

CERTIFIED MAIL

Richard T. Bzdyra
Ocean State Planners, Inc.
1255 Oaklawn Avenue
Cranston, RI 02920

RE: **NOTICE OF VIOLATION**
File Name: Richard Bzdyra
License No.: D2034

Dear Mr. Bzdyra:

Enclosed please find a Notice of Violation ("NOV"). As set forth within the NOV, you may wish to request a formal hearing. In that regard your request must be made in writing and received by the Administrative Adjudication Division (AAD) at the address listed immediately below within twenty (20) days of the receipt of this letter:

Bonnie Stewart, Clerk
Department of Environmental Management
Administrative Adjudication Division
235 Promenade Street, Room 310
Providence, RI 02908

A copy of the request for a hearing should be sent to Attorney Gregory Schultz at the Office of Legal Services, 235 Promenade Street, Room 450, Providence, Rhode Island 02903.

Correspondence other than a request for a hearing should be sent to the following address:

David Chopy, Supervising Sanitary Engineer
Department of Environmental Management
Office of Compliance and Inspection
235 Promenade Street, Room 220
Providence, Rhode Island 02908-5767

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Name: Richard Bzdyra

RE: Notice of Violation

PLEASE BE ADVISED that correspondence with the Office of Compliance and Inspection, including requests to arrange an informal meeting to discuss this Order and Penalty, will not be deemed a request for a formal hearing and will not protect your right to request a formal hearing.

Sincerely,

David Chopy

Supervising Sanitary Engineer

Office of Compliance and Inspection

Enclosure: Notice of Violation

cc. Gregory Schultz, Esq., Office of Legal Services, DEM
Russell Chateaufeuf, Chief, Office of Water Resources, DEM
Brian Moore, DEM, Office of Water Resources

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF COMPLIANCE & INSPECTION**

IN RE: Richard Bzdyra

LICENSE NO. #D2034

NOTICE OF VIOLATION

A. Introduction

Pursuant to *Sections 42-17.1-2(u) and 42-17.6-3 of the Rhode Island General Laws, as amended*, 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. Facts

- (1) The Respondent is currently licensed by DEM as a Class II individual sewage disposal system ("ISDS") designer (License #D2034).
- (2) On or about December 11, 2001 the Respondent submitted to DEM an ISDS application (# 0116-2859) for a repair to an ISDS for property located on 86 Lookout Avenue, in the town of Johnston, Rhode Island, Plat 9, Lot 153 (the "Repair Application"). The Repair Application stated that the depth to verified water table was 7.5 feet based on the groundwater elevation on an adjacent lot.
- (3) DEM approved the Repair Application on December 13, 2001. The ISDS was constructed and RIDEM issued a Certificate of Conformance on November 6, 2002.
- (4) On August 5, 2003 DEM received a written complaint from Paul and Diane Cotoia, the owners of the property at 86 Lookout Avenue, Johnston, Rhode Island (the "Property Owners"). The Property Owners stated in their written complaint that the ISDS had failed during the winter 2002/spring 2003 and that the Respondent had proposed a questionable plan to correct the ISDS.
- (5) The Respondent submitted letters to DEM on September 11, 2003 and October 15, 2003 in response to inquiries from DEM describing his actions in the construction of the ISDS (the "Response Letters").

- (6) DEM review of the Response Letters and ISDS Application File #0116-2859 revealed the following:
- (a) The plans associated with the Repair Application that was approved by DEM on December 13, 2001 stated that no subsurface drainage shall be installed within 25 feet of the ISDS.
 - (b) An underdrain was discovered during the construction of the ISDS in June 2002 that was within 25 feet of the ISDS.
 - (c) The underdrain was believed to be inactive and a decision was made by the Respondent to remove a portion of the underdrain and continue with the construction of the ISDS.
 - (d) The Respondent failed to verbally notify DEM of the underdrain during the construction of the ISDS.
 - (e) The Respondent submitted the Certificate of Construction on November 1, 2002, approximately five (5) months after the ISDS construction was completed.
 - (f) The Respondent failed to show the underdrain on the Certificate of Construction.
 - (g) The Respondent failed to obtain sufficient soil information to properly design the ISDS. A supplemental water table report submitted by David C. Duranleau to DEM on April 12, 2004 determined that the proper water table depth was 4.0 feet. The Respondent submitted a revised Repair Application to DEM on May 28, 2004 that stated that verified depth to water table was 2.25 feet from the original grade.
 - (h) The Property Owners first reported the failed ISDS to the Respondent in January 2003; however, the Respondent failed to respond to or address the Property Owners concerns in a timely manner.
- (7) Findings of DEM's review of the above referenced ISDS Application were presented to the ISDS Designer Licensing Review Panel (the "Panel"). The Panel is appointed by the Director to review the actions of licensed designers and make recommendations to the DEM on whether a designer's license should be suspended or revoked and the length of time for the suspension or revocation. The Panel met on October 17, 2003 and December 5, 2003 and reviewed the Respondent's actions regarding the ISDS Application. The Panel recommended no revocation or suspension of the Respondent's license, however, the Panel did recommend that DEM assess an administrative penalty.

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 § 5-56.1-7 (a) relating to the requirement that a designer perform all necessary studies, evaluations, and investigations in the design of an ISDS.
- (2) R.I. Gen. Laws § 5-56.1-7 (c) relating to the requirement that after certification of the installation of an ISDS the designer shall be responsible for said installation.
- (3) Section SD 25.05 (b)(2) of the ISDS Regulations relating to the requirement that the designer design an ISDS in a competent manner and demonstrate proper conduct in the inspection or certification of an installation of an ISDS.
- (4) Section SD 27.00 (i) of the ISDS Regulations relating to the requirement that the designer notify DEM if conditions are encountered during construction of an ISDS that are not in accordance with the permit.
- (5) Section SD 27.00 (l)(2) of the ISDS Regulations relating to the requirement that the designer submit a Certificate of Construction to DEM within 5 days of construction of an ISDS.

D. Assessment of Penalty

- (1) Pursuant to *R.I. Gen. Laws §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:

Two Thousand One Hundred Dollars (\$ 2,100.00)

- (2) The proposed administrative penalty is calculated pursuant to the *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 Management Services, 235 Promenade Street, Providence, Rhode Island 02908-5767, along with a copy of this NOV.

E. Right to Administrative Hearing

- (1) Pursuant to *R.I. Gen. Laws §§42-17.1-2(u)(1), 42-17.6-4 and Chapter 42-35*, each named respondent is entitled to request a hearing before the Director or his/her designee regarding the allegations, orders and/or penalties set forth in Paragraphs B through D above. **All requests for hearing MUST:**

- (a) Be in writing. See R.I. Gen. Laws §§42-17.1-2(u)(1) and 42-17.6-4(a),
 - (b) Be **RECEIVED** by DEM's Administrative Adjudication Division within twenty (20) days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(u)(1), 42-17.1-2(u)(3), 42-17.6-4(a) and 42-17.7-9;
 - (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; 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 *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters.*
- (2) All written requests for hearing must be forwarded to:
- Chief Hearing Officer
DEM - Administrative Adjudication Division
235 Promenade Street, 3RD Floor
Providence, RI 02908-5767
- (3) A copy of each request for hearing must also be forwarded to:
- Gregory Schultz, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767
- (4) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (5) 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(u)(5) and 42-17.6-4(b).
- (6) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
- (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, please contact Gregory Schultz, DEM's Office of Legal Services at (401) 222-6607. Technical questions should be directed to David Chopy of DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 7257.

FOR THE DIRECTOR

Dean H. Albro, Chief
DEM Office of Compliance and Inspection

Date:

CERTIFICATION

I hereby certify that on the _____ day of _____, 2005
the within Notice of Violation was forwarded to:

Richard T. Bzdyra
Ocean State Planners, Inc.
1255 Oaklawn Avenue
Cranston, RI 02920

by Certified Mail, return receipt requested.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION
 WATER COMPLIANCE SECTION

File No.: OC&I/ISDS: #D2034

File Name: Richard Bzdyra

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) and C (3); Failure to design an ISDS properly	Type I <i>(\$1000 Max. Penalty)</i>	Major	\$800	1 violation	\$800
C (2); Failure to address concerns of owner	Type I <i>(\$1000 Max. Penalty)</i>	Minor	\$400	1 violation	\$400
C (4); Failure to notify DEM of subdrain encountered during ISDS construction	Type I <i>(\$1000 Max. Penalty)</i>	Major	\$ 800	1 violation	\$ 800
C (5); Failure to submit COC	Type III <i>(\$600 Max. Penalty)</i>	Minor	\$ 100	1 violation	\$ 100
SUB-TOTAL					\$2,100

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$2,100.00

PENALTY MATRIX WORKSHEET

FILE NO.: OC & I/ISDS #D2034 FILE NAME: Richard Bzdyra

CITATION: Failure to design an ISDS properly

VIOLATION NO.: C (1) and C (3)

TYPE		
<input checked="" type="checkbox"/> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment	<input type="checkbox"/> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment	<input type="checkbox"/> 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 Section 10 (a) (2) of the Rules and Regulations for Assessment of Administrative Penalties</p> <p>(A) The extent to which the act or failure to act was out of compliance. The Respondent failed to obtain sufficient soil information to properly design the ISDS. Failure to properly design an ISDS is of major importance to the regulatory program.</p> <p>(B) Environmental conditions. The Respondent designed the ISDS with a 7.5-foot water table depth based on existing water table data from an adjacent property. Subsequent testing on the property revealed that the actual water table depth was 2.25 feet.</p> <p>(G) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance. The Respondent used existing data from an adjacent lot to determine the water table depth rather than determine the actual water table depth by digging a test hole on the property. The Respondent used poor judgement in failing to recognize that conditions at the property required a test hole.</p> <p>(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. DEM did not consider any actions other than those summarized in the NOV in the assessment of the administrative penalty.</p> <p>(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 was completely within the control of the Respondent. The Respondent is solely responsible for ensuring that the ISDS is designed in accordance with the ISDS Regulations.</p>		
<input type="checkbox"/> MINOR	<input type="checkbox"/> MODERATE	<input checked="" type="checkbox"/> MAJOR

Penalty Matrix where the applicable statute provides for a civil penalty up to \$1000.00		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$800-to-\$1,000 \$800	\$600-to-\$800	\$400-to-\$600
	MODERATE	\$ 600-to-\$800	\$400-to-\$600	\$200-to-\$400
	MINOR	\$400-to-\$600	\$200-to-\$400	\$100-to-\$200

PENALTY MATRIX WORKSHEET

FILE NO.: OC & I/ISDS #D2034 FILE NAME: Richard Bzdyra

CITATION: Failure to address concerns of owner

VIOLATION NO.: C (2)

TYPE		
<input checked="" type="checkbox"/> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment	<input type="checkbox"/> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment	<input type="checkbox"/> 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>FACTORS CONSIDERED:</p> <p>Taken from Section 10 (a) (2) of the Rules and Regulations for Assessment of Administrative Penalties</p> <p>(A) The extent to which the act or failure to act was out of compliance. The Respondent failed to respond to or address the property owners concerns in a timely manner. Addressing the valid concerns of a property owner in the design or construction of an ISDS is of importance to the regulatory program.</p> <p>(G) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance. The property owners filed a written complaint with DEM on August 5, 2003 stating that the ISDS had failed during the winter 2002/spring 2003 and that the Respondent had proposed a questionable plan to correct the ISDS.</p> <p>(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. DEM did not consider any actions other than those summarized in the NOV in the assessment of the administrative penalty.</p> <p>(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 was completely within the control of the Respondent. The Respondent is solely responsible for ensuring that the ISDS is designed in accordance with the ISDS Regulations and that the concerns of the owner are addressed in a timely manner.</p>		
<input checked="" type="checkbox"/> MINOR	<input type="checkbox"/> MODERATE	<input type="checkbox"/> MAJOR

Penalty Matrix where the applicable statute provides for a civil penalty up to \$1000.00		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$800-to-\$1,000	\$600-to-\$800	\$400-to-\$600
	MODERATE	\$ 600-to-\$800	\$400-to-\$600	\$200-to-\$400
	MINOR	\$400-to-\$600 \$400	\$200-to-\$400	\$100-to-\$200

PENALTY MATRIX WORKSHEET

FILE NO.: OC & I/ISDS #D2034 FILE NAME: Richard Bzdyra

CITATION: Failure to notify DEM of subdrain encountered during ISDS construction

VIOLATION NO.: C (4)

TYPE		
<input checked="" type="checkbox"/> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment	<input type="checkbox"/> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment	<input type="checkbox"/> 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>FACTORS CONSIDERED:</p> <p>Taken from Section 10 (a) (2) of the Rules and Regulations for Assessment of Administrative Penalties</p> <p>(A) The extent to which the act or failure to act was out of compliance. The Respondent failed to notify DEM of a subdrain uncovered during ISDS construction. Providing notification to DEM in a timely manner of changed conditions at a site is of major importance to the regulatory program.</p> <p>(G) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance. The plans approved by DEM as part of the ISDS permit application stated that no subdrains were allowed within 25 feet of the ISDS. The Respondent uncovered a subdrain during construction of the ISDS that was within 25 feet of the ISDS, but failed to notify DEM of the changed site condition and failed to show the subdrain on the Certificate of Construction that was submitted to DEM. The Respondent made a decision to remove a portion of the subdrain and continue the ISDS construction.</p> <p>(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. DEM did not consider any actions other than those summarized in the NOV in the assessment of the administrative penalty.</p> <p>(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 was completely within the control of the Respondent. The Respondent is solely responsible for ensuring that the ISDS is constructed in accordance with the ISDS Regulations.</p>		
___ MINOR	___ MODERATE	___X___ MAJOR

Penalty Matrix where the applicable statute provides for a civil penalty up to \$1000.00		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$800-to-\$1,000 \$800	\$600-to-\$800	\$400-to-\$600
	MODERATE	\$ 600-to-\$800	\$400-to-\$600	\$200-to-\$400
	MINOR	\$400-to-\$600	\$200-to-\$400	\$100-to-\$200

PENALTY MATRIX WORKSHEET

FILE NO.: OC & I/ISDS #D2034 FILE NAME: Richard Bzdyra

CITATION: Failure to submit COC within 5 days

VIOLATION NO.: C (5)

TYPE		
<input type="checkbox"/> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment	<input type="checkbox"/> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment	<input checked="" type="checkbox"/> 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>FACTORS CONSIDERED:</p> <p>Taken from Section 10 (a) (2) of the Rules and Regulations for Assessment of Administrative Penalties</p> <p>(A) The extent to which the act or failure to act was out of compliance. The Respondent failed to submit COC to DEM within 5 days of completion of ISDS. Submission of a COC to DEM within the specified time is of importance to the regulatory program.</p> <p>(G) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance. The ISDS construction was completed in June 2002; however, the Respondent failed to submit the COC to DEM until November 1, 2002 (almost 5 months past the due date).</p> <p>(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. DEM did not consider any actions other than those summarized in the NOV in the assessment of the administrative penalty.</p> <p>(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 was completely within the control of the Respondent. The Respondent is solely responsible for ensuring that the ISDS is constructed in accordance with the ISDS Regulations.</p>		
<input checked="" type="checkbox"/> MINOR	<input type="checkbox"/> MODERATE	<input type="checkbox"/> MAJOR

Penalty Matrix where the applicable statute provides for a civil penalty up to \$1000.00		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$800-to-\$1,000	\$600-to-\$800	\$400-to-\$600
	MODERATE	\$ 600-to-\$800	\$400-to-\$600	\$200-to-\$400
	MINOR	\$400-to-\$600	\$200-to-\$400	\$100-to-\$200
				\$100