



RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Office of Compliance and Inspection 235 Promenade Street, Providence, RI 02908-5767
Telephone 401-222-1360 Fax 401-222-3811 TDD 401-222-4462

July 3, 2014

CERTIFIED MAIL

Adler Brothers Construction, Inc.
c/o Kenneth Adler, Registered Agent
604 Putnam Pike
Greenville, RI 02828

RE: **NOTICE OF VIOLATION**
File No.: WP-14-79

Dear Mr. Adler:

Enclosed please find a Notice of Violation ("NOV") relating to water pollution violations at a property located at 84 Smith Avenue in the town of Smithfield, Rhode Island.

PLEASE READ THIS DOCUMENT CAREFULLY. Pursuant to R.I. General Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35 each named Respondent is entitled to request an administrative hearing before the Director or her 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 Adler Brothers Construction, Inc. ("Adler") wishes to request an administrative hearing concerning this NOV, the request must **be made in writing and be received within 20 days of your receipt of this NOV.** A written request for an administrative hearing must be submitted to:

Administrative Clerk
DEM-Administrative Adjudication Division ("AAD")
One Capitol Hill, 2ND Floor
Providence, RI 02903

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

Marisa Desautel, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, Rhode Island 02908-5767

Page two

Name: Adler Brothers Construction, Inc.

RE: Notice of Violation

Adler may also wish to arrange for an informal meeting to discuss the 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.

Representatives of the OC&I are prepared to discuss a resolution of this matter with Adler; 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 Adler's right to a formal hearing before the AAD.

If Adler wishes to arrange for an informal meeting to discuss this NOV, please contact:

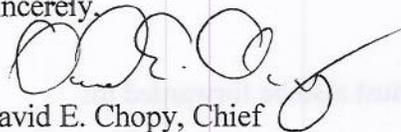
Patrick Hogan, Principal Sanitary Engineer
Office of Compliance and Inspection
235 Promenade Street, Room 220
Providence, Rhode Island 02908-5767
Telephone: (401) 222-1360, ext 7119

Or

Anna Maria Cole, Technical Staff Assistant
Telephone: (401) 222-1360, ext 7431

Adler has a right to be represented by legal counsel before the AAD or in an informal meeting with the OC&I. Adler is not obligated to do so, but if Adler plans 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, Chief
Office of Compliance and Inspection

Enclosure: Notice of Violation

cc: Angelo Liberti, Chief, DEM Office of Water Resources
David Turin, Environmental Protection Agency, Region I

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Adler Brothers Construction, Inc.

FILE No.: WP-14-79

X-ref RIPDES RIR101003

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, ("R.I. Gen. Laws") you are hereby notified that the Director of the Department of Environmental Management (the "Director" of "DEM") has reasonable grounds to believe that the above-named party ("Respondent") has violated certain statutes and/or administrative regulations under the DEM's jurisdiction.

B. Facts

- (1) The property is located at 84 Smith Avenue in the town of Smithfield, Rhode Island (the "Property").
- (2) On 13 June 2013 the DEM issued a General Permit for Stormwater Discharge Associated with Construction Activity, No. RIR101003 to the Respondent (the "Permit").
- (3) The Permit requires the Respondent to:
 - (a) Inspect all pollution prevention measures a least once every seven (7) days;
 - (b) Prepare and sign reports that document the results of the inspections; and
 - (c) Maintain a Storm Water Pollution Prevention Plan ("SWPPP") at the Property.
- (4) On 13 June 2014 the DEM inspected the Property. The inspection revealed that the Respondent failed to maintain a SWPPP at the Property and conduct inspections and prepare and sign reports that document the results of the inspections.

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) **DEM's Regulations for the Rhode Island Pollutant Discharge Elimination System, Rule 14.02(a)** – requiring the permittee to comply with all conditions of a permit issued by the DEM.

D. 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:

Three Thousand Dollars (\$3,000)

- (2) The proposed administrative penalty is calculated pursuant to the DEM's *Rules and Regulations for Assessment of Administrative Penalties*, as amended, and must be paid to the DEM within 30 days of your receipt of this NOV. Payment shall be in the form of a certified check, cashiers check or money order made payable to the "General Treasury - Water & Air Protection Program Account" and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against the Respondent in this NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

E. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through D 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 the DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
One Capitol Hill, 2ND Floor
Providence, RI 02903

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
- (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Rule 7.00(b) of the DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters*.

- (2) A copy of each request for hearing must also be forwarded to:

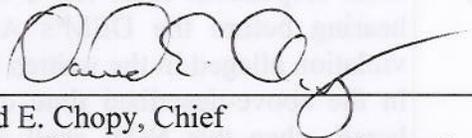
Marisa Desautel, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before the DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then this NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (v) and 42-17.6-4(b) and (c).
- (5) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) 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) Marisa Desautel at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Patrick Hogan of the DEM Office of Compliance and Inspection at (401) 222-1360 ext. 7119.

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 E above.

FOR THE DIRECTOR



David E. Chopy, Chief
DEM Office of Compliance and Inspection

Date: July 3, 2014

CERTIFICATION

I hereby certify that on the 3rd day of July, 2014
the within Notice of Violation was forwarded to:

Adler Brothers Construction, Inc.
c/o Kenneth Adler, Registered Agent
604 Putnam Pike
Greenville, RI 02828

by Certified Mail.





ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution
 File No.: WP 14-79
 Respondent: Adler Brothers Construction, Inc.

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
C (1) – Failure to have a SWPPP on site	Type I (\$25,000 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500
C (1) – Failure to maintain inspection records	Type III (\$6,250 Max. Penalty)*	Minor	\$500	1 violation	\$500
SUB-TOTAL					\$3,000

*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 ARE IN COMPLIANCE. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:

- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR
- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.

A review of the record in this matter has revealed that the Respondent has either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted can not 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 the DEM 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 REGULATIONS = \$3,000

PENALTY MATRIX WORKSHEET

CITATION: Failure to have a SWPPP on site
 VIOLATION NO.: C (1)

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.

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondent failed to comply with the conditions of its permit by maintaining the SWPPP on site. Maintaining the SWPPP on site is important to the regulatory program.
- (B) **Environmental conditions:** Considered, but not utilized for this calculation.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** Considered, but not utilized for this calculation.
- (E) **Duration of the violation:** Full duration unknown. Violation documented on 13 June 2014.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

(continued)

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent did not take reasonable action to fully comply with the permit. The Respondent failed to keep the SWPPP on site.
- (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:** Considered, but not utilized for this calculation.
- (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:** Negligence is attributable to the Respondent for its failure to comply with the requirement set forth in the permit to maintain the SWPPP on site.
- (J) **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
--------------	-----------------	------------------------------

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

PENALTY MATRIX WORKSHEET

CITATION: Failure to maintain inspection records
 VIOLATION NO.: C (1)

TYPE		
<u> </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> X </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.

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondent failed to comply with the conditions of its permit by properly maintaining inspection records relating to stormwater pollution prevention. Maintenance of inspection records related to stormwater pollution prevention from construction activities is important to the regulatory program.
- (B) **Environmental conditions:** Considered, but not utilized for this calculation.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** Considered, but not utilized for this calculation.
- (E) **Duration of the violation:** Full duration unknown. Violation documented on 13 June 2014.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

(continued)

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent did not take reasonable action to fully comply with the permit. The Respondent failed to keep proper inspection records.
- (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:** Considered, but not utilized for this calculation.
- (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:** Negligence is attributable to the Respondent for its failure to comply with the reporting requirements set forth in the permit.
- (J) **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
--------------	-----------------	---------------------------

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

