

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Lucas D'Allesandro

FILE No.: L1554
X-ref. OWTS-12-102 &
OWTS CI 12-81

NOTICE OF VIOLATION AND SUSPENSION OF LICENSE

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 holds Onsite Wastewater Treatment System ("OWTS") License No. L1554 (the "License") to install, construct, alter and repair OWTSs in the State of Rhode Island.
- (2) On June 26, 2012, DEM received an anonymous complaint that an OWTS was being installed at 699 Danielson Pike in the town of Scituate, Rhode Island (the "Property").
- (3) DEM inspected the Property on June 26, 2012. The inspection revealed that the OWTS at the Property was being repaired by the Respondent as evidenced by:
 - (a) Observation and photographs of disturbed ground surface in the area of the existing OWTS;
 - (b) Observation and photographs of flow diffusers staged in the rear yard; and
 - (c) Admission by the Respondent that the OWTS was being repaired.
- (4) The Respondent did not have authorization from DEM to repair the OWTS at the Property.
- (5) On July 17, 2012, DEM issued a Notice of Intent to Suspend or Revoke OWTS Installer's License to the Respondent for the unauthorized OWTS repair conducted at the Property.
- (6) On September 7, 2012, the Respondent met with DEM and admitted that he had

repaired the OWTS at the Property without having first received approval from DEM.

- (7) On September 13, 2012, the Respondent submitted a letter to DEM explaining that he had installed three flow diffusers at the Property to repair the OWTS.
- (8) The Respondent has not shown cause why DEM should not suspend the License.

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) **Rhode Island General Laws Section 5-56-7** – requiring that licensed OWTS installers adhere to the following:
 - (a) Perform all work in compliance with approved plans and specifications.
 - (b) Work only under valid plans approved by the Director.
- (2) **DEM’s Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems, Rule 8.3** – prohibiting any person from installing, constructing, altering or repairing any OWTS without first obtaining the Director’s written approval of the plans and specifications for such work.

D. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 5-56-5(a), **it is hereby ordered that the License be suspended for six (6) months** during which time the Respondent may not engage in any work associated with the installation, construction, alteration or repair of any component of an OWTS.

E. 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:

One Thousand Dollars (\$1,000.00)

- (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 within thirty (30) days of your receipt of this 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 the 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.

F. 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 E 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
DEM - Administrative Adjudication Division
One Capitol Hill, 2ND 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:

Gary Powers, 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 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) Gary Powers 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 F above.

FOR THE DIRECTOR

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

Date: _____

CERTIFICATION

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

Lucas D'Allesandro
P.O. Box 424
Foster, RI 02825

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, OWTS
 File Nos.: L1554 X-ref. OWTS-12-102 & OWTS CI12-81
 Respondent: Lucas D'Allesandro

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) & C(2) - Repair of an OWTS without DEM approval	Type I (\$1,000 Max. Penalty)*	Major	\$1,000	1 violation	\$1,000.00
SUB-TOTAL					\$1,000.00

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

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$1,000.00

PENALTY MATRIX WORKSHEET

CITATION: Repair of an OWTS without approval by DEM

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

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 PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <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: The Respondent repaired an OWTS without prior approval of the plans by DEM. Utilization of DEM approved plans & specifications is a primary objective of the OWTS Regulations and is of great importance to the regulatory program.</p> <p>(B) Environmental conditions: The Respondent installed three (3) flow diffusers to treat the wastewater from the dwelling. Upon submission of plans to DEM, it was determined that three (3) flow diffusers were inadequate to properly treat the wastewater prior to the wastewater entering the groundwater and the OWTS needed to be upgraded to six (6) flow diffusers.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.</p> <p>(E) Duration of the violation: Single event, violation occurred on June 26, 2012.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p> <p>(G) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance: The Respondent did not take reasonable and appropriate steps to prevent the violation. The Respondent failed to notify the owners that the short term solution to the violation required that the owners retain a licensed hauler to pump the septic tank until a proper repair plan could be submitted and approved by DEM. The Respondent failed to make arrangements with an OWTS Licensed Designer to submit plans to DEM for approval prior to completing the repair. The Respondent mitigated the violation by his immediate ceasing of the OWTS repair upon DEM inspection and subsequent submittal of a repair application.</p> <p>(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: The DEM has no prior record of a violation by the Respondent.</p> <p>(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 full knowledge of the applicable laws and regulations. The Respondent willfully violated the applicable laws and regulations. The Respondent had full control over the occurrence of the violation. The violation was foreseeable.</p> <p>(J) Any other factor(s) that may be relevant in determining the amount of a penalty: Considered, but not utilized for this calculation.</p>		
<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		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