

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Rhode Island Recycled Metals, LLC  
ACR Realty LLC**

**FILE NO.: WP 12-9  
X-ref. WP10-049**

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 June 8, 2010 the DEM issued an informal written notice to Rhode Island Recycled Metals (“RIRM”) for the discharge of stormwater associated with industrial activity (in the form of scrap metal recycling) without a permit from the DEM. The notice required RIRM to submit a permit application. On June 28, 2010 RIRM submitted a permit application. In August 2010 DEM advised RIRM that the application was deficient and provided comments (the comments included the failure to describe the activity proposed). On December 13, 2010 DEM met with the RIRM’s consultants and discussed the comments and issued a follow up letter to RIRM on February 17, 2011. On June 21, 2011 the Respondents submitted a revised application to DEM. On September 14, 2011 DEM issued a permit to the Respondents to discharge stormwater associated with industrial activity; however, the permit does not cover some of the auto salvage activity that is currently ongoing, as the Respondents failed to disclose this activity on the application.

C. Facts

- (1) The subject property is located at 434 Allens Avenue, Assessor’s Plat 47, Lot 601 and 444 Allens Avenue, Assessor’s Plat 55, Lot 10 in the city of Providence, Rhode Island (the “Property”).
- (2) The Property includes a business engaged in the recycling of metal (the “Facility”).
- (3) ACR Realty LLC owns the Property.
- (4) Rhode Island Recycled Metals, LLC (“RIRM”) operates the Facility.

- (5) On May 24, 2010 the DEM Office of Compliance and Inspection (“OC&I”) inspected the Property. The inspection revealed a discharge of stormwater associated with industrial activity (in the form of scrap metal recycling) to the Providence River without a permit from the DEM.
- (6) On June 28, 2010, RIRM submitted to the DEM Office of Water Resources (“OWR”) a Notice of Intent (“NOI”) to obtain coverage under the Rhode Island Pollutant Discharge Elimination System Multi-Sector General Permit to discharge stormwater to the Providence River associated with industrial activity at the Property (the “MSGP”). The Stormwater Pollution Prevention Plan (“SWPPP”) included with the NOI failed to describe the proposed industrial activities at the Property.
- (7) On September 21, 2010, the OC&I inspected the Property. The inspection revealed that RIRM was dismantling derelict vessels in the water adjacent to the Property (the “Vessel Dismantling Activity”).
- (8) On February 22, 2011 the OC&I inspected the Property and spoke with Edward Sciabi, Jr. The inspector observed an engine storage area with engines leaking oil. Mr. Sciabi informed the inspector that RIRM crushes vehicles and removes and stores engines.
- (9) On or about June 21, 2011 and August 31, 2011 Garofalo & Associates, Inc. submitted a revised SWPPP to the OWR on behalf of the Respondents (the “Revised SWPPP”). The Revised SWPPP stated that the following activities are conducted at the Property:
  - (a) Collect, trade, broker and process metals from industrial manufacturers, auto salvage facilities, metal dealers and individuals; and
  - (b) Accept decommissioned derelict vessels, portions of which may be brought ashore for disassembly.

The Revised SWPPP made no mention of the activity involving vehicle crushing or engine removal and storage.

- (10) The Revised SWPPP was signed by Edward Sciabi, Jr., who certified that the document was prepared under his direction or supervision, and that to the best of his knowledge and belief is true, accurate and complete. Mr. Sciabi also certified that he is aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.
- (11) On August 10, 2011 the OC&I inspected the Property and spoke with Edward Sciabi, Jr. The inspector observed an engine storage area with engines leaking oil. Mr. Sciabi informed the inspector that a car crusher is in operation on the Property.
- (12) On September 14, 2011 the OWR issued the MSGP to the Respondents. The

MSGP authorized the discharge of storm water for the activities identified in the Revised SWPPP and required the installation of stormwater controls.

- (13) On November 15, 2011 the OC&I inspected the Property. The inspection revealed the following activities being conducted:
- (a) Vehicle crushing;
  - (b) Vehicle engine removal; and
  - (c) Vehicle engine storage.

The inspector observed oil staining on the land in the area of the vehicle engine storage.

- (14) On December 13, 2011 the OC&I and the OWR inspected the Property. The inspection revealed the following activities being conducted:
- (a) Repair and maintenance of equipment;
  - (b) Vehicle crushing;
  - (c) Vehicle engine removal; and
  - (d) Vehicle engine storage.

The inspection also revealed that fill was placed in the Providence River to aide in the Vessel Dismantling Activity.

- (15) On January 19, 2012, RIRM informed the DEM that four derelict vessels are undergoing Vessel Dismantling Activity. These vessels were identified as a sunken barge (the “Sunken Barge”), a sunken tug boat *Akron* (the “Akron”), a sunken ferry (the “Sunken Ferry”), and the submarine *Juliet* (the “Juliet”).

- (16) On February 15, 2012 the OC&I inspected the Property. The inspection revealed the following:
- (a) Oil/petroleum spilled onto the land at various locations throughout the Property, particularly at the engine storage area and in the vicinity of the car crusher; and
  - (b) Improper/poorly maintained erosion and sediment controls.

- (17) As of the date of this Notice of Violation (“NOV”), the Respondents have not obtained a water quality certificate from the DEM for the Vessel Dismantling Activity.

- (18) As of the date of the NOV, the Respondents have not obtained a water quality certificate from the DEM for the fill placed in the Providence River to aide in the Vessel Dismantling Activity (the “Unauthorized Fill”).

- (19) As of the date of the NOV, the Respondents have not obtained approval from the DEM to undertake repair and maintenance of equipment, vehicle crushing, or

vehicle engine removal and storage on the Property.

- (20) As of the date of the NOV, the Respondents have not installed the stormwater controls required under the MSGP.

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) **Rhode Island's Water Pollution Act, Section 46-12-5(a)** – prohibiting the placement of any pollutant in any waters.
- (2) **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.
- (3) **DEM's Water Quality Regulations**
  - (a) **Rule 13(A)** – prohibiting the discharge of any pollutant into or conducting any activity which will likely cause or contribute pollution to the waters of the State without having obtained all required approvals from the DEM.
  - (b) **Rule 13(A)(3)** – requiring a water quality certificate from DEM for activity that may result in a discharge to the waters of the State
  - (c) **Rule 13(A)(3)(b)(ii)** – requiring a water quality certificate from DEM for filling waters of the State.
  - (d) **Rule 16(A)** – mandating compliance with all terms, conditions, management practices and operation and maintenance requirements set forth in a permit.
- (4) **DEM's Regulations for the Rhode Island Pollutant Discharge Elimination System**
  - (a) **Rule 12(d)** – requiring the permittee to submit accurate information on an application to the DEM.
  - (b) **Rule 14.02(a)** – requiring the permittee to comply with all conditions of the permit.
  - (c) **Rule 31(a)(1)(i)** – requiring a permit for a stormwater discharge associated with industrial activity
- (5) **DEM's Oil Pollution Control Regulations, Section 6(a)** – prohibiting the placement of oil onto the land.
- (6) **DEM's Oil Pollution Control Regulations, Section 12 (b)(2)** – requiring the owner to immediately begin the cleanup of an oil release onto the land.

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** cease receiving any additional derelict vessels for dismantling. No derelict vessels shall be received until RIRM obtains all required permits from the RIDEM to do so.
- (2) **IMMEDIATELY** cease receiving any scrap metal and vehicles. No scrap metal or vehicles shall be received until RIRM complies with E(8) through E(10) below.
- (3) **IMMEDIATELY** cease releasing oil/petroleum onto the surface of the ground and report any future oil/petroleum releases to DEM in accordance with the DEM's Oil Pollution Control Regulations.
- (4) **IMMEDIATELY** cease the following industrial activities:
  - (a) Equipment repair and maintenance;
  - (b) Vehicle crushing;
  - (c) Vehicle engine removal; and
  - (d) Engine storage.
- (5) **IMMEDIATELY** install and maintain oil/petroleum containment boom surrounding all in water operations. Collect and dispose of all oil/petroleum captured by the containment boom and dispose of the oil/petroleum in accordance with all applicable laws and regulations.
- (6) **IMMEDIATELY** install as necessary, repair, and continuously maintain all erosion and sedimentation controls in accordance with the minimum standards as established in the Rhode Island Stormwater Design and Installation Standards Manual, December 2010.
- (7) **Within 60 days of receipt of the NOV**, remove all scrap metal, engines, and vehicles.
- (8) **Within 7 days of completion of E(7) above**, remove and properly dispose of all oil/petroleum released onto the land. Within 10 days of completion of the cleanup, submit to DEM all oil/petroleum spill debris disposal documentation.
- (9) **Within 7 days of completion of E(8) above**, clean and sweep the Property of any waste debris associated with the scrap metal and vehicle dismantling activity and properly dispose of the waste in accordance with all applicable laws and regulations
- (10) **Within 90 days of completion of E(9) above**, complete the construction of the stormwater controls required in the MSGP.
- (11) **By December 31, 2012**, complete the dismantling of the Sunken Barge, the

Akron, the Sunken Ferry, and the Juliet. All ballast and bilge water from the vessels must be contained so that there is no discharge of pollutants to waters of the State and properly disposed of in accordance with all applicable laws and regulations.

- (12) **By February 15, 2013**, remove the Unauthorized Fill.

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:

**Forty Six Thousand Two Hundred Fifty Dollars (\$46,250.00)**

- (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 DEM within 20 days of your receipt of the 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 Respondents 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.
- (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 the DEM determines that reasonable efforts have been made to comply promptly with this 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 the DEM 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 this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk  
Office of Administrative Adjudication  
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 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:
- 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 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) An original signed copy of this NOV is being forwarded to the city of Providence 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 46-12-9(c).
  - (7) 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) Susan Forcier at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to me at (401) 222-

1360 ext. 7400.

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

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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:

Rhode Island Recycled Metals, LLC  
c/o Edward J. Sciaba, Jr., Registered Agent  
434 Allens Avenue  
Providence, RI 02905

ACR Realty LLC  
c/o Joseph Raheb, Esq., Registered Agent  
650 Washington Highway  
Lincoln, RI 02865

by Certified Mail.

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## ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution

File No.: WP 12-9, X-ref WP10-049

Respondents: Rhode Island Recycled Metals, LLC and ACR Realty LLC

<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(2), D(3)(d) and D(4)(b) – Failure to comply with a permit	Type I (\$25,000 Max. Penalty)*	Major	\$12,500	1 violation	\$12,500
D(2), D(3)(a) and D(4)(c) – Discharge of stormwater associated with industrial activity without a permit	Type I (\$25,000 Max. Penalty)*	Major	\$12,500	1 violation	\$12,500
D(4)(a) – Failure to submit accurate information on an application	Type I (\$25,000 Max. Penalty)*	Major	\$12,500	1 violation	\$12,500
D(5) – Placement of oil onto the land	Type I (\$25,000 Max. Penalty)*	Moderate	\$6,250	1 violation	\$6,250
D(1), D(2) and D(3)(a) & (c) – Unauthorized fill into waters of the State	Type I (\$25,000 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500
<b>SUB-TOTAL</b>					<b>\$46,250.00</b>

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

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$46,250.00**

**PENALTY MATRIX WORKSHEET**

CITATION: Failure to comply with a permit  
 VIOLATION NO.: D(2), D(3)(d) and D(4)(b)

TYPE		
<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 Respondents have failed to comply with a RIPDES permit for storm water runoff associated with certain industrial activities at the property. Complying with the terms and conditions of a permit is of major importance to the DEM.
- (B) **Environmental conditions:** The property is located directly adjacent to the Providence River. The Providence River is a class SB1{a} water of the State, which waters are designated for primary and secondary contact recreational activities and for fish and wildlife habitat. However, primary contact recreational activities may be impacted due to pathogens from approved wastewater discharges. These waters shall have good aesthetic value. The Providence River in the area of the property is impacted by sewage overflows after heavy rainstorms, which results in the discharge of tens of millions of gallons of untreated wastewater and stormwater into the river.
- (C) **Amount of the pollutant:** Unknown – depends on the pollutants deposited on the land and the intensity and duration of rain storms.
- (D) **Toxicity or nature of the pollutant:** The SWPPP identified the following pollutants of concern: chemical oxygen demand, total suspended solids, and metals (aluminum, iron, copper, lead and zinc). In addition, DEM inspectors observed oil on the ground during various inspections.
- (E) **Duration of the violation:** 7 months. The permit was issued on September 14, 2011.
- (F) **Areal extent of the violation:** 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 Respondents did not take reasonable action to prevent the violation. The SWPPP submitted in June 2011 stated that Respondents would engage in the following activities: (1) collect, trade, broker, and process metals from industrial manufacturers, auto salvage facilities, metal dealers and individuals and (2) accept decommissioned derelict vessels, portions of which may be brought ashore for disassembly. The Respondents failed to comply with the SWPPP by conducting activities that are not stated in the SWPPP, specifically vehicle crushing, engine block removal and storage, and vehicle repair. The Respondents also failed to install the stormwater controls required in the MSGP for the activities authorized under the MSGP. The Respondents took some action to mitigate the violation by submitting a revised SWPPP to DEM in March 2012 for the unauthorized activities.
- (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:** 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:** The violation is knowing and willful. The Respondents have complete knowledge of the required permit and have complete control over the violation and operations occurring at the property. The violation was foreseeable. The Respondents undertook the unauthorized activities for financial gain.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not utilized for this calculation.

<u>X</u> MAJOR	MODERATE	MINOR
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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 <b>\$12,500</b>	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

**PENALTY MATRIX WORKSHEET**

CITATION: Discharge of stormwater associated with industrial activity without a permit  
 VIOLATION NO.: D(2), D(3)(a) and D(4)(c)

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

**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 Respondents discharged storm water associated with industrial activity without a permit from the DEM.
- (B) **Environmental conditions:** The property is located directly adjacent to the Providence River. The Providence River is a class SB1{a} water of the State, which waters are designated for primary and secondary contact recreational activities and for fish and wildlife habitat. However, primary contact recreational activities may be impacted due to pathogens from approved wastewater discharges. These waters shall have good aesthetic value. The Providence River in the area of the property is impacted by sewage overflows after heavy rainstorms, which results in the discharge of tens of millions of gallons of untreated wastewater and stormwater into the river.
- (C) **Amount of the pollutant:** Unknown – depends on the pollutants deposited on the land and the intensity and duration of rain storms.
- (D) **Toxicity or nature of the pollutant:** The SWPPP identified the following pollutants of concern: chemical oxygen demand, total suspended solids, and metals (aluminum, iron, copper, lead and zinc). In addition, DEM inspectors observed oil on the ground during various inspections.
- (E) **Duration of the violation:** Unknown. At least 16 months. On May 24, 2010 DEM inspected the property and observed that the Respondents were engaged in industrial activity that required a stormwater permit. Additional inspections during the intervening time demonstrated that these activities were ongoing during that time. No permit was issued by DEM for any industrial activity on the property until September 14, 2011.
- (F) **Areal extent of the violation:** 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 Respondents did not take reasonable action to prevent the violation. On June 8, 2010 the DEM issued an informal written notice to RIRM for the violation. The notice required RIRM to submit an application for a permit to DEM. RIRM submitted a Notice of Intent (NOI) to DEM on June 28, 2010 to discharge stormwater associated with industrial activity at the property; however, the SWPPP submitted with the NOI provided no information concerning the proposed activity. In August 2010 DEM advised RIRM that the SWPPP was deficient and required RIRM to submit a revised SWPPP that described the proposed activity. The revised SWPPP was not submitted until July 2011. The Respondents took no action to cease the activity and expanded the activity to include vehicle repair and maintenance, auto crushing, engine removal, and engine storage – activities which were never included in the original SWPPP or the revised SWPPP.
- (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:** 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:** The initial violation may have been unknowing; however, the Respondents had knowledge of the required permit on June 8, 2010 and have complete control over the operations occurring at the property. The Respondents continued to operate and expanded the activities at the property without a permit for financial gain.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not utilized for this calculation.

<u>X</u> MAJOR	MODERATE	MINOR
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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	MAJOR	\$12,500 to \$25,000 <b>\$12,500</b>	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

**PENALTY MATRIX WORKSHEET**

CITATION: Failure to submit accurate information on an application  
 VIOLATION NO.: D(4)(a)

<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 Respondents failed to submit accurate information on a permit application to DEM. Submission of accurate information on a permit application is of major importance to the DEM.
- (B) **Environmental conditions:** Not utilized for this calculation.
- (C) **Amount of the pollutant:** Not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** Not utilized for this calculation.
- (E) **Duration of the violation:** Not utilized for this calculation.
- (F) **Areal extent of the violation:** 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 Respondents did not take reasonable action to prevent the violation. The SWPPP submitted in June 2011 stated that Respondents would engage in the following activities: (1) collect, trade, broker, and process metals from industrial manufacturers, auto salvage facilities, metal dealers and individuals and (2) accept decommissioned derelict vessels, portions of which may be brought ashore for disassembly. DEM inspections on February 22, 2011 and August 10, 2011 revealed that the Respondents were engaged in vehicle crushing, engine block removal and storage, and vehicle repair, activities that were not included on the SWPPP. The Respondents took action to mitigate the violation by submitting a revised SWPPP to DEM in March 2012 for these activities.
- (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:** 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:** The violation is knowing and willful. The SWPPP was signed by Edward Sciabi, Jr., General Manager for the facility, who certified that the document was prepared under his direction or supervision, and that to the best of his knowledge and belief is true, accurate and complete. Mr. Sciabi also certified that he is aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not utilized for this calculation.

<u>X</u> MAJOR	MODERATE	MINOR
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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	MAJOR	\$12,500 to \$25,000 <b>\$12,500</b>	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

**PENALTY MATRIX WORKSHEET**

CITATION: Placement of oil onto the land  
 VIOLATION NO.: D(5)

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

**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 Respondents allowed the placement of oil onto the land at the property. The placement of oil onto the land is prohibited by State law and DEM regulations.
- (B) **Environmental conditions:** The property is located directly adjacent to the Providence River. The Providence River is a class SB1{a} water of the State, which waters are designated for primary and secondary contact recreational activities and for fish and wildlife habitat. However, primary contact recreational activities may be impacted due to pathogens from approved wastewater discharges. These waters shall have good aesthetic value. The Providence River in the area of the property is impacted by sewage overflows after heavy rainstorms, which results in the discharge of tens of millions of gallons of untreated wastewater and stormwater into the river.
- (C) **Amount of the pollutant:** Unknown – it depends on the activities that are ongoing on the property.
- (D) **Toxicity or nature of the pollutant:** Oil is capable of causing significant contamination of soil, surface water and groundwater. Certain petroleum constituents are potentially harmful to human health and the environment. Petroleum products are toxic to aquatic organisms.
- (E) **Duration of the violation:** Full duration unknown. At least 1 year. DEM documented the placement of oil onto the land on February 22, 2011, August 10, 2011, November 15, 2011, December 13, 2011, February 15, 2012, and March 22, 2012.
- (F) **Areal extent of the violation:** Not utilized for this calculation.

(continued)



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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondents did not take reasonable action to prevent the violation. The DEM inspectors informed RIRM of the oil releases during each inspection; however, subsequent inspections continued to show releases of oil onto the land.
- (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:** 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:** The violation is knowing and willful. The Respondents have complete control over the violation and operations occurring at the property. The violation was foreseeable.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not utilized for this calculation.

<b>MAJOR</b>	<b><u>X</u> MODERATE</b>	<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	MAJOR	\$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
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

**PENALTY MATRIX WORKSHEET**

CITATION: Unauthorized fill into waters of the State

VIOLATION NO.: D(1), D(2) and D(3)(a) & (c)

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

**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 Respondents filled in an area of the Providence River. Preventing the unauthorized filling of waters is of major importance to the DEM.
- (B) **Environmental conditions:** The Providence River is a class SB1{a} water of the State, which waters are designated for primary and secondary contact recreational activities and for fish and wildlife habitat. However, primary contact recreational activities may be impacted due to pathogens from approved wastewater discharges. These waters shall have good aesthetic value. The Providence River in the area of the property is impacted by sewage overflows after heavy rainstorms, which results in the discharge of tens of millions of gallons of untreated wastewater and stormwater into the river.
- (C) **Amount of the pollutant:** Not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** Not utilized for this calculation.
- (E) **Duration of the violation:** Full duration unknown – at least 3 months. DEM documented the fill on January 4, 2012.
- (F) **Areal extent of the violation:** 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 Respondents did not take reasonable action to prevent or mitigate the violation. The Respondents purchased the property, expanded the operation to include in-water activities, and filled in a section of the Providence River for access without having applied to DEM for the required permit.
- (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:** 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:** The Respondents have complete control over the violation and operations occurring at the property. The violation was foreseeable.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** 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>\$2,500</b>	\$1,250 to \$2,500	\$250 to \$1,250