

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF COMPLIANCE & INSPECTION

IN RE: DOMENIC LOMBARDI REALTY, INC.
Yonatan Mabat

FILE NO.: OCI-SR-18-4

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 the DEM's jurisdiction.

B. Facts

- (1) The property is located at 1151 Danielson Pike, Assessor's Plat 27, Lot 36 in the Town of Scituate, Rhode Island (the "Property").
- (2) Yonatan Mabat ("Mabat") owns the Property.
- (3) Mabat purchased the Property from DOMENIC LOMBARDI REALTY, INC. ("Lombardi") on 18 December 2014.
- (4) Lombardi owned the Property from 20 April 1987 to 12 July 2002 and from 11 September 2008 to 18 December 2014.
- (5) The DEM received the following reports that documented the presence of elevated levels of petroleum, volatile organic compounds, semi-volatile organic compounds and metals in the groundwater and the soil on the Property:
 - (a) On 31 July 1987, a report titled *Preliminary Assessment of R&R Jewelry, Scituate, Rhode Island*, that was prepared by the Environmental Protection Agency;
 - (b) On 14 November 1989, a report titled *Final Screening Site Inspection, R&R Jewelry, Scituate, Rhode Island*, that was prepared by NUS Corporation;
 - (c) On 15 September 1994, a report titled *Site Inspection Prioritization Report for R&R Jewelry, Inc., Scituate, Rhode Island*;

- (d) In February 2000, a report titled *Removal Program Preliminary Assessment/Site Investigation for the R&R Jewelry Site, Scituate, Rhode Island, 27 October 1999, 18 November 1999 and 19 through 21 January 2000*, that was prepared by Roy F. Weston, Inc.;
 - (e) On 6 July 2000, a report titled *Final Expanded Site Inspection Report, R&R Jewelry*, that was prepared by Roy F. Weston, Inc.;
 - (f) In January 2001, a report titled *After Action Report for the R&R Jewelry Removal Site, Scituate, Rhode Island*, that was prepared by Roy F. Weston, Inc.
 - (g) On 30 December 2003, a report titled *Preliminary Assessment/Site Investigation Activities at the R&R Jewelry Site*, that was prepared by Roy F. Weston, Inc.;
 - (h) On 31 December 2003, a report titled *Health Consultation for R&R Jewelry, Incorporated, Scituate, Rhode Island*, that was prepared by the Agency for Toxic Substance and Disease Registry;
 - (i) In June 2004, a report titled *After Action Report for the R&R Jewelry Removal Site, Scituate, Rhode Island, 12 February 2004 through 27 April 2004*, that was prepared by Weston Solutions, Inc.; and
 - (j) On 19 August 2004, a report titled *Final Site Reassessment Memorandum for R&R Jewelry, Inc., Scituate, Rhode Island*, that was prepared by Weston Solutions, Inc.
- (6) On 12 March 2009, the DEM issued a Letter of Responsibility (“LOR”) to Lombardi by certified mail as the Property owner and Responsible Party. The LOR required Lombardi to perform a site investigation (“SI”) and submit a site investigation report (“SIR”) to the DEM in accordance with Rule 7 of the DEM’s *Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases* (the “Remediation Regulations”) within 90 days of receipt of the LOR.
- (7) On 18 March 2009, the LOR was delivered to Lombardi.
- (8) On 26 January 2015, the DEM issued a LOR to Mabat by certified mail as the Property owner and Responsible Party. The LOR required Mabat to perform a SI and submit a SIR to the DEM in accordance with Rule 7 of the DEM’s Remediation Regulations within 90 days of receipt of the LOR.
- (9) On 20 March 2015, the LOR was delivered to Mabat.

- (10) On 29 September 2015, the DEM inspected the Property and spoke with Mabat at the time of the inspection. Mabat informed the DEM of the following:
- (a) He replaced/repairs parts of the pump system for the 104-foot deep drinking water supply well on the Property (the “Well”);
 - (b) He connected the piping for the Well to the building on the Property;
 - (c) The Well supplies water to a restroom (sink, toilet and shower); and
 - (d) The wastewater from the restroom discharges to an onsite wastewater treatment system (“OWTS”) on the Property.
- (11) On 16 April 2016, the DEM received a report titled *FINAL EXPANDED TRIP REPORT FOR R&R JEWELRY SITE ASSESSMENT SCITUATE, RHODE ISLAND*, that was prepared by Weston Solutions, Inc. The report stated the following:
- (a) Water samples were collected on 28 October 2015 and 5 November 2015 from the Well and from a 500-foot deep drinking water supply well on an adjacent property (the “Adjacent Well”);
 - (b) Carbon tetrachloride, chloroform, acetone and 2-butanone were present in the water in the Well;
 - (c) Carbon tetrachloride was present in the Well at a concentration that exceeded the *GA Groundwater Objectives* set forth in the DEM’s Remediation Regulations;
 - (d) Carbon tetrachloride, chloroform, trichloroethylene, acetone and dibromochloromethane were present in the water in the Adjacent Well; and
 - (e) Carbon tetrachloride and chloroform were present in the Adjacent Well at a concentration that exceeded the *GA Groundwater Objectives* set forth in the DEM’s Remediation Regulations.
- (12) As of the date of this Notice of Violation (“NOV”), Lombardi and Mabat have failed to respond to or comply with the LOR.

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) **DEM's Remediation Regulations Section 4.02** – requiring a party that is notified of a release or presence of hazardous materials to initiate investigation and act.
- (2) **DEM's *Groundwater Quality Rules, Rule 8.3*** – prohibiting operating or maintaining a facility in a manner that may result in the discharge of any pollutant to the groundwater without the DEM's approval

D. Order

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

- (1) **IMMEDIATELY** cease use of the Well. No use of the Well or any groundwater on the Property is allowed without the DEM's approval.
- (2) **IMMEDIATELY** cease the discharge of wastewater to the OWTS. No use of the OWTS is allowed without the DEM's approval.
- (3) **Within 90 days of receipt of the NOV**, conduct a SI in accordance with the Section 7.00 of the DEM's Remediation Regulations.
- (4) **Within 180 days of receipt of the NOV**, submit a SIR in accordance with Section 7.00 of the DEM's Remediation Regulations. The SIR shall include:
 - (a) The SIR checklist in accordance with Section 7.08 of the DEM's Remediation Regulations;
 - (b) At least two remedial alternatives other than no action/natural attenuation;
 - (c) Plans for the re-use or redevelopment of the Property; and
 - (d) A schedule to complete the proposed work.
- (5) The SIR 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, you must submit to the DEM a modified report or additional information necessary to correct the deficiencies.
- (6) Upon approval of the SIR by the DEM, comply with all the remaining requirements of the DEM's Remediation Regulations within the deadlines specified by the DEM.

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:

\$15,891

- (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, cashier's check or money order made payable to the "General Treasury - Environmental Response Fund," 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 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.
- (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.

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's 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 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
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 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) An original signed copy of the NOV is being forwarded to the Town of Scituate, 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 23-18.9-13, as is or as amended.
 - (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 the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey D'Amadio Tyrrell of the DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 7407.

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

By: _____
David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

Yonatan Mabat
1151 Danielson Pike
Scituate, RI 02857

DOMENIC LOMBARDI REALTY, INC.
c/o Jean F. Lombardi, Registered Agent
88 West Warwick Avenue
P.O. Box 456
West Warwick, RI 02893

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, SITE REMEDIATION
 File No.: OCI-SR-18-4
 Respondent: Yonatan Mabat and DOMENIC LOMBARDI REALTY, 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) – Site Investigation	Type I (\$25,000 Max. Penalty)*	Major	\$12,500	1 violation	\$12,500
SUB-TOTAL					\$12,500

*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 COMPLY. 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.			
DESCRIPTION OF BENEFIT	CALCULATION		AMOUNT
Completion of SI and SIR. The economic benefit of noncompliance was determined by using an EPA computer model titled <i>BEN</i> that performs a detailed economic analysis. The dates, dollar amounts and values used in this analysis are listed in this table.	<ul style="list-style-type: none"> ▪ Profit Status ▪ Filing Status ▪ Initial Capital Investment ▪ One-time Non-depreciable Expense ▪ Annual Recurring Costs ▪ First Month of Noncompliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	For profit other than a C-Corp Active \$0 \$20,000 \$0 April 2015 31 December 2018 31 December 2018 4.6%	\$3,391
SUB-TOTAL			\$3,391

ADMINISTRATIVE PENALTY SUMMARY (continued)

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 = \$15,891

PENALTY MATRIX WORKSHEET

CITATION: Site Investigation
 VIOLATION NO.: C (1)

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;"><u> </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><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><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10A.1.b of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent failed to complete the SI and the SIR. Completion of the SI and SIR and remediation of the Property are of major importance to the regulatory program. Failure to comply prolongs the threat of human exposure to the contaminants of concern and increases the possibility of further environmental harm. (2) Environmental conditions: The Property is in a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. (3) Amount of the pollutant: Unknown. (4) Toxicity or nature of the pollutant: Laboratory analysis of groundwater samples obtained from drinking water wells on the Property and an adjacent property revealed the presence of volatile organic compounds (carbon tetrachloride, chloroform, trichloroethylene, acetone, 2-butanone, dibromochloromethane). The most recent samples collected in 2015 showed concentrations of carbon tetrachloride and chloroform that exceed the <i>GA Groundwater Objectives</i> set forth in the DEM's Remediation Regulations. The compounds are hazardous and toxic to humans. (5) Duration of the violation: Approximately 5 1/2 years for Lombardi - June 2009 to December 2014 and approximately 3 years for Mabat – June 2015 to present. (6) Areal extent of the violation: Considered, but not utilized for this calculation. 		
(continued)		

(continued from the previous page)

- (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 completing the SI and SIR. Respondents have yet to mitigate the noncompliance despite receiving the LOR from the 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 for 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:** Negligence is attributable to Respondents for the failure to comply with the DEM's Remediation Regulations. Mabat, as owner of the Property, and Lombardi, as the former owner of the Property and current mortgage holder, have/had complete control over the occurrence of the violation.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u> X </u> MAJOR	MODERATE	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 \$12,500	\$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	\$1,250 to \$2,500	\$250 to \$1,250