

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: George Secchiaroli

FILE NO.: OCI-SW-20-3

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 Rhode Island Department of Environmental Management (“Director” of “RIDEM”) has reasonable grounds to believe that the above-named party (“Respondent”) has violated certain statutes and/or administrative regulations under RIDEM's jurisdiction.

B. ADMINISTRATIVE HISTORY

On 14 October 2010, RIDEM issued a *Letter of Non-Compliance* (“LNC”) to Respondent for the alleged violations that are the subject of this *Notice of Violation* (“NOV”). The LNC required specific actions to correct the violations. On 27 October 2010, RIDEM’s inspector met with Respondent at the property in response to the LNC. Respondent advised RIDEM’s inspector that he would comply with the LNC at the end of November. On 17 January 2020, as a follow up to an inspection performed by RIDEM on 2 January 2020, RIDEM issued a *Notice of Intent to Enforce* (“NIE”) to Respondent by certified mail for the alleged violations that are the subject of the NOV. The NIE required specific actions to correct the violations. The NIE was delivered on 4 February 2020. As of the date of the NOV, Respondent has failed to respond to or comply with the NIE.

C. FACTS

- (1) The property is located at 80 Nooseneck Hill Road, Assessor's Plat 6, Lot 33-2 in West Greenwich, Rhode Island (“Property”).
- (2) BUSTER CORP. owns the Property.
- (3) On 1 September 2010, RIDEM inspected the Property in response to a citizen’s complaint that was filed with RIDEM on 6 May 2010. The inspection revealed approximately 60 cubic yards of solid waste deposited on the ground, which consisted of approximately 300 used rubber tires, construction and demolition debris, discarded appliances, plastic waste, metal waste, yard waste and other mixed solid waste. RIDEM’s inspector observed that some of the solid waste was deposited within or near regulated freshwater wetlands.

- (4) On 30 June 2017, the Massachusetts Secretary of the Commonwealth involuntarily dissolved the Certificate of Incorporation for BUSTER CORP. Respondent is the last known President of BUSTER CORP.
- (5) On 2 January 2020, RIDEM inspected the Property in response to a citizen's complaint that was filed with RIDEM on 29 July 2019. The inspection revealed approximately 60 cubic yards of solid waste deposited on the ground, which consisted of approximately 300 used rubber tires, discarded appliances, vehicle parts, bottles and cans, household refuse, metal waste, wood waste, PVC piping and other mixed solid waste. RIDEM's inspector observed that some of the solid waste was deposited within or near regulated freshwater wetlands.
- (6) On 3 November 2022, RIDEM inspected the Property. The inspection revealed approximately 91 cubic yards of solid waste deposited on the ground in the areas previously inspected and in additional areas of the Property. The solid waste consisted of approximately 387 used rubber tires, discarded appliances, metal waste, wood waste, PVC piping, steel drums and other mixed solid waste. The inspector observed that some of the solid waste was deposited within or near regulated freshwater wetlands.
- (7) Respondent has neither sought nor obtained an approval, permit or license from RIDEM to operate a solid waste management facility on the Property.
- (8) As of the date of the NOV, Respondent has failed to cease operating a solid waste management facility on the Property and compliantly dispose of the solid waste 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 licensed by RIDEM.
- (2) **R.I. Gen. Laws Section 23-18.9-8** – prohibiting the operation of a solid waste management facility without first obtaining a license from RIDEM.
- (3) **R.I. Gen. Laws Section 2-1-21** – prohibiting activities which may alter freshwater wetlands without a permit from RIDEM.
- (4) **Rhode Island's Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act (250-RICR-150-15-3) (formerly 250-RICR-150-15-1), Part 3.5.5(A) (formerly Part 1.5(A)(1))** – prohibiting activities which may alter freshwater wetlands without a permit from RIDEM.

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 and accumulation of solid waste on the Property.
- (2) **Within 60 days of receipt of the NOV**, remove all solid waste from the Property and dispose of it at a licensed solid waste management facility in accordance with the following requirements:
 - (a) Minimize disturbance to all freshwater wetlands. All removal activities in freshwater wetland shall be completed through manual methods (e.g., by hand or with hand-held tools and equipment). **The use of machinery within freshwater wetlands is prohibited unless a permit is first obtained from RIDEM.**
 - (b) Following the removal of the solid waste from the freshwater wetlands, all disturbed surfaces within the freshwater wetlands shall be seeded with a wildlife conservation grass mixture and then covered with a loose mat of straw mulch, which shall be free of any components/contaminants that could promote the spread of invasive plant species. The restored areas shall be allowed to revegetate and revert to a natural wild condition.
 - (c) The solid waste shall not be burned or buried.
- (3) **Within 10 days of completion of the removal of the solid waste**, submit to RIDEM's Office of Compliance and Inspection written verification that the solid waste was disposed of at a licensed solid waste management facility or recycling 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:

\$9,154

- (2) The proposed administrative penalty is calculated pursuant to Rhode Island's *Rules and Regulations for Assessment of Administrative Penalties* (250-RICR-130-00-1) ("Penalty Rules") and must be paid to RIDEM within 30 days of your receipt of the NOV. Penalty payments shall be by one of two methods:
- (a) By certified check, cashier's check or money order made payable to the **General Treasury – Environmental Response Fund** and forwarded to:
- Administrator, RIDEM Office of Compliance and Inspection
235 Promenade Street, Suite 220
Providence, RI 02908-5767
- (b) By wire transfer in accordance with instructions provided by RIDEM
- (3) Penalties assessed against 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 RIDEM 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 RIDEM'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 RIDEM'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
RIDEM - 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).

- (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 Rhode Island's 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:
- Jenna Giguere, Esquire
RIDEM - 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 RIDEM'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 this 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 Town of West Greenwich, 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) 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) Jenna Giguere of RIDEM's Office of Legal Services at (401) 222-6607, ext. 2772036 or at jenna.giguere@dem.ri.gov. All other inquiries should be directed to Tracey D'Amadio Tyrrell of RIDEM's Office of Compliance and Inspection at (401) 222-1360, ext. 2777407 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
RIDEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

George Secchiaroli
One Deer Island
Amesbury, MA 01913

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: Solid Waste
 File No.: OCI-SW-20-3
 Respondent: George Secchiaroli

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>	Minor	\$4,375	1 violation	\$4,375
D (2) – Operation of a Solid Waste Management Facility Without a License	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$4,375	1 violation	\$4,375
<i>SUB-TOTAL</i>					\$8,750

*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 the cost of disposing of the solid waste at a licensed solid waste management facility. 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 Non-compliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	For profit, other than a C Corp. \$1,471 September 2010 1 March 2023 1 February 2023 8.1%
<i>SUB-TOTAL</i>		\$404

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 RIDEM 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 RULES = \$9,154

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.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Rules.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent 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. (2) Environmental conditions: The Property is in a GAA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment, and which are in groundwater reservoirs and portions of their recharge areas, wellhead protection areas for community water supply wells and in groundwater dependent areas. The northern half of the Property lies within the wellhead protection area for a community water supply. The Property is within a groundwater recharge area for the community water supply wells and within 300 feet of a groundwater reservoir. The far southern portion of the Property lies within a non-community water supply wellhead protection area. Approximately 40% of the Property is comprised of regulated freshwater wetlands associated with Old Hickory Brook, which flows through the eastern portion of the Property. The Property is located within Pawtuxet River watershed. The eastern boundary of the Property abuts residential developments. (3) Amount of the pollutant: Approximately 91 cubic yards of solid waste (as of 3 November 2022). (4) Toxicity or nature of the pollutant: Some of the solid waste is combustible and presents a fire hazard. The stockpiles of solid waste may provide harborage to rodents or disease vectors. The discarded appliances may contain oil or components containing hazardous materials. (5) Duration of the violation: Full duration unknown – at least 12 years. RIDEM first observed solid waste on the Property on 1 September 2010. RIDEM only considered the duration of the violation since the 3 November 2022 inspection due to a July 2021 statutory amendment. (6) Areal extent of the violation: The solid waste is deposited throughout much of the 14.2-acre Property. 		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent the non-compliance by ceasing or prohibiting the disposal of solid waste on the Property. Respondent has yet to mitigate the non-compliance despite receiving the LNC and NIE from RIDEM, which required that he do so.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM 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 Respondent for the failure to comply with Rhode Island's *Refuse Disposal Act*. Respondent, 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	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 \$4,375	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Operating a Solid Waste Management Facility Without a License

VIOLATION NO.: D (2)

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		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Rules.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent allowed for the disposal of solid waste on the Property and allowed it to accumulate and remain on-site for an extended period. Prohibiting the operation of a solid waste management facility without a license or approval from RIDEM is of prime importance to the regulatory program. RIDEM’s licensing process ensures that solid waste management facilities are appropriately located and operated in strict compliance with Rhode Island’s <i>Rules and Regulations for Solid Waste Management Facilities and Organic Waste Management Facilities</i>. Failure to comply will likely result in threats or harm to public health and safety and the environment. (2) Environmental conditions: The Property is in a GAA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment, and which are in groundwater reservoirs and portions of their recharge areas, wellhead protection areas for community water supply wells and in groundwater dependent areas. The northern half of the Property lies within the wellhead protection area for a community water supply. The Property is within a groundwater recharge area for the community water supply wells and within 300 feet of a groundwater reservoir. The far southern portion of the Property lies within a non-community water supply wellhead protection area. Approximately 40% of the Property is comprised of regulated freshwater wetlands associated with Old Hickory Brook, which flows through the eastern portion of the Property. The Property is located within Pawtuxet River watershed. The eastern boundary of the Property abuts residential developments. (3) Amount of the pollutant: Approximately 91 cubic yards of solid waste (as of 3 November 2022). (4) Toxicity or nature of the pollutant: Some of the solid waste is combustible and presents a fire hazard. The stockpiles of solid waste may provide harborage to rodents or disease vectors. The discarded appliances may contain oil or components containing hazardous materials. (5) Duration of the violation: Full duration unknown – at least 12 years. RIDEM first observed solid waste on the Property on 1 September 2010. RIDEM only considered the duration of the violation since the 3 November 2022 inspection due to a July 2021 statutory amendment. (6) Areal extent of the violation: The solid waste is deposited throughout much of the 14.2-acre Property. 		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent the non-compliance by ceasing or prohibiting the disposal of solid waste on the Property. Respondent has yet to mitigate the non-compliance despite receiving the NIE from RIDEM, which required that he do so.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM 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 Respondent for the failure to comply with Rhode Island's *Refuse Disposal Act*. Respondent, 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	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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	MINOR	\$2,500 to \$6,250 \$4,375	\$1,250 to \$2,500	\$250 to \$1,250