

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: SMM New England Corporation

**FILE NO.: WP 12-5
X-ref. WP11-089**

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Department of Environmental Management (the “Director” of “DEM”) has reasonable grounds to believe that the above-named party (“Respondent”) has violated certain statutes and/or administrative regulations under DEM’s jurisdiction.

B. Administrative History

On October 25, 2011 the DEM met with SMM New England Corporation (“SMM”) and its consultants. SMM informed the DEM that at present it wanted to continue with the ship building/repair business previously done by Promet Marine Services Corporation (“Promet”). The DEM informed SMM that it needed to file a request to transfer the stormwater permit that DEM issued to Promet to SMM. The DEM advised SMM that if/when it decides to expand the activities beyond ship building/repair it would need to reapply for authorization and submit a new stormwater pollution prevention plan that addressed the proposed activities. SMM did not file a request to transfer the stormwater permit that DEM issued to Promet until January 12, 2012 and expanded its activities to scrap metal recycling without reapplying to the DEM for authorization to do so. On January 24, 2012 the DEM met with SMM. SMM agreed to install a concrete wall around the scrap metal recycling area. On February 15, 2012 the DEM inspected the property and determined that SMM had constructed the concrete wall and that stormwater runoff from the scrap metal recycling area would not enter the Providence River.

C. Facts

- (1) The subject property is located at 242 Allens Avenue, Assessor’s Plat 46, Lot 326 in the city of Providence, Rhode Island (the “Property”).
- (2) The Property currently includes a business engaged in ship repair/maintenance and scrap metal recycling (the “Facility”).
- (3) SMM New England Corporation (“SMM”) owns the Property and operates the Facility. SMM acquired the Property from Promet Marine Services Corporation (“Promet”) and began operating the Facility on October 7, 2011.

- (4) On April 17, 2006 Promet obtained coverage under the Rhode Island Pollutant Discharge Elimination System Multi-Sector General Permit (the “MSGP”) to discharge stormwater to the Providence River associated with industrial activity at the Property. The MSGP required Promet to comply with its Stormwater Pollution Prevention Plan (“SWPPP”). The SWPPP described ship repair/maintenance only.
- (5) The DEM’s Regulations for the Rhode Island Pollutant Discharge Elimination System (“RIPDES”) require the submission of a written request to the DEM to automatically transfer a permit to a new permittee for the permit to remain in effect.
- (6) On December 20, 2011 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 and ship repair/maintenance) to the Providence River.
- (7) On January 12, 2012, SMM submitted to the DEM Office of Water Resources (“OWR”) a letter requesting the transfer of the MSGP from Promet to SMM (the “Transfer Request”).
- (8) The Transfer Request was signed by Anthony Izzo, CMM’s Region President, who certified that he had read the MSGP and agreed to abide by all of the conditions of the MSGP and that the production levels, products produced, rates of discharge, and wastewater characteristics remain unchanged.
- (9) As of the date of this Notice of Violation (“NOV”), the Respondent has not obtained approval from the OWR to discharge stormwater associated with industrial activity to the Providence River from the Property.

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(b)** – requiring the discharge of any pollutant into waters of the State comply with the terms and conditions of a permit and applicable regulations.
- (2) **DEM’s Water Quality Regulations, 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.

(3) **DEM's RIPDES Regulations**

- (a) **Rule 12(d)** – requiring the permittee to submit accurate information on an application to the DEM.
- (b) **Rule 31(a)(1)(i)** – requiring a permit for a stormwater discharge associated with industrial activity.

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 scrap metal. No scrap metal shall be received until SMM obtains a stormwater permit from the DEM and constructs the stormwater controls required pursuant to the permit.
- (2) **IMMEDIATELY** cease receiving any ships for repair/maintenance. No ships shall be received until SMM obtains a stormwater permit from the DEM.
- (3) **Within sixty (60) days of receipt of the NOV**, remove all scrap metal from the Property.
- (4) **Within sixty (60) days of receipt of the NOV**, complete repairs/maintenance to all ships on the Property.
- (5) **Within seven (7) days of completing ordered actions E(3) and E(4) above**, clean and sweep the Property of any waste debris associated with ship repair/maintenance and properly dispose of the waste in accordance with all applicable laws and regulations.

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:

Twenty Five Thousand Dollars (\$25,000.00)

- (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 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.
- (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 twenty (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, 2ND 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, 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 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

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:

SMM New England Corporation
c/o Corporation Service Company, Registered Agent
222 Jefferson Boulevard, Suite 200
Warwick, RI 02888

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution

File No.: WP 12-5, X-ref WP11-089

Respondent: SMM New England Corporation

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), D(2) and D(3)(b) – Discharge of stormwater associated with industrial activity without a permit	Type I (\$25,000 Max. Penalty)*	Major	\$12,500	1 violation	\$12,500
D(3)(a) – Failure to submit accurate information on an application	Type I (\$25,000 Max. Penalty)*	Major	\$12,500	1 violation	\$12,500
SUB-TOTAL					\$25,000.00

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

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$25,000.00

PENALTY MATRIX WORKSHEET

CITATION: Discharge of stormwater associated with industrial activity without a permit
 VIOLATION NO.: D(1), D(2) and D(3)(b)

TYPE		
<p><u> </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE III <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 Respondent 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 issued to Promet included the following pollutants of concern associated with ship repair/maintenance: dirt, paint solids, metals, suspended solids, sandblast grit, mineral spirits/solvents, diesel fuel, waste oil, and gasoline. The scrap metal recycling operation is likely to have many of the same pollutants of concern.
- (E) **Duration of the violation:** 5 months. On October 7, 2011 SMM acquired the property and engaged in industrial activity that required a stormwater permit. Thus far, no permit has been issued to SMM by DEM for any industrial activity on the property.
- (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 Respondent did not take reasonable action to prevent the violation. On October 25, 2011 the DEM met with SMM and its consultants. SMM informed the DEM that at present it wanted to continue with the ship building/repair business previously done by Promet. The DEM informed SMM that it needed to file a request to transfer the stormwater permit that DEM issued to Promet to SMM. The DEM advised SMM that if/when it decides to expand the activities beyond ship building/repair it would need to reapply for authorization and submit a new stormwater pollution prevention plan that addressed the proposed activities. SMM expanded its activities to scrap metal recycling without reapplying to the DEM for authorization to do so. On January 24, 2012 the DEM met with SMM. SMM agreed to install a concrete wall around the scrap metal recycling area. On February 15, 2012 the DEM inspected the property and determined that SMM had constructed the concrete wall and that stormwater runoff from the scrap metal recycling area would not enter the Providence River.
- (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 Respondent had knowledge of the required permit and has complete control over the operations occurring at the property. The Respondent continues 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 \$12,500	\$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(3)(a)

TYPE		
<p><u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE III <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 Respondent failed to submit accurate information on a permit transfer request to DEM. Submission of accurate information on a permit transfer request 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 Respondent did not take reasonable action to prevent the violation. The permit transfer request submitted on January 12, 2012 certified that Respondent would engage in the same activities as Promet and that the production levels, products produced, rates of discharge, and wastewater characteristics remained unchanged. DEM inspections on December 20, 2011 and February 15, 2012 revealed that the Respondent was engaged in scrap metal recycling, which is an activity that has not been approved by RIDEM, and is not what Promet was engaged in. The Respondent took action to mitigate the violation by submitting a revised permit application to DEM in March 2012 for this activity.
- (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 permit transfer request was signed by Anthony Izzo, the Region President of SMM, who certified that he had read the permit issued to Promet and agreed to abide by all the conditions of the permit and that the production levels, products produced, rates of discharge, and wastewater characteristics remained unchanged.
- (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 \$12,500	\$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