

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Bradley Real Estate Holding Group, Inc.

FILE NO.: SW 2010-52

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 DEM's jurisdiction.

B. Administrative History

On 4 February 2004, DEM issued a Notice of Violation (the “Former NOV”) to the Respondent for the storage of fifteen thousand (15,000) used tires on the subject property. On 20 October 2004, DEM and the Respondent executed a Consent Agreement to resolve the Former NOV that required the removal and proper disposal of the tires. The tires were properly removed and disposed at that time. On 17 December 2009, DEM issued an informal notice to the Respondent for the violations that are the subject of this notice of violation. The Respondent has failed to respond to or comply with the informal notice.

C. Facts

- (1) The subject property is located at 40 Canal Street in the town of North Smithfield, Rhode Island, Assessor’s Plat 3, Lot 134 (the “Property”).
- (2) Respondent owns the Property.
- (3) On 12 November 2009 and 7 June 2010 DEM inspected the Property. The inspections revealed the following:
 - (a) On 12 November 2009 approximately one hundred thirty one cubic yards of mixed solid waste (consisting of steel drums, construction and demolition debris, metal waste and other mixed solid waste) and approximately seven hundred used tires were deposited on the ground.
 - (b) On 7 June 2010 greater than three cubic yards of solid waste was deposited on the ground, which included used tires, household refuse, metal waste and other mixed solid waste.

- (3) As of the date of this Notice of Violation (“NOV”), the Respondent has failed to comply with the Rhode Island Refuse Disposal Act, R.I. Gen. Laws § 23-18.9-1, et seq..
- (4) The Respondent has neither sought nor obtained an approval, permit or license from the Director to operate a solid waste management facility 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 the Director.

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 of solid waste on the Property.
- (2) **Within sixty (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. The solid waste shall not be burned or buried.
- (3) **Within ten (10) days of completion of the removal of the solid waste**, submit documentation to DEM that the solid waste was disposed at a licensed solid waste management facility through receipts, bills, or weight slips.

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:

Six Thousand Two Hundred and Fifty Dollars (\$6,250.00)

- (2) The proposed administrative penalty is calculated pursuant to the DEM Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the Director within twenty 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 - Environmental Response Fund” 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 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.
- (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 the Director determines that reasonable efforts have been made to comply promptly with this 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 the DEM 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 DEM's Administrative Adjudication Division, at the following address, within twenty 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
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); **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 Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters.
- (2) A copy of each request for hearing must also be forwarded to:

Richard M. Bianculli Jr., 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 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) An original signed copy of this NOV is being forwarded to the town of North Smithfield, 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 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) Richard M. Bianculli Jr., Esq. at the DEM Office of Legal Services at (401) 222-6607 extension 2023. All other inquiries should be directed to Tracey Tyrrell of the DEM Office of Compliance and Inspection at (401) 222-1360 ext. 7407.

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

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

Date: _____

CERTIFICATION

I hereby certify that on the _____ day of _____, 2011 the within
Notice of Violation was forwarded to:

Bradley Real Estate Holding Group, Inc.
c/o James J. LePore, Esq., Registered Agent
226 South Main Street
Providence, RI 02903

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, SOLID WASTE

File No.: SW 2010-52

Respondent: Bradley Real Estate Holding Group, 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	
D (1) – Disposal of solid waste at other than a licensed solid waste management facility	Type I (\$ <u>25,000</u> Max. Penalty)*	Minor	\$ 6,250	1 violation	\$6,250.00
<i>SUB-TOTAL</i>					\$6,250.00

*Maximum Penalties represent the maximum penalty amounts per day, per violation.

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$6,250.00

PENALTY MATRIX WORKSHEET

CITATION: *Disposal of solid waste at other than a licensed solid waste management facility*
 VIOLATION NO.: D (1)

TYPE		
<p><u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>____ TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>____ TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p>FACTORS CONSIDERED: Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) 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 importance to the regulatory program.</p> <p>(B) Environmental conditions: The property is located in a GB groundwater classification zone, which are groundwater resources designated to be unsuitable for drinking water use without treatment. The property abuts a GAA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment, and which are located in groundwater reservoirs or portions of their recharge areas. The property is located in the Blackstone River watershed and is surrounded by the Blackstone River and a canal connected to the river. Mixed solid waste is disposed of at the property in an uncontrolled manner and without the protective controls required at a licensed solid waste management facility.</p> <p>(C) Amount of the pollutant: The 12 November 2009 inspection revealed approximately 131 cubic yards of mixed solid waste and 700 used tires.</p> <p>(D) Toxicity or nature of the pollutant: The storage of large amounts of used tires presents a fire hazard and provides breeding places for disease vectors such as mosquitoes. The 12 November 2009 inspection revealed approximately forty fifty-five gallon steel drums. The contents of these drums are unknown at this time. The stockpiles of mixed solid waste may provide harborage to rodents or disease vectors.</p> <p>(E) Duration of the violation: DEM first observed solid waste on the property on 12 November 2009.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
(continued)		

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent the non-compliance by prohibiting the disposal of solid waste on the property. Respondent has yet to mitigate the non-compliance despite receiving a Notice of Intent to Enforce from DEM on 21 December 2009, which required that it do so.
- (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:** Respondent was previously cited by DEM for solid waste violations on the property in a notice of violation issued on 4 February 2004. The Respondent and DEM executed a Consent Agreement on 20 October 2004 to resolve the notice of violation. The Respondent removed and properly disposed of the solid waste but failed to fully pay the agreed upon penalty in the Consent Agreement.
- (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 the failure to comply the Rhode Island Refuse Disposal Act. Respondent, as owner of the property, had complete control over the occurrence of the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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 \$6,250	\$1,250 to \$2,500	\$250 to \$1,250