

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF COMPLIANCE & INSPECTION**

IN RE: New England Holding Inc.

FILE NO.: OCI-OWTS-18-8

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 the DEM's jurisdiction.

B. Administrative History

On 26 January 2018, the City of Warwick, Rhode Island posted/noticed the structure on the Property as unsafe and prohibited its occupancy. On 28 February 2018, the DEM issued a Notice of Intent to Enforce (“NOTICE”) to Respondent by certified mail for the violations that are the subject of this Notice of Violation (“NOV”). The NOTICE required that specific actions be taken to correct the violations. Although Respondent submitted a letter in response to the NOTICE, Respondent has failed to comply with the required actions.

C. Facts

- (1) The property is located at 1400 Warwick Avenue, Assessor’s Plat 307, Lot 369 in the City of Warwick, Rhode Island (the “Property”).
- (2) Respondent owns the Property.
- (3) On January 19, 2018, two police officers from the Warwick Police Department responded to the Property at the request of the DEM. The inspections revealed that wastewater from the onsite wastewater treatment system (“OWTS”) at the Property was being pumped to the surface of the ground and running into a storm water catch basin on Warwick Avenue as evidenced by:
 - (a) Observation of a long black pipe connected to a sump pump in a cesspool that was discharging sewage to the surface of the ground, and observation of a sewage trail running from the Property to a storm water catch basin on Warwick Avenue (the “Basin”);
 - (b) Photographs showing the pipe, the electrical wiring for the sump pump and the sewage trail on the surface of the ground beginning at the end of the black pipe and running to the Basin; and

- (c) Detection of odors associated with sewage from the liquid in the area around pipe.
- (4) On January 19, 2018, the DEM also inspected the Property. The inspector observed and photographed a sewage trail with a strong sewage odor running from the Property to the Basin. The inspector also observed a sump pump on the Property.
- (5) On March 22, 2018, the DEM received a report prepared by a licensed OWTS designer retained by Respondent to evaluate the OWTS. The report stated that the OWTS is failed and requires immediate repair.
- (6) The NOTICE required Respondent to apply to the DEM to repair the failed OWTS within 30 days of receipt of the NOTICE.
- (7) As of the date of the NOV, Respondent has failed to apply to the DEM to repair the failed OWTS.

D. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that the Respondent has violated the following statutes and/or regulations:

- (1) **DEM's Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems (the "OWTS Regulations")**
 - (a) **Rule 8.7** – prohibiting the discharge of wastewater to any open or covered drain tributary to a watercourse.
 - (b) **Rule 8.8** – prohibiting the discharge of wastewater to the surface of the ground.
 - (c) **Rule 17.7** – requiring submittal of a repair application for a failed OWTS.

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** take steps to reduce the discharge of sewage to the OWTS, such as through the installation and use of water conservation devices and fixtures and arrange to have the OWTS pumped by a permitted septage transporter as frequently as necessary to prevent the OWTS from overflowing or breaking out onto the surface of the ground. A list of permitted septage transporters can be obtained by contacting the DEM's Office of Water Resources - OWTS Permitting at 222-6820 or from the DEM's web page at: www.dem.ri.gov/programs/benviron/waste/transport/septage.pdf.

- (2) **IMMEDIATELY** cease use of any/all laundry washing machine(s) located on the Property. No laundry use is allowed until the OWTS is fully repaired.
- (3) **Within 30 days of receipt of the NOV**, submit a repair application and plan to the DEM 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.
- (4) 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.
- (5) 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 later), 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:

\$3,200

- (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, cashiers 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 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, Room 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 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:

Tricia Quest, Esq.
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 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 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 Warwick, 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 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) Tricia Quest of 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
Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

New England Holding, Inc.
c/o Peter Tsang, Registered Agent
1237 Elmwood Avenue
Providence, RI 02907

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, OWTS
 File No.: OCI-OWTS-18-8
 Respondent: New England Holding 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)(a) – Discharge Of Sewage to Drain	Type I (\$1,000 Max. Penalty) *	Major	\$1,000	1 violation	\$1,000
D(1)(b) – Discharge of Sewage to Ground	Type I (\$1,000 Max. Penalty) *	Major	\$1,000	1 violation	\$1,000
D(1)(c) – Repair Application	Type I (\$1,000 Max. Penalty) *	Major	\$1,000	1 violation	\$1,000
SUB-TOTAL					\$3,000

*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 COMPLY. 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.		
DESCRIPTION OF BENEFIT	CALCULATION	AMOUNT
Cost of septic system pumping	1 occurrence @ \$200 each pumping	\$200
SUB-TOTAL		\$200

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 = \$3,200

PENALTY MATRIX WORKSHEET

CITATION: Discharge Of Sewage To Drain
 VIOLATION NO.: D (1)(a)

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 VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Section Part 1.10A.1.b of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Sewage was discharged/pumped to a storm drain from a failed OWTS. Preventing the discharge of sewage to a location where it is likely to enter a watercourse is a major objective of the regulatory program. (2) Environmental conditions: The property includes a multipurpose building in a densely populated neighborhood. (3) Amount of the pollutant: The inspections on January 19, 2018 revealed evidence of sewage flowing from the OWTS to a storm drain on Warwick Avenue. (4) Toxicity or nature of the pollutant: Sewage contains many kinds of bacteria, viruses, and parasites that can cause serious or fatal diseases in both humans and animals, as well as being the source of extremely objectionable odors. (5) Duration of the violation: Full duration unknown. The violation was observed by the DEM on January 19, 2018. (6) Areal extent of the violation: Considered, but not utilized for this calculation. (7) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance: Respondent failed to have the system pumped by a licensed septage hauler as necessary and instead pumped sewage from the OWTS into a storm drain. (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: Respondent had full control over the violation. The violation was foreseeable. (10) Any other factor(s) that may be relevant in determining the amount of a penalty: Considered, but not utilized for this calculation. 		
<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
DEVIATION FROM STANDARD	MAJOR	\$800 to \$1,000 \$1,000	\$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: Discharge Of Sewage To Ground

VIOLATION NO.: D (1)(b)

TYPE		
<u> X </u> TYPE I	___ TYPE II	___ TYPE III
DIRECTLY related to protecting health, safety, welfare or environment.	INDIRECTLY related to protecting health, safety, welfare or environment.	INCIDENTAL to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
FACTORS CONSIDERED:		
Taken from Section Part 1.10A.1.b of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i>		
<p>(1) The extent to which the act or failure to act was out of compliance: Sewage was discharged/pumped to the surface of the ground from a failed OWTS. Preventing the discharge of sewage to the surface of the ground is a primary objective of the regulations and a major objective of the regulatory program.</p> <p>(2) Environmental conditions: The property includes a multipurpose building in a densely populated neighborhood.</p> <p>(3) Amount of the pollutant: The inspections on January 19, 2018 revealed evidence of sewage on the surface of the ground on the Property and in the street.</p> <p>(4) Toxicity or nature of the pollutant: Sewage contains many kinds of bacteria, viruses, and parasites that can cause serious or fatal diseases in both humans and animals, as well as being the source of extremely objectionable odors.</p> <p>(5) Duration of the violation: Full duration unknown. The violation was observed by the DEM on January 19, 2018.</p> <p>(6) Areal extent of the violation: Considered, but not utilized for this calculation.</p> <p>(7) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance: Respondent failed to have the system pumped by a licensed septage hauler as necessary and instead pumped sewage from the OWTS directly to the surface of the ground.</p> <p>(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.</p> <p>(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: Respondent had full control over the violation. The violation was foreseeable.</p> <p>(10) Any other factor(s) that may be relevant in determining the amount of a penalty: Considered, but not utilized for this calculation.</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
DEVIATION FROM STANDARD	MAJOR	\$800 to \$1,000 \$1,000	\$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 Application

VIOLATION NO.: D (1)(c)

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 VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Section Part 1.10A.1.b of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent failed to submit a repair application for the failed OWTS despite having had a licensed OWTS designer evaluate the OWTS on March 9, 2018 and document that a repair was needed. The repair of failed septic systems is a primary objective of the regulations and a major objective of the regulatory program. (2) Environmental conditions: The property includes a multipurpose building in a densely populated neighborhood. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation. (5) Duration of the violation: Full duration unknown – at least 7 months. The failed OWTS was first observed by the DEM on January 19, 2018. (6) Areal extent of the violation: Considered, but not utilized for this calculation. (7) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance: Respondent failed to submit a repair application despite receiving notice from the DEM dated February 28, 2018 and having had a licensed OWTS designer evaluate the OWTS and document that a repair was needed. (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: Respondent had full control over the violation. Respondent is fully aware of the necessary actions to correct the violation. (10) Any other factor(s) that may be relevant in determining the amount of a penalty: The notice issued on February 28, 2018 stated the penalty could be up to \$1,000 per day for each violation. 		
<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
DEVIATION FROM STANDARD	MAJOR	\$800 to \$1,000 \$1,000	\$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