

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Robert Russo

**FILE NO.: OCI-OWTS-18-67
X-ref. L-0576**

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 the DEM's jurisdiction.

B. Administrative History

On 24 February 2016, the DEM issued a Notice of Intent to Suspend or Revoke OWTS Installer’s License to Respondent for the violations that are the subject of this Notice of Violation (“NOV”). On 9 March 2016, the DEM received a letter from Respondent in response to the notice and met with Respondent on 8 April 2016 to discuss the notice. Respondent offered to correct the violations. On 20 June 2018, the DEM received a document showing that the violations were corrected by replacing a water line on the property. Respondent’s failure to properly install the individual sewage disposal system (“ISDS”) on the property resulted in ongoing violations for approximately 13½ years that posed a potential threat to the health of the people who resided in the dwelling at the property.

C. Facts

- (1) In September 1998 the DEM promulgated regulations titled *Rules and Regulations Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Individual Sewage Disposal Systems*, September 1998 (the “1998 ISDS Regulations”). The 1998 ISDS Regulations became effective on 1 October 1998.
- (2) In February 2000 the DEM amended the 1998 ISDS Regulations (the “2000 ISDS Regulations”). The 2000 ISDS Regulations became effective on 8 March 2000.
- (3) The 1998 ISDS Regulations and the 2000 ISDS Regulations are collectively referred to in the NOV as the ISDS Regulations.
- (4) Respondent holds License No. L0576 issued by the DEM to install ISDSs in the State of Rhode Island.

- (5) On 5 September 2002, the owner (the “Owner”) of property located at 486 Atlantic Avenue in the Town of Westerly, Rhode Island (the “Property”) applied to the DEM to construct an ISDS for a new single-family dwelling (the “Dwelling”) on the Property (the “Application”).
- (6) The ISDS Regulations SD 3.05 requires a minimum distance of 25 feet from the ISDS.
- (7) The plan submitted with the Application (the “ISDS Plan”) did not show any drinking water lines within 25 feet of the ISDS.
- (8) On 5 March 2003, the DEM approved the Application (the “Approval”).
- (9) The Approval required that the ISDS be constructed in accordance with the ISDS Plan.
- (10) On 27 December 2005, the DEM received a Certificate of Construction from the licensed ISDS designer certifying that the ISDS was installed by Respondent in accordance with the ISDS Plan and the ISDS Regulations.
- (11) On 28 December 2005, the DEM issued a Certificate of Conformance for the ISDS.
- (12) On or about 24 February 2014, the DEM received a letter and sketch from the licensed ISDS designer regarding the ISDS. The letter and sketch included the following information:
 - (a) There was an additional water service connection that was not discovered prior to the Approval;
 - (b) The existing water line located east of the ISDS that served the Dwelling was greater than 12 feet from the ISDS (“Water Line 1”); and
 - (c) The proposed installation of a sleeve on Water Line 1.
- (13) On 1 May 2014, the DEM received electronic correspondence that included a plan for the Property titled *EXISTING CONDITIONS Right of Way Encroachment UPDATED APRIL 2014* that was stamped and signed by Wesley Grant from Environmental Planning & Surveying, Inc. The plan showed:
 - (a) Water Line 1; and
 - (b) Water Line 1 is 17.23 feet from the ISDS.

- (14) On 1 February 2016, the DEM received a copy of a deposition of Respondent taken on 20 May 2015. In the deposition Respondent stated that:
 - (a) He is a licensed ISDS installer;
 - (b) He was hired to install the ISDS and drinking water line that provides service to the Dwelling;
 - (c) He installed the OWTS and Water Line 1; and
 - (d) Water Line 1 was not installed in the location shown on the ISDS Plan.
- (15) On 8 June 2016, the Owner applied to the DEM to alter the ISDS (the “Revised Application”).
- (16) The plan submitted with the Revised Application showed:
 - (a) Water Line 1 is approximately 11 feet from the ISDS; and
 - (b) The installation of a sleeve for Water Line 1.
- (17) The DEM has determined that Respondent failed to:
 - (a) Perform all work in compliance with the ISDS Plan;
 - (b) Report any discrepancies on the ISDS Plan, which he may note during construction, to the DEM;
 - (c) Use only the best construction techniques to provide for the best possible installations; and
 - (d) Adhere to each term of the Approval.

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 General Laws, Section 5-56-7(1)** – requiring that a licensed ISDS installer perform all work in compliance with approved plans and specifications only.
- (2) **Rhode Island General Laws, Section 5-56-7(2)** – requiring that a licensed ISDS installer report any discrepancies on an approved plan, which he or she may note during construction, to the DEM.
- (3) **Rhode Island General Laws, Section 5-56-7(4)** – requiring that a licensed ISDS installer use only the best construction techniques to provide for the best possible installations.

- (4) **Rhode Island General Laws, Section 5-56-7(6)** – requiring that a licensed ISDS installer adhere to each term of approval as stipulated by the DEM in his or her approval of the plan.
- (5) **DEM’s ISDS Regulations SD2.05(B)** – requiring that a licensed ISDS installer stop construction and notify the licensed ISDS designer that is responsible for witnessing and inspecting the installation if the installer encounters unanticipated conditions during construction which indicates that the system cannot be installed in accordance with the approval and plan.

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:

\$3,000

- (2) The proposed administrative penalty is calculated pursuant to the DEM’s *Rules and Regulations for Assessment of Administrative Penalties*, as amended, and must be paid to the DEM within 30 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’s Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 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 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 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 DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters*.
- (2) A copy of each request for hearing must also be forwarded to:

Christina Hoefsmit, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before the 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) Christina Hoefsmit of the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to David E. Chopy of the DEM's Office of Compliance and Inspection 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 F above.

FOR THE DIRECTOR

David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

Robert Russo
121 Woodville Alton Road
Hope Valley, RI 02832

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, OWTS
 File No.: OCI-OWTS-18-67 X-ref L-0576
 Respondent: Robert Russo

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) and D (4) – ISDS Plan	Type I <i>(\$1,000 Max. Penalty) *</i>	Major	\$1,000	1 violation	\$1,000
D (2) and D (5) – Reporting	Type I <i>(\$1,000 Max. Penalty) *</i>	Major	\$1,000	1 violation	\$1,000
D (3) – ISDS Installation Techniques	Type I <i>(\$1,000 Max. Penalty) *</i>	Major	\$1,000	1 violation	\$1,000
<i>SUB-TOTAL</i>					\$3,000

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

ADMINISTRATIVE PENALTY SUMMARY (continued)

ECONOMIC BENEFIT FROM NONCOMPLIANCE

COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT COMPLY. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:

- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR
- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.

A review of the record in this matter has revealed that Respondent has either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.

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 the 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 = \$3,000

PENALTY MATRIX WORKSHEET

CITATION: ISDS Plan

VIOLATION NO.: D (1) and D (4)

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 VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10A.1.b of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent failed to install an ISDS in accordance with the approved plan. Preventing the improper installation of an ISDS is a primary objective of the regulations and a major objective of the regulatory program. (2) Environmental conditions: The Property includes a 2-bedroom dwelling. The Property includes a water line (identified in the NOV as Water Line 1) that serves the dwelling located on the Property. This water line was determined to be within 11 feet of the ISDS and was replaced and sleeved in 2018. The minimum distance allowed for water lines in the ISDS Regulations is 25 feet without protection. (3) Amount of the pollutant: The location of the water line within 11 feet of the ISDS potentially allowed sewage from the ISDS to contaminate the water line. The amount of any contamination is unknown. (4) Toxicity or nature of the pollutant: Sewage contains many kinds of bacteria, viruses, and parasites that can cause serious or fatal diseases in both humans and animals, as well as being the source of extremely objectionable odors. (5) Duration of the violation: Approximately 13½ years. The ISDS was constructed and put into use on or about December 2005. The water line was replaced and sleeved on or about 20 June 2018. (6) Areal extent of the violation: Considered, but not utilized for this calculation. (7) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance: Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by installing the ISDS in accordance with the approved plan. (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 had full control over the violation. The violation was foreseeable. (10) Any other factor(s) that may be relevant in determining the amount of a penalty: Considered, but not utilized for this calculation. 		
<u> X </u> MAJOR	MODERATE	MINOR

Penalty Matrix where the applicable statute provides for a civil penalty up to \$1,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$800 to \$1,000 \$1,000	\$600 to \$800	\$400 to \$600
	MODERATE	\$600 to \$800	\$400 to \$600	\$200 to \$400
	MINOR	\$400 to \$600	\$200 to \$400	\$100 to \$200

PENALTY MATRIX WORKSHEET

CITATION: Reporting
 VIOLATION NO.: D (2) and D (5)

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 VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10A.1.b of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent failed to report to the DEM or the licensed ISDS designer that the water line could not be constructed in accordance with the approved plan. Installer notifications regarding discrepancies with an approved plan are a primary objective of the regulations and a major objective of the regulatory program. (2) Environmental conditions: Considered, but not utilized for this calculation. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation. (5) Duration of the violation: Considered, but not utilized for this calculation. (6) Areal extent of the violation: Considered, but not utilized for this calculation. (7) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance: Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by reporting to the DEM or the licensed ISDS designer that the water line could not be constructed in accordance with the approved plan. Respondent knew the water line on the Property could not be constructed in accordance with the approved plan, but he failed to notify the DEM or the licensed designer and installed the water line in a different location. (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 had full control over the violation. The violation was foreseeable. (10) Any other factor(s) that may be relevant in determining the amount of a penalty: The minimum distance allowed for water lines in the ISDS Regulations is 25 feet without protection. Failure to maintain this distance potentially exposes humans to illness from contaminants in the sewage. As a licensed ISDS installer, Respondent is aware of the potential for harm to human health from failing to maintain required minimum distances as set in the ISDS Regulations and Respondent is aware of his obligation as a licensed installer to report discrepancies with the approved plan to the DEM or the licensed ISDS designer. 		
<u> X </u> MAJOR	MODERATE	MINOR

Penalty Matrix where the applicable statute provides for a civil penalty up to \$1,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$800 to \$1,000 \$1,000	\$600 to \$800	\$400 to \$600
	MODERATE	\$600 to \$800	\$400 to \$600	\$200 to \$400
	MINOR	\$400 to \$600	\$200 to \$400	\$100 to \$200

PENALTY MATRIX WORKSHEET

CITATION: ISDS Installation Techniques

VIOLATION NO.: D (3)

TYPE		
<input checked="" type="checkbox"/> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<input type="checkbox"/> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<input type="checkbox"/> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10A.1.b of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent failed to use best construction techniques to provide for the best possible installation. Use of best construction techniques are a primary objective of the regulations and a major objective of the regulatory program. (2) Environmental conditions: Considered, but not utilized for this calculation. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation. (5) Duration of the violation: Considered, but not utilized for this calculation. (6) Areal extent of the violation: Considered, but not utilized for this calculation. (7) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance: Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by using best construction techniques. Respondent installed the water line on the Property too close to the ISDS and he did not include additional protection around the water line to prevent sewage from contaminating the water line. (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 had full control over the violation. The violation was foreseeable. (10) Any other factor(s) that may be relevant in determining the amount of a penalty: The minimum distance allowed for water lines in the ISDS Regulations is 25 feet without protection. Failure to maintain this distance potentially exposes humans to illness from contaminants in the sewage. As a licensed ISDS installer, Respondent is aware of the potential for harm to human health from failing to maintain required minimum distances as set in the ISDS Regulations and Respondent is aware of that water lines installed less than 25 feet from an ISDS require additional protection. 		
<input checked="" type="checkbox"/> MAJOR	MODERATE	MINOR

Penalty Matrix where the applicable statute provides for a civil penalty up to \$1,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$800 to \$1,000 \$1,000	\$600 to \$800	\$400 to \$600
	MODERATE	\$600 to \$800	\$400 to \$600	\$200 to \$400
	MINOR	\$400 to \$600	\$200 to \$400	\$100 to \$200