

**STATE OF RHODE ISLAND  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Vilma Perez**

**FILE NO.: OCI-WP-20-133**

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. Administrative History

On 11 May 2017, DEM issued an Expedited Citation Notice (“ECN”) to Respondent by certified mail for, among other issues, the release of oil to the ground at the property that is the subject of this Notice of Violation (“NOV”). The ECN required payment of an administrative penalty. On 15 May 2017, the ECN was delivered to Respondent. Respondent did not respond to or comply with the ECN, and the ECN expired. On 1 October 2018, DEM issued a letter to Respondent by certified mail. The letter informed Respondent that she failed to comply with the ECN and that if she paid the penalty assessed in the ECN, DEM would take no further action; otherwise, DEM may issue a Notice of Violation. On 4 October 2018, the letter was delivered to Respondent. Respondent failed to respond to or comply with the letter. On October 8, 2019, DEM issued a Notice of Intent to Enforce (“NIE”) to Respondent by certified mail. The NIE informed Respondent of the continued noncompliance. On 12 October 2019, the NIE was delivered. Respondent failed to respond to the NIE.

C. Facts

- (1) The property is located at 16 Gwinett Court in the City of Providence, Rhode Island (the “Property”). The Property is vacant land.
- (2) The Property abuts 60 Reservoir Avenue (the “Reservoir Avenue Property”), which includes a commercial building.
- (3) Respondent owned the Property during the time relevant to the NOV.

- (4) On 16 October 2015, DEM inspected the Property. The inspection revealed the following:
  - (a) Approximately twenty-six 55-gallon containers holding used oil and other unidentified liquid wastes were present;
  - (b) Several containers were in poor condition due to deterioration, which resulted in the release of used oil onto the land (the “Release”) of the Property and onto Gwinnett Court as evidenced by visual observations and photographs of a blackish substance on the asphalt consistent with oil; and
  - (c) No evidence that action was taken to contain and clean up the Release or transfer the used oil to containers that were in good condition.
- (5) DEM’s inspector spoke with Carlos Reyes (“Reyes”) at the time of the inspection. Reyes stated that:
  - (a) He owns and operates Reservoir Auto & Alignment Repair Service, LLC at the Reservoir Avenue Property;
  - (b) He has been at this location for 8 years;
  - (c) Respondent and Robin Perez own the Reservoir Avenue Property and several properties around Gwinnett Court;
  - (d) Robin Perez operated a previous business at the Reservoir Avenue Property known as RESERVOIR ALIGNMENT & FRAME SERVICES, LLC (“RESERVOIR”);
  - (e) The containers were generated by Robin Perez; and
  - (f) He would assume responsibility and oversee the removal and proper disposal of the containers.
- (6) On 6 November 2015, Reyes procured the services of Western Oil, Inc. to remove 300 gallons of used oil from the Property.
- (7) DEM reviewed the Rhode Island Secretary of State online database, which revealed the following:
  - (a) On 8 April 2004, RESERVOIR received a Certificate of Registration/Organization;
  - (b) The principal office for RESERVOIR was the Reservoir Avenue Property;
  - (c) The purpose identified for RESERVOIR was alignment and frame services;

- (d) Vilma Perez was identified as the manager of RESERVOIR; and
- (e) On 19 June 2007, the Certificate of Registration/Organization for RESERVOIR was revoked.
  
- (8) DEM subsequently reviewed its records and determined that Respondent did not verbally report the Release to DEM and did not submit a written report to DEM of the Release.
- (9) On 12 July 2016, DEM inspected the Property and confirmed that the containers were removed and that the Release was cleaned up.
- (10) On 16 August 2016, DEM received additional written verification from Reyes that the containers and oil spill cleanup debris were properly disposed of by Western Oil, Inc.

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) **R.I. Gen. Laws Section 46-12.5.1-3** – prohibiting discharges of oil into or upon the waters or land of the State except by regulation or by permit from DEM.
- (2) ***Oil Pollution Control Regulations* [effective 31 December 2001 to 2 May 2018] (the “OPC Regulations”), Section 6(a)** – prohibiting the placement of oil or pollutants into the waters or land of the State or in a location where they are likely to enter the waters of the State.
- (3) **OPC Regulations, Section 12(b)(2)** – requiring responsible parties to immediately stop a discharge of oil and begin containment and removal of the oil and waste material.
- (4) **OPC Regulations, Section 12(b)(3)** – requiring responsible parties to immediately report a release of oil to DEM.
- (5) **OPC Regulations, Section 12(b)(5)** – requiring responsible parties to submit a written report to DEM within 10 days of an oil release.

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:

**\$6,250**

- (2) The proposed administrative penalty is calculated pursuant to the *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* [effective 19 March 2021 to Current] (the “Penalty Regulations”) and must be paid to 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 – Water and Air Protection Program” and shall be forwarded to DEM’s Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, RI 02908-5767.
- (3) Penalties assessed against Respondent 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.

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 DEM's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Paragraphs 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 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 *Rules and Regulations for the Administrative Adjudication Division (250-RICR-10-00-1)* [effective 27 November 2014 to Current].

- (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, Suite 425  
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) 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 DEM's Office of Legal Services at (401) 222-6607 or at [joseph.lobianco@dem.ri.gov](mailto:joseph.lobianco@dem.ri.gov). All other inquiries should be directed to Tracey Tyrrell of DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 2777407 or at [tracey.tyrrell@dem.ri.gov](mailto:tracey.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 F above.

FOR THE DIRECTOR

By: \_\_\_\_\_  
David E. Chopy, Administrator  
DEM Office of Compliance and Inspection

Dated: \_\_\_\_\_

CERTIFICATION

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

Vilma Perez  
1348 Douglas Pike  
Smithfield, RI 02917

by Certified Mail.

\_\_\_\_\_



# ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Oil Pollution  
 File No.: OCI-WP-20-133  
 Respondent: Vilma Perez

<b>GRAVITY OF VIOLATION</b>					
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), D (2) and D (3) – Release of Oil and Failure to Take Remedial Action	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$5,000	1 violation	\$5,000
D (4) and D (5) – Oil Spill Reporting	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,250	1 violation	\$1,250
<b>SUB-TOTAL</b>					<b>\$6,250</b>

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

<b>ECONOMIC BENEFIT FROM NON-COMPLIANCE</b>
<p>COSTS OF COMPLIANCE, EQUIPMENT, O&amp;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:</p> <ul style="list-style-type: none"> <li>- THERE IS NO IDENTIFIABLE BENEFIT FROM NON-COMPLIANCE; OR</li> <li>- THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED.</li> </ul>
<p>A review of the record in this matter has revealed that Respondent has either enjoyed no identifiable benefit from the non-compliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.</p>

<b>COST RECOVERY</b>
<p>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.</p>
<p>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.</p>

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$6,250**

# PENALTY MATRIX WORKSHEET

CITATION: Release of Oil and Failure to Take Remedial Action

VIOLATION NOs.: D (1), D (2) and D (3)

<b>TYPE</b>		
<p style="text-align: center;"><u>  X  </u> <b>TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u>      </u> <b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u>      </u> <b>TYPE III</b></p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Part 1.10 (A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> <li>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent allowed for the release of oil to the land of the State. The release of oil to the land of the State is prohibited by Rhode Island law and the OPC Regulations. Respondent failed to immediately stop the discharge of oil and begin containment and removal of the oil and waste materials. The failure to comply presumably increased the likelihood of threats to public health and safety and the environment.</li> <li>(2) <b>Environmental conditions:</b> Twenty-six 55-gallon drums of used oil and other unknown liquids were observed by DEM as present on the Property, and several containers had deteriorated, releasing oil to the land of the Property and onto Gwinett Court, a public road. The Property is in a densely developed area with numerous proximate residential and commercial properties. The Property is in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells in the vicinity. The Property is within a groundwater reservoir and an environmental justice area. The Property is in the Pawtuxet River watershed.</li> <li>(3) <b>Amount of the pollutant:</b> Unknown.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> Oil can cause significant impacts to subsurface soils and groundwater if released to the environment. Certain petroleum constituents may have adverse impacts to public health and the environment.</li> <li>(5) <b>Duration of the violation:</b> Full duration unknown – at least 9 months. The release was first observed by DEM on 16 October 2015 and was not cleaned up until on or about 12 July 2016.</li> <li>(6) <b>Areal extent of the violation:</b> Spillage of oil was observed across much of the 3,000 square foot outdoor storage area. The exact area was not calculated.</li> </ol>		
(continued)		



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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by immediately stopping the discharge of oil upon its initial discovery and immediately taking remedial action. Respondent made no apparent effort to mitigate the noncompliance. The noncompliance was mitigated by Respondent's tenant, who procured the services of a contractor to clean up the release and properly dispose of the containers and oil spill cleanup debris.
- (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:** Respondent, as the owner of the Property, had control over the occurrence of the violation. It was foreseeable that poorly maintained steel containers could eventually fail and cause a release of oil to the land of the State. Negligence is attributable to Respondent for the failure to comply immediately with the oil spill mitigation requirements set forth in the OPC Regulations.
- (10) **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>  X  </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>\$5,000</b>	\$1,250 to \$2,500	\$250 to \$1,250

# PENALTY MATRIX WORKSHEET

CITATION: Oil Spill Reporting  
 VIOLATION NOs.: (4) and (5)

<b>TYPE</b>		
___ <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u><b>X</b></u> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	___ <b>TYPE III</b> <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
<b>DEVIATION FROM THE STANDARD</b> THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Part 1.10 (A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> <li>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent failed to verbally report the release of oil to DEM and failed to submit a written report to DEM. The OPC Regulations require immediate notification and then submission of a written report within 10 days. The requirements to immediately report a spill and then submit a written report to DEM detailing the circumstances of the release are very important to the regulatory program because they provide vital information to DEM and reduce the potential for a spill or release to impact soil, surface waters and groundwater resources.</li> <li>(2) <b>Environmental conditions:</b> Considered, but not utilized for this calculation.</li> <li>(3) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> Oil can cause significant impacts to subsurface soils and groundwater if released to the environment. Certain petroleum constituents may have adverse impacts to public health and the environment.</li> <li>(5) <b>Duration of the violation:</b> Considered, but not utilized for this calculation.</li> <li>(6) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</li> </ol>		
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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** Respondent failed to take reasonable and appropriate steps to prevent and/or mitigate the non-compliance. Respondent failed to verbally report the release to DEM and has never submitted a written report to DEM.
- (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:** Respondent, as the owner of the Property, had control over the occurrence of the violation. Negligence is attributable to Respondent for the failure to comply with the oil spill reporting requirements set forth in the OPC Regulations.
- (10) **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>  X  </u> <b>MINOR</b>
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	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	\$1,250 to \$2,500 <b>\$1,250</b>	\$250 to \$1,250