

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Manafort Brothers Incorporated**

**FILE No.: WP14-93  
X-ref RIPDES RIR100844**

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. Facts

- (1) The property is the Providence Viaduct Bridge No. 578 ("Bridge 578") on Interstate 95 in the city of Providence, Rhode Island (the "Property").
- (2) On 5 April 2013 the DEM authorized the DOT to discharge storm water associated with the reconstruction of Bridge 578 under the 2008 General Permit for Stormwater Discharge Associated with Construction Activity ("2008 General Permit"). The permit authorization number is RIPDES No. RIR100844 (the "Storm Water Permit").
- (3) On 5 April 2013 the Respondent certified that it is responsible for complying with the requirements of the Storm Water Permit.
- (4) On 24 September 2013 the DEM issued a new general permit to discharge storm water associated with construction activity ("2013 General Permit"). The effective date of the 2013 General Permit was 26 September 2013 ("Effective Date").
- (5) In accordance with Part D.3.a of the 2013 General Permit, upon the Effective Date the DOT was authorized pursuant to the Storm Water Permit to discharge storm water under the 2013 General Permit.
- (6) The Storm Water Permit requires the Respondent to:
  - (a) Design, install and maintain effective erosion, runoff and sediment controls;
  - (b) Prevent daily construction activities from causing pollution; and

- (c) Ensure that all erosion, runoff, sediment and pollution prevention controls remain in effective operating condition and are protected from activities that would reduce their effectiveness.
- (7) On 13 August 2014 the DEM inspected the Property during a rain storm. The inspection revealed that storm water laden with sediment was flowing from the Property onto Promenade Street and entering into the Woonosquatucket River and that no erosion, runoff or sediment controls were installed.
- (8) On 13 August 2014 the DEM received electronic mail from Steve Soderlund, the DOT's resident engineer. Mr. Soderlund stated the following:
  - (a) There was an erosion issue;
  - (b) Most of the sediment was being retained within a temporary coffer dam, but some sediment was entering the Woonosquatucket River; and
  - (c) The Respondent responded quickly and installed stone and hay bales to control sediment runoff from the Property from entering onto Promenade Street and into the Woonosquatucket River.
- (9) The Respondent failed to comply with the Storm Water Permit.

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's Water Pollution Act Section 46-12-5(b)** – requiring the discharge of any pollutant into waters of the State comply with the terms and conditions of a permit and applicable regulations.
- (2) **DEM's Water Quality Regulations**
  - (a) **Rule 11(B)** – requiring the discharge of pollutants into the waters of the State comply with the terms and conditions of a permit issued by DEM.
  - (b) **Rule 16(A)** – mandating compliance with all terms, conditions, management practices and operation and maintenance requirements set forth in a permit.
- (3) **DEM's Regulations for the Rhode Island Pollutant Discharge Elimination System, Rule 14.02(a)** – requiring the permittee to comply with all conditions of a permit issued by DEM.

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:

**Six Thousand Two Hundred and Fifty Dollars (\$6,250)**

- (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 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 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.

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's 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 the 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  
One Capitol Hill, 2<sup>ND</sup> 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:
- Christina Hoefsmit, 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 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 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) Christina Hoefsmit 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 \_\_\_\_\_  
the within Notice of Violation was forwarded to:

Manafort Brothers Incorporated  
c/o Corporation Service Company, Registered Agent  
222 Jefferson Boulevard, Suite 200  
Warwick, RI 02888

by Certified Mail.

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## ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution  
 File No.: WP 14-93  
 Respondent: Manafort Brothers Incorporated

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), & C(3) – Failure to comply with permit	Type I (\$25,000 Max. Penalty)*	Minor	\$6,250	1 violation	\$6,250
<b>SUB-TOTAL</b>					<b>\$6,250</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 = \$6,250**

**PENALTY MATRIX WORKSHEET**

CITATION: Failure to comply with permit  
 VIOLATION NO.: C(1), C(2) and C(3)

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

**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 failed to comply with the permit by installing and maintaining effective erosion, runoff and sediment controls. Compliance with a permit is important to the regulatory program.
- (B) **Environmental conditions:** Sediment laden storm water from the project flowed onto Promenade Street and into the Woonosquatucket River.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** Considered, but not utilized for this calculation.
- (E) **Duration of the violation:** Full duration unknown - the DEM received a complaint call at 8:20 am on 13 August 2014 and the DEM inspector observed the violation at 9:30 am on 13 August 2014. Shortly thereafter, the Respondent installed stone and hay bales to control the runoff.
- (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 action to comply with the permit. No erosion, sediment or runoff controls were installed to prevent pollution. The Respondent took quick action to mitigate the violation by installing the appropriate controls.
- (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:** Negligence is attributable to the Respondent for its failure to comply with the permit.
- (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>\$6,250</b>	\$1,250 to \$2,500	\$250 to \$1,250