

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Diana D. Burdett

**FILE NOs.: SW 2011-03 and
OWTS CI 09-007**

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

DEM issued informal written notices to the Respondent and David Burdett on February 13, 2009 and February 24, 2009 for the violations and spoke to Mr. Burdett regarding the septic system violations on May 4, 2009. The notices required that specific actions be taken to correct the violations. The DEM inspector spoke with the Respondent's tenant on May 24, 2010. The tenant informed the DEM inspector that he was seeking authorization from the Respondent to correct the septic system violations and that the Respondent was seeking to divest from the property and let the bank foreclose. To date, the Respondent has failed to comply with the notices.

C. Facts

- (1) The subject property is located at 901 Mooresfield Road in the town of South Kingstown, Rhode Island, Assessor's Plat 17, Lot 17 (the "Property"). The Property includes a two bedroom single family dwelling (the "Dwelling").
- (2) The Respondent owns the Property.

Facts Pertaining to Solid Waste

- (3) On February 11, 2009, May 24, 2010 and November 1, 2010 DEM inspected the Property. The inspections revealed the following:
 - (a) Solid waste consisting of used tires, junk automobiles, broken boat parts, wood waste, steel tanks, household refuse and other mixed solid waste

deposited on the ground in an amount greater than three cubic yards on February 11, 2009 and November 1, 2010; and

- (b) Approximately ninety cubic yards of solid waste consisting of used tires, wood waste, vehicle parts, used appliances, carpeting, household refuse, plastic waste, unregistered vehicles and boats in varying states of disrepair, metal waste, barrels, drums and other mixed solid waste deposited on the ground on May 24, 2010.
- (4) As of the date of this Notice of Violation (“NOV”), the Respondent has failed to comply with Rhode Island’s Refuse Disposal Act.
- (5) Respondent has neither sought nor obtained an approval, permit or license from DEM to operate a solid waste management facility on the Property.

Facts Pertaining to Septic Systems

- (6) On February 11, 2009 DEM inspected the Property. The inspection revealed that the onsite wastewater treatment system that treats laundry wastewater from the Dwelling (the “Laundry OWTS”) and the onsite wastewater treatment system that treats the wastewater from the toilets, showers and sinks for the Dwelling (the “Main OWTS”) have failed and sewage was discharged from the Laundry OWTS and the Main OWTS to the surface of the ground as evidenced by:
 - (a) Observation of black soil, ponding or breakout of fluids, and fecal matter on the surface of the ground in the area around the Main OWTS;
 - (b) Detection of odors associated with sewage in the area around the Main OWTS;
 - (c) Photographs showing black soil, ponding or breakout of fluids, and fecal matter on the surface of the ground in the area around the Main OWTS;
 - (d) Observation of a collapsed Laundry OWTS with fluids at the surface of the ground;
 - (e) Observation of soap suds and detection of odors associated with laundry waste in the area around the Laundry OWTS; and
 - (f) Photographs showing the fluids on the surface of the ground in the area around the Laundry OWTS.
- (7) As of the date of this NOV, the Respondent has failed to comply with the DEM’s Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems (the “OWTS Regulations”).

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 licensed solid waste management facility.
- (2) DEM’s OWTS Regulations
 - (a) Rule 8.8 – prohibiting the discharge of wastewater to the surface of the ground.
 - (b) Rule 17.7 – requiring submittal of a repair application for a failed OWTS.

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** take steps to reduce the discharge of sewage to the Main OWTS, such as through the installation and use of water conservation devices and fixtures, and arrange to have the Main OWTS pumped by a permitted septage transporter as frequently as necessary to prevent the Main OWTS from overflowing or breaking out onto the surface of the ground. A list of permitted septage transporters can be obtained by contacting the DEM Office of Waste Management at 222-2797 or from the DEM web page at:
www.dem.ri.gov/programs/benviron/waste/transport/septage.pdf.
- (2) **IMMEDIATELY** cease use of the washing machine at the Dwelling until the Laundry OWTS has been repaired and the washing machine discharge pipe has been plumbed to the repaired Laundry OWTS.
- (3) **Within thirty (30) days of receipt of this NOV**, submit a written proposal for a permanent solution to the OWTS violations, that must include an inspection of the Main OWTS and the Laundry OWTS by a licensed OWTS designer to determine the cause of the failures (the “system assessments”). The system assessments must be signed by the licensed designer who inspected the OWTSs, must identify the size and location of the OWTS components, must set forth the probable cause(s) for the failures, and propose a plan, including a proposed timetable, for any repair work for the correction of the failures. For any proposed repair or alteration to the Main OWTS or Laundry OWTS, the system assessment must include the submittal of a formal application and plan to the DEM in accordance with the DEM’s OWTS Regulations (the “Application”). **Any repairs or modifications to the Main OWTS or the Laundry OWTS require the prior approval of DEM.** The list of licensed OWTS designers can be obtained by contacting Deb Knauss at 222-4700, extension 7612 or from the DEM web page at:
www.dem.ri.gov/programs/benviron/water/licenses/OWTS/pdfs/deslist.pdf.

- (4) The Application shall be subject to DEM review and approval. Upon review, the DEM shall provide written notification to you either granting formal approval or stating the deficiencies therein. Within fourteen days (unless a longer time is specified) of receiving a notification of deficiencies in the Application, you must submit to the DEM a modified proposal or additional information necessary to correct the deficiencies.
- (5) Commence work on the project in accordance with the method approved by the Director within twenty days of approval (unless otherwise expressly authorized by the Director in writing to commence work at a later time), and complete such work within one hundred twenty days of said approval or other date specified by the Director.
- (6) **Within sixty (60) days of receipt of this 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.
- (7) **Within ten (10) days of completion of the disposal of the solid waste**, submit documentation to the DEM Office of Compliance and Inspection 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:

Four Thousand Two Hundred Dollars (\$4,200.00)

- (2) The proposed administrative penalty is calculated pursuant to DEM's Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the Director within twenty (20) days of your receipt of this NOV. Payment in the amount of Three Thousand Dollars (\$3,000.00) 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. Payment in the amount of One Thousand Two Hundred Dollars (\$1,200.00) 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 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 (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
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:

Joseph J. LoBianco, 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 South Kingstown, 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 Sections 23-18.9-13 and 42-17.1-2(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) Joseph J. LoBianco at the DEM Office of Legal Services at (401) 222-6607. All other inquiries regarding the solid waste violations should be directed to Tracey Tyrrell of the DEM Office of Compliance and Inspection at (401) 222-1360 extension 7407. All other inquiries regarding the OWTS violations should be directed to Patrick Hogan of the DEM Office of Compliance and Inspection at (401) 222-1360 extension 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 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 _____
the within Notice of Violation was forwarded to:

Diana D. Burdett
901 Mooresfield Road
South Kingstown, RI 02879

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, SOLID WASTE and OWTS

File Nos.: SW 2011-03 & OWTS CI 09-007

Respondent: Diana D. Burdett

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 (\$25,000 Max. Penalty)*	Minor	\$3,000	1 violation	\$3,000.00
D(2)(a) – Discharge of sewage to the surface of the ground	Type I (\$1,000 Max. Penalty)*	Moderate	\$600	1 violation	\$600.00
D(2)(b) - Failure to submit an application for a failed septic system	Type I (\$1,000 Max. Penalty)*	Moderate	\$600	1 violation	\$600.00
<i>SUB-TOTAL</i>					\$4,200.00

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

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$4,200.00

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 <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	_____ TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	_____ 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:** Respondent disposed of or allowed for the disposal of more than three cubic yards 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.
- (B) **Environmental conditions:** The property is located in a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. Residences in the vicinity rely on private drinking water supply wells. The property is located within 300 feet of the Saugutucket River. Regulated freshwater wetlands are located along the western side of the property. 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.
- (C) **Amount of the pollutant:** DEM observed at least 90 cubic yards of solid waste on the property.
- (D) **Toxicity or nature of the pollutant:** The stockpiles of solid waste could provide harborage for rodents. Discarded tires can provide breeding places for mosquitoes or other disease vectors. DEM observed evidence that mixed solid waste may have been burned on the property.
- (E) **Duration of the violation:** Unknown. DEM first observed the violation on February 11, 2009.
- (F) **Areal extent of the violation:** Not relevant.

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- (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 written notice from DEM dated February 24, 2009, which required that she 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:** Not relevant.
- (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 Respondent for the failure to comply immediately with the requirements set forth in Rhode Island's Refuse Disposal Act. Respondent, as owner of the property, has 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
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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 \$3,000	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Discharge of sewage to the surface of the ground

VIOLATION NO.: D(2)(a)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	_____ TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	_____ 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 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: Sewage was discharged to the ground surface from the failed septic systems. Preventing the discharge of sewage to the surface of the ground is a primary objective of the regulations and a major objective of the regulatory program.</p> <p>(B) Environmental conditions: The dwelling is a 2-bedroom residence in a moderately populated neighborhood.</p> <p>(C) Amount of the pollutant: The volume of the sewage overflow is unknown. Sewage overflowed from the system that treats laundry waste and the system that treats wastewater from the toilets, sinks, and showers.</p> <p>(D) Toxicity or nature of the pollutant: Sewage contains many kinds of bacteria, viruses, and parasites that can cause serious or fatal diseases in both humans and animals, as well as being the source of extremely objectionable odors.</p> <p>(E) Duration of the violation: Total duration unknown. The violation was first observed on February 11, 2009.</p> <p>(F) Areal extent of the violation: Unknown.</p> <p>(G) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance: The Respondent failed to have the systems pumped as necessary to prevent discharge to the ground surface. Respondent has yet to mitigate the non-compliance despite receiving a written notice from DEM dated February 13, 2009, which required that she do so.</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: Not relevant.</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 Respondent had full control over the violation. The violation was foreseeable.</p> <p>(J) Any other factor(s) that may be relevant in determining the amount of a penalty: The notice issued on February 13, 2009 stated the penalty could be up to \$1,000.00 per violation.</p>		
MAJOR	<u> X </u> MODERATE	MINOR

Penalty Matrix where the applicable statute provides for a civil penalty up to \$1,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$800 to \$1,000	\$600 to \$800	\$400 to \$600
	MODERATE	\$600 to \$800 \$600	\$400 to \$600	\$200 to \$400
	MINOR	\$400 to \$600	\$200 to \$400	\$100 to \$200

PENALTY MATRIX WORKSHEET

CITATION: Failure to submit an application for a failed septic system

VIOLATION NO.: D(2)(b)

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.		
<p>FACTORS CONSIDERED:</p> <p>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: The Respondent failed to submit a repair application for the failed septic systems. The repair of failed septic systems is a primary objective of the regulations and a major objective of the regulatory program.</p> <p>(B) Environmental conditions: The dwelling is a 2-bedroom residence in a moderately populated neighborhood.</p> <p>(C) Amount of the pollutant: Not relevant.</p> <p>(D) Toxicity or nature of the pollutant: Not relevant.</p> <p>(E) Duration of the violation: Total duration unknown, but is at least 26 months.</p> <p>(F) Areal extent of the violation: Not relevant.</p> <p>(G) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance: The Respondent failed to retain a licensed designer to evaluate the systems and prepare and submit a repair application despite receiving a notice from DEM dated February 13, 2009 that required that she do so.</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: Not relevant.</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 Respondent has full control over the violation. The Respondent is fully aware of the necessary actions to correct the violation.</p> <p>(J) Any other factor(s) that may be relevant in determining the amount of a penalty: The notice issued on February 13, 2009 stated the penalty could be up to \$1,000.00 per day for each violation.</p>		
MAJOR	<u> X </u> MODERATE	MINOR

Penalty Matrix where the applicable statute provides for a civil penalty up to \$1,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$800 to \$1,000	\$600 to \$800	\$400 to \$600
	<i>MODERATE</i>	\$600 to \$800 \$600	\$400 to \$600	\$200 to \$400
	MINOR	\$400 to \$600	\$200 to \$400	\$100 to \$200