

CERTIFIED MAIL

Kamal Hingorany
Narragansett Engineering, Inc.
3102 East Main Road
Portsmouth, RI 02871-4205

RE: **NOTICE OF VIOLATION AND SUSPENSION OF LICENSE**
File Name: Kamal Hingorany
License No.: D3051

Dear Mr. Hingorany:

Enclosed please find a Notice of Violation and Suspension of License ("NOV").

PLEASE READ THIS DOCUMENT CAREFULLY. Pursuant to R.I. General Laws §§ 42-17.1-2(u)(1), 42-17.6-4 and Chapter 42-35 each named Respondent is entitled to request an administrative hearing before the Director or his designee regarding the alleged violations, orders and/or penalties set forth in this NOV. Further details regarding each Respondent's right to an administrative hearing are provided within the NOV.

If you wish to request an administrative hearing concerning this NOV, the request must **be made in writing and be received within thirty (30) days of your receipt of this NOV**. A written request for an administrative hearing must be submitted to:

RIDEM – Administrative Adjudication Division ("AAD")
235 Promenade Street, 3rd Floor
Providence, RI 02908-5767

A copy of the request for an administrative hearing must also be forwarded to:

RIDEM – Office of Legal Services
235 Promenade Street, 4th Floor
Providence, RI 02908-5767

You may also wish to arrange for an informal meeting to discuss this NOV with representatives of the Office of Compliance & Inspection ("OC&I"). At that informal meeting, representatives of the OC&I will be prepared to discuss the facts set forth in the NOV, steps that may be necessary to comply with the orders contained therein, pertinent regulatory requirements, as well as issues related to the penalty assessed in this NOV. If agreement on resolution of the enforcement action can be reached, a Consent Agreement may be entered that both resolves the NOV and eliminates the need for an administrative hearing.

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Name: Kamal Hingorany

RE: Notice of Violation and Suspension of License

Representatives of the OC&I are prepared to discuss a resolution of this matter with you; however, please be advised that correspondence with the OC&I, including a request for an informal meeting to discuss this NOV, does not constitute a formal request for a hearing and will not protect your right to a formal hearing before RIDEM's AAD.

If you wish to arrange for an informal meeting to discuss this NOV, please contact:

David Chopy, Supervising Sanitary Engineer
Office of Compliance & Inspection
235 Promenade Street, Room 220
Providence, RI 02908 – 5767
Telephone: (401) 222 – 4700, ext. 7257
Or
Anna Zonfrilli, Technical Staff Assistant
Telephone: (401) 222 – 4700, ext. 7431

You have a right to be represented by legal counsel before RIDEM's AAD or in an informal meeting with the OC&I. You are not obligated to do so, but if you plan on having legal representation present at an informal meeting with the OC&I, please inform us at the time of the request for an informal meeting so that we can make arrangements to have legal counsel present.

Sincerely,

David E. Chopy
Supervising Sanitary Engineer
Office of Compliance & Inspection

Enclosure

cc. DEM Office of Legal Services
Russell Chateaufneuf, 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: Kamal Hingorany

LICENSE NO. #D3051

NOTICE OF VIOLATION AND SUSPENSION OF LICENSE

A. Introduction

Pursuant to *Sections 5-56.1-8, 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 III individual sewage disposal system ("ISDS") designer (License #D3051).
- (2) On or about September 26, 2000 the Respondent, on behalf of an applicant, submitted to DEM three (3) ISDS applications (#0033-2482; #0033-0434; and #0033-1609) and plans, stamped and signed by Respondent as the designer, for an alteration to ISDSs located on Neck Road (#0033-2482) and Main Road (#0033-0434 and #0033-1609) in the Town of Tiverton.
- (3) DEM evaluated the applications and returned each application as unacceptable for, among other reasons, the lack of information on any wells located across Neck Road or Main Road, within regulated distances from the ISDSs, or whether the property that was the subject to the application(s) was served by a public well.
- (4) The Respondent resubmitted the alteration applications to DEM on November 8, 2000 (# 0033-2482 and # 0033-1609) and December 6, 2000 (#0033-0434), respectively. In each of the resubmitted alteration applications the Respondent provided information to DEM that there were no wells within 200 feet on Neck Road (# 0033-2482 and #0033-1609) or that there were no wells located across Neck Road or Main Road (#0033-0434). The plans submitted with each application stated that there were no public wells (existing or proposed) within 500 feet of any component of proposed ISDS.
- (5) DEM evaluated each application and, based upon information provided by the Respondent, approved the applications on November 15, 2000 (#0033-2482), December 12, 2000 (#0033-0434), and December 14, 2000 (#0022-1609).
- (6) The ISDSs were not installed and the approvals expired in November and December of 2005, respectively.

- (7) The Respondent resubmitted the alteration applications to DEM on June 19, 2006. The plans for each application did not show any public wells. DEM approved the application for #0033-0434 on July 12, 2006. Following additional review on the remaining applications, DEM questioned the lack of information regarding public wells for applications #0033-2482 and #0033-1609 and returned the applications to the Respondent as unacceptable on August 28, 2006.
- (8) The Respondent resubmitted all three alteration applications to DEM on January 5, 2007. The plans now showed three (3) public wells on nearby lots that included commercial businesses identified as Four Corners Grill, Provender, and Gray's Ice Cream. The previous plans submitted to DEM showed the existing well for Provender; however, the well was identified as a private well. The plans showed that the public wells for Provender and Four Corners Grill were within 400 feet of the proposed ISDS. The Respondent requested a variance from the requirement in the DEM *Rules and Regulations Establishing Minimum Standards Relating to Location, Design, Construction, and Maintenance of Individual Sewage Disposal Systems* (the "ISDS Regulations") for a 400 foot setback from a public well for any component of an ISDS.
- (9) DEM received from the Department of Health documents that showed that the public well for Four Corners Grill has been active since 1997, the public well for Gray's Ice Cream has been active since 1985, and the public well for Provender has been active since 1982.
- (10) The information pertaining to the presence of public wells described by the Respondent in his ISDS alteration applications submitted on January 5, 2007 was available to the Respondent prior to Respondent's initial ISDS application submissions described in Fact B.2 above.
- (11) DEM had issued a Notice of Violation and Suspension of License to the Respondent on November 24, 2003 (the "2003 NOV") alleging a series of violations involving eleven (11) separate ISDS applications that were submitted to DEM by the Respondent from 1998 to 2001. The violations included omissions from application forms and plans, errors in calculations and designs and many resubmissions which did not address all the elements identified as deficiencies in correspondence from DEM.
- (12) DEM and the Respondent executed a Consent Agreement on April 22, 2004 to resolve the 2003 NOV. The suspension was waived in the Consent Agreement, but the Respondent paid the full administrative penalty of Two Thousand Two Hundred Dollars (\$2,200.00) assessed in the 2003 NOV.
- (13) Findings of the DEM review of the each of the above referenced ISDS applications described in Facts B.2 through B.8 (the "ISDS Applications") 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 March 30, 2007 and reviewed the Respondent's actions regarding the ISDS Applications and his prior history. The Panel recommended to DEM that the Respondent's License #D3051 be suspended six (6) months.

- (14) On June 22, 2007 DEM issued to the Respondent a Notice of Intent to Suspend or Revoke the Respondent's License #D3051 (the "NOI"). The NOI was issued for violating the provisions of Rhode Island General Laws, Section 5-56.1-1 et seq. and the ISDS Regulations relating to the Respondent's actions regarding the ISDS Applications. The NOI afforded the Respondent the opportunity to request a preliminary hearing before DEM to show cause why DEM should not suspend the Respondent's license.
- (15) The Respondent received said NOI and requested a preliminary hearing before DEM. The preliminary hearing was held on September 5, 2007.
- (16) The Respondent failed to show cause why DEM should not suspend the Respondent's License #D3051.

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 relating to the authority to suspend a designer's license where the licensed designer has demonstrated gross or repeated negligence, incompetence or misconduct in the representation of site conditions in an application to DEM or design of an ISDS.
- (2) ISDS Regulations effective March 8, 2000 (the "ISDS 2000 Regulations"), Section SD 2.02 (a) relating to the requirement to provide all pertinent information on the ISDS application form.
- (3) ISDS 2000 Regulations, Section SD 2.02 (c) relating to the requirement to submit basic design data with an ISDS application.
- (4) ISDS 2000 Regulations, Section SD 2.02 (d)(12) relating to the requirement to show existing public drinking water wells within 500 feet of the proposed disposal system.

D. Order

Based upon the violations alleged above and pursuant to *R.I. Gen. Laws 5-56.1-8 and Section SD 25.0 of the ISDS Regulations*, it is hereby **ORDERED** that Designer License #D3051 issued to Kamal Hingorany be suspended for a period of six (6) months, effective thirty (30) days from the receipt of this NOV.

E. 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:

Three Thousand Dollars (\$ 3,000.00)

- (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 thirty (30) 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.

F. Right to Administrative Hearing

- (1) Pursuant to *R.I. Gen. Laws §§5-56.1-8, 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 E 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 thirty (30) 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:

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 the DEM 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 _____, 2007 the within Notice of Violation was forwarded to:

Kamal R. Hingorany
Narragansett Engineering, Inc.
3102 East Main Road
Portsmouth, RI 02871

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WATER COMPLIANCE SECTION

File Name: Kamal Hingorany

File No.: OC&I/ISDS: #D3051

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)-C(4); Gross negligence, incompetence or misconduct on an ISDS design; Application # 0033-2482	Type I <i>(\$1000 Max. Penalty)</i>	Major	\$ 1,000	1 application	\$ 1,000
C (1)-C(4); Gross negligence, incompetence or misconduct on an ISDS design; Application # 0033-0434	Type I <i>(\$1000 Max. Penalty)</i>	Major	\$ 1,000	1 application	\$ 1,000
C (1)- C(4); Gross negligence, incompetence or misconduct on an ISDS design; Application # 0033-1609	Type I <i>(\$1000 Max. Penalty)</i>	Major	\$ 1,000	1 application	\$ 1,000
SUB-TOTAL					\$3,000

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$3,000.00

PENALTY MATRIX WORKSHEET

FILE NO.: OC & I/ISDS #D3051 x-ref Appl. #0033-2482

FILE NAME: Kamal Hingorany

CITATION: Gross negligence, incompetence or misconduct on an ISDS design

VIOLATION NO.: C (1)-C (4)

TYPE		
<u> X </u> TYPE I DIRECTLY related to protecting health, safety, welfare or environment	_____ TYPE II INDIRECTLY related to protecting health, safety, welfare, or environment	_____ 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 Section 10 (a) (2) of the Rules and Regulations for Assessment of Administrative Penalties		
<p>(A) The extent to which the act or failure to act was out of compliance. The Respondent provided inaccurate and/or false information on the ISDS application and plans. Providing accurate information 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 Respondent submitted the ISDS application and plans to DEM in September 2000 showing no public wells within 500 feet of the proposed ISDS. DEM returned the application to the Respondent specifically questioning the presence of public wells in the area. The Respondent stated in his response that no public wells were present. The Respondent submitted a second ISDS application and plans to DEM in June 2006 again showing no public wells within 500 feet of the proposed ISDS. A third ISDS application and plans submitted to DEM in January 2007 showed two (2) public wells within 400 feet of the proposed ISDS. The Respondent failed to take the appropriate steps to determine the presence of the public wells until the submission of the application in January 2007.</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 issued an NOV to the Respondent on November 23, 2003 noting 22 instances of violation of statute or regulation in the design of an ISDS and inspection of an ISDS installation. The NOV ordered a 60 day suspension of the Respondent's license and the payment of a \$2,200 penalty. DEM and the Respondent executed a consent agreement on April 22, 2004 whereby the suspension was waived but the full penalty was paid to DEM.</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> <p>(J) Any other factors that may be relevant in determining the amount of a penalty. The Respondent's failure to design the ISDS in a competent and thorough manner resulted in delays in the review of the application.</p>		
___ MINOR	_____ MODERATE	___ X MAJOR

Penalty Matrix where the applicable statute provides for a civil penalty up to \$1,000.00		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$800-to-\$1,000 \$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

PENALTY MATRIX WORKSHEET

FILE NO.: OC & I/ISDS #D3051 x-ref Appl. #0033-0434

FILE NAME: Kamal Hingorany

CITATION: Gross negligence, incompetence or misconduct on an ISDS design

VIOLATION NO.: C (1)-C (4)

TYPE		
<u> X </u> TYPE I DIRECTLY related to protecting health, safety, welfare or environment	_____ TYPE II INDIRECTLY related to protecting health, safety, welfare, or environment	_____ TYPE III INCIDENTAL to protecting health, safety, welfare, or environment
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PENALTY MATRIX WORKSHEET

FILE NO.: OC & I/ISDS #D3051 x-ref Appl. #0033-1609

FILE NAME: Kamal Hingorany

CITATION: Gross negligence, incompetence or misconduct on an ISDS design

VIOLATION NO.: C (1)-C (4)

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