

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: RSM Employer Parking, LLC
Donigian Park, LLC
Michael Izzi d/b/a Izzi and Sons Partnership**

FILE NO.: OCI-SR-12-1

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 parties (“Respondents”) have violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Facts

- (1) The properties are located at 100 Amherst Street and 181 Valley Street in the city of Providence, Rhode Island (the “Amherst Street Property” and “Valley Street Property”, respectively).
- (2) Donigian Park, LLC (“Donigian”) owns the Amherst Street Property. Donigian acquired the Amherst Street Property on July 7, 2012.
- (3) The Amherst Street Property is identified in the city of Providence assessor’s database as vacant residential property.
- (4) RSM Employer Parking, LLC (“RSM”) owns the Valley Street Property. RSM acquired the Valley Street Property on July 7, 2012.
- (5) The Valley Street Property is a contaminated site as defined in the DEM’s *Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases* (the “Remediation Regulations”).
- (6) On July 2, 2009, Izzi and Sons Partnership (“Izzi”) submitted to the DEM a Remedial Action Work Plan (“RAWP”) to remediate contaminated soil at the Valley Street Property. The RAWP was signed by Michael Izzi.
- (7) On November 30, 2011 the DEM approved the RAWP through issuance of a Remedial Approval Letter to Izzi.

- (8) On December 11, 2012, the DEM inspected the Amherst Street Property. The inspection revealed that fill material was recently deposited on the Amherst Street Property (the “Fill Material”).
- (9) During the December 11, 2012 inspection the DEM inspector spoke with Mark Van Noppen of the Armory Revival Company. Mr. Van Noppen admitted the following:
 - (a) He represents Donigian and RSM;
 - (b) The Fill Material was taken from the Valley Street Property;
 - (c) The Fill Material was about one hundred fifty (150) cubic yards in volume; and
 - (d) One plan for the Amherst Street Property involved the construction of multi-family dwellings.
- (10) During the December 11, 2012 inspection, the DEM collected six (6) samples of the Fill Material and transported the samples to ESS Laboratory for analysis.
- (11) On December 19, 2012, DEM received a report on the results of the analysis of the samples. A review of the report revealed that all six (6) samples contained hazardous substances at concentrations exceeding the Residential Direct Exposure Criteria (“R/DEC”) contained in the DEM’s Remediation Regulations.
- (12) The depositing of the Fill Material constitutes a jurisdictional release of hazardous materials. The DEM did not approve the release of hazardous materials on the Amherst Street Property.
- (13) The presence of hazardous materials in the Fill Material at concentrations exceeding the R/DEC renders the Fill Material unsuitable for reuse on a residential property and constitutes a solid waste when disposed of on a residential property.
- (14) The DEM has not issued a license to Donigian to operate a solid waste management facility on the Amherst Street Property.
- (15) On July 3, 2013 DEM received a copy of a report entitled “Soil Removal and Disposal” prepared by Alliance Environmental Group, Inc. reporting that all of the Fill Material was removed from the Amherst Street Property and disposed of at a licensed facility.
- (16) Review of records maintained by the DEM revealed that Izzi failed to notify DEM of the change of ownership of the Valley Street Property.

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 23-18.9-5** – prohibiting the disposal of solid waste at other than a solid waste management facility.
- (2) **DEM’s Remediation Regulation 4.01** – prohibiting the release of hazardous materials in any manner which may impact the classification or uses of the land without complying with all applicable regulations.
- (3) **DEM’s Remediation Regulation 10.03** – requiring a performing party to notify the DEM thirty (30) days prior to the change of ownership of a contaminated site.

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, against the following Respondents:
 - (a) **RSM for violations 1 and 2 - Twenty Five Thousand Seven Hundred and Ninety Five Dollars (\$25,795.00)**
 - (b) **Donigian for violations 1 and 2 - Twenty Five Thousand Seven Hundred and Ninety Five Dollars (\$25,795.00)**
 - (c) **Izzi for violation 3 - One Thousand Two Hundred and Fifty Dollars (\$1,250.00)**
- (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 thirty (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 - 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 Respondents 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 Paragraphs 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 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
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 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:

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 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, Esq. at the DEM Office of Legal Services at (401) 222-6607. 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 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:

Michael Izzi d/b/a Izzi & Sons Partnership
11 Naples Avenue
Providence, RI 02908

RSM Employer Parking, LLC
c/o H. LeBaron Preston, Registered Agent
334 Broadway
Providence, RI 02909

Donigian Park, LLC
c/o H. LeBaron Preston, Registered Agent
334 Broadway
Providence, RI 02909

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, SITE REMEDIATION
 File No.: OCI-SR-12-1
 Respondents: RSM Employer Parking, LLC, Donigian Park, LLC and Michael Izzi d/b/a Izzi & Sons Partnership

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 (2) – Release of hazardous materials and disposal of solid waste	Type I (\$ 25,000 Max. Penalty)*	Moderate	\$6,250	8 violations (eight truckloads of hazardous materials/solid waste)	\$50,000.00
C (3) – Failure to notify DEM of change of ownership	Type III (\$ 6,250 Max. Penalty)*	Minor	\$1,250	1 violation	\$1,250.00
SUB-TOTAL					\$51,250.00

*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 Respondents have 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
PAH analysis by method 8270	\$90.00 per samples x 6 samples	\$ 540.00
PP 13 metals analysis by method 6010B	\$110.00 per sample x 6 samples	\$ 660.00
TPH analysis by method 8100M	\$65.00 per sample x 6 samples	\$ 390.00
<i>SUB-TOTAL</i>		\$ 1,590.00

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS= \$52,840.00

PENALTY MATRIX WORKSHEET

CITATION: Release of hazardous materials and disposal of solid waste
 VIOLATION NO.: C (1) and (2)

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:</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: RSM and Donigian released hazardous materials and disposed of solid waste (in the form of contaminated soil) on the Amherst Street property. The DEM's regulations prohibit the release of hazardous materials onto the land in a manner that will impact the classification or use of the land. Rhode Island's Solid Waste Disposal Act prohibits the disposal of solid waste at an unlicensed facility.</p> <p>(B) Environmental conditions: The Amherst Street property consists of undeveloped land that has been classified by DEM as a contaminated site (consisting of arsenic, lead and polycyclic aromatic hydrocarbons (PAHs) that exceed the DEM's direct exposure standards). The property is located in an area designated by the DEM as having a GB groundwater classification.</p> <p>(C) Amount of the pollutant: One hundred fifty (150) cubic yards.</p> <p>(D) Toxicity or nature of the pollutant: The fill material contained elevated concentrations of lead and PAHs, several of which are listed as suspected human carcinogens.</p> <p>(E) Duration of the violation: About 7 months. The fill material was deposited on the property on or before November 27, 2012. DEM received a report in July 2013 stating that all the fill material was properly removed and disposed.</p> <p>(F) Areal extent of the violation: Considered, but not utilized in this calculation.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable steps to prevent the noncompliance by obtaining approval from DEM prior to transporting and depositing the material on the property.
- (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 in 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:** RSM and Donigian had complete control over the management and disposition of the material.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized in 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 notify DEM of change of ownership

VIOLATION NO.: C (3)

TYPE		
<p style="text-align: center;"><u> </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> X </u> 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>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: Izzi failed to notify DEM of a change of ownership of the Valley Street property which is a contaminated site.</p> <p>(B) Environmental conditions: Considered, but not utilized in this calculation.</p> <p>(C) Amount of the pollutant: Considered, but not utilized in this calculation.</p> <p>(D) Toxicity or nature of the pollutant: The Valley Street property contains elevated concentrations of lead and PAHs, several of which are listed as suspected human carcinogens.</p> <p>(E) Duration of the violation: 6 months. The Valley Street property was transferred from Izzi to RSM on July 7, 2012. DEM did not know the property was transferred until it inspected the Amherst Street property and Valley Street property in December 2012.</p> <p>(F) Areal extent of the violation: Considered, but not utilized in this calculation</p> <p style="text-align: right;">(continued)</p>		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Izzi failed to take reasonable steps to notify DEM of the sale of the Valley Street property.
- (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 in 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:** Izzi 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:** Considered, but not utilized in this calculation.

<u> </u> MAJOR	<u> </u> 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	\$250 to \$1,250 \$1,250