

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Lonnie Jackson

FILE NOs.: OCI-SW-17-41 and OCI-SR-19-2

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 DEM's jurisdiction.

B. Administrative History

On 10 January 2019, DEM issued a Notice of Intent to Enforce (“NIE”) to Respondent by certified mail for the alleged solid waste violations that are the subject of this Notice of Violation (“NOV”). On 15 January 2019, the NIE was delivered. Respondent has failed to respond to or comply with the NIE.

C. Facts

- (1) The subject property is located at 632 River Street, Assessor's Plat 8D, Lot 27 in the City of Woonsocket, Rhode Island (the “Property” or “Site”). The Property includes a commercial structure and an unlicensed salvage yard (the “Facility”).
- (2) Respondent owns the Property. Respondent acquired the Property on 7 October 2013.
- (3) Respondent operates the Facility.
- (4) On 14 November 2005, DEM received a *Hazardous Materials Release Notification Form* from the former owner of the Property, Petroleum Heat & Power Company, Inc. (“PHPC”).
- (5) On 3 April 2006, DEM received a *Site Investigation Report* for the Property, which was prepared by Fuss & O’Neill, Inc. (“F&O”) on behalf of PHPC. F&O reported that concentrations of total petroleum hydrocarbons (“TPHs”), polycyclic aromatic hydrocarbons (“PAHs”) and arsenic were present in Site soils at levels that exceeded the *Method One Industrial/Commercial Direct Exposure Criterion* set forth in Part 1.9.2 of the Rhode Island Code of Regulations titled *Rules and*

Regulations for the Investigation and Remediation of Hazardous Material Releases (250-RICR-140-30-1) (the “Remediation Regulations”).

- (6) On 28 February 2007, DEM received a *Remedial Action Work Plan* (“RAWP”) for the Property, which was prepared by F&O on behalf of PHPC.
- (7) On 12 March 2007, DEM issued a *Remedial Approval Letter* to PHPC for the RAWP.
- (8) On 8 August 2007, PHPC recorded an *Environmental Land Use Restriction* (“ELUR”) on the deed for the Property. The ELUR requires all owners of the Property to procure the services of a qualified environmental professional to perform annual inspections of the restrictions and engineered controls set forth in the document and submit an annual evaluation report to DEM.
- (9) On 25 September 2007, DEM issued a *Letter of Compliance* (“LOC”) to PHPC. The LOC notified PHPC that they and any future holders of interest in the Property were required to comply with the terms and conditions of the ELUR and RAWP.
- (10) During each of the years 2008, 2011 and 2012, PHPC procured the services of a qualified environmental professional (Sage Environmental) to perform the required annual site evaluation inspections required by Section H of the ELUR.
- (11) On 27 July 2012 and 29 July 2013, DEM audited the Property and no ELUR violations were found.
- (12) On 22 August 2017, 1 October 2018, and 7 June 2019, DEM viewed the Property from the River Street right-of-way and observed well in excess of 3 cubic yards of solid waste deposited and discarded on the ground, which consisted of approximately 15 used motor vehicles and trucks (unregistered and apparently inoperable), motorized campers and camp trailers, steel drums, plastic barrels, air conditioners, bicycles, boats, used tires, scrap metal and other mixed solid waste. DEM’s inspector observed that the material appeared to be discarded with no obvious organization and that it did not appear as though it was being actively managed for recycling.
- (13) On 24 June 2019, DEM performed a partial audit of the Site and a review of Respondent’s compliance with the terms and conditions of the ELUR and RAWP. The audit and review revealed the following:
 - (a) Most of the Site was covered with stockpiles of salvaged materials and solid waste including scrap metal, steel drums, motor vehicles, campers, camp trailers, plastic barrels, air conditioners, bicycles, boats, used tires and other mixed solid waste; and
 - (b) Inspection of the engineered controls specified in the ELUR was not possible due the widespread accumulation of salvaged materials and solid waste on the Site; and

- (c) Since taking title to the Property in October 2013, Respondent had not submitted any annual evaluation reports to DEM to verify that a qualified environmental professional had inspected the Property to evaluate compliance with the terms and conditions of the ELUR and RAWP.
- (14) Respondent has neither sought nor obtained an approval, permit or license from DEM to operate a solid waste management facility on the Property.
- (15) The Rhode Island Department of Business Regulation nor the City of Woonsocket, Rhode Island have issued a license or approval to Respondent to operate motor vehicle wrecking and salvage or scrap metal recycling businesses 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 23-18.9-5** – prohibiting the disposal of solid waste at other than a solid waste management facility licensed by DEM.
- (2) **R.I. Gen. Laws Section 23-18.9-8** – prohibiting the operation of a solid waste management facility or construction and demolition debris processing facility without a license or approval from DEM.
- (3) **R.I. Gen. Laws Section 23-19.14-6(b)(1)** – assigning liability to responsible parties for all removal or remedial actions necessary to rectify the effects of a release of hazardous material so that it does not cause a substantial danger to present or future public health or welfare or the environment.
- (4) **Part 1.5.2(A) of the Remediation Regulations** – requiring responsible parties to investigate and remediate hazardous material releases in accordance with the regulations.
- (5) **Part 1.12.1 of the Remediation Regulations** – requiring performing parties to complete remedial action as required by DEM.
- (6) **Part 1.12.2 of the Remediation Regulations** – requiring performing parties to operate and maintain all portions, activities and/or operations in accordance with all the terms and conditions of the remedial action approval and all other applicable laws and regulations.
- (7) **Part D of the ELUR** – prohibiting the alteration of any part of the Property, that is inconsistent with the requirements of the restriction, without prior written notification to and approval by DEM.

- (8) **Part H of the ELUR** – requiring annual inspections to ensure compliance with the terms of the ELUR, including the engineered controls, by a qualified environmental professional and submittal of written reports summarizing the results of each inspection to 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 or recycling 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 DEM that the solid waste was disposed of at a licensed solid waste management facility or recycling facility.
- (5) **Within 30 days of completion of the solid waste removal project**, procure the services of a qualified environmental professional to perform an evaluation of the engineered controls at the Site in accordance with Section H of the ELUR.
- (6) **Within 10 days of the completion of the evaluation**, submit to DEM's Office of Waste Management ("OWM") an evaluation report prepared by the qualified environmental professional, which shall detail the results of the evaluation, including any violations that may be revealed.
- (7) If the evaluation reveals that the Site is out of compliance with the terms and conditions set forth in the ELUR and/or RAWP, Respondent shall submit a written corrective action plan to the OWM within 10 days of the submittal of the evaluation report. The corrective action plan shall detail the proposed remedies that will return the Site to compliance with the ELUR and RAWP and include a proposed schedule for its completion.

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:

\$25,000

- (2) The proposed administrative penalty is calculated pursuant to the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* and must be paid to 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 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 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 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 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:

Tricia Quest, 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 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 City of Woonsocket, Rhode Island 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) Tricia Quest of DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey D'Amadio Tyrrell of 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
Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

Lonnie Jackson
20 Rebekah Street
Woonsocket, RI 02895-1121

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Programs: Solid Waste and Site Remediation
 File Nos.: OCI-SW-17-41 and OCI-SR-19-2
 Respondent: Lonnie Jackson

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	\$6,250	1 violation	\$6,250
D (2) – Operating a Solid Waste Management Facility without a License from DEM	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$6,250	1 violation	\$6,250
D (3), (4), (5), (6), (7) & (8) – Failure to adhere to the requirements of the RAWP and ELUR	Type I <i>(\$25,000 Max. Penalty) *</i>	Moderate	\$12,500	1 violation	\$12,500
SUB-TOTAL					\$25,000

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

ECONOMIC BENEFIT FROM NON-COMPLIANCE

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:

- THERE IS NO IDENTIFIABLE BENEFIT FROM NON-COMPLIANCE; OR
- THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED.

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.

ADMINISTRATIVE PENALTY SUMMARY (continued)

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 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 = \$25,000

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.	<u> </u> TYPE II INDIRECTLY related to protecting health, safety, welfare or environment.	<u> </u> 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.

FACTORS CONSIDERED:

Taken from Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)*.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent disposed of or allowed for the disposal of well in excess of 3 cubic yards 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:** There are numerous residential dwellings within 400 feet of the Property. The Property is located within 275 feet of an environmental justice area. The Property is in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. The Property is located above a groundwater reservoir. The Property abuts the Blackstone River and lies within its watershed.
- (3) **Amount of the pollutant:** More than 3 cubic yards of solid waste. Estimated to be in the hundreds of cubic yards.
- (4) **Toxicity or nature of the pollutant:** 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. DEM first observed solid waste on the Property on 22 August 2017.
- (6) **Areal extent of the violation:** The solid waste has been deposited atop at least half of the one-acre parcel.

(continued)

(continued from the previous page)

- (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 NIE from 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 immediately with the requirements set forth in R.I. Gen. Laws §23-18.9-5. 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
--------------	-----------------	----------------------------------

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 \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Operating a 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 the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i>.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent has operated a solid waste management facility since at least 22 August 2017 without a license or approval from DEM. Prohibiting the operation of a solid waste management facility without a license or approval from DEM is of prime importance to the regulatory program. Failure to comply prevents DEM from ensuring that solid waste is managed and disposed of in accordance with Rhode Island’s Solid Waste Regulations and in appropriate locations so as to protect public health and safety and the environment. (2) Environmental conditions: There are numerous residential dwellings within 400 feet of the Property. The Property is located within 275 feet of an environmental justice area. The Property is in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. The Property is located above a groundwater reservoir. The Property abuts the Blackstone River and lies within its watershed. (3) Amount of the pollutant: More than 3 cubic yards of solid waste. Estimated to be in the hundreds of cubic yards. (4) Toxicity or nature of the pollutant: 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. DEM first observed solid waste on the property on 22 August 2017. (6) Areal extent of the violation: The solid waste has been deposited atop at least half of the one-acre parcel. 		
(continued)		

(continued from the previous page)

- (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 NIE from 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 immediately with the requirements set forth in R.I. Gen. Laws §23-18.9-8. 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
--------------	-----------------	----------------------------------

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 \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to adhere to the requirements of the RAWP and ELUR

VIOLATION NOs.: D (3), (4), (5), (6), (7) & (8)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> 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>		
<u>FACTORS CONSIDERED:</u>		
<p>Taken from Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i>.</p>		
<p>(1) The extent to which the act or failure to act was out of compliance: Respondent failed to procure the services of a qualified environmental professional to inspect the engineered controls specified in the RAWP and ELUR. Annual reports summarizing the results of the required inspections have not been submitted to DEM since Respondent took title to the Property. Respondent deposited a large volume of salvaged materials and solid waste throughout most of the Site, which prevents inspection of the engineered controls. The engineered controls are designed to prevent human contact with surficial and subsurface soils at the Site. Failure to maintain these controls would likely result in threats to public health and safety.</p>		
<p>(2) Environmental conditions: There are numerous residential dwellings within 400 feet of the Property. The Property is located within 275 feet of an environmental justice area. The Property is in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. The Property is located above a groundwater reservoir. The Property abuts the Blackstone River and lies within its watershed.</p>		
<p>(3) Amount of the pollutant: Concentrations of arsenic, PAHs and TPHs are present in subsurface soils on the Site, which exceed the industrial/commercial direct exposure criteria set forth in the Remediation Regulations.</p>		
<p>(4) Toxicity or nature of the pollutant: Inorganic arsenic is a known human carcinogen and has numerous other deleterious health effects. Certain types of PAHs are listed as either probable or possible human carcinogens. PAHs are known to have numerous other deleterious health effects. Many types of TPH compounds are known to have adverse health effects in humans. The pollutants that are present in the Site's soils comprise a threat to public health and safety.</p>		
<p>(5) Duration of the violation: Respondent has been in violation of these requirements since taking title to the Property in 2013.</p>		
<p>(6) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		
(continued)		

(continued from the previous page)

- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent the non-compliance by procuring the services of a qualified environmental professional to perform annual inspections of the engineered controls in place on the Property and submit annual reports to DEM.
- (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 immediately with the requirements set forth in R.I. Gen. Laws §23-19.14-6(b)(1), the Remediation Regulations, the RAWP and the ELUR. 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	<u> X </u> MODERATE	MINOR
--------------	------------------------------	--------------

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 \$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