

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

**IN RE: Rhode Island Department of Administration      FILE NO.: OCI-OWTS-17-108**

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 December 22, 2017, DEM issued a Notice of Intent to Enforce ("NOTICE") to Steven Denoyelle, Respondent's Deputy Chief of the Division of Capital Asset Management & Maintenance ("DCAMM") by certified mail for the violation that is the subject of this Notice of Violation ("NOV"). The NOTICE required that specific actions be taken to correct the violation, including pumping the onsite wastewater treatment system ("OWTS") at the property as often as necessary to prevent the overflow of wastewater to the surface of the ground and repairing the OWTS, if it was determined that a repair was necessary. On January 9, 2017, the NOTICE was delivered. On February 14, 2020, Respondent applied to DEM to repair the OWTS, which was approved by DEM on March 17, 2020. Since the NOTICE was issued, DEM officials have communicated with Respondent (by telephone and electronic correspondence) on numerous occasions regarding the violation. As of the date of the NOV, Respondent has failed to begin work to repair the OWTS, has failed to provide a schedule to DEM to do so and has failed to keep the OWTS pumped to prevent the overflow of wastewater to the surface of the ground.

C. Facts

- (1) The property is located at 173 Sayles Hill Road, Assessor's Plat 17, Lot 193, in the Town of North Smithfield, Rhode Island (the Property").
- (2) The State of Rhode Island owns the Property. Respondent is responsible for maintenance and repair of the OWTS.
- (3) The OWTS includes one 3,000-gallon septic tank and two 1,500-gallon septic tanks (collectively, the "Tanks").

- (4) On December 5, 2017, in response to a complaint from a neighboring property owner, DEM inspected the Property. The inspection revealed that wastewater was present on the surface of the ground as evidenced by:
  - (a) Ponding of fluids on the surface of the OWTS;
  - (b) Photographs showing the breakout of fluids on the surface of the OWTS and evidence of fluids leaving the Property; and
  - (c) Detection of odors associated with sewage in the area around the OWTS.
- (5) On March 17, 2020, Respondent received approval from DEM (application number 2025-0178) to install a new OWTS (the "Approval"). The maximum design flow for the new OWTS is 1,400 gallons per day (the "Design Flow").
- (6) On May 22, 2020, in response to a complaint from a neighboring property owner, DEM inspected the Property. The inspection revealed that wastewater from the OWTS was present on the surface of the ground as evidenced by:
  - (a) Ponding of fluids on the surface of the OWTS;
  - (b) Photographs showing the breakout of fluids on the surface of the OWTS and evidence of fluids leaving the Property; and
  - (c) Detection of odors associated with sewage in the area around the OWTS.
- (7) As of the date of the NOV, Respondent has not commenced installation of the new OWTS.
- (8) As of the date of the NOV, Respondent has failed to comply with the regulations titled *Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems*.

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) ***Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems [effective June 27, 2016 through November 25, 2018], Rule 8.8*** – prohibiting the discharge of wastewater to the surface of the ground.
- (2) ***Rhode Island Code of Regulations titled Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems (250-RICR-150-10-6) [effective November 25, 2018 to present], Part 6.9(H)*** – prohibiting the discharge of wastewater to the surface of the ground.

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** have the Tanks pumped by a permitted septage transporter and continue such pumping **every 3 days** or more frequently if the Design Flow is exceeded to prevent the OWTS from overflowing or breaking out onto the surface of the ground. A list of permitted septage transporters can be obtained by contacting DEM's Office of Water Resources - OWTS Permitting at 222-6820 or from DEM's web page at:  
[www.dem.ri.gov/programs/benviron/waste/transpor/septage.pdf](http://www.dem.ri.gov/programs/benviron/waste/transpor/septage.pdf).
- (2) **Within 90 days of receipt of the NOV**, commence work on the project in accordance with the Approval (unless otherwise expressly authorized by DEM in writing to commence work later), and complete such work within 120 days of receipt of the NOV.

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:

**\$2,000**

- (2) The proposed administrative penalty is calculated pursuant to the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* and must be paid to DEM within 30 days of your receipt of the NOV. Payment shall be in the form of an electronic transfer to DEM's Water & Air Protection Program account.
- (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 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); **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 Rhode Island Code of Regulations titled *Rules and Regulations for the Administrative Adjudication Division (250-RICR-10-00-1)*.
- (2) A copy of each request for hearing must also be forwarded to:

Joseph J. LoBianco, 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) 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) Joseph J. LoBianco of DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Stephen Tyrrell of 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, Administrator  
Office of Compliance and Inspection

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

CERTIFICATION

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

Rhode Island Department of Administration  
c/o Brett Smiley, Director  
One Capitol Hill  
Providence, RI 02908-5853

by Certified Mail.

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# ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, OWTS  
 File No.: OCI-OWTS-17-108  
 Respondent: Rhode Island Department of Administration

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) – Discharge of Wastewater to the Surface of the Ground	Type I (\$1,000 Max. Penalty) *	Major	\$1,000	2 violations	\$2,000
<b>SUB-TOTAL</b>					<b>\$2,000</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 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 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: Discharge of Wastewater to the Surface of the Ground

VIOLATION NOs.: D (1) and (2)

TYPE		
<p><u>  X  </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>      </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>      </u> 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><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</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> Wastewater was discharged to the ground surface from a failed OWTS. Preventing the discharge of wastewater to the surface of the ground is a primary objective of the regulations and a major objective of the regulatory program.</li> <li>(2) <b>Environmental conditions:</b> The Property includes a residential group home in a rural neighborhood.</li> <li>(3) <b>Amount of the pollutant:</b> Full amount unknown - the inspections on December 5, 2017 and May 22, 2020 revealed obvious wastewater breakout to the surface of the ground.</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, as well as being the source of extremely objectionable odors.</li> <li>(5) <b>Duration of the violation:</b> Full duration unknown. The violation was observed by DEM on December 5, 2017 and May 22, 2020.</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> Respondent failed to have the OWTS pumped as necessary to prevent discharge to the ground surface.</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> Respondent 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> Considered, but not utilized for this calculation.</li> </ol>		
<p><u>  X  </u> MAJOR</p>	<p>MODERATE</p>	<p>MINOR</p>



Penalty Matrix where the applicable statute provides for a civil penalty up to \$1,000		<b>TYPE I</b>	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