

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: RHODE ISLAND RECYCLED METALS, LLC
AARE, LLC**

FILE NO.: OCI-SR-23-2

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 parties (“Respondents”) have violated certain statutes and/or administrative regulations under RIDEM's jurisdiction.

B. ADMINISTRATIVE HISTORY

In May 2012, RIDEM issued a Notice of Violation (“2012 NOV”) to RHODE ISLAND RECYCLED METALS, LLC (“RIRM”) and ACR Realty, LLC (“ACR”) alleging certain violations of Rhode Island’s *Water Pollution Act, Water Quality Regulations, Oil Pollution Regulations and Regulations for the Rhode Island Pollutant Discharge Elimination System*. The violations involved failure to comply with a stormwater permit and unauthorized activities in Providence River, including the dismantling of vessels. In July 2013, RIDEM, RIRM, and ACR executed a Consent Agreement to resolve the 2012 NOV. In March 2015, RIDEM and the Rhode Island Office of Attorney General (“RIAG”) filed a complaint in the Rhode Island Superior Court (“RISC”) against Respondents alleging that Respondents failed to comply with the Consent Agreement. In July 2016, RISC issued an order appointing a Special Master (“Special Master”) to address the environmental violations at the property. The order barred RIDEM from taking any administrative enforcement action except in an emergency without first notifying the Special Master and allowing the Special Master to bring the matter to the attention of the court. On 30 March 2023, RIDEM and Respondents met to discuss Respondents’ plans for the property. At that meeting, and as further written in meeting minutes sent to Respondents on 10 April 2023, RIDEM directed Respondents to perform a site investigation (“SI”) of the property and submit a site investigation report (“SIR”) in accordance with Rhode Island’s *Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases* (250-RICR-140-30-1) (“SR Rules”). After multiple disagreements with the scope and timing of the required investigation, RIAG and RIDEM petitioned RISC to impose standing fines of \$500 a day for missed deadlines and to require RIRM to pre-fund the escrow account to a level sufficient to complete the remediation. On 13 June 2023, RISC issued an order returning RIDEM’s administrative authority to proceed through the site remediation process and to allow RIDEM to bring an administrative enforcement action for violations of the SR Rules. On 16 November 2023, in response to a petition RIDEM received from the community in accordance with the SR Rules, RIDEM issued a letter to Respondents requiring the submission of a draft public involvement plan (“PIP”) to RIDEM. On 5 December 2023 and on 14 December 2023, RIDEM received electronic correspondence from Respondents’ attorney that submission of the PIP would not be made by the deadlines specified by RIDEM, without properly requesting an extension and without providing an adequate justification. As of the date of this Notice of Violation (“2023 NOV”), Respondents have failed to submit the PIP to RIDEM.

C. FACTS

Historic

- (1) The property is located at 434 Allens Avenue, Assessor's Plat 47, Lot 601 in Providence, Rhode Island ("Property"). The Property includes a facility engaged in metals recycling, which involves the receipt, processing, and transport of scrap metal ("Facility").
- (2) AARE, LLC owns the Property. AARE acquired the Property on 14 April 2014.
- (3) RHODE ISLAND RECYCLED METALS, LLC ("RIRM") operates the Facility.
- (4) On or about 19 February 1993, RIDEM received a report on an inspection of the Property that was prepared by Roy F. Weston, Inc. titled *FINAL SITE INSPECTION REPORT FOR BOLIDEN METECH, INC. PROVIDENCE, RHODE ISLAND* and dated 19 February 1993.
- (5) On 4 May 1998, RIDEM received a report of polychlorinated biphenyl ("PCB") cleanup activities at the Property that was prepared by VHB/Vanasse Hangen Brustlin, Inc. titled *PCB Cleanup Verification Report Boliden Metech Allens Avenue Facility* and dated April 1988 ("PCB Report").
- (6) The PCB Report includes the following findings:
 - (a) Soil samples collected at the Property had levels of PCBs that were below 10 mg/kg.
 - (b) Several pathways were considered for potential transport of PCBs from the Property to Providence River, which were soil/sediment, surfacewater, groundwater and airborne ("Pathways").
 - (c) The implementation of the remediation plan including capping the Property with clean soils, maintaining runoff on the Property, constructing a multi-tiered shoreline structure, and establishing ground cover will prevent the transport of PCBs through any of the Pathways.
- (7) On 2 August 1999, the Environmental Protection Agency ("EPA") issued a Certificate of Completion for the remediation of the Property. The remediation of the Property included the following:
 - (a) Placement of 8,000 cubic yards ("CY") of clean fill to replace excavated, PCB contaminated soil that was removed from the Property.
 - (b) Construction of a shoreline structure ("Shoreline Structure").
 - (c) Placement of clean fill to an average depth of 1 foot ("Soil Cover").
 - (d) Establishment of ground cover ("Ground Cover").

The Shoreline Structure, Soil Cover and Ground Cover are collectively referred to as the "Contaminated Soil Cap".

- (8) RIDEM issued a Remedial Decision Letter and Remedial Approval Letter for the Property. The letters required that an Environmental Land Use Restriction ("ELUR") be recorded in the land evidence records on the Property.
- (9) On 5 February 2003, the ELUR was recorded in the land evidence records on the Property.
- (10) The ELUR states that:
 - (a) Some soil on the Property may contain hazardous substances.
 - (b) To prevent exposure to or migration of hazardous substances that may be present and to abate hazards to human health and/or the environment, the owner desires to impose certain restrictions on the use, occupancy, and activities of and at the Property.
 - (c) The restrictions will effectively protect public health and the environment from any such contamination.
 - (d) One purpose of the restriction is to prevent humans engaged in commercial/industrial activity from being exposed to soils at the Property containing hazardous substances in concentrations exceeding the industrial/commercial direct exposure criteria in the SR Rules ("I/C Criteria") except as may be approved by RIDEM pursuant to the terms of the restriction.
- (11) The ELUR required that:
 - (a) Soil at the Property not be disturbed in any manner without written permission of RIDEM, except as permitted in the Soil Management Plan ("SMP") approved by RIDEM in the Remedial Decision Letter and Remedial Approval Letter dated 16 January 2003, to prevent exposure to soils at the Property containing hazardous substances in concentrations exceeding the I/C Criteria.
 - (b) No action shall be taken if such action is reasonably likely to create a risk of migration of hazardous substances or potential hazard to human health or the environment or result in a disturbance of the structural integrity of any engineering controls designed or used at the Property to contain hazardous substances or limit human exposure to hazardous substances, except as permitted in the SMP.
- (12) On or about 6 February 2015, RIDEM inspected the Property. The inspection revealed no excavation into the Contaminated Soil Cap.
- (13) On 17 March 2015, RIDEM inspected the Property. The inspection revealed that excavation had occurred into the Contaminated Soil Cap.

- (14) On 20 March 2015, 25 March 2015, and 1 April 2015, RIDEM inspected the Property. The inspections revealed the following:
- (a) About 1,073 CY of soil (about 77 feet in length by 71 feet in width by 5.3 feet in depth) was excavated from the Property ("Excavated Area").
 - (b) The Contaminated Soil Cap was no longer present within the Excavated Area.
 - (c) The soil from the Excavated Area was placed in 2 piles on either side of the Excavated Area ("Contaminated Soil Piles").
 - (d) The soil of the embankment of the Excavated Area was exposed to tidal action from Providence River, wind, sun, and rain.
 - (e) Hay bales and black silt screen were placed along the top of the Excavated Area.
 - (f) The Contaminated Soil Piles were uncovered and exposed to wind, sun, and rain.
- (15) On 20 May 2015, RIDEM inspected the Property. The inspection revealed the following:
- (a) It appeared that no clean Soil Cover was present on the Property.
 - (b) The Contaminated Soil Piles were covered with blue tarpaulin ("Contaminated Soil Covers").
 - (c) The hay bales and black silt screen placed along the top of the Excavated Area would not prevent contaminants from entering Providence River during heavy rain.
 - (d) The Property was out of compliance with the ELUR.
- (16) On 15 December 2015, RIDEM inspected the Property. The inspection revealed that little of the Contaminated Soil Covers remained over the Contaminated Soil Piles and that most of Contaminated Soil Piles were exposed to the wind, sun, and rain.
- (17) On 16 March 2016, RIDEM received a report on a site inspection of the Property that was prepared by Coneco Engineers & Scientists titled *PHASE II SUBSURFACE INVESTIGATION REPORT* and dated 8 March 2016 ("Phase II Report").
- (18) The Phase II Report includes the following findings:
- (a) An inspection of the Property on 23 October 2015 revealed that:
 - (i) The Contaminated Soil Piles were only partially covered by the Contaminated Soil Covers.
 - (ii) The Contaminated Soil Covers were deteriorated.

- (iii) The Contaminated Soil Covers did not appear to be staged in an environmentally secure manner.
- (b) Soil samples collected on 5 February 2016 from each of the Contaminated Soil Piles had levels of **benzo(a) pyrene** that ranged from 2.1 mg/kg to 4.2 mg/kg.
- (c) A soil sample collected on 5 February 2016 from one of the Contaminated Soil Piles had a level of **lead** of 730 mg/kg.
- (d) Subsurface soil samples collected on 9 February 2016 at 3 of 13 locations at the Property had levels of **total petroleum hydrocarbons (“TPH”)** that ranged from 5,800 mg/kg to 14,000 mg/kg.
- (e) Subsurface soil samples collected on 9 February 2016 at 6 of 13 locations at the Property had levels of **arsenic** that ranged from 9.6 mg/kg to 45 mg/kg.
- (f) Subsurface soil samples collected on 9 February 2016 at 3 of 13 locations at the Property had levels of **lead** that ranged from 610 mg/kg to 1,400 mg/kg.

SIR Timeline/Findings

- (19) RIDEM reviewed aerial photographs of the Property taken in March-April 2023 by Eagle View Imagery. The photographs revealed that the Excavated Area and Contaminated Soil Piles were still present. The Contaminated Soil Piles were only partially covered by the Contaminated Soil Covers, and the Contaminated Soil Covers were deteriorated.
- (20) On 6 June 2023, RIDEM received a Site Investigation Work Plan (“SIWP”) dated 19 May 2023 that was submitted by Lake Shore Environmental, Inc. (“LSE”) on behalf of Respondents.
- (21) On 12 June 2023, RIDEM issued a letter to Respondents with comments on the SIWP (“June Comment Letter”). The letter requested additional information and sampling and required a response within 15 days.
- (22) On 30 June 2023, RIDEM issued a letter to Respondents and Special Master. The letter stated that Respondents failed to respond to the June Comment Letter and that RIDEM now considers Respondents in violation of the SR Rules. The letter further stated that Respondents must complete a SI and submit a SIR to RIDEM by 28 September 2023.
- (23) On 11 August 2023, RIDEM received a revised SIWP dated 8 August 2023 that was prepared by LSE on behalf of Respondents.
- (24) On 18 August 2023, RIDEM issued a letter to Respondents and Special Master in response to the revised SIWP. The letter identified specific actions that must be taken to complete the SI (“August Comment Letter”) and extended the deadline to submit the SIR to 13 October 2023.
- (25) On 10 October 2023, RIDEM received electronic correspondence from the Special Master requesting an extension to submit the SIR to 22 November 2023.

- (26) On 11 October 2023, RIDEM sent electronic correspondence to Respondents' attorney and Special Master extending the deadline to submit the SIR to 10 November 2023.
- (27) On 3 November 2023, RIDEM received electronic correspondence from Respondents' attorney requesting an extension to submit the SIR on 22 November 2023.
- (28) On 9 November 2023, RIDEM sent electronic correspondence to Respondents' attorney and Special Master extending the deadline to submit the SIR to 1 December 2023 with specific conditions that Respondents had to meet ("November 9TH Extension Approval").
- (29) On 5 December 2023, RIDEM received soil and groundwater data collected on the Property as part of the SI that was submitted by Respondents' attorney ("December Data"). RIDEM's review of the December Data revealed the following:
- (a) Soil samples collected on 3 November 2023 from each of the Contaminated Soil Piles had levels of **benzo(a) pyrene** that ranged from 4.63 mg/kg to 7.75 mg/kg.
 - (b) Soil samples collected on 3 November 2023 from each of the Contaminated Soil Piles had levels of **benzo(b)fluoranthene** that ranged from 7.96 mg/kg to 10.5 mg/kg.
 - (c) Soil samples collected on 3 November 2023 from each of the Contaminated Soil Piles had levels of **arsenic** that ranged from 7.72 mg/kg to 8.25 mg/kg.
 - (d) A soil sample collected on 3 November 2023 from one of the Contaminated Soil Piles had a level of **benzo(a)anthracene** of 10.3 mg/kg.
 - (e) Soil samples collected on 3 November 2023 from one of the Contaminated Soil Piles had levels of **dibenz(a, h)anthracene** that ranged from 0.884 mg/kg to 1.39 mg/kg.
 - (f) Surface soil samples collected on 8 November 2023 at 3 of the 12 locations at the Property had levels of **arsenic** that ranged from 7.37 mg/kg to 11.9 mg/kg.
 - (g) Surface soil samples collected on 8 November 2023 at 2 of the 12 locations at the Property had levels of **lead** that ranged from 989 mg/kg to 1830 mg/kg.
 - (h) Surface soil samples collected on 8 November 2023 at 2 of the 12 locations at the Property had levels of **TPH** that ranged from 2,950 mg/kg to 4,410 mg/kg.
 - (i) Subsurface soil samples collected on 3 November 2023 at 2 of the 18 locations at the Property had levels of **benzo(a)anthracene** that ranged from 9.66 mg/kg to 11.3 mg/kg.

- (j) Subsurface soil samples collected on 3 November 2023 at 10 of the 18 locations at the Property had levels of **benzo(a)pyrene** that ranged from 0.881 mg/kg to 11.1 mg/kg.
 - (k) Subsurface soil samples collected on 3 November 2023 at 2 of the 18 locations at the Property had levels of **dibenz(a,h)anthracene** that ranged from 0.842 mg/kg to 2.05 mg/kg.
 - (l) Subsurface soil samples collected on 3 November 2023 at 5 of the 18 locations at the Property had levels of **arsenic** that ranged from 7.58 mg/kg to 19.6 mg/kg.
 - (m) Subsurface soil samples collected on 3 November 2023 at 2 of the 18 locations at the Property had levels of **lead** that ranged from 625 mg/kg to 1,100 mg/kg.
 - (n) Subsurface soil samples collected on 3 November 2023 at 3 of the 18 locations at the Property had levels of **TPH** that ranged from 2,650 mg/kg to 3,380 mg/kg.
- (30) The I/C Criteria for the following compounds are: arsenic – 7.0 mg/kg; benzo(a)anthracene – 7.8 mg/kg; benzo(a)pyrene – 0.8 mg/kg, benzo(b)fluoranthene – 7.8 mg/kg; dibenz(a,h)anthracene – 0.8 mg/kg; lead – 500 mg/kg; and TPH – 2500 mg/kg. The December Data shows exceedances of these I/C Criteria.
- (31) The December Data also revealed that the Contaminated Soil Piles and the soils on the Property contain the following compounds that did not exceed the I/C Criteria: acenaphthylene; anthracene; antimony; benzo(g,h) perylene; benzo(k) fluoranthene; cadmium; chromium; chrysene; copper; dibenzofuran; fluoranthene; indeno (1,2,3-cd) pyrene; mercury; nickel; PCBs; phenanthrene; pyrene; and zinc.
- (32) EPA has listed each of the compounds identified in Sections C (32) and C (33) above (except TPH) as toxic pollutants in accordance with Section 307(a) of the Federal Clean Water Act (“Section 307(a)”).
- (33) The SR Rules define a hazardous material to include compounds listed as toxic pollutants in accordance with Section 307(a).
- (34) Part 1.9.2(B)(4) of the SR Rules states that TPH can be useful as an indicator of potential adverse impacts to human health from a release of hazardous materials.
- (35) On 13 December 2023, Respondents submitted the SIR, 12 days after the 1 December 2023 deadline. Respondents did not properly satisfy the specific conditions in the November 9TH Extension Approval.
- (36) Respondents did not have approval from RIDEM to disturb the Contaminated Soil Cap in any manner.

Public Involvement Plan

- (37) On 14 November 2023, RIDEM received a petition from the community, submitted in accordance with the SR Rules, requesting a Public Involvement Plan (“PIP”) be developed and approved for the Property.
- (38) On 16 November 2023, RIDEM issued a letter to Respondents and Special Master requiring submission of a draft PIP to RIDEM by 15 December 2023.
- (39) As of the date of the 2023 NOV, Respondents have failed to submit a draft PIP to RIDEM.

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) **SR Rules, Part 1.8.1(A)** – requiring a performing party of a contaminated site to conduct, in a specified amount of time, an investigation of the contaminated site to adequately assess the nature and extent of contamination, and to evaluate and design a proposed remedy.
- (2) **SR Rules, Part 1.8.1(D)** – requiring a performing party to complete a site investigation and submit a site investigation report in both hard copy and electronic format (as specified by RIDEM) for review and approval.
- (3) **SR Rules, Part 1.8.7(E)** – requiring a performing party to submit to RIDEM for review and approval in both hard copy and electronic format a site-specific public involvement plan for any contaminated site for which a minimum of 25 residents, local officials or other interested parties have requested, in writing and in the form of a petition, that a formal process be set up for their participation in cleanup planning. The public involvement plan shall address all relevant and applicable requirements of Parts 1.8.7(A) through (D) of the SR Rules.

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 **within 3 days of receipt of the 2023 NOV**, submit a draft PIP to RIDEM that fully complies with Part 1.8 of the SR Rules.

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:

\$25,000

- (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 2023 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 Respondents in the 2023 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 2023 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 2023 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, 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).
- (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, 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 RIDEM's Administrative Adjudication Division as to each violation alleged in the written 2023 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 2023 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 2023 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 the 2023 NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) An original signed copy of the 2023 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 23-19.1, as amended.
- (7) The 2023 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 at RIDEM's Office of Legal Services at (401) 537-4409 or at jenna.giguere@dem.ri.gov. All other inquiries should be directed to Christina Hoefsmit of RIDEM's Office of Compliance and Inspection at (401) 537-4448 or at christina.hoefsmit@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

Date: _____

CERTIFICATION

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

RHODE ISLAND RECYCLED METALS, LLC
c/o Jared Sevinor, Resident Agent
27 Warren Way
Providence, RI 02905

AARE, LLC
c/o MOSES RYAN LTD., Resident Agent
40 Westminster Street, 9TH Floor
Providence, RI 02903

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: Site Remediation
 File No.: OCI-SR-23-2
 Respondents: RHODE ISLAND RECYCLED METALS, LLC and AARE, LLC

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), D (2) and D (3) – Failure to submit SIR by the deadline specified by RIDEM and failure to submit the PIP	Type I <i>(\$25,000 Max. Penalty) *</i>	Major	\$25,000	1 violation	\$25,000
SUB-TOTAL					\$25,000

*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 COMPLY. 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 Respondents have either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot 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 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 = \$25,000

PENALTY MATRIX WORKSHEET

CITATION: Failure to submit SIR by the deadline specified by RIDEM and failure to submit the PIP

VIOLATION NOs.: D (1), D (2), and D (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.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Rules.</p> <p>(1) The extent to which the act or failure to act was out of compliance: Respondents failed to submit the SIR and PIP to RIDEM by the deadlines specified by RIDEM. Compliance with deadlines for submission of documents for sites impacted by a release of hazardous materials is of importance to the regulatory program.</p> <p>(2) Environmental conditions: The Property is adjacent to Providence River. Providence River is a class SB1{a} water of the State, which waters are designated for primary and secondary contact recreational activities and for fish and wildlife habitat. However, primary contact recreational activities may be impacted due to pathogens from approved wastewater discharges. These waters shall have good aesthetic value. Providence River around the Property is impacted by wastewater overflows after heavy rainstorms, which results in the discharge of tens of millions of gallons of untreated wastewater and stormwater into the river, and the sediment within the river contains toxic compounds from activities over the years unrelated to Respondents' activities. The Property abuts Allens Avenue, which is heavily traveled by vehicles and is also used by pedestrians. The Property is in a densely developed industrial/commercial area, with many businesses nearby. Prior to Respondents' action, the Property had the Contaminated Soil Cap and posed no threat to public health or the environment. The Excavated Area is exposed to wind, rain, sun, and tides. The Contaminated Soil Piles are not properly covered and are exposed to wind, rain, and sun. On dry days dust containing hazardous materials from the Property can become airborne. On wet days, soil containing hazardous materials from the Property can be released into Providence River. During both dry and wet days, soil containing hazardous materials from the Property are released onto Allens Avenue from customers' vehicles arriving and leaving the Facility. For this penalty calculation, it is estimated that since the release began the Facility has received 46,500 customers (300 days of operation per year x 7.75 years x 20 customers per day). RIDEM inspectors who inspected the Property on or about May 2015 reported that they were so concerned for their health from inhaling airborne dust that they did not want to inspect the Facility again. The inspectors stated that the conditions at the Facility posed a risk to the health and safety of the workers and others who went to the Facility. The Property is in an Environmental Justice Focus Area, as defined in RIDEM's <i>Environmental Justice Policy</i>.</p> <p>(3) Amount of the pollutant: Full amount unknown – the Contaminated Soil Piles contain approximately 1,100 CY of soil. In addition, about 3,600 square feet of soil is exposed within the Excavated Area.</p> <p>(4) Toxicity or nature of the pollutant: The Contaminated Soil Piles and the soils on the Property contain the following hazardous materials in concentrations that exceed the I/C Criteria (the factor above the standard is shown in parentheses): arsenic: 7.22 mg/kg to 45 mg/kg (range of 1.05 to 6.4); benzo(a)anthracene: 9.66 mg/kg to 11.3 mg/kg (range of 1.24 to 1.45), benzo(a)pyrene: .881 mg/kg to 11.1 mg/kg (1.10 to 12.6), benzo(b)fluoranthene: 7.96 mg/kg to 10.5 mg/kg (1.02 to 1.34), dibenz(a,h)anthracene: .842 mg/kg to 2.05 mg/kg (range of 1.05 to 2.56), lead: 610 mg/kg to 1,400 mg/kg (range of 1.22 to 3.66), and TPH: 2,650 mg/kg to 14,000 mg/kg (1.06 to 5.6). The I/C Criteria for these hazardous materials are: arsenic – 7.0 mg/kg; benzo(a)anthracene – 7.8 mg/kg; benzo(a)pyrene – 0.8 mg/kg, benzo(b)fluoranthene – 7.8 mg/kg; dibenz(a,h)anthracene – 0.8 mg/kg; lead – 500 mg/kg; and TPH – 2500 mg/kg. The Contaminated Soil Piles and the soils on the Property also contain the following compounds that did not exceed the I/C Criteria: acenaphthylene; anthracene; antimony; benzo(g,h) perylene; benzo(k) fluoranthene; cadmium; chromium; chrysene; copper; dibenzofuran; fluoranthene; indeno (1,2,3-cd) pyrene; mercury; nickel; PCBs; phenanthrene; pyrene; and zinc. EPA has listed each of these compounds (except TPH) as toxic pollutants in accordance with Section 307(a).</p>		
(continued)		

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- (5) **Duration of the violation:** 12 days for the SIR and 3 days (as of the date of the 2023 NOV) for the PIP. The deadline to submit the SIR and PIP were 1 December 2023 and 15 December 2023, respectively. Respondents advised RIDEM that the PIP would be submitted on 22 December 2023.
- (6) **Areal extent of the violation:** Unknown. The release has affected an unknown area of land, water, and air.
- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable and appropriate steps to prevent the noncompliance. RIDEM extended the deadline to submit the SIR 3 times – the original deadline was 28 September 2023. At Respondents request, RIDEM extended the deadline to 13 October 2023, to 10 November 2023 and to 1 December 2023. The November 9TH Extension Approval contained 3 conditions, none of which were properly satisfied. First, Respondents were required to provide weekly reports of the SIR progress to RIDEM. The reports for the weeks of November 13-17 and November 20-24 were submitted late on 27 November 2023 and no reports were filed for any subsequent weeks. Second, Respondents were required to submit the laboratory results to RIDEM by 22 November 2023. Certain data was transmitted late on 5 December 2023; however, the required laboratory report was not produced until the late SIR submission. Third, RIDEM directed that “any delay factors must be reported to RIDEM by the next business day after RIRM or its agents are informed of the delay factor.” Without reporting any delay factor, and without asking for an extension, Respondents stated that they would not meet the deadlines. On 6 December 2023, RIDEM sent electronic correspondence to Respondents’ attorney and the Special Master advising Respondents that missing the deadlines is unacceptable and that RIDEM was evaluating its enforcement options. On 13 December 2023, Respondents submitted the SIR to mitigate the noncompliance as it pertains to the SIR. As of the date of the 2023 NOV, Respondents have failed to submit the PIP to RIDEM.
- (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:** Respondents were issued the 2012 NOV for major water pollution and oil pollution violations at the Property. RIRM, ACR and RIDEM executed a consent agreement in July 2013 that required specific actions to attain compliance with the regulations. RIRM and ACR failed to comply with the agreement. In March 2015, RIDEM and the Office of Attorney General filed a complaint in RISC against Respondents. As of the date of the 2023 NOV, the litigation is ongoing.
- (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:** Respondents had complete control over the occurrence of the violation and the violation was foreseeable. Respondents were aware of the deadlines to submit the SIR and PIP.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The maximum penalty RIDEM could have assessed for this violation was \$375,000 (12 days x \$25,000 per day + 3 days x \$25,000 per day).

<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 \$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	\$1,250 to \$2,500	\$250 to \$1,250