director within 20 days of approval (unless otherwise expressly authorized by the DEM in writing to commence work later), and complete such work within 120 days of said approval or other date specified 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, against D Construction:

\$2,000

- (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 D Construction 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.

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
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:
- 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 Johnston, 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
DEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

D Construction, LLC
Dario Ozuna, Resident Agent
11 Pungansett Street
Providence, RI 02908

First Choice Construction, LLC
c/o Randy R. Santos, Resident Agent
1586 Broad Street
Cranston, RI 02905

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, OWTS
 File No.: OCI-OWTS-17-52
 Respondent: D Construction, 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)(a) – Installation of Septic Tank Without Valid License	Type I (\$1,000 Max. Penalty) *	Minor	\$1,000	1 violation	\$1,000
D(1)(b) – Installation of Septic Tank Without Permit	Type I (\$1,000 Max. Penalty) *	Moderate	\$1,000	1 violation	\$1,000
SUB-TOTAL					\$2,000

*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 = \$2,000

PENALTY MATRIX WORKSHEET

CITATION: Installation Of Septic Tank Without Valid License

VIOLATION NO.: D (1)(a)

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 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> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: A septic tank was installed/constructed by person/s who did not possess a license issued by the DEM to perform this work. Preventing the installation of OWTS components by persons without a valid license issued by the DEM is a primary objective of the DEM's OWTS Regulations and a major objective of the regulatory program. (2) Environmental conditions: Considered, but not utilized for this calculation. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation. (5) Duration of the violation: Full duration unknown. The violation was first observed by the DEM on 15 June 2017. (6) Areal extent of the violation: Considered, but not utilized for this calculation. (7) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance: D Construction failed to take reasonable and appropriate steps to prevent the noncompliance by retaining person/s licensed by the DEM to install OWTS components. (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: D Construction had full control over the occurrence of the violation and the violation was foreseeable. (10) Any other factor(s) that may be relevant in determining the amount of a penalty: D Construction's agent, Cruz, spoke with the DEM's agent on 22 September 2017. The DEM agent explained what actions were needed to correct the violation. On 25 September 2017, D Construction transferred title to the Property to First Choice. 		
<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

PENALTY MATRIX WORKSHEET

CITATION: Installation Of Septic Tank Without Permit

VIOLATION NO.: D (1)(b)

TYPE		
<p style="text-align: center;"><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___TYPE III</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><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> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: D Construction installed/constructed a septic tank without obtaining an approval by the DEM. Preventing the installation of OWTS components without an approval from the DEM is a primary objective of the DEM's OWTS Regulations and a major objective of the regulatory program. (2) Environmental conditions: The Property includes a single-family home in a densely populated neighborhood. At the time of the DEM inspection on 15 June 2017, the tank was not connected to the plumbing for the dwelling on the Property. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation. (5) Duration of the violation: Full duration unknown. The violation was first observed by the DEM on 15 June 2017. (6) Areal extent of the violation: Considered, but not utilized for this calculation. (7) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance: D Construction failed to take reasonable and appropriate steps to prevent the noncompliance by obtaining an approval from the DEM. D Construction failed to mitigate the noncompliance, despite receiving the NIE from the DEM requiring that it do so and having its agent, Cruz, communicate with the DEM agent by electronic correspondence over 2 months after the NIE was issued, during which the DEM agent explained what D Construction needed to do to resolve the violation. Cruz last communicated with the DEM's agent on 22 September 2017. The DEM agent explained what actions were needed to correct the violation. On 25 September 2017, D Construction transferred title to the Property to First Choice. (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: D Construction had full control over the occurrence of the violation and the violation was foreseeable. (10) Any other factor(s) that may be relevant in determining the amount of a penalty: The NIE stated that the penalty could be up to \$1,000 per day for each violation. 		
<p style="text-align: center;"><u> X </u> MAJOR</p>	<p style="text-align: center;">MODERATE</p>	<p style="text-align: center;">MINOR</p>

Penalty Matrix where the applicable statute provides for a civil penalty up to \$1,000		TYPE I	TYPE II	TYPE III
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