

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Michael A. St.Angelo, Jr.  
Lisa A. St.Angelo**

**FILE NO.: CI 10-021**

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

DEM issued an informal written notice to the Respondents on October 22, 2010 for the violations. The notice required that specific actions be taken to correct the violations. The Respondents failed to comply with the notice.

C. Facts

- (1) The subject property is located at 19 Pine Lane, Assessor's Plat 61, Lot 31 in the town of Johnston, Rhode Island (the "Property").
- (2) The Respondents own the Property.
- (3) On June 2, 2000, the Respondents submitted to DEM an individual sewage disposal system ("ISDS") application (no. 0016-1573) and associated engineered plans to construct an ISDS at the Property (the "Application").
- (4) On June 7, 2000, DEM approved the Application (the "Approval").
- (5) The Approval specified that:
  - (a) The existing drinking water well located in the front of the Property was to be capped with concrete and abandoned;
  - (b) The ISDS was to be constructed in the front of the Property; and
  - (c) A new drinking water well was to be constructed in the rear of the Property.
- (6) On August 15, 2000 DEM received a well report signed by Gary Bourque, a DEM registered well driller. The report stated that the new drinking water well was installed in the front of the Property on June 29, 2000.

- (7) On February 21, 2001 DEM received a Certificate of Construction signed by Peter Alviti, Jr., a licensed ISDS designer (the "COC"). The COC stated that the ISDS was constructed in accordance with the Approval.
- (8) On November 30, 2009 DEM inspected the Property and determined that based on the location of the ISDS as shown on the COC the drinking water well was installed within approximately forty one feet of the ISDS leachfield.
- (9) As of the date of this Notice of Violation ("NOV"), the Respondents have failed to comply with the DEM regulations.

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) DEM's Rules and Regulations Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Individual Sewage Disposal Systems (effective October 1, 1998)
  - (a) **Rule SD2.15** – prohibiting the installation of any part of an ISDS within one hundred feet of a private drinking water well
  - (b) **Rule SD3.05** – requiring that the minimum distance between an ISDS leachfield and a private drinking water well be at least one hundred feet

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) **Within thirty (30) days of receipt of this NOV**, submit a formal application to DEM to construct an onsite wastewater treatment system ("OWTS") on the Property that is prepared by a licensed OWTS designer in accordance with DEM's Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems (the "Application").
- (2) The Application shall be subject to DEM review and approval. Upon review, the DEM shall provide written notification to you either granting formal approval or stating the deficiencies therein. Within fourteen (14) days (unless a longer time is specified) of receiving a notification of deficiencies in the Application, you must submit to the DEM a modified proposal or additional information necessary to correct the deficiencies.
- (3) Commence work on the project in accordance with the method approved by the Director within twenty (20) days of approval (unless otherwise expressly authorized by the Director in writing to commence work at a later time), and complete such work within one hundred twenty (120) days of said approval or other date specified by the Director.

OR

- (4) **Within thirty (30) days of receipt of this NOV**, install a drinking water well at the Property in accordance with all applicable state and local 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:

**Six Hundred Dollars (\$600.00)**

- (2) The proposed administrative penalty is calculated pursuant to the DEM Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the Director within twenty (20) days of your receipt of this NOV. Payment shall be in the form of a certified check or money order made payable to the "General Treasury - Water & Air Protection Program Account," and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against 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 Director 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

DEM - Administrative Adjudication Division  
235 Promenade Street, 3<sup>RD</sup> Floor  
Providence, RI 02908-5767

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
- (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Rule 7.00(b) of the DEM Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters.
- (2) A copy of each request for hearing must also be forwarded to:
- Joseph J. LoBianco, Esquire  
DEM - Office of Legal Services  
235 Promenade Street, 4<sup>TH</sup> Floor  
Providence, RI 02908-5767
- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then this NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (v) and 42-17.6-4(b) and (c).
- (5) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) An original signed copy of this NOV is being forwarded to the town of Johnston 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 42-17.1-2(13), as amended.
- (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) Joseph J. LoBianco at the DEM Office of Legal Services at (401) 222-6607 extension 2302. All other inquiries should be directed

to Patrick Hogan of the DEM Office of Compliance and Inspection at (401) 222-1360 extension 7119.

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:

Michael A. St. Angelo, Jr.  
46 Kent View Drive  
Hope, RI 02831-1126

Lisa A. St. Angelo  
46 Kent View Drive  
Hope, RI 02831-1126

by Certified Mail.

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## **ADMINISTRATIVE PENALTY SUMMARY**

Program: OFFICE OF COMPLIANCE AND INSPECTION, OWTS  
 File No.: CI 10-021  
 Respondents: Michael A. & Lisa A. St.Angelo

<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(1)(a) & (b) – Construction of an ISDS within 100 feet of a private well	Type I (\$1,000 Max. Penalty)*	Moderate	\$600	1 violation	\$600.00
<b><i>SUB-TOTAL</i></b>					<b>\$600.00</b>

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

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$600.00**

# PENALTY MATRIX WORKSHEET

CITATION: Construction of an ISDS within 100 feet of a private well  
 VIOLATION NO.: D(1)(a) & (b)

TYPE		
<u>  X  </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.		
<b><u>FACTORS CONSIDERED:</u></b> Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i> (A) <b>The extent to which the act or failure to act was out of compliance:</b> The ISDS was constructed in a location that is significantly less than the required setback distance from the private drinking water well located at the property. The proper citing of an ISDS, with respect to allowable setback distances from drinking water wells, is of importance to the regulatory program.  (B) <b>Environmental conditions:</b> The ISDS and private drinking water well are located within approximately forty one feet of each other in the front yard of the property.  (C) <b>Amount of the pollutant:</b> Not relevant.  (D) <b>Toxicity or nature of the pollutant:</b> Not relevant.  (E) <b>Duration of the violation:</b> The total duration of the violation is approximately 10½ years.  (F) <b>Areal extent of the violation:</b> Not relevant.  (G) <b>Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:</b> It is not known if the Respondents took any steps to prevent the noncompliance. The Respondents did not take the necessary action to mitigate the non-compliance.  (H) <b>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:</b> Not relevant.  (I) <b>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:</b> The Respondents have control over the violation. The Respondents are aware of the necessary actions to correct the violations.  (J) <b>Any other factor(s) that may be relevant in determining the amount of a penalty:</b> The notice issued to the Respondents stated the penalty could be up to \$1,000.00 per day for each violation.		
MAJOR	<u>  X  </u> 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	\$600 to \$800	\$400 to \$600
	<b>MODERATE</b>	\$600 to \$800 <b>\$600</b>	\$400 to \$600	\$200 to \$400
	MINOR	\$400 to \$600	\$200 to \$400	\$100 to \$200