

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Alexander Perry  
d/b/a Pyramid Painting**

**FILE NO.: AIR 10 – 14**

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

DEM verbally notified the Respondent of the violations on 24 June 2010 and informed the Respondent of the proper actions to take to comply with the DEM regulations. The Respondent continued to work in violation of the DEM regulations.

C. Facts

- (1) The subject properties are located at 27 Cushing Street in the city of Providence, Rhode Island (the “Cushing Street Property”) and 710 River Avenue in the city of Providence, Rhode Island (the “River Avenue Property”).
- (2) Respondent is a registered residential contractor doing business as Pyramid Painting.
- (3) On 24 June 2010, DEM inspected the Cushing Street Property. The inspection revealed the following:
  - (a) Exterior paint was being removed from the side of the dwelling with a power sander;
  - (b) Paint debris was evident on the front siding at the edge of a window (the “paint debris”);
  - (c) A field test by DEM of a sample of the paint debris was positive for lead; and
  - (d) The Respondent was directing the paint removal work.

- (4) On 25 June 2010, DEM inspected the Cushing Street Property. The inspection revealed the following:
- (a) Exterior paint was being removed from the dwelling with a power sander that was not equipped with a high efficiency particulate air (“HEPA”) vacuum unit;
  - (b) Paint debris was evident on plastic sheeting at the front of the dwelling (the “paint debris”);
  - (c) A field test by DEM of a sample of the paint debris was positive for lead;
  - (d) The plastic sheeting was not anchored to the ground or weighed down;
  - (e) One window on the side of the dwelling where paint was being removed was not closed and securely sealed from the outside; and
  - (f) The Respondent was directing the paint removal work.
- (5) On 28 June 2010, DEM inspected the Cushing Street Property. The inspection revealed that the property had been properly cleaned of all lead paint debris.
- (6) On 26 July 2010, DEM inspected the River Avenue Property. The inspection revealed the following:
- (a) Exterior paint was being removed from the dwelling with a scraping tool without misting or spraying of water onto the paint prior to the manual scraping;
  - (b) Paint debris was evident on the front porch of the dwelling (the “paint debris”);
  - (c) A field test by DEM of a sample of the paint debris was positive for lead;
  - (d) Fine paint dust was evident along the ground near the foundation of the dwelling;
  - (e) A power sander with a ten foot hose was observed in the garage. The power sander was near a vacuum that had no HEPA filter inside;
  - (f) The plastic sheeting was not anchored to the ground or weighed down;
  - (g) Abutters within fifty feet of the paint removal work were not notified; and
  - (h) The Respondent was directing the paint removal work.
- (7) On 28 July 2010, DEM inspected the River Avenue Property. The inspection revealed that the property had been properly cleaned of all lead paint debris.

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) **Air Pollution Control (“APC”) Regulation No. 24, Section 24.3.1(a)** – requiring written notification to adults residing within fifty feet of a structure from which lead paint is to be removed at least five days prior to the beginning of any lead paint removal from the exterior surface of the structure.
- (2) **APC Regulation No. 24, Section 24.4.1(c)** – requiring that ground sheeting be attached to the ground by staking, weighing down or other method to insure that it remains in place during the paint removal operation.
- (3) **APC Regulation No. 24, Section 24.4.1(d)** – requiring all windows on the walls to be machine sanded to be closed and securely sealed from the outside.
- (4) **APC Regulation No. 24, Section 24.7.1** – requiring that machine sanding and/or scraping shall be allowed only if the unit is controlled by a HEPA vacuum unit.
- (5) **APC Regulation No. 24, Section 24.7.2** – requiring that exterior surfaces must be misted with water prior to manual scraping.

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:

**Eleven Thousand Five Hundred Dollars (\$11,500.00)**

- (2) The proposed administrative penalty is calculated pursuant to the DEM Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the Director within twenty days of your receipt of this Notice of Violation (“NOV”). Payment shall be in the form of a certified 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 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 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  
235 Promenade Street, 3<sup>RD</sup> Floor  
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 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:

Joseph J. LoBianco, 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 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) Joseph J. LoBianco at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Martha Mulcahey of DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 7032.

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:

Alexander Perry  
d/b/a Pyramid Painting  
45 Bateman Avenue  
Cranston, RI 02920

by Certified Mail.

---



# ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, AIR

File No.: AIR 10 – 14

Respondent: Alexander Perry, d/b/a Pyramid Painting

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) – Failure to issue prior written notification	Type II (\$ <u>5,000</u> Max. Penalty)*	Minor	\$500	1 violation	\$500
D (2) and (3) – Failure to prepare worksite properly	Type I (\$ <u>10,000</u> Max. Penalty)*	Moderate	\$ 2,500	2 violations	\$5,000
D (4) – Failure to equip power sander with HEPA filter vacuum unit	Type I (\$ <u>10,000</u> Max. Penalty)*	Moderate	\$3,000	2 violations	\$6,000
<b>SUB-TOTAL</b>					<b>\$11,500.00</b>

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

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$ 11,500.00**

# PENALTY MATRIX WORKSHEET

CITATION: Failure to issue prior written notification  
 VIOLATION NO.: D (1)

TYPE		
<p style="text-align: center;">___ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u>X</u> 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		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent failed to provide written notification to the neighbors prior to the removal of lead paint from the exterior of the River Avenue dwelling. Written notification of an impending lead paint removal operation is to be provided for the protection of the public health, safety, welfare and the environment.</p> <p>(B) <b>Environmental conditions:</b> The River Avenue dwelling is in an urban residential neighborhood. The distance to each of the neighboring houses is estimated as less than fifty feet. The dwelling was unoccupied at the time of the DEM inspection.</p> <p>(C) <b>Amount of the pollutant:</b> Not relevant.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Lead is a persistent, bioaccumulative toxic chemical.</p> <p>(E) <b>Duration of the violation:</b> Unknown. DEM documented the violation on 26 July 2010.</p> <p>(F) <b>Areal extent of the violation:</b> Not relevant.</p> <p style="text-align: right;">(continued)</p>		



(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by issuing prior written notifications to the neighbors.
- (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:** DEM had verbally advised the Respondent on 24 June 2010 (during an inspection of the Cushing Street property) to comply with all applicable requirements contained in APC Regulation No. 24.
- (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 his not having issued prior written notifications to the neighbors.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

<b>MAJOR</b>	<b>MODERATE</b>	<u>  <b>X</b>  </u> <b>MINOR</b>
--------------	-----------------	----------------------------------

Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	<b>MODERATE</b>	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	<b>MINOR</b>	\$1,000 to \$2,500	\$500 to \$1,000 <b>\$500</b>	\$100 to \$500

## PENALTY MATRIX WORKSHEET

CITATION: Failure to prepare worksite properly  
 VIOLATION NO.: D (2) and (3)

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><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent failed to set down adequate ground sheeting to collect debris from the exterior lead paint removal work at the Cushing Street dwelling and the River Avenue dwelling. The regulatory requirement for properly covering the ground prior to commencing a lead paint removal operation is directly related to the protection of the public health, safety, welfare and the environment. The Respondent also failed to close and/or seal all windows on the working face during the power sanding paint removal work at the Cushing Street dwelling. An unsealed window on the working face was exposed to lead paint dust. Lead paint dust penetrating to the windowsills or in between framing components could potentially cause contamination to the interior of the residence. The regulatory requirement for having all windows closed and securely sealed from the outside directly relates to preventing lead poisoning.</p> <p>(B) <b>Environmental conditions:</b> The Cushing Street dwelling and the River Avenue dwelling are in residential areas with single family homes. The distance to the neighboring houses is estimated as less than fifty feet.</p> <p>(C) <b>Amount of the pollutant:</b> Lead paint removal dust and debris was observed on the ground, on the window sills, and on the front porch of the River Avenue dwelling.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Lead is a persistent, bioaccumulative toxic chemical.</p>		
(continued)		

(continued from the previous page)

- (E) **Duration of the violation:** Unknown. DEM documented the violations at the Cushing Street dwelling on 24 June 2010 and 25 2010 and documented the violations at the River Avenue dwelling on 26 July 2010.
- (F) **Areal extent of the violation:** The extent of the violation appears to be limited to each property at which the lead paint removal work took place.
- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to properly prepare the worksite to comply with APC Regulation No. 24. The Respondent mitigated the violation by properly cleaning up the lead paint debris at each property.
- (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:** DEM had verbally advised the Respondent on 24 June 2010 (during an inspection of the Cushing Street property) to comply with all applicable requirements contained in APC Regulation No. 24.
- (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 violations were foreseeable as the Respondent had been previously advised to comply with the requirements of APC Regulation No. 24. The Respondent had complete control over the lead paint removal work and should have installed all required controls and measures prior to commencing removal of lead paint.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

MAJOR	<u>  X  </u> MODERATE	MINOR
-------	-----------------------	-------

Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	<b>MODERATE</b>	\$2,500 to \$5,000 <b>\$2,500</b>	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

## PENALTY MATRIX WORKSHEET

CITATION: Failure to equip power sander with HEPA filter vacuum unit  
 VIOLATION NO.: D (4)

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><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent failed to have power sanders connected to HEPA filters for the exterior lead paint removal work. The regulatory requirement for HEPA filtration during any power sanding paint removal work is directly related to the protection of the public health, safety, welfare and the environment.</p> <p>(B) <b>Environmental conditions:</b> The Cushing Street dwelling and the River Avenue dwelling are in residential areas with single family homes. The distance to the neighboring houses is estimated as less than fifty feet.</p> <p>(C) <b>Amount of the pollutant:</b> Unknown. Evidence of paint dust from a power sander was observed on the ground along the foundation of the River Avenue dwelling and on inside screen windows and outside window sills of the River Avenue dwelling.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Lead is a persistent, bioaccumulative toxic chemical.</p> <p>(E) <b>Duration of the violation:</b> Unknown. DEM documented the violations at the Cushing Street dwelling on 24 June 2010 and 25 2010 and documented the violations at the River Avenue dwelling on 26 July 2010.</p> <p>(F) <b>Areal extent of the violation:</b> The areal extent of contamination could not be determined.</p>		
(continued)		

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent did not take reasonable steps to prevent noncompliance with APC Regulation No. 24. The Respondent mitigated the violation by properly cleaning up the lead paint debris at each property.
- (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:** DEM had previously instructed the Respondent to comply with all applicable requirements contained in APC Regulation No. 24.
- (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 violations were foreseeable as the Respondent had been previously advised to comply with the requirements of APC Regulation No. 24. The Respondent had complete control over the lead paint removal work and should have installed all required controls and measures prior to commencing removal of lead paint.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

MAJOR	<u>  X  </u> MODERATE	MINOR
-------	-----------------------	-------

Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	<b>MODERATE</b>	\$2,500 to \$5,000 <b>\$3,000</b>	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500