

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Thomas J. McMaugh, Jr.
Keith E. McMaugh**

FILE NO.: OCI-OWTS-20-19

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 DEM's jurisdiction.

B. Administrative History

On April 8, 2020, DEM issued a Notice of Intent to Enforce ("NIE") to Respondents by certified mail for the violations that are the subject of this Notice of Violation ("NOV"). The NIE required specific actions to correct the violations. On April 23, 2020, in response to the NIE, DEM received a letter from Walker Engineering, Ltd. on behalf of Respondents. The letter described the actions that were taken and would be taken to comply with the NIE, which included the replacement of the septic system on the property. Keith McMaugh sent electronic correspondence to DEM on several occasions advising DEM of the status of the work; however, as of the date of the NOV, Respondents have failed to apply to DEM to replace the septic system on the property and have failed to comply with the NIE.

C. Facts

- (1) The property is located at 4 St. Mary's Road, Assessor's Plat 30, Lot 17 in Scituate, Rhode Island (the "Property").
- (2) Respondents own the Property.
- (3) On March 25, 2020, DEM inspected the Property. The inspection revealed that the onsite wastewater treatment system ("OWTS") at the Property has failed and wastewater was discharged from the OWTS to the surface of the ground as evidenced by:
 - (a) Observation of lush green vegetation and evidence of the breakout of fluids on the surface of the ground in the area around the OWTS.
 - (b) Photographs showing lush green vegetation and evidence of the breakout of fluids on the surface of the ground in the area around the OWTS.
 - (c) Detection of odors associated with wastewater in the area around the OWTS.

- (4) As of the date of the NOV, Respondents have failed to comply with Rhode Island's *Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems* [effective November 25, 2018 to December 28, 2021] (the "OWTS Rules").

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) OWTS Rules
 - (a) **Part 6.9(H)** – prohibiting the discharge of wastewater to the surface of the ground.
 - (b) **Part 6.18(G)** – requiring submittal of a repair application for a failed OWTS.

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) **IMMEDIATELY** take steps to reduce the discharge of sewage to the OWTS, such as through the installation and use of water conservation devices and fixtures and arrange to have the OWTS pumped by a permitted septage transporter as frequently as necessary to prevent the OWTS from overflowing or breaking out onto the surface of the ground. A list of permitted septage transporters can be obtained by contacting DEM's Office of Water Resources – OWTS Permitting at 222-6820 or from DEM's web page at: www.dem.ri.gov/programs/benviron/waste/transpor/septage.pdf.
- (2) **IMMEDIATELY** cease use of any/all laundry washing machine(s) located on the Property. No laundry use is allowed until the OWTS is fully repaired.
- (3) **Within 30 days of receipt of the NOV**, retain a licensed OWTS designer and have the designer apply to DEM to replace the OWTS in accordance with Rhode Island's *Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems* [effective January 4, 2022 to Current] (the "Application"). The list of licensed OWTS designers can be obtained by contacting the Office of Water Resources at 222-4700 or from DEM's web page at: www.dem.ri.gov/programs/benviron/water/licenses/OWTS/pdfs/deslist.pdf.

- (4) The Application shall be subject to DEM's review and approval. Upon review, 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 Application, submit to DEM a modified proposal or additional information necessary to correct the deficiencies.
- (5) Commence work on the project in accordance with the method approved by DEM within 20 days of approval (unless otherwise expressly authorized by DEM in writing to commence work later), and complete such work within 120 days of said approval or other date specified by 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:

\$2,200

- (2) The proposed administrative penalty is calculated pursuant to Rhode Island's *Rules and Regulations for Assessment of Administrative Penalties* [effective January 4, 2022 to Current] (the "Penalty Rules") and must be paid to DEM within 30 days of your receipt of the NOV. Penalty payments shall be by one of two methods:

- (a) By certified check, cashier's check, or money order made payable to the **General Treasury – Water and Air Protection Program** and forwarded to:

Administrator, DEM Office of Compliance and Inspection
235 Promenade Street, Suite 220
Providence, RI 02908-5767.

- (b) By wire transfer in accordance with instructions provided by DEM.
- (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 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 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 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).
 - (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 Rhode Island's *Rules and Regulations for the Administrative Adjudication Division* [effective January 4, 2022 to Current].
- (2) A copy of each request for hearing must also be forwarded to:

Joseph J. LoBianco, Esq.
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 regarding 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 42-17.1-2(13), as amended.
- (7) The NOV does not preclude DEM 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 DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Stephen Tyrrell of DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 2777406 or at stephen.tyrrell@dem.ri.gov.

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, Administrator
Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

Thomas J. McMaugh, Jr.
4 St. Mary's Road
N. Scituate, RI 02857

Keith E. McMaugh
4 St. Mary's Road
N. Scituate, RI 02857

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, OWTS
 File No.: OCI-OWTS-20-19
 Respondents: Thomas J. McMaugh, Jr. and Keith McMaugh

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(1)(a) – Discharge of Wastewater to Ground Surface	Type I <i>(\$1,000 Max. Penalty) *</i>	Major	\$1,000	1 violation	\$1,000
D(1)(b) – Failure to Apply to DEM to Repair Failed OWTS	Type I <i>(\$1,000 Max. Penalty) *</i>	Major	\$1,000	1 violation	\$1,000
<i>SUB-TOTAL</i>					\$2,000

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

ADMINISTRATIVE PENALTY SUMMARY (continued)

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 COMPLY. 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.		
<i>DESCRIPTION OF BENEFIT</i>	<i>CALCULATION</i>	<i>AMOUNT</i>
Cost of septic system pumping	1 occurrence @ \$200 each pumping	
<i>SUB-TOTAL</i>		\$200

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 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 = \$2,200

PENALTY MATRIX WORKSHEET

CITATION: Discharge of Wastewater to Ground Surface
 VIOLATION NO.: D (1)(a)

TYPE		
<u> X </u> TYPE I DIRECTLY related to protecting health, safety, welfare, or environment.	___TYPE II INDIRECTLY related to protecting health, safety, welfare, or environment.	___TYPE III INCIDENTAL to protecting health, safety, welfare, or environment.
DEVIATION FROM THE STANDARD THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10A.1.b of the Penalty Rules.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Wastewater was discharged to the ground surface from a failed OWTS. Preventing the discharge of wastewater to the surface of the ground is a primary objective of the regulations and a major objective of the regulatory program. (2) Environmental conditions: The Property includes a single-family home in a moderately populated neighborhood. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: Sewage contains many kinds of bacteria, viruses, and parasites that can cause serious or fatal diseases in both humans and animals, as well as being the source of extremely objectionable odors. (5) Duration of the violation: Full duration unknown. The inspection on March 25, 2020 revealed evidence wastewater breakout to the surface of the ground. (6) Areal extent of the violation: Considered, but not utilized for this calculation. (7) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance: Respondents failed to have the system pumped as necessary to prevent discharge to the ground surface. (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: Respondents had full control over the violation. The violation was foreseeable. (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 \$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

PENALTY MATRIX WORKSHEET

CITATION: Failure to Apply to DEM to Repair Failed OWTS

VIOLATION NO.: D (1)(b)

TYPE		
<input checked="" type="checkbox"/> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.	<input type="checkbox"/> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.	<input type="checkbox"/> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10A.1.b of the Penalty Rules.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents failed to submit a repair application for the failed OWTS. The repair of failed OWTSs is a primary objective of the regulations and a major objective of the regulatory program. (2) Environmental conditions: The Property includes a single-family home in a moderately populated neighborhood. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation. (5) Duration of the violation: Full duration unknown — almost 2 years. The violation was first observed by DEM on March 25, 2020. (6) Areal extent of the violation: Considered, but not utilized for this calculation. (7) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance: Respondents failed to retain a licensed OWTS designer to prepare and submit a repair application despite receiving the NIE requiring 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: Respondents had full control over the violation. Respondents are fully aware of the necessary actions to correct the violation. (10) Any other factor(s) that may be relevant in determining the amount of a penalty: The notice issued on 8 April 2020 stated the penalty could be up to \$1,000 per day. 		
<input checked="" type="checkbox"/> MAJOR	MODERATE	MINOR

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