

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Rhode Island Convention Center Authority  
Manafort Brothers Incorporated  
Lockwood Remediation Technologies, LLC**

**FILE NOs.: OCI-WP-20-50  
and RIG85G033  
Permit Referral #19-01**

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. Facts

- (1) On 17 July 2018, DEM issued a permit to the Rhode Island Convention Center Authority (“RICCA”), Manafort Brothers Incorporated (“MBI”) and Lockwood Remediation Technologies, LLC (“LRT”) to discharge treated groundwater associated with the construction of the Garrahy Parking Garage Project to Providence River (the “Discharge”). The permit authorization number was RIPDES No. RIG85G033 (the “Permit”).
- (2) The Permit required Respondents to:
  - (a) Comply with a monthly average Discharge limit for Total Arsenic (“Arsenic”), Total Nickel (“Nickel”), Total Zinc (“Zinc”) and Total Copper (“Copper”) of 1.12 micrograms per liter (“ppb”), 6.62 ppb, 68.5 ppb and 2.98 ppb, respectively, and a maximum daily Discharge limit for Zinc and Copper of 76.11 ppb and 4.62 ppb, respectively (collectively, the “Limits”);
  - (b) Treat the groundwater through a series of tanks and filters (the “Treatment System”) to comply with the Limits;
  - (c) If the results show any violations of the Limits, cease operation of the Treatment System, re-evaluate, and if necessary, redesign the Treatment System prior to resuming operation of the Treatment System; and

- (d) Summarize monitoring results obtained during each calendar quarter and report these results to DEM in a Discharge Monitoring Report (“DMR”) that must be postmarked no later than the 15<sup>th</sup> day of the month following the completed quarter.
- (3) On 15 January 2019, DEM received the DMR for the quarter ending on 31 December 2018. The DMR included the following monitoring results (in ppb) that exceeded the Limits:

Parameter	Monthly Average	Daily Maximum
Arsenic	2.98	
Nickel	13.40	
Zinc	91.96	125
Copper	17.58	38.1

- (4) On or about 28 January 2019, the groundwater was redirected to the Narragansett Bay Commission sewerage collection system and the Discharge was terminated.
- (5) On 7 March 2019, DEM received the DMR for the quarter ending 31 March 2019. The DMR included the following monitoring results (in ppb) that exceeded the Limits:

Parameter	Monthly Average	Daily Maximum
Arsenic		
Nickel	16.48	
Zinc	122.5	131
Copper	4.28	5.7

- (6) Respondents failed to comply with the Permit by ceasing operation of the Treatment System. The Treatment System operated for approximately 3½ months from 9 October 2018 through 28 January 2019 in noncompliance with the Limits.

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) **Water Pollution Act, Section 46-12-5(b)** – requiring the discharge of any pollutant into the waters comply with the terms and conditions of a permit and applicable regulations.
- (2) **Water Quality Regulations (250-RICR-150-05-1) [effective 19 August 2018 to Current] (the “Water Quality Regulations”)**
- (a) **Part 1.13(B)** – requiring the discharge of pollutants into the waters of the State comply with the terms and conditions of an approval issued by DEM.

- (b) **Part 1.18(A)** – mandating compliance with all terms, conditions, management practices and operation and maintenance requirements set forth in the approval.
- (3) ***Regulations for the Rhode Island Pollutant Discharge Elimination System (250-RICR-150-10-1)*** [effective 7 October 2018 to Current] (the “**RIPDES Regulations**”), **Part 1.14(B)(1)** – 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:

**\$23,302**

- (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 & Air Protection Program” and shall be forwarded to DEM’s 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.

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 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 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:

Susan Forcier, 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 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) Susan Forcier of DEM's Office of Legal Services at (401) 222-6607 or at [susan.forcier@dem.ri.gov](mailto:susan.forcier@dem.ri.gov). All other inquiries should be directed to David E. Chopy of DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 77400 or at [david.chopy@dem.ri.gov](mailto:david.chopy@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 E 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:

Rhode Island Convention Center Authority  
c/o Daniel McConaghy, Executive Director  
One LaSalle Square – DDC  
Providence, RI 02903

Manafort Brothers Incorporated  
c/o CORPORATION SERVICE COMPANY, Registered Agent  
222 Jefferson Boulevard, Suite 200  
Warwick, RI 02888

LOCKWOOD REMEDIATION TECHNOLOGIES, LLC  
c/o INCORPORATING SERVICES, LTD, Resident 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 Nos.: OCI-WP-20-50 and RIG85G033  
 Respondents: RICCA, MBI and LRT

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) and C (3) – Failure to Comply with Permit	Type I <i>(\$25,000 Max. Penalty) *</i>	Moderate	\$6,250	1 violation	\$6,250
<b><i>SUB-TOTAL</i></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 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.			
DESCRIPTION OF BENEFIT	CALCULATION		AMOUNT
Discharge of contaminated groundwater with inadequate treatment. The cost was calculated using the fee charged by NBC to discharge to its sewerage system. 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"> <li>▪ Profit Status</li> <li>▪ Filing Status</li> <li>▪ Initial Capital Investment</li> <li>▪ One-time Non-depreciable Expense</li> <li>▪ Annual Recurring Cost</li> <li>▪ First Month of Noncompliance</li> <li>▪ Compliance Date</li> <li>▪ Penalty Due Date</li> <li>▪ Useful Life of Pollution Control</li> <li>▪ Equipment Annual Inflation Rate</li> <li>▪ Discount Compound Rate</li> </ul>	For Profit Corporation  C Corporation \$0 \$0 \$63,020 October 2018 28 January 2019 30 June 2021   8.1%	
<b><i>SUB-TOTAL</i></b>			<b>\$17,052</b>

## **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 = \$23,302**



# PENALTY MATRIX WORKSHEET

CITATION: Failure To Comply With Permit  
 VIOLATION NOs.: C (1), C (2) and C (3)

TYPE		
<u>  X  </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> TYPE III <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 Part 1.10(A)(1)(b) of the Penalty Regulations.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents failed to comply with the Limits. Compliance with the limits in a permit is a primary objective of Rhode Island's *Water Pollution Act*, Water Quality Regulations and RIPDES Regulations.
- (2) **Environmental conditions:** Contaminated groundwater from the Garrahy Parking Garage Project was directed to Providence River through the storm water drainage system. Providence River in the area of the Discharge is designated as a Class SB1{a} waterbody. Waters classified as SB1{a} are designated for primary and secondary contact recreational activities and fish and wildlife habitat. They shall be suitable for aquacultural uses (other than shellfish for direct human consumption), navigation, and industrial cooling. These waters shall have good aesthetic value. Primary contact recreational activities may be impacted due to pathogens from approved wastewater discharges; however, all Class SB criteria must be met. These waters will likely be impacted by combined sewer overflows. Therefore, primary contact recreational activities; shellfishing uses; and fish and wildlife habitat will likely be restricted. Providence River in the area of the Discharge is in nonattainment for fish and wildlife habitat and primary and secondary contact recreation; however, this is not attributed to metals.
- (3) **Amount of the pollutant:** The monthly average concentrations of Arsenic, Nickel, Zinc and Copper in the Discharge for the quarter ending 31 December 2018 were 2.98 ppb (2.7 times over the Discharge limit), 13.4 ppb (2.0 times over the Discharge limit), 91.96 ppb (1.3 times over the Discharge limit), and 17.58 ppb (5.9 times over the Discharge limit), respectively, and the daily maximum concentrations of Zinc and Copper in the Discharge for the quarter ending 31 December 2018 were 125 ppb (1.6 times over the Discharge limit) and 38.1 ppb (8.2 times over the Discharge limit), respectively. The monthly average concentrations of Nickel, Zinc and Copper in the Discharge for the quarter ending 31 March 2019 were 16.48 ppb (2.5 times over the Discharge limit), 122.5 ppb (1.8 times over the Discharge limit) and 4.28 ppb (1.4 times over the Discharge limit), respectively, and the daily maximum concentrations of Zinc and Copper in the Discharge for the quarter ending 31 March 2019 were 131 ppb (1.7 times over the Discharge limit) and 5.7 ppb (1.2 times over the Discharge limit), respectively. The total volume of the Discharge is unknown, but from information provided by BETA the flows ranged from 20,000 to 30,000 gallons per day.
- (4) **Toxicity or nature of the pollutant:** Arsenic, Nickel, Zinc and Copper in sufficient concentrations are toxic to aquatic organisms.
- (5) **Duration of the violation:** Approximately 3 1/2 months. The Discharge began on 8 October 2018 and ended on 28 January 2019.
- (6) **Areal extent of the violation:** Unknown. DEM has no specific information concerning adverse impacts to the aquatic organisms in Providence River that may have occurred because of the Discharge.

(continued)

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents did not take reasonable and appropriate steps to prevent the noncompliance. Respondents were advised by DEM on multiple occasions to cease operation of the Treatment System; however, Respondents decided to continue to Discharge despite their knowledge of the requirement in the Permit to cease the Discharge. Respondents mitigated the noncompliance by directing the contaminated groundwater to NBC's sewerage system and ceasing the Discharge.
- (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 their failure to comply with the Permit. Respondents had control over the violations and had an obligation to ensure compliance with the Permit.
- (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>	<u>  X  </u> <b>MODERATE</b>	<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 <b>\$6,250</b>	\$2,500 to \$6,250	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250