

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: GABHALTAIS TEAGHLAIGH LLC
RESERVOIR VENTURES II LLC**

FILE NO.: OCI-SW-19-13

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 20 March 2019, DEM issued a *Notice of Intent to Enforce* (“NIE”) to GABHALTAIS TEAGHLAIGH LLC by certified mail for the alleged violations that are the subject of this *Notice of Violation* (“NOV”). The NIE required specific actions to correct the violations. The NIE was delivered on 27 March 2019. Respondent failed to respond to or comply with the NIE.

C. Facts

- (1) The subject property is located at 327 Pine Street in the City of Pawtucket, Rhode Island, otherwise identified as Pawtucket Tax Assessor's Plat 44, Lot 592 (the "Property").
- (2) GABHALTAIS TEAGHLAIGH LLC (“TEAGHLAIGH”) acquired ownership of the Property on 23 April 2018.
- (3) RESERVOIR VENTURES II LLC acquired ownership of the Property on 16 July 2019.
- (4) On 11 February 2019, DEM inspected the Property and observed the following:
 - (a) Approximately 578 cubic yards of solid waste on the ground, which consisted of wooden pallets, plastic pallets, plastic containers, corrugated paperboard, plastic film, mixed plastic waste, paper bins filled with mixed plastic waste, conveyor belts, 275-gallon totes, piping, plastic barrels, plastic trays, container lids, tables, a boat, fabric, mattresses and other mixed solid waste;

- (b) At least three 275-gallon totes and at least three 55-gallon drums (the “containers”) holding varying amounts of unknown liquid wastes. The containers were stored in a disorganized manner, outside of a protective structure and exposed to the elements; and
 - (c) Evidence that unknown liquids had been released from two of the 275-gallon totes onto the ground.
- (5) On 20 March 2019, DEM inspected the Property and observed that solid waste and hazardous waste remained on the Property.
 - (6) On or about 21 March 2019, Newton B. Washburn, LLC, on behalf of TEAGHLAIGH, removed approximately 8 drums holding 400 gallons of hazardous waste (mineral spirits) from the Property for proper disposal. Copies of an invoice and a hazardous waste manifest were provided to DEM to document the disposal.
 - (7) On 5 July 2019 and 26 December 2019, DEM inspected the Property. The inspections revealed that approximately 183 cubic yards of solid waste remained on the ground, which consisted of plastic totes, plastic barrels, steel drums, mattresses, paperboard bins, beverage containers, foam, fabric, paperboard containers, wooden pallets, used tires, plastic containers, wood waste, plastic waste, conveyor belts, plastic film, a steel ramp and other mixed solid waste. The inspector observed that one tote was holding an unknown liquid (the “Unknown Liquid”).
 - (8) DEM has not issued a license or approval to Respondents to operate a solid waste management facility on 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) **R.I. Gen. Laws Section 23-18.9-5** – prohibiting the disposal of solid waste at other than a solid waste management facility.
- (2) **R.I. Gen. Laws Section 23-18.9-8** – prohibiting the operation of a solid waste management facility without a license or approval from DEM.

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 the disposal of solid waste on the Property.
- (2) **IMMEDIATELY** remove the Unknown Liquid from the Property for disposal or recycling in full compliance with R.I. Gen. Laws Section 23-18.9-5 and Part 1.7.3 of the *Rules and Regulations for Hazardous Waste Management (250-RICR-140-10-1)*. Written verification of compliance shall be submitted to DEM's Office of Compliance and Inspection ("OC&I").
- (3) **Within 60 days of receipt of the NOV**, remove all solid waste from the Property and dispose of the waste at a licensed solid waste management or recycling facility. The waste shall not be burned or buried.
- (4) **Within 10 days of completion of the removal of the solid waste as required in subsection E (3) above**, submit to OC&I written verification (in the form of receipts) that the solid waste was disposed at a licensed solid waste management facility.

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:

\$12,616

- (2) The proposed administrative penalty is calculated pursuant to the *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* and must be paid to DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a certified check, cashier's check or money order made payable to the "General Treasury - Environmental Response Fund" and shall be forwarded to DEM's Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, RI 02908-5767.
- (3) Penalties assessed against Respondents in the NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (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 DEM determines that reasonable efforts have been made to comply promptly with the 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 DEM's 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 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, Suite 350
Providence, RI 02908-5767

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
 - (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Part 1.7(B) of the *Rules and Regulations for the Administrative Adjudication Division (250-RICR-10-00-1)*.
- (2) A copy of each request for hearing must also be forwarded to:

Christina Hoefsmit, Esquire
DEM - Office of Legal Services
235 Promenade Street, Suite 425
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner regarding any violation set forth herein, then the NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (vi) and 42-17.6-4(b) and (c).

- (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) An original signed copy of the NOV is being forwarded to the City of Pawtucket, Rhode Island, 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 23-18.9-13, as is or as amended.
- (7) 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 DEM's Office of Legal Services at (401) 222-6607 or at christina.hoefsmit@dem.ri.gov. All other inquiries should be directed to Tracey D'Amadio Tyrrell of DEM's Office of Compliance and Inspection at (401) 222-1360, extension 7407 or at tracey.tyrrell@dem.ri.gov.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section G above.

FOR THE DIRECTOR

By: _____
David E. Chopy, Administrator
DEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

GABHALTAIS TEAGHLAIGH LLC
c/o William Gately, Resident Agent
316 Highland Avenue
Winchester, MA 01890

RESERVOIR VENTURES II LLC
c/o Sanford J. Resnick, Esq., Resident Agent
300 Centerville Road Summit West Suite 300
Warwick, RI 02886

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, SOLID WASTE

File No.: OCI-SW-19-13

Respondents: GABHALTAIS TEAGHLAIGH LLC and RESERVOIR VENTURES II LLC

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) – Disposal of Solid Waste at other than a Licensed Solid Waste Management Facility	Type I <i>(\$25,000 Max. Penalty) *</i>	Moderate	\$6,250	1 violation	\$6,250
D (2) – Operating a Solid Waste Management Facility without a License from DEM	Type I <i>(\$25,000 Max. Penalty) *</i>	Moderate	\$6,250	1 violation	\$6,250
SUB-TOTAL					\$12,500

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

ADMINISTRATIVE PENALTY SUMMARY (continued)

ECONOMIC BENEFIT FROM NON-COMPLIANCE		
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 NON-COMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED.		
DESCRIPTION OF BENEFIT	CALCULATION	AMOUNT
Delaying disposal of the solid waste. The economic benefit of non-compliance was determined by using an EPA computer model titled <i>BEN</i> that performs a detailed economic analysis. The dates, dollar amounts and values used in this analysis are listed in this table.	<ul style="list-style-type: none"> ▪ Profit Status ▪ Filing Status ▪ Initial Capital Investment ▪ One-time Non-depreciable Expense ▪ First Month of Noncompliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	For profit, other than a C Corp. \$2,516 February 2019 1 May 2020 1 April 2020 8.0%
<i>SUB-TOTAL</i>		\$116

COST RECOVERY
ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY DEM DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.
A review of the record in this matter has revealed that DEM has not incurred any additional or extraordinary costs during the investigation, enforcement and resolution of this enforcement action (excluding non-overtime personnel costs), for which the State is not otherwise reimbursed.

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$12,616

PENALTY MATRIX WORKSHEET

CITATION: Disposal of Solid Waste at other than a Licensed Solid Waste Management Facility
 VIOLATION NO.: D (1)

TYPE		
<u> X </u> TYPE I DIRECTLY related to protecting health, safety, welfare or environment.	<u> </u> TYPE II INDIRECTLY related to protecting health, safety, welfare or environment.	<u> </u> TYPE III INCIDENTAL 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.		
<u>FACTORS CONSIDERED:</u>		
Taken from Rule 10(A)(1)(b) of the <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i>		
<p>(1) The extent to which the act or failure to act was out of compliance: Respondents disposed of or allowed for the disposal of solid waste on the Property. Prohibiting the disposal of solid waste at other than a licensed solid waste management facility is of prime importance to the regulatory program. Failure to comply may result in threats or harm to public health and safety and the environment.</p> <p>(2) Environmental conditions: The Property is located in an industrial/commercial zone. The Property is located within an environmental justice area. The Property is in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. The Property lies within the Providence River watershed.</p> <p>(3) Amount of the pollutant: DEM observed approximately 578 cubic yards of solid waste on the ground on 11 February 2019 and approximately 183 cubic yards of solid waste on the ground on 26 December 2019.</p> <p>(4) Toxicity or nature of the pollutant: Much of the solid waste is combustible. The stockpiles of solid waste may provide harborage to rodents or disease vectors.</p> <p>(5) Duration of the violation: Full duration unknown – at least 1½ years. DEM first observed solid waste on the Property on 11 February 2019.</p> <p>(6) Areal extent of the violation: The solid waste has been deposited across an area of approximately 0.4 acres.</p>		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable and appropriate steps to prevent the non-compliance by prohibiting the disposal of solid waste on the Property. Respondents have yet to mitigate the non-compliance despite TEAGHLAIGH receiving the NIE from DEM, which required that it do so.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondents for the failure to comply with the law. Respondents, as owners of the Property, had complete control over the occurrence of the violation.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	<u> X </u> 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	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500 \$6,250	\$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: Operating a Solid Waste Management Facility without a License from DEM
 VIOLATION NO.: D (2)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Rule 10(A)(1)(b) of the <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents operate a solid waste management facility without a license or approval from DEM. Prohibiting the operation of a solid waste management facility without a license or approval from DEM is of prime importance to the regulatory program. Failure to comply prevents the proper management and disposal of solid waste to protect public health and safety and the environment. (2) Environmental conditions: The Property is located in an industrial/commercial zone. The Property is located within an environmental justice area. The Property is in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. The Property lies within the Providence River watershed. (3) Amount of the pollutant: DEM observed approximately 578 cubic yards of solid waste on the ground on 11 February 2019 and approximately 183 cubic yards of solid waste on the ground on 26 December 2019. (4) Toxicity or nature of the pollutant: Much of the solid waste is combustible. The stockpiles of solid waste may provide harborage to rodents or disease vectors. (5) Duration of the violation: Full duration unknown – at least 1½ years. DEM first observed solid waste on the Property on 11 February 2019. (6) Areal extent of the violation: The solid waste has been deposited across an area measuring approximately 0.4 acres. 		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable and appropriate steps to prevent the non-compliance by first obtaining an approval from the DEM to operate a solid waste management facility on the Property. Respondents have yet to mitigate the non-compliance despite TEAGHLAIGH receiving the NIE from DEM, which required that it do so.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondents for the failure to comply with the law. Respondents, as owner of the Property, had complete control over the occurrence of the violation.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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