

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Brian Giblin**

**FILE NO.: OCI-OWTS-16-76**

**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" or "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 22 August 2016, the DEM issued a Notice of Intent to Enforce ("NIE") to Respondent by certified mail for the violation that is the subject of this Notice of Violation ("NOV"). The NIE required specific actions to correct the violation. On 9 September 2016, Respondent submitted a letter to the DEM in response to the NIE. Respondent stated that he would comply with the NIE. Respondent failed to comply with the NIE.

**C. Facts**

- (1) The property is located at 23 Bailey Pond Road, Assessors Plat 41, Lot 13, in the town of West Greenwich (the Property").
- (2) Respondent owns the Property.
- (3) On 12 August 2016, the DEM inspected the Property. The inspection revealed that the onsite wastewater treatment system ("OWTS") located in the front yard was under repair. Specifically, the inspector observed that the wooden boards, stone and sand for the sand filter were being replaced.
- (4) The DEM inspector spoke with Respondent at the time of the inspection. Respondent stated that he was repairing the OWTS himself, and he did not know he needed a permit from the DEM or that the repair had to be done by a person licensed by the DEM.
- (5) No permit was issued by the DEM to repair the OWTS.
- (6) Respondent does not have a license issued by the DEM to repair the OWTS.

- (7) As of the date of the NOV, 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) DEM's OWTS Regulations
  - (a) **Rule 8.2** – prohibiting any person from repairing an OWTS without a valid license issued by the DEM.
  - (b) **Rule 8.3** – prohibiting the repair of an OWTS without a permit 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) **Within 30 days of receipt of the NOV**, submit a formal application and plan to the DEM to repair the OWTS in accordance with the DEM's OWTS Regulations (the "Application"). **Any repairs or modifications to the OWTS require the prior approval of the DEM.** The list of licensed OWTS designers can be obtained by contacting Deb Knauss at 222-4700, Ext. 7612 or from the DEM's web page at:

[www.dem.ri.gov/programs/benviron/water/licenses/OWTS/pdfs/deslist.pdf](http://www.dem.ri.gov/programs/benviron/water/licenses/OWTS/pdfs/deslist.pdf).

- (2) The Application shall be subject to the DEM's review and approval. Upon review, the DEM shall provide written notification to you either granting formal approval or stating the deficiencies therein. Within 14 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.
- (3) Commence work on the project in accordance with the method approved by the DEM within 20 days of approval (unless otherwise expressly authorized by the DEM in writing to commence work at a later time), and complete such work within 120 days of said approval or other date specified by the DEM.

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:

**\$2,000**

- (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, cashier's check or money order made payable to the "General Treasury - Water & Air Protection Program Account," and shall be forwarded to the DEM's Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 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 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, 4<sup>TH</sup> 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, Esq.  
DEM - Office of Legal Services  
235 Promenade Street, 4<sup>TH</sup> 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 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 West Greenwich 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 42-17.1-2(13), as amended.
- (7) The NOV does not preclude the DEM 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's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Stephen Tyrrell of the DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 7406.

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, 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:

Brian Giblin  
23 Bailey Pond Road  
West Greenwich, RI 02817

by Certified Mail.

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## ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, OWTS  
File No.: OCI-OWTS-16-76  
Respondent: Brian Giblin

### 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)(a) – Repair To OWTS Without Valid License	Type I (\$1,000 Max. Penalty)*	Major	\$1,000	1 violation	\$1,000
D(1)(b) – Repair To OWTS Without Permit	Type I (\$1,000 Max. Penalty)*	Major	\$1,000	1 violation	\$1,000
<b>SUB-TOTAL</b>					<b>\$2,000</b>

\*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 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.

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.

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$2,000**

## PENALTY MATRIX WORKSHEET

CITATION: Repair To OWTS Without Valid License

VIOLATION NO.: D (1)(a)

TYPE		
<input checked="" type="checkbox"/> TYPE I DIRECTLY related to protecting health, safety, welfare or environment.	<input type="checkbox"/> TYPE II INDIRECTLY related to protecting health, safety, welfare or environment.	<input type="checkbox"/> TYPE III INCIDENTAL to protecting health, safety, welfare or environment.
<b>DEVIATION FROM THE STANDARD</b> THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<b>FACTORS CONSIDERED:</b>		
Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i>		
<p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent repaired the OWTS himself. The proper design and repair of an OWTS by a licensed designer is a primary objective of the DEM's regulations and the regulatory program.</p> <p>(B) <b>Environmental conditions:</b> The Property includes a single family house in a lightly populated neighborhood. The OWTS is an ADVANTEX denitrification system with a bottomless sand filter. Respondent replaced the entire sand filter with new wooden boards, crushed stone and sand.</p> <p>(C) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Considered, but not utilized for this calculation.</p> <p>(E) <b>Duration of the violation:</b> Considered, but not utilized for this calculation.</p> <p>(F) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</p> <p>(G) <b>Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:</b> Respondent failed to retain a licensed designer to repair the OWTS.</p> <p>(H) <b>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:</b> Considered, but not utilized for this calculation.</p> <p>(I) <b>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:</b> Respondent submitted a letter to the DEM on 7 September 2016 in response to the NIE that stated the following: when he purchased the house several years ago, the sand filter was filled with weeds, had no crushed stone remaining and the piping was visible; he ordered sand and gravel to resurface his driveway and thought it was a perfect time to replace the leachfield with plywood, liner and fill; he researched on line the system design; and he thought simply replacing the sand was something he could do himself.</p> <p>(J) <b>Any other factor(s) that may be relevant in determining the amount of a penalty:</b> An ADVANTEX denitrification system and a bottomless sand filter is required in sensitive environmental areas where a standard OWTS is not adequate to properly treat the wastewater to prevent contamination of groundwater. The work undertaken by Respondent may be allowing improperly treated wastewater to enter the groundwater.</p>		
<input checked="" type="checkbox"/> MAJOR	MODERATE	MINOR

Penalty Matrix where the applicable statute provides for a civil penalty up to \$1,000		<b>TYPE I</b>	TYPE II	TYPE III
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$800 to \$1,000 <b>\$1000</b>	\$600 to \$800	\$400 to \$600
	MODERATE	\$600 to \$800	\$400 to \$600	\$200 to \$400
	MINOR	\$400 to \$600	\$200 to \$400	\$100 to \$200

## PENALTY MATRIX WORKSHEET

CITATION: Repair To OWTS Without Permit  
 VIOLATION NO.: D (1)(b)

TYPE		
<input checked="" type="checkbox"/> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<input type="checkbox"/> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<input type="checkbox"/> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
<b>DEVIATION FROM THE STANDARD</b> THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<b>FACTORS CONSIDERED:</b>		
Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i>		
<ul style="list-style-type: none"> <li>(A) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent failed to submit an application to the DEM for the repair he completed to the OWTS. The proper submittal of an application to the DEM by a licensed designer is a primary objective of the DEM's regulations and the regulatory program.</li> <li>(B) <b>Environmental conditions:</b> The Property includes a single family home in a lightly populated neighborhood.</li> <li>(C) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(D) <b>Toxicity or nature of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(E) <b>Duration of the violation:</b> 6 months - the violation was observed by the DEM on 12 August 2016.</li> <li>(F) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</li> <li>(G) <b>Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:</b> Respondent failed to retain a licensed designer to submit a repair application despite receiving the NIE from the DEM on 22 August 2016 requiring that he do so. Respondent submitted a letter to the DEM on 7 September 2016 in response to the NIE stating that he would comply with the NIE.</li> <li>(H) <b>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:</b> Considered, but not utilized for this calculation.</li> <li>(I) <b>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:</b> Respondent had full control over the violation. The violation was foreseeable.</li> <li>(J) <b>Any other factor(s) that may be relevant in determining the amount of a penalty:</b> The NIE stated the penalty could be up to \$1,000 per day.</li> </ul>		
<input checked="" type="checkbox"/> MAJOR	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 <b>\$1,000</b>	\$600 to \$800	\$400 to \$600
	MODERATE	\$600 to \$800	\$400 to \$600	\$200 to \$400
	MINOR	\$400 to \$600	\$200 to \$400	\$100 to \$200