

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: HARAMOS REALTY, LLC

FILE NO.: OCI-SR-16-1

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 4 April 2015, the DEM notified Respondent of the specific actions required to address an oil spill at the property. Respondent completed some of the required actions, but did not fully comply. On 20 January 2016, the DEM issued a Notice of Intent to Enforce (“NIE”) to Respondent for the violations that are the subject of this Notice of Violation (“NOV”). The NIE required specific actions to correct the violations. On 29 January 2016, Respondent’s attorney submitted a letter to the DEM stating that Respondent’s consultant would be meeting with the DEM inspector at the property to discuss the required actions. On 29 January 2016, the DEM received a telephone call from Respondent’s consultant. The consultant informed the DEM that Respondent lacked the funds necessary to complete the required actions. As of the date of the NOV, Respondent has failed to comply with the NIE.

C. Facts

- (1) The property is located at 2258 Flat River Road in the town of Coventry (the Property”).
- (2) Respondent owns the Property.
- (3) On 4 April 2015, the DEM inspected the Property in response to a reported oil spill. The inspection revealed the following:
 - (a) A 275-gallon aboveground tank (the “AST”) that held No. 2 heating oil had tipped over; and
 - (b) Oil staining was observed in a grassy area and atop a concrete slab in the area surrounding the AST.

- (4) On 10 June 2015, the DEM inspected the Property. The inspection revealed the following:
- (a) The AST was removed and replaced with a new tank; and
 - (b) No visible oil staining was observed on the ground.
- (5) On 16 July 2015, the DEM received a written report from Marshall Environmental Group, Inc. (“MEG”) dated 4 June 2015, which summarized its activities at the Property. MEG reported the following:
- (a) Oil-contaminated soil had been excavated from the grassy area impacted by the oil spill by Respondent and placed into four 55-gallon drums (the “Drums”);
 - (b) Laboratory analysis of 2 confirmatory soil samples collected by MEG from the grassy area after the excavation revealed concentrations of total petroleum hydrocarbons (“TPH”) at 340 milligrams per kilogram (“mg/kg” or “ppm”) and 51 ppm;
 - (c) Laboratory analysis of a composite sample of soil collected from 3 locations along the stained concrete slab area revealed a concentration of TPH at 6,700 ppm;
 - (d) Removal of the concrete slab to allow for excavation of the remaining oil-contaminated soils beneath the slab was necessary to complete the remediation of the oil spill in full compliance with the DEM’s OPC Regulations; and
 - (e) Respondent did not authorize MEG to complete the required remediation work.
- (6) On 29 January 2016, the DEM received a telephone call from MEG. MEG informed the DEM that the Drums had been removed from the Property for proper disposal or recycling.
- (7) The full nature and extent of the oil release has yet to be determined.
- (8) As of the date of the NOV, Respondent has failed to investigate and remediate the oil release in accordance with Section 12(e) of the DEM’s *Oil Pollution Control Regulations* (the “OPC Regulations”).

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 (a)** – prohibiting discharges of oil into or upon the land of the State
- (2) **DEM's OPC Regulations, Section 6(a)** – prohibiting the placement of oil into the land of the State
- (3) **DEM's OPC Regulations, Section 12 (e)** – requiring all actions necessary to remediate a release of oil as determined by the DEM.

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) **Within 7 days of receipt of the NOV**, procure the services of a qualified environmental consultant to prepare a status report (the "Report") and a remedial action plan (the "Plan") for the Property in accordance with Section 12(e) of the DEM's OPC Regulations. The Plan must include a schedule to complete all proposed work.
- (2) **Within 60 days of receipt of the NOV**, submit the Report and Plan to the DEM.
- (3) The Report and Plan 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 Report or the Plan, you must submit to the DEM a modified proposal or additional information necessary to correct the deficiencies.
- (4) The investigation, remedial action and clean-up shall continue until the release has been mitigated to the satisfaction of 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:

\$2,500

- (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 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, 4TH 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 Rule 7.00(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:

Joseph J. LoBianco, Esquire
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 with regard to 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 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 at 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
DEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

HARAMOS REALTY, LLC
c/o Arthur G. Capaldi, Esq., Registered Agent
1035 Main Street
Coventry, RI 02816

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION - Oil Pollution Control
 File No.: OCI-SR-16-1
 Respondent: HARAMOS REALTY, 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 (3) – Failure to Remediate Release of Oil	Type I (\$25,000 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500
SUB-TOTAL					\$2,500

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

ECONOMIC BENEFIT FROM NON-COMPLIANCE

COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT ARE IN COMPLIANCE. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:

- THERE IS NO IDENTIFIABLE BENEFIT FROM NON-COMPLIANCE; OR
- THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED.

A review of the record in this matter has revealed that Respondent has 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.

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 = \$2,500

PENALTY MATRIX WORKSHEET

CITATION: Failure to Remediate Release of Oil
 VIOLATION NOS: D (3)

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 PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Section 10 (a) (2) 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: Respondent failed to remediate a release of oil at the Property. The investigation and remediation of oil is of primary importance to the regulatory program, especially when drinking water supplies are potentially affected.</p> <p>(B) Environmental conditions: The Property is located in a GAA groundwater classification zone, which are groundwater resources considered to be suitable for drinking water use without treatment and which are located in groundwater reservoirs and portions of their recharge areas, wellhead protection areas for community water supply wells and in groundwater dependent areas. The Property is located in wellhead protection areas for both community and non-community water supply wells, a groundwater reservoir and in a groundwater recharge area. The Site structures and residences proximate to the Site rely on private drinking water supply wells. The Property lies within 800 feet of freshwater wetlands and within the Pawtuxet River watershed.</p> <p>(C) Amount of the pollutant: An unknown quantity of No. 2 heating oil was accidentally released on the Property when the AST tipped over on or about 4 April 2015. Oil-contaminated soil was subsequently excavated; however, an unknown quantity of impacted soil remains in place on the Property as evidenced by laboratory analysis of soil samples obtained from the Property with TPH concentrations as high as 6,700 mg/kg. The extent of any potential groundwater contamination is unknown.</p> <p>(D) Toxicity or nature of the pollutant: No. 2 heating oil is capable of causing significant impacts to subsurface soils and groundwater if released to the environment. Certain petroleum constituents are harmful to human health.</p> <p>(E) Duration of the violation: Approximately 1 ½ years - the release of oil was first reported to the DEM on 4 April 2015 and the remedial actions ceases on or about 22 April 2015.</p> <p>(F) Areal extent of the violation: Unknown. The full extent of the subsurface contamination has yet to be delineated.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent initially took appropriate steps to mitigate the violation by stopping the release, installing a new AST and excavating some of the oil-contaminated soil. Respondent ceased the remedial action on or about 22 April 2015 and has since taken no apparent steps to mitigate the non-compliance, despite receiving the NIE from the DEM, which required that it do so.
- (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.
- (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, as owner of the Property, had control over the occurrence of the violation. Negligence is attributable to Respondent for the failure to comply immediately with the requirements set forth in the DEM's OPC Regulations.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	MODERATE	<u> X </u> MINOR
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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 \$2,500	\$1,250 to \$2,500	\$250 to \$1,250