

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Wood Street Investors, Inc.
East Bay Rubber Company
J. Royal Co., Inc.**

FILE NO.: 2009-25-HW

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. Facts

- (1) The subject property is located at 500 Wood Street, Bristol, Rhode Island, Assessor's Plat 29, Lot 1 (the “Property”). The Property includes a building identified as Building #9 (“Building 9”).
- (2) Wood Street Investors, Inc. (“Wood Street”) is the owner of the Property.
- (3) The Rhode Island Secretary of State's corporation's database lists East Bay Rubber Company as an inactive corporation, having its principal place of business at the Property. The date of the Revocation Certificate was February 16, 2006. The company was not formally dismantled.
- (4) East Bay Rubber Inc. is registered with DEM as a small quantity hazardous waste generator at the Property pursuant to the DEM Rules and Regulations for Hazardous Waste Management (the “Hazardous Waste Regulations”) and pursuant to Title 40 of the Code of Federal Regulations (“40 CFR”) under the name of “East Bay Rubber, Inc.” with the U.S. Environmental Protection Agency (“EPA”) identification number RID987489986.
- (5) The Rhode Island Secretary of State's corporation's database lists East Bay Rubber Inc. as merged into J. Royal Co., Inc. on September 18, 1998.
- (6) On February 11, 2009 DEM inspected Building 9. The inspection revealed the following:

- (a) One (1) thirty (30) gallon black plastic container holding a clear fluid with an acidic odor that was labeled as “acetic acid”;
 - (b) Two (2) fifty five (55) gallon blue plastic containers holding a dark red colored fluid with a petroleum odor;
 - (c) One (1) fifteen (15) gallon red steel container holding a dark colored liquid with a strong petroleum odor.
- (7) On March 5, 2009, DEM collected samples from the containers in Building 9. The DEM inspector collected sample WSI-01 from the thirty (30) gallon container marked as acetic acid, sample WSI-02 and WSI-03 from the two (2) fifty-five (55) gallon blue plastic containers holding the dark red colored fluid and sample WSI-04 from the fifteen gallon red steel container holding the dark colored liquid. Wood Street’s President, Lyle Fain, informed the DEM inspector at the time of the inspection that the building was formerly occupied by East Bay Rubber Company and that the containers were abandoned when the company moved out over three (3) years ago. The DEM inspector asked Mr. Fain to identify a manufacturing process or activity conducted by Wood Street that required the use of the chemicals held in the containers. Mr. Fain stated that Wood Street did not operate a manufacturing process or activity that required the use of the chemicals.
- (8) The containers in Building 9 became solid waste when East Bay Rubber Company or East Bay Rubber Inc. or both terminated occupancy and abandoned the containers. The Hazardous Waste Regulations and 40 CFR define a solid waste as any discarded material that is not otherwise excluded from regulation.
- (9) On March 12, 2009 DEM received a report of the analytical test results for the samples collected on March 5, 2009. The pH of sample WSI-01 was 1.8 making the waste a corrosive hazardous waste having an EPA Waste Number of D002. The flashpoint for samples WSI-02, WSI-03 and WSI-04 was 129°F, 114°F and 130°F, respectively which indicates that the wastes held in the containers met the definition of a flammable hazardous waste having an EPA Waste Number of D001.
- (10) On October 23, 2009, DEM inspected Building 9 and observed the four (4) containers holding hazardous waste in the same condition as noted during the inspection on March 5, 2009.
- (11) The Respondents did not receive approval from DEM to store hazardous waste on the Property.
- (12) As of the date of this Notice of Violation (“NOV”), Wood Street has failed to properly dispose of the hazardous waste on the Property.

C. 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 23-19.1-10 and Hazardous Waste Regulation 7.01 A** – requiring that a person obtain a permit prior to storing or disposing of hazardous waste onsite.

D. 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 the NOV**, remove all hazardous waste from the Property using a permitted hazardous waste transporter and ship the hazardous waste to a licensed treatment, storage and disposal facility (the “Designated Facility”).
- (2) **Within thirty (30) days of receipt of the uniform hazardous waste manifest signed by the Designated Facility**, submit a copy of the manifest to the DEM Office of Compliance and Inspection.

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:

Thirteen Thousand Twenty-Six Dollars (\$13,026.00)

- (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 the NOV. Payment shall be in the form of a certified 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 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.

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 Paragraphs 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 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, 3RD 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:

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 town of Bristol 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) 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 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 F 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:

Wood Street Investors, Inc.
c/o Barry Kusnitz, Registered Agent
155 South Main Street, Suite 405
Providence, RI 02903

Lyle Fain, President
Wood Street Investors, Inc.
623 Angell Street
Providence, RI 02906

Diane Finkle, Esq.
Winograd, Shine & Zacks, PC
123 Dyer Street
Providence, RI 02903

East Bay Rubber Company
c/o Eugene C. Heilhecker, III, Registered Agent
12 Cara Court
North Kingstown, RI 02852

J. Royal Co., Inc.
c/o Russell Vroom, Registered Agent
40 Bay Spring Avenue
P.O. Box 225
Barrington, R.I. 02806

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, HAZARDOUS WASTE
 File No.: 2009-25-HW
 Respondents: Wood Street Investors, Inc., East Bay Rubber Company, and J. Royal Co., Inc.

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	
C (1) – Unauthorized storage of hazardous waste	Type I (\$ <u>25,000</u> Max. Penalty)*	Major	\$12,500	1	\$12,500.00
<i>SUB-TOTAL</i>					\$12,500.00

*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.

DESCRIPTION OF BENEFIT	CALCULATION	AMOUNT
Economic Benefit of noncompliance identified by the State of Rhode Island for storing hazardous waste without first obtaining a permit. The One-time Non-depreciable Expense related to the failure to properly dispose of the waste was obtained by surveying local contractors to obtain cost estimates for disposal of the hazardous waste. The Economic Benefit gained by the instances of noncompliance was calculated by utilizing an EPA computer model entitled "BEN". The model calculates the economic gain of noncompliance by performing a detailed economic analysis. The dates, dollar amounts and values used in this analysis are as listed in this table.	<ul style="list-style-type: none"> • Profit Status 	C-Corporation
	<ul style="list-style-type: none"> • Filing Status 	C-Corporation
	<ul style="list-style-type: none"> • Initial Capital Investment 	\$0
	<ul style="list-style-type: none"> • One-time Non-depreciable Expense 	\$875.00
	<ul style="list-style-type: none"> • Annual Expense 	\$0
	<ul style="list-style-type: none"> • First Month of Non-Compliance 	March 2006
	<ul style="list-style-type: none"> • Compliance Date 	July 31, 2010
	<ul style="list-style-type: none"> • Penalty Due Date 	July 31, 2010
	<ul style="list-style-type: none"> • Useful Life of Pollution Control 	N/A
	<ul style="list-style-type: none"> • Equipment Annual Inflation Rate 	N/A
<ul style="list-style-type: none"> • Discount/Compound Rate 	N/A	
<i>SUB-TOTAL</i>		\$158.00

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.		
DESCRIPTION OF COST	CALCULATION OF ACTUAL COST INCURRED	AMOUNT
Flashpoint Analysis – Method 1010	\$25.00/sample x 3 samples	\$ 75.00
pH Analysis – Method 4500	\$8.00/sample x 1 sample	\$ 8.00
Volatile Organic Analysis – Method 8260	\$95.00/sample x 3 samples	\$ 285.00
<i>SUB-TOTAL</i>		\$ 368.00

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$13,026.00

PENALTY MATRIX WORKSHEET

CITATION: *Unauthorized storage of hazardous waste*

VIOLATION NO.: C (1)

TYPE		
<p style="text-align: center;"><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p>FACTORS CONSIDERED:</p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondents stored several containers holding hazardous waste on the property and failed to take necessary steps to obtain a permit as required by State law and Federal and State regulations or properly dispose of the hazardous waste. The requirement to obtain a permit is a major component of the regulatory program because the permit requires the development of procedures and installation of equipment that are designed to safely store the hazardous waste. The requirement to properly dispose of hazardous waste is also a major component of the regulatory program.</p> <p>(B) Environmental conditions: The hazardous waste was stored in a building that was vacant at the time of the inspections conducted by DEM.</p> <p>(C) Amount of the pollutant: DEM observed one (1) thirty (30) gallon container, two (2) fifty five (55) gallon containers and one (1) fifteen (15) gallon container, all holding hazardous waste. Based on the number and volume of the containers, the total volume of hazardous waste could have equaled one hundred fifty five (155) gallons.</p> <p>(D) Toxicity or nature of the pollutant: The waste stored by Respondents was analyzed and determined to include a characteristic flammable hazardous waste having an EPA Waste Number of D001 and a corrosive hazardous waste having an EPA waste Number of D002.</p> <p>(E) Duration of the violation: At least three (3) years. DEM first observed the containers holding hazardous waste on February 11, 2009 and then observed the same containers on March 5, 2009 and October 23, 2009. The DEM inspector was informed during the March 5 inspection that the containers were abandoned about three (3) years ago.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable steps to prevent or mitigate the noncompliance by obtaining a permit to store the hazardous waste or properly dispose of the hazardous waste. During the inspection on March 5, 2009 the DEM inspector advised Lyle Fain, the president of Wood Street Investors, Inc, of the requirements of the Hazardous Waste Regulations and explained that the subject waste may meet the definition of a hazardous waste. Wood Street Investors, Inc. continued to store the hazardous waste onsite after being made aware of the requirements of the regulations.
- (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 relevant.
- (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:** Respondents had complete control over the occurrence of the violation and Wood Street Investor's Inc. was notified by the DEM of the requirements of the Hazardous Waste Regulations.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

<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