

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Hollywood Properties, LLC
Hollywood Landscaping, Inc.**

FILE NO.: SW 2011-01

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. Administrative History

On 13 November 2008 and May 17, 2009, DEM issued informal notices to Hollywood Properties, LLC for the violations. The Respondents have failed to comply with the notices.

C. Facts

- (1) The subject property is located at 3034 Post Road in the city of Warwick, Rhode Island, Assessor’s Plat 245, Lot 340 (the “Property”).
- (2) Hollywood Properties, LLC owns the Property.
- (3) Hollywood Landscaping, Inc. operates a landscaping business on the Property.
- (4) On 22 October 2008, 26 March 2009, 30 July 2009, 24 November 2009, and 6 January 2011, DEM inspected the Property. The inspections revealed the following:
 - (a) Leaves, grass clippings, and shrub trimmings (the “yard waste”) stored in and around concrete bunkers;
 - (b) The volume of yard waste ranged from forty nine cubic yards observed on 30 July 2009 to two hundred eighty cubic yards observed on 22 October 2008; and
 - (c) The yard waste was undergoing passive composting as evidenced by its dark earthy color, odors consistent with composting detected during the inspection on 22 October 2008, and steam emanating from one of the piles during the inspection on 30 July 2009.

- (5) On 6 November 2008 Jon J. Halliwell, the President of Halliwell Landscaping, Inc., informed the DEM in a telephone conversation that the yard waste at the Property is composted and sold.
- (6) As of the date of this Notice of Violation (“NOV”), the Respondents have failed to comply with the Rhode Island Refuse Disposal Act and DEM’s Rules and Regulations for Composting Facilities and Solid Waste Management Facilities (the “Solid Waste Regulations”).
- (7) Respondents have neither applied for nor obtained a license or approval from DEM to operate a composting facility on the Property.

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 23-18.9-8** – prohibiting the operation of a solid waste management facility without a license issued by DEM.
- (2) **Solid Waste Regulations, Rule 1.4.01** – prohibiting any person from constructing, developing, establishing, managing, owning or maintaining a composting facility, without first having obtained approval from DEM.
- (3) **Solid Waste Regulations, Rule 1.4.01** – prohibiting any person from operating a composting facility without first having obtained a license or registration to operate from 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 composting of yard waste on the Property. No yard waste shall be composted on the Property without an approval from DEM.
- (2) **Within thirty days of receipt of the NOV**, remove all yard waste from the Property and dispose of it at a licensed solid waste management facility. The yard waste shall not be burned or buried.
- (3) **Within ten days of completion of the removal of the yard waste**, submit documentation to DEM to verify 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:

Two Thousand Five Hundred Dollars (\$2,500.00)

- (2) The proposed administrative penalty is calculated pursuant to the DEM Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the Director within twenty days of your receipt of this NOV. Payment 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.
- (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.
- (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 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 city of Warwick, 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) 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 D'Amadio 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 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:

Hollywood Properties, LLC
c/o Jon J. Halliwell, Registered Agent
215 Ardway Avenue
Warwick, RI 02889

Hollywood Landscaping, Inc.
c/o Jon J. Halliwell, Registered Agent
215 Ardway Avenue
Warwick, RI 02889

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, SOLID WASTE
 File No.: SW 2011 – 01
 Respondents: Hollywood Properties, LLC and Hollywood Landscaping, 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	
D (1), D (2) and D (3) – Operating a composting facility without a license from DEM	Type I (\$ <u>25,000</u> Max. Penalty)*	Minor	\$5,000	1 violation	\$5,000.00
SUB-TOTAL					\$5,000.00

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

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$5,000.00

PENALTY MATRIX WORKSHEET

CITATION: Operating a composting facility without a license from DEM
 VIOLATION NO.: D (1), (2) and (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		
<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: Respondents operated a composting facility without the approval of DEM. The permitting of composting facilities is of importance to the regulatory program. Operating a composting facility without the approval of the DEM bypasses all of the safeguards and environmental protections obtained through the permitting process.</p> <p>(B) Environmental conditions: The property is located in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. The property is located within 260 feet of Gorton Pond and within the Greenwich Bay watershed. The property is located in an industrially-zoned area; however, residential properties are located within 300 feet of the property.</p> <p>(C) Amount of the pollutant: Varied. DEM observed approximately 151 cubic yards of yard waste on the property on its most recent inspection on 6 January 2011. Previous inspections have revealed between 49 and 280 cubic yards of yard waste on the property.</p> <p>(D) Toxicity or nature of the pollutant: The yard waste is combustible and presents a fire hazard. The stockpiles of yard waste may provide harborage to rodents or disease vectors. Decomposing leaves and grass clippings generate objectionable odors that could impact nearby residential properties.</p> <p>(E) Duration of the violation: Unknown. DEM first observed the yard waste on 25 March 2008.</p> <p>(F) Areal extent of the violation: Not relevant.</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 prevent the non-compliance by first obtaining an approval or license from DEM to operate a composting facility on the property. Respondents have yet to mitigate the non-compliance despite receiving Notices of Intent to Enforce from DEM on 13 November 2008 and 17 May 2009, which required that they 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 Respondents for the failure to comply immediately with the requirements set forth in the Rhode Island Refuse Disposal Act and DEM's Solid Waste Regulations. Respondents 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:** 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 \$5,000	\$1,250 to \$2,500	\$250 to \$1,250