

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Kenneth D. Demers

FILE NO.: OCI-SW-13-68

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. Administrative History

On 21 November 2013 and 19 June 2014, the DEM issued a Letter of Non-Compliance (“LNC”) to Respondent for the violations that are the subject of this Notice of Violation (“NOV”). The LNCs required specific actions to correct the violations. On 31 October 2018, a DEM agent spoke with Respondent to determine the status of compliance with the LNCs. Respondent stated that the property is for sale and he is cleaning it up. On 27 December 2018, the DEM inspected the property and observed that the violations are still present. As of the date of the NOV, Respondent has failed to comply with the remedial requirements set forth in the LNCs.

C. Facts

- (1) The subject property is located at 4 and 8 Chapel Lane, Assessor's Plat 3, Lot 179 and Plat 3, Lot 89 in the Town of Lincoln, Rhode Island, (the “Property”). The Property includes commercial structures and undeveloped land (the “Facility”).
- (2) Respondent owns the Property.
- (3) On 31 October 2013, the DEM inspected the Property. The inspection revealed approximately 34 cubic yards of solid waste deposited on the ground, which consisted of wood waste, asphalt shingles, metal waste, used tires, abandoned equipment and other mixed solid waste.
- (4) On 12 June 2014, the DEM inspected the Property. The inspection revealed approximately 10 cubic yards of solid waste deposited on the ground, which consisted of wood waste, used tires, vacuum cleaners, barrels, a canvas awning, plastic drums, sinks, a truck cap, steel drums, a trailer, paving equipment, steel tanks file cabinets, lawn tractors, hydraulic lifts, metal ducting, a pool slide and

other mixed solid waste. The material was stored outdoors in a disorganized manner and appeared to be abandoned.

- (5) On 27 December 2018, the DEM inspected the Property. The inspection revealed approximately 273 cubic yards of solid waste deposited on the ground, which consisted of wood waste, steel tanks, trailers, metal waste, foam, plastic waste, four unregistered vehicles, drums, barrels, a paddle boat, metal ducting, shelving, three oil trucks, rubber hose, windows, cloth, shingles, siding, a truck cap, a kitchen stove, used tires and other mixed solid waste. The material was stored outdoors in a disorganized manner and appeared to be abandoned.
- (6) Respondent has neither sought nor obtained an approval, permit or license from the DEM to operate a solid waste management facility on the Property.
- (7) As of the date of the NOV, Respondent has not addressed the noncompliance described in subsection C(5) above.

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.
- (2) **R.I. Gen. Laws Section 23-18.9-8** – prohibiting the operation of a solid waste management facility without a license or approval from the DEM.

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) **IMMEDIATELY** cease the operation of the solid waste management facility on the Property.
- (3) **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. The solid waste shall not be burned or buried.
- (4) **Within 10 days of completion of the removal of the solid waste**, submit written verification to the DEM's Office of Compliance and Inspection that the solid waste was disposed of at a licensed solid waste management 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:

\$6,000

- (2) The proposed administrative penalty is calculated pursuant to Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* and must be paid to the DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a certified check, cashier's check or money order made payable to the "General Treasury - Environmental Response Fund," and shall be forwarded to the DEM's Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, RI 02908-5767.
- (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 the DEM 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 the DEM'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 the DEM'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
DEM – 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); **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 Part 1.7(B) of the Rhode Island Code of Regulations titled *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:
- Christina Hoefsmit, Esquire
DEM - 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 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 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 the 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 Lincoln, 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) The 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) Christina Hoefsmit of the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey D'Amadio Tyrrell of the DEM's 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

By: _____
David E. Chopy, Administrator
DEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

Kenneth D. Demers
135 Jenckes Hill Road
Lincoln, RI 02865

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, SOLID WASTE
 File No.: OCI-SW-13-68
 Respondent: Kenneth D. Demers

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	\$3,000	1 violation	\$3,000
D (2) – Operating solid waste management facility without a license	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$3,000	1 violation	\$3,000
SUB-TOTAL					\$6,000

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

ECONOMIC BENEFIT FROM NON-COMPLIANCE
<p>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:</p> <ul style="list-style-type: none"> - THERE IS NO IDENTIFIABLE BENEFIT FROM NON-COMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED.
<p>A review of the record in this matter has revealed that Respondent has either enjoyed no identifiable benefit from the non-compliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.</p>

COST RECOVERY
<p>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.</p>
<p>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.</p>

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$6,000

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.	_____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><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties</i> (250-RICR-130-00-1)</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 located in groundwater reservoirs and portions of their recharge areas, wellhead protection areas for community water supply wells and in groundwater dependent areas. The Property is located within 1,700 feet of a community water supply wellhead protection area, above a groundwater reservoir and above a groundwater recharge area. The Property is located on the banks of Scott Pond and within the Blackstone River watershed. The Property abuts residential properties to the north and west. (3) Amount of the pollutant: Approximately 273 cubic yards of solid waste. (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 abandoned trucks and other vehicles may contain or leak hazardous liquids such as gasoline, diesel fuel, lubricating oils, hydraulic oils, transmission fluid or other materials. (5) Duration of the violation: Full duration unknown. The DEM first observed solid waste on the Property on 31 October 2013. (6) Areal extent of the violation: Most of the solid waste is deposited throughout Lot 89, which is 0.68 acres in area. 		
(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 prohibiting the disposal of solid waste on the Property. Respondent has yet to mitigate the non-compliance despite receiving the LNCs from the DEM, 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 the Department, or any law which the Department 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 the requirements set forth in the law. 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 \$3,000	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Operating 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		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties</i> (250-RICR-130-00-1)</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent operated a solid waste management facility without a license or approval from the DEM. Prohibiting the operation of a solid waste management facility without a license or approval from the DEM is of prime importance to the regulatory program. Failure to comply prohibits the DEM from ensuring that solid waste is managed and disposed of in accordance with the Solid Waste Regulations and in appropriate locations so as to protect 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 located in groundwater reservoirs and portions of their recharge areas, wellhead protection areas for community water supply wells and in groundwater dependent areas. The Property is located within 1,700 feet of a community water supply wellhead protection area, above a groundwater reservoir and above a groundwater recharge area. The Property is located on the banks of Scott Pond and within the Blackstone River watershed. The Property abuts residential properties to the north and west. (3) Amount of the pollutant: Approximately 273 cubic yards of solid waste. (4) Toxicity or nature of the pollutant: The solid waste is combustible and presents a fire hazard. The stockpiles of solid waste may provide harborage to rodents or disease vectors. The abandoned trucks and other vehicles may contain or leak hazardous liquids such as gasoline, diesel fuel, lubricating oils, hydraulic oils, transmission fluid or other materials. (5) Duration of the violation: Full duration unknown. The DEM first observed solid waste on the property on 31 October 2013. (6) Areal extent of the violation: Most of the solid waste is deposited throughout Lot 89, which is 0.68 acres in area. 		
(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 first obtaining an approval from the DEM to operate a solid waste management facility on the Property. Respondent has yet to mitigate the non-compliance despite receiving the LNCs from the DEM, 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 the Department, or any law which the Department 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 the law. 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.

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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 \$3,000	\$1,250 to \$2,500	\$250 to \$1,250