

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF COMPLIANCE & INSPECTION**

IN RE: Discount Disposal & Demo, Inc.

FILE NO.: OCI-SR-14-3

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 10 Lockwood Street in the town of West Warwick, Rhode Island (the “Property”).
- (2) On 25 November 2013 the DEM was notified of a release of oil at the Property by the West Warwick Fire Department (the “WWFD”). The WWFD informed the DEM that the oil posed a driving hazard on the street and requested a cleanup. The WWFD reported that the cause of the release was a ruptured hydraulic line from a truck owned by the Respondent.
- (3) On 25 November 2013 the DEM arrived at the Property. The DEM inspector observed the following:
 - (a) Oil on the ground and on the driveway on the Property;
 - (b) Oil on Lockwood Street; and
 - (c) Oil in the storm water drainage basin on Lockwood Street.

The DEM inspector advised the WWFD to hire a clean up contractor.

- (4) On 25 November 2013 the WWFD contracted with the Marshall Environmental Group, Inc. (“MEG”) to clean up the oil. MEG responded that day and cleaned the oil spilled on the ground and on the driveway on the Property, on Lockwood Street and in the storm water drainage basin on Lockwood Street.
- (5) MEG generated three (3) 55-gallon drums of oil spill cleanup debris.
- (6) On 6 January 2014 the DEM hand delivered a letter dated 30 December 2013 to Paul Papavasiliou. The letter advised the Respondent that the company had until 15 January 2014 to show proof to the DEM that the oil spill cleanup debris was

properly disposed. The letter stated that failure to do so would result in enforcement action against the Respondent. The DEM inspector informed Mr. Papavasiliou that it was his responsibility to show that the cleanup was completed. Mr. Papavasiliou said okay.

- (7) The Respondent failed to respond to the letter or properly dispose of the oil spill cleanup debris.
- (8) On 10 March 2014 the DEM paid MEG for the proper disposal of the oil spill cleanup debris.
- (9) The Respondent did not report the release of oil to the DEM or any local official.
- (10) The Respondent did not contain and remove the oil and waste material.
- (11) The Respondent did not submit a written report of the release of oil to the DEM.
- (12) The Respondent has not reimbursed the DEM for the removal and disposal of the oil spill cleanup debris.

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) **R.I. Gen. Laws Section 46-12.5.1-3** – prohibiting discharges of oil into or upon the waters or land of the State.
- (2) **DEM’s Oil Pollution Control (“OPC”) Regulations Section 6(a)** – prohibiting the placement of oil into the waters or land of the State.
- (3) **DEM’s OPC Regulations Section 12(b)(2)** – requiring the immediate cessation of the release of oil and the containment and removal of the oil.
- (4) **DEM’s OPC Regulations Section 12(b)(3)** – requiring the immediate reporting of the release of oil to the DEM.
- (5) **DEM’s OPC Regulations Section 12(b)(5)** – requiring the submission of a written report to the DEM within 10 days of the release of oil that includes the date, time, and location of the release, the responsible parties, the amount and type of material spilled, circumstances causing the release, and actions taken to clean up the oil and prevent future releases.

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:

Ten Thousand Six Hundred and Seventy Dollars (\$10,670)

- (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 the 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:

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 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) Joseph J. LoBianco at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey Tyrrell at 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 E 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:

Discount Disposal & Demo, Inc.
c/o Jonathan V. Kalander, Registered Agent
931 Jefferson Boulevard, Suite 2004
Warwick, Rhode Island 02886

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: Office of Compliance and Inspection, Oil Pollution Control

File No.: OCI-SR-14-3

Respondent: Discount Disposal & Demo, 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) and C (2) – Discharge of oil into or upon the waters or land of the State	Type I (\$25,000 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500
C (3) – Failure to contain and remove a release of oil	Type I (\$25,000 Max. Penalty)*	Moderate	\$6,250	1 violation	\$6,250
C (4) and C (5) – Failure to report a release of oil	Type II (\$25,000 Max. Penalty)*	Minor	\$1,250	1 violation	\$1,250
<i>SUB-TOTAL</i>					\$10,000

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

ADMINISTRATIVE PENALTY SUMMARY (continued)

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.

DESCRIPTION OF COST	CALCULATION OF ACTUAL COST INCURRED	AMOUNT
Disposal of oil spill debris	Field technician (4 hours @ \$55 per hour)	\$220
	Disposal cost (2 drums @ \$125 per drum)	\$250
	Small truck (4 hours @ \$25 per hour)	\$100
	Drums (2 drums @ \$50 per drum)	\$100
SUB-TOTAL		\$670

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS= \$10,670

PENALTY MATRIX WORKSHEET

CITATION: Discharge of oil into or upon the waters or land of the State
 VIOLATION NO.: C (1) and C (2)

TYPE		
<p><u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> 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: The Respondent failed to prevent the release of oil onto the land and/or waters of the state. The Respondent released hydraulic oil onto the ground at the property. The oil subsequently flowed onto the adjacent street and into a nearby storm drain. The release of oil caused a potential impact to the environment and a safety hazard for driving.</p> <p>(B) Environmental conditions: The property is located within a GA groundwater area, 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 groundwater dependent areas. The property is located within 400 feet of Hardig Brook and 500 feet from Cedar Brook in the Pawtuxet River watershed.</p> <p>(C) Amount of the pollutant: The amount of oil released into the environment is unknown; however, the environmental contractor generated three (3) 55-gallon drums of oil spill cleanup debris.</p> <p>(D) Toxicity or nature of the pollutant: Hydraulic oil if ingested can cause problems with the brain, nerve and muscles, as well as difficulty breathing, tremors, weakness to the extremities and even paralysis.</p> <p>(E) Duration of the violation: 1 day – the release occurred on 25 November 2013</p> <p>(F) Areal extent of the violation: Full extent unknown. The spill occurred in the driveway at 10 Lockwood Street, flowed down the driveway onto Lockwood Street and into an adjacent storm drain.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to prevent the release of hydraulic oil into the environment.
- (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 prevent the release of hydraulic oil into the environment.
- (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> </u> X 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 \$2,500	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to contain and remove a release of oil
 VIOLATION NO.: C (3)

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><u>FACTORS CONSIDERED:</u></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 take any action to contain and remove the hydraulic oil from the environment. The oil subsequently flowed onto the adjacent street and into a nearby storm drain. An environmental contractor had to be contacted to remove the hydraulic oil from the street and the storm drain. The failure to immediately contain and remove the oil caused an impact to the environment and a safety hazard for driving.</p> <p>(B) Environmental conditions: The property is located within a GA groundwater area, 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 groundwater dependent areas. The property is located within 400 feet of Hardig Brook and 500 feet from Cedar Brook in the Pawtuxet River watershed.</p> <p>(C) Amount of the pollutant: The amount of oil released into the environment is unknown; however, the environmental contractor generated three (3) 55-gallon drums of oil spill cleanup debris.</p> <p>(D) Toxicity or nature of the pollutant: Hydraulic oil if ingested can cause problems with brain, nerve and muscles, as well as difficulty breathing, tremors, weakness to the extremities and even paralysis.</p> <p>(E) Duration of the violation: 4 months. The release occurred on 25 November 2013, and the oil spill debris was properly disposed at the DEM's expense on 10 March 2014.</p> <p>(F) Areal extent of the violation: Full extent unknown. The spill occurred in the driveway at 10 Lockwood Street, flowed down the driveway onto Lockwood Street and into an adjacent storm drain.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to take any action to contain and remove the hydraulic oil that was released into the environment despite receiving a telephone call from the West Warwick Fire Department (WWFD) requiring that it do so. The Respondent failed to mitigate the violation by paying the environmental contractor retained by the WWFD for the cost of disposal of the oil spill cleanup debris despite receiving a hand delivered letter from the DEM on 6 January 2014 requiring 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:** 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 immediately contain and remove the hydraulic oil that was released into the environment.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	<u> X </u> 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	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500 \$6,250	\$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

PENALTY MATRIX WORKSHEET

CITATION: Failure to report a release of oil
 VIOLATION NO.: C (4) & C (5)

TYPE		
TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>X</u> 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 <i>Rules and Regulations for Assessment of Administrative Penalties</i>		
(A) The extent to which the act or failure to act was out of compliance: The Respondent failed to immediately report to the DEM the release of oil and failed to submit a written report to the DEM of the release of oil. Proper reporting to the DEM of a release of oil is important to the regulatory program.		
(B) Environmental conditions: The property is located within a GA groundwater area, 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 groundwater dependent areas. The property is located within 400 feet of Hardig Brook and 500 feet from Cedar Brook in the Pawtuxet River watershed.		
(C) Amount of the pollutant: The amount of oil released into the environment is unknown; however, the environmental contractor generated three (3) 55-gallon drums of oil spill cleanup debris.		
(D) Toxicity or nature of the pollutant: Hydraulic oil if ingested can cause problems with brain, nerve and muscles, as well as difficulty breathing, tremors, weakness to the extremities and even paralysis.		
(E) Duration of the violation: 8 months. The release occurred on 25 November 2013. As of the issuance of the NOV the Respondent has failed to submit a written report to the DEM.		
(F) Areal extent of the violation: Full extent unknown. The spill occurred in the driveway at 10 Lockwood Street, flowed down the driveway onto Lockwood Street and into an adjacent storm drain.		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to immediately report to the DEM the release of oil, despite a requirement in the DEM's regulations that it do so. The DEM was notified by the West Warwick Fire Department after the oil had entered the street and a nearby storm drain. The Respondent has failed to submit a written report to DEM of the release of oil, despite a requirement in the regulations requiring that it do so within 10 days of the release.
- (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 immediately report to the DEM the release of oil and its failure to submit a written report to the DEM of the release of oil.
- (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
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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	\$1,250 to \$2,500 \$1,250	\$250 to \$1,250