

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: King's Carpet & Upholstery Cleaning, Inc.**

**FILE No.: WP-13-61**

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 DEM's jurisdiction.

B. Facts

- (1) The Respondent is a registered business with the State of Rhode Island, Corporations Division of the Secretary of State's Office, providing commercial, residential and industrial carpet and upholstery care services.
- (2) On August 29, 2013, the Respondent emptied cleaning wastewater into a storm drainage system located at the end of Waterman Avenue in the city of Cranston, Rhode Island that discharges directly to Blackmore Pond, a water of the State, as evidenced by:
  - (a) Electronic mail with photographs taken by a citizen and sent to the DEM on August 29, 2013 that show the Respondent's van, the storm drainage system cover wetted by soap suds and wastewater, and soap suds floating on the surface of Blackmore Pond at the location of the discharge outlet that connects to the storm drainage system; and
  - (b) An incident report obtained by DEM prepared by Officer Robert J. Skodras of the Cranston Police Department who responded to the scene on August 29, 2013, wherein two employees of the Respondent stated to Officer Skodras that they emptied wastewater into the storm drainage system located at the end of Waterman Avenue.
- (3) The DEM's Water Quality Regulations classify Blackmore Pond as a Class B body of water.
- (4) The DEM's Water Quality Regulations prohibit discharges into Class B bodies of water that will cause floating solids.

- (5) The Respondent did not have authorization from DEM to discharge the wastewater to waters of the State.

C. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) **The Rhode Island Water Pollution Act Section 46-12-5(a)** – prohibiting the placement of any pollutant in a location where it is likely to enter the waters of the State.
- (2) **DEM’s Water Quality Regulations**
  - (a) **Rule 9(A)** – prohibiting the discharge of pollutants into any waters of the State which the Director determines will likely result in the violation of any State water quality criterion or interfere with one or more of the existing or designated uses assigned to the receiving waters.
  - (b) **Rule 11(B)** – prohibiting the discharge of pollutants into the waters of the State except in compliance with a permit issued by DEM
  - (c) **Rule 13(A)** – prohibiting the discharge of any pollutant into or conducting any activity which will likely cause or contribute pollution to the waters of the State.

D. 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:

**Two Thousand Five Hundred Dollars (\$2,500.00)**

- (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 thirty (30) days of your receipt of this Notice of Violation (“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 this NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

E. 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 Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through D 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 twenty (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  
Office of Administrative Adjudication  
One Capitol Hill, Second 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 Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of 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, 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 with regard to any violation set forth herein, then this 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 (v) and 42-17.6-4(b) and (c).
- (5) Failure to comply with this NOV may subject each respondent to additional civil

and/or criminal penalties.

- (6) This 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 Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Patrick Hogan of the DEM Office of Compliance and Inspection at (401) 222-1360 ext. 7119.

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 E above.

FOR THE DIRECTOR

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David E. Chopy, Chief  
DEM Office of Compliance and Inspection

Date: \_\_\_\_\_

CERTIFICATION

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 2013  
the within Notice of Violation was forwarded to:

King's Carpet & Upholstery Cleaning, Inc.  
C/o Walter King, Registered Agent  
32 Thomas Avenue  
Pawtucket, RI 02860

by Certified Mail.

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## ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution  
 File No.: WP-13-61  
 Respondent: King's Carpet & Upholstery Cleaning, Inc.

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	
C(1) and C(2) – Discharge of a pollutant into waters of the State	Type I	Minor	\$2,500	1 violation	\$2,500.00
<b>SUB-TOTAL</b>					<b>\$2,500.00</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 ARE IN COMPLIANCE. 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 the 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 = \$2,500.00**

**PENALTY MATRIX WORKSHEET**

CITATION: Discharge of a pollutant into waters of the State

VIOLATION NO.: C(1) and C(2)

<b>TYPE</b>		
<p><b><u>X</u> TYPE I</b>  <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><b>TYPE II</b>  <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><b>TYPE III</b>  <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>

**DEVIATION FROM THE STANDARD**  
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

**FACTORS CONSIDERED:**

Taken from Section 10 (a) (2) of the DEM *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance.** The Respondent emptied wastewater into a storm drain which discharged directly to waters of the State. Preventing the discharge of pollutants to surface waters is a primary objective of the Water Pollution Act and the DEM's Water Quality Regulations.
- (B) **Environmental conditions:** Wastewater was discharged directly to a storm drain, which discharged to Blackamore Pond, a class B water of the State. Class B waters are designated for fish and wildlife habitat and primary and secondary contact recreational activities. These waters shall have good aesthetic value.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** Wastewater contains potentially pathogenic bacteria and viruses
- (E) **Duration of the violation:** 1 day.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent did not take reasonable steps to prevent the violation.
- (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:** The Respondent had complete control over the operations and its employees to prevent the unauthorized discharge of the wastewater to waters of the State.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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