

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: The Providence Turners

FILE NO.: OCI-HW-15-65

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 August 20, 2015, the DEM issued a Letter of Non-Compliance to the Respondent by certified mail for the violations that are the subject of this Notice of Violation ("NOV"). The letter required the Respondent to take specific actions to correct the violations. The letter was returned to the DEM and marked "unclaimed". On 29 September 2015, the DEM inspector spoke with the Respondent's president at the Property and advised her of the actions required to correct the violations. To date, the Respondent has failed to respond to the DEM or correct the violations.

C. Facts

- (1) The property is located at 108-130 Glenbridge Avenue, Assessor's Plat 113, Lots 261, 262, 263 and 419, in the city of Providence (the "Property"). The Property includes a building used for a members club of physical training (the "Building").
- (2) The Respondent owns the Property.
- (3) On 30 June 2015, 29 September 2015 and 20 October 2015, the DEM inspected the Property. The inspections revealed the following:
 - (a) Along the eastern side of the Building evidence of a release of oil to the land that was approximately 300 square feet in size (the "Oil Release"); and
 - (b) In the area of the Oil Release one 55-gallon container holding used oil that was not labeled with the words "Used Oil" that was placed on the ground without an impervious surface or under a roofed structure.
- (4) The Respondent did not receive approval from the DEM to release oil on the Property.

- (5) As of the date of the NOV, the Respondent has failed to correct the violations that are described in Section C (3) above.

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 for Hazardous Waste Management (the "Hazardous Waste Regulations") 15.2F, Oil Pollution Control Regulations Section 6(a) and DEM's Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases (the "Remediation Regulations") 4.01** – prohibiting the release or disposal of used oil and/or hazardous materials to the waters or to the land of the State.
- (2) **DEM's Hazardous Waste Regulations 15.4D** – requiring used oil generators to take immediate steps to contain and clean up spills or releases of used oil.
- (3) **DEM's Oil Pollution Control Regulations Section 12(b)** – requiring a person to take immediate steps to contain and clean up spills or releases of oil.
- (4) **DEM's Hazardous Waste Regulations 15.4 A3** – requiring that a used oil generator label each container holding used oil with the words “Used Oil”.
- (5) **DEM's Hazardous Waste Regulation 15.4 A4** – requiring containers of used oil that are stored outside to be placed on an impervious surface under a roofed structure and protected from precipitation and flooding.

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 10 days of receipt of the NOV**, contain the release of used oil, remove all soil that has been impacted by the release and place the collected used oil and soil into containers that are compatible with used oil.
- (2) **Within 30 days of receipt of the NOV:**
 - (a) Collect representative soil samples from the base and sides of the excavation and submit the samples to a laboratory for analysis to confirm compliance with the DEM's Remediation Regulations 8.02B; and
 - (b) Label all containers holding used oil or contaminated soil with the words “Used Oil”.
- (3) **Within 10 days of receipt** of the analytical report from the laboratory, submit a copy of the report to DEM's Office of Compliance & Inspection.

- (4) **Within 60 days of receipt of the NOV**, make arrangements with a licensed transporter to ship all containers holding used oil and the contaminated soil to a properly licensed disposal 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:

\$5,000

- (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 - Environmental Response Fund," 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 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 the Director 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 the DEM Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Paragraphs 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 the 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
One Capitol Hill, 4TH 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'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 A. Hoefsmit, Esq.
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 with regard to 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 42-71.1-2(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 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 23-19.1-33, 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 A. Hoefsmit at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey Tyrrell of the DEM Office of Compliance and Inspection at (401) 222-1360 ext. 7407.

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, Chief
DEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

The Providence Turners
c/o Leslie DeLuca, Registered Agent
191 Carleton Street
Providence, RI 02908

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, HAZARDOUS WASTE
 File No.: OCI-HW-15-65
 Respondent: The Providence Turners

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), (2) & (3) - Release of Oil	Type I (\$25,000 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500
D (4) and D (5) – Labeling and Storage of Used Oil Container	Type I (\$25,000 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500
SUB-TOTAL					\$5,000

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

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 ARE IN COMPLIANCE. 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 the 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 can not 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= \$5,000

PENALTY MATRIX WORKSHEET

CITATION: Release of Oil
 VIOLATION NO.: D (1), (2) & (3)

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.

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM's *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 contain a release of used oil and failed to take steps to clean up the oil release on the property. State regulations prohibit the disposal of used oil to the waters or land of the State and require any person subject to the regulations to take immediate actions to contain and clean up a release of used oil. Disposal of used oil at an unlicensed facility may result in contamination of soil, surface and groundwater.
- (B) **Environmental conditions:** Used oil was released onto exposed soil at the property.
- (C) **Amount of the pollutant:** At the time of the inspections, the DEM inspector observed a release of used oil covering approximately 300 square feet of soil.
- (D) **Toxicity or nature of the pollutant:** Used oil is known to cause soil contamination when released to the environment and may contain constituents that are suspected human carcinogens.
- (E) **Duration of the violation:** Full duration unknown - at least 16 months.
- (F) **Areal extent of the violation:** Considered, but 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 failed to take reasonable steps to mitigate the noncompliance by cleaning up the oil and impacted soil.
- (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:** Considered, but 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 complete control over the property and failed to take steps to clean up the release of used oil.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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

PENALTY MATRIX WORKSHEET

CITATION: Labeling and Storage of Used Oil Container
 VIOLATION NO.: D (4) & (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 PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM's *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 label a container holding used oil with the words "Used Oil" and failed to store the container on an impervious surface and under a roofed structure. The requirement to label containers holding used oil and properly store used oil containers are integral parts of the regulatory program because these requirements reduce the potential for mismanagement of waste. Proper labeling of containers provides important information regarding the chemical properties of the waste for emergency responders who may be called to a facility during a fire, spill or release. Proper storage of containers minimizes the likelihood of the release of contaminants to the environment.
- (B) **Environmental conditions:** Considered, but not utilized in this calculation.
- (C) **Amount of the pollutant:** One 55-gallon container.
- (D) **Toxicity or nature of the pollutant:** Used oil is known to cause soil contamination when released to the environment and may contain constituents that are suspected human carcinogens.
- (E) **Duration of the violation:** Full duration unknown - at least 16 months.
- (F) **Areal extent of the violation:** Considered, but not utilized in this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to take reasonable and appropriate steps to prevent the noncompliance and has provided no information to the DEM that it is now in compliance.
- (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:** Considered, but not utilized in 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 complete control over the occurrence of the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized in this calculation.

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