

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Emory Chapman
The Indian River Company**

FILE NO.: OCI-HW-16-54

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 26 September 2016, DEM issued a *Letter of Non-Compliance* (“LNC”) to Emory Chapman (“Chapman”) by certified mail for some of the violations that are the subject of this Notice of Violation (“NOV”). The LNC required specific actions to correct the violations. On October 4, 2016, the LNC was delivered. Chapman did not respond to the LNC, and he failed to fully comply with the LNC. On 14 August 2018, DEM issued an *Expedited Citation Notice* (“ECN”) to Chapman by certified mail for some of the violations that are the subject of the NOV. The ECN required specific actions to correct the violations and payment of an administrative penalty. On August 20, 2018, the ECN was delivered. A copy of the ECN was sent by regular mail to The Indian River Company (“Indian River”). On or about 20 October 2018, the ECN expired. Neither Chapman nor Indian River responded to or complied with the ECN. On 8 October 2019, DEM issued a *Notice of Intent to Enforce* (“NIE”) to Chapman by certified mail for some of the violations that are the subject of the NOV. The NIE required specific actions to correct the violations. The NIE was returned to DEM with the notation “not deliverable as addressed, unable to forward”. On 28 October 2019, DEM sent the NIE to Indian River by certified mail. On 4 November 2019, the NIE was delivered. As of the date of the NOV, Respondents have neither responded to nor complied with the NIE.

C. Facts

- (1) The property is located at 41 Rocky Hollow Road, Assessor’s Plat 3, Lot 276 in East Greenwich, Rhode Island (the “Property”). The Property includes a facility used as a motor vehicle repair and service business (the “Facility”).
- (2) Indian River owns the Property.
- (3) Chapman operates the Facility doing business as Greenwich Garage.

- (4) On 6 May 2016, DEM inspected the Facility and identified several instances of non-compliance including the failure to contain and clean up a release of used oil on the Property.
- (5) On 7 June 2017, DEM inspected the Facility and met with Chapman at the time of the inspection. The inspection revealed used oil spilled onto the ground surface in 2 areas near the main building at the Property and no steps taken to contain and clean up the spill. The impacted area measured approximately 100 square feet.
- (6) On 1 March 2021, DEM inspected the Facility. The inspection revealed an extensive area of used oil spillage on bare soil around an outdoor used oil storage tank.
- (7) As of the date of the NOV, the non-compliance identified in Facts 4-6 above have not been rectified.

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 46-12.5.1-3** – prohibiting discharges of oil into or upon the waters or land of the State except by regulation or by permit from DEM.
- (2) **Rhode Island’s *Oil Pollution Control Regulations* [effective 31 December 2001 to 2 May 2018]**
 - (a) **Section 6(a)** – prohibiting the placement of oil or pollutants into the waters or land of the State or in a location where they are likely to enter the waters of the State.
 - (b) **Section 12(b)(2)** – requiring responsible parties to immediately stop the discharge and begin containment and removal of the oil and waste material in response to an oil spill.
- (3) **Rhode Island’s *Oil Pollution Control Regulations* [effective 2 May 2018 to 4 January 2022]**
 - (a) **Part 2.6(A)** – prohibiting the placement of oil or pollutants into the waters or land of the State or in a location where they are likely to enter the waters of the State.
 - (b) **Part 2.12(B)(2)** – requiring responsible parties to immediately stop the discharge and begin containment and removal of the oil and waste material in response to an oil spill.

E. Order

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

- (1) **IMMEDIATELY, upon receipt of the NOV**, clean up all used oil that was spilled onto the ground on the Property by excavating all soils that were impacted by the release and transporting the soils off-site for disposal at a DEM-licensed solid waste management facility, in full compliance with Part 2.12 and Part 2.13 of Rhode Island's *Oil Pollution Control Regulations* [effective 4 January 2022 to Current]. **Within 10 days of the disposal**, submit a copy of a bill-of-lading or other documentation to DEM's Office of Compliance and Inspection ("OC&I") to verify the compliant and lawful disposal of this material.
- (2) **Upon completion of this initial remedial action** (the petroleum-impacted soil removal), collect representative soil samples from the base and sidewalls of all excavation areas and have the samples delivered to a licensed and certified analytical laboratory via chain-of-custody protocols. The samples shall be analyzed by the laboratory to determine the concentration of total petroleum hydrocarbons in each sample. **Within 10 days of receipt of the laboratory analytical report**, submit a copy to OC&I. OC&I will review the report and determine whether further remedial action is required.
- (3) Upon receipt of written notification from OC&I that further remedial action is required, comply with the deadlines specified in the notification.

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:

\$12,500

- (2) The proposed administrative penalty is calculated pursuant to Rhode Island's *Rules and Regulations for Assessment of Administrative Penalties* [effective 4 January 2022 to Current] (the "Penalty Regulations") and must be paid to DEM within 30 days of your receipt of the NOV.
- (3) 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.
- (4) 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.
- (5) 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 Director 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 Paragraphs 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 this 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 4 January 2022 to Current].

- (2) A copy of each request for hearing must also be forwarded to:

Joseph J. LoBianco, Esquire
DEM - Office of Legal Services
235 Promenade Street, Suite 425
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 East Greenwich, 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 46-12.5.1-12(c).
- (7) The NOV does not preclude the Director 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 Tracey Tyrrell of DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 2777407 or at tracey.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:

Emory Chapman d/b/a Greenwich Garage
65 Rocky Hollow Road
East Greenwich, RI 02818

The Indian River Company
c/o Allison H. Morrison, Registered Agent
P.O. Box 24
East Greenwich, RI 02818

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, OIL POLLUTION
 File No.: OCI-HW-16-54
 Respondents: Chapman and Indian River

| 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), D (2)(a) and D (3)(a) – Release of Oil | Type I <i>(\$25,000 Max. Penalty) *</i> | Minor | \$6,250 | 1 violation | \$6,250 |
| D (2)(b) and D (3)(b) – Oil Spill Response | Type I <i>(\$25,000 Max. Penalty) *</i> | Minor | \$6,250 | 1 violation | \$6,250 |
| SUB-TOTAL | | | | | \$12,500 |

*Maximum Penalties represent the maximum penalty amounts per day, per violation.

| ECONOMIC BENEFIT FROM NON-COMPLIANCE |
|---|
| <p>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:</p> <ul style="list-style-type: none"> - THERE IS NO IDENTIFIABLE BENEFIT FROM NON-COMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED. |
| <p>A review of the record in this matter has revealed that Respondents have either enjoyed no identifiable benefit from the non-compliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.</p> |
| COST RECOVERY |
| <p>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.</p> |
| <p>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.</p> |

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$12,500

PENALTY MATRIX WORKSHEET

CITATION: Release of Oil
 VIOLATION NOs.: D (1), D (2)(a) and D (3)(a)

| TYPE | | |
|--|---|--|
| <u>X</u> TYPE I DIRECTLY related to protecting health, safety, welfare or environment. | TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment. | TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment. |
| DEVIATION FROM THE STANDARD <small>THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small> | | |
| <p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: DEM inspections of the Property revealed that oil had been released to the ground surface. The release of oil to the land of the State is prohibited by Rhode Island’s law and <i>Oil Pollution Control Regulations</i>. The failure to comply presumably increases the likelihood of threats to public health and safety and the environment. (2) Environmental conditions: The Facility is in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells in the immediate vicinity of the Property. The Facility is within 550 feet of a groundwater reservoir, 190 feet of the Hunt/Annaquatucket/Pettaquamscutt sole source aquifer, 1,300 feet of a groundwater recharge area, 3,100 feet of a community water supply wellhead protection area and 580 feet of Greenwich Cove, an important estuarine habitat. The Facility is in Greenwich Bay watershed. (3) Amount of the pollutant: DEM’s inspector observed 2 areas on the Property that were impacted by a spill or unplanned release of oil. The exact quantity of oil that was released on the Property is unknown. (4) Toxicity or nature of the pollutant: Oil can cause significant impacts to subsurface soils and groundwater if released to the environment. Certain petroleum constituents may have adverse impacts to public health and the environment. (5) Duration of the violation: Full duration unknown – at least 5 ½ years. DEM first observed the oil spillage on 6 May 2016. (6) Areal extent of the violation: Approximately 100 square feet was impacted by the release of oil. | | |
| (continued) | | |

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** Chapman failed to take reasonable and appropriate steps to prevent the noncompliance by carefully managing the used oil and taking due care to prevent spillage onto the ground. Respondents have yet to mitigate the noncompliance, despite receiving the LNC, ECN and/or NIE from DEM, which required that they do so.
- (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 in 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:** Chapman had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence. Negligence is attributable to Chapman for the failure to prevent the release of oil to the land of the State.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized in this calculation.

| | | |
|--------------|-----------------|----------------------------------|
| MAJOR | MODERATE | <u> X </u> MINOR |
|--------------|-----------------|----------------------------------|

| Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000 | | TYPE I | TYPE II | TYPE III |
|---|-----------------|--------------------------------------|---------------------|--------------------|
| DEVIATION FROM STANDARD | MAJOR | \$12,500 to \$25,000 | \$6,250 to \$12,500 | \$2,500 to \$6,250 |
| | MODERATE | \$6,250 to \$12,500 | \$2,500 to \$6,250 | \$1,250 to \$2,500 |
| | MINOR | \$2,500 to \$6,250 \$6,250 | \$1,250 to \$2,500 | \$250 to \$1,250 |

PENALTY MATRIX WORKSHEET

CITATION: Oil Spill Response
 VIOLATION NOs.: D (2)(b) and D(3)(b)

| 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 1.10(A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents failed to take corrective action in accordance with Rhode Island’s <i>Oil Pollution Controls Regulations</i> after the oil was released on the Property. The requirement to immediately clean up a spill or release of oil to the land of the State is an integral part of the regulatory program because this requirement reduces the potential for a spill or release to impact soil, surface waters and groundwater resources. (2) Environmental conditions: The Facility is in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells in the vicinity. The Facility is within 550 feet of a groundwater reservoir, 190 feet of the Hunt/Annaquatucket/Pettaquamscutt sole source aquifer, 1,300 feet of a groundwater recharge area, 3,100 feet of a community water supply wellhead protection area and 580 feet of Greenwich Cove, an important estuarine habitat. The Facility is in Greenwich Bay watershed. (3) Amount of the pollutant: DEM’s inspector observed 2 areas on the Property that were impacted by a spill or unplanned release of oil. The exact quantity of oil that was released on the Property is unknown. (4) Toxicity or nature of the pollutant: Oil can cause significant impacts to subsurface soils and groundwater if released to the environment. Certain petroleum constituents may have adverse impacts to public health and the environment. (5) Duration of the violation: Full duration unknown – at least 5 ½ years. DEM first observed the oil spillage on 6 May 2016. (6) Areal extent of the violation: Approximately 100 square feet was impacted by the release of oil. | | |
| (continued) | | |

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable and appropriate steps to prevent the noncompliance by cleaning up the oil spillage. Respondents have yet to mitigate the noncompliance, despite receiving the LNC, ECN and/or NIE from DEM, which required that they do so.
- (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 in 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:** Respondents had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence. Negligence is attributable to Respondents for the failure to comply with the oil spill remediation requirements set forth in the OPC Regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized in this calculation.

| | | |
|--------------|-----------------|---------------------------|
| MAJOR | MODERATE | <u> X </u> MINOR |
|--------------|-----------------|---------------------------|

| Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000 | | TYPE I | TYPE II | TYPE III |
|---|-----------------|--------------------------------------|---------------------|--------------------|
| DEVIATION FROM STANDARD | MAJOR | \$12,500 to \$25,000 | \$6,250 to \$12,500 | \$2,500 to \$6,250 |
| | MODERATE | \$6,250 to \$12,500 | \$2,500 to \$6,250 | \$1,250 to \$2,500 |
| | MINOR | \$2,500 to \$6,250 \$6,250 | \$1,250 to \$2,500 | \$250 to \$1,250 |