

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Howard R. Migneault**

**FILE NO.: CI08-0128**

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

DEM issued an informal notice to the Respondent on November 6, 2008 for the violations. The notice required that specific actions be taken to correct the violations. The Respondent failed to comply with the notice.

C. Facts

- (1) The subject property is located at 34 Richardson Clearing Trail, Assessor's Plat 1A, Lot 14 in the town of Glocester, Rhode Island (the “Property”).
- (2) The Respondent owns the Property.
- (3) The Respondent stated in a telephone conversation with the DEM on November 3, 2008 that he:
  - (a) repaired the onsite wastewater treatment system (“OWTS”) located at the Property and moved it across the road;
  - (b) did not know that a permit to repair the OWTS from DEM was required; and
  - (c) would hire an OWTS designer to submit the required OWTS repair application.
- (4) As of the date of this Notice of Violation (“NOV”), the Respondent has failed to comply with 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) **OWTS Regulations, Rule 8.3** – prohibiting the repair of an OWTS without first having obtained written approval 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) **Within fifteen days of receipt of this NOV**, retain the services of a licensed OWTS designer to submit a formal OWTS repair application and plan to the DEM Office of Water Resources - OWTS Permitting Program (“OWR”) in accordance with the OWTS Regulations (the “Application”). The list of licensed OWTS designers can be obtained by contacting Deb Knauss at 222-4700, extension 7612 or from the DEM 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) **Within forty five days of receipt of this NOV**, submit the Application to OWR.
- (3) The Application shall be subject to OWR’s review and approval. Upon review, OWR shall provide written notification to you either granting formal approval or stating the deficiencies therein. Within fourteen days (unless a longer time is specified) of receiving a notification of deficiencies in the Application, you must submit to OWR a modified proposal or additional information necessary to correct the deficiencies.
- (4) Commence work on the project in accordance with the method approved by the Director within twenty days of approval (unless otherwise expressly authorized by the Director in writing to commence work at a later time), and complete such work within one hundred twenty days of said approval or other date specified by the Director.

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:

**One Thousand Dollars (\$1,000.00)**

- (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 - 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.
- (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, 3<sup>RD</sup> 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:

Richard M. Bianculli, Jr., Esquire  
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 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 town of Glocester 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 42-17.1-2(13), 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) Richard M. Bianculli, Jr. at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Patrick J. Hogan of the DEM Office of Compliance and Inspection at (401) 222-1360 extension 7119.

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

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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:

Howard R. Migneault  
34 Richardson Clearing Trail  
Chepachet, RI 02814

by Certified Mail.

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# ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, OWTS  
 File No.: CI08-0128  
 Respondent: Howard R. Migneault

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) – repair of OWTS without DEM approval	Type I (\$1,000 Max. Penalty)*	Major	\$1,000	1	\$1,000
<b>SUB-TOTAL</b>					<b>\$1,000</b>

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

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$1,000.00**

# PENALTY MATRIX WORKSHEET

CITATION: Repair of OWTS without DEM approval  
 VIOLATION NO.: D (1)

TYPE		
<u>X</u> TYPE I DIRECTLY related to protecting health, safety, welfare or environment.	___ TYPE II INDIRECTLY related to protecting health, safety, welfare or environment.	___ 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.		
<p><b>FACTORS CONSIDERED:</b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> The Respondent repaired his septic system himself without DEM approval to do so. The proper design and construction of septic system repairs by designers licensed by DEM are a primary objective of the regulations and a major objective of the regulatory program.</p> <p>(B) <b>Environmental conditions:</b> Not relevant.</p> <p>(C) <b>Amount of the pollutant:</b> Not relevant.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Not relevant.</p> <p>(E) <b>Duration of the violation:</b> The total duration of the violation is unknown, but is at least two years.</p> <p>(F) <b>Areal extent of the violation:</b> Not relevant.</p> <p>(G) <b>Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:</b> The Respondent failed to retain a licensed designer to submit a repair application for the OWTS despite receiving notice from DEM on November 6, 2008 requiring that he do so.</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> Not relevant.</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> The Respondent has full control over the violation. The Respondent is fully aware of the necessary actions to correct the violation.</p> <p>(J) <b>Any other factor(s) that may be relevant in determining the amount of a penalty:</b> The notice issued on November 6, 2008 stated the penalty could be up to \$1,000.00 per day for each violation.</p>		
<u>X</u> MAJOR	MODERATE	MINOR

Penalty Matrix where the applicable statute provides for a civil penalty up to \$1,000	TYPE I	TYPE II	TYPE III
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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