

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

**OFFICE OF COMPLIANCE & INSPECTION**

IN RE: Omni 1C, LLC  
Omni Combined W.E., LLC  
The CJF Group, Ltd.

File No.: SR-13-02

**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 (“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. Facts

- (1) The property is located at 2 Fox Place, Assessor’s Plat 26, Lots 52, 53, 57 and 157 in the city of Providence, Rhode Island (the “Property”).
- (2) Omni 1C, LLC (“Omni 1C”) owns the Property. Omni 1C acquired the Property on 14 February 2013.
- (3) Omni Combined W.E., LLC (“Omni Combined”) owned the Property from 5 February 2013 until 14 February 2013.
- (4) The CJF Group, Ltd. (“CJF”) owned the Property prior to 5 February 2013 at all times relevant to this Notice of Violation (“NOV”).
- (5) On 15 June 2012, the DEM issued a letter to CJF approving a plan to remediate contaminated soil on the Property (the “RAWP”). The letter specified that the preferred remedial alternative included installing a geo-textile liner and soil cap, recording an environmental land use restriction (“ELUR”) and implementing a soil management plan (“SMP”).
- (6) On 19 October 2012, the DEM issued a letter to CJF certifying that the geo-textile liner and soil cap were properly installed and authorizing the recording of the ELUR. The ELUR included the SMP.
- (7) On 1 August 2012 the ELUR was recorded in the city of Providence land evidence records. The ELUR includes the following provisions:

- (a) No soil at the Property shall be disturbed in any manner without the written permission of the DEM, except as permitted in the RAWP or SMP;
  - (b) No alteration of any kind in, to or about any portion of the Property that is inconsistent with the ELUR is allowed without the DEM's prior written approval for such alteration; and
  - (c) All of the terms, covenants and conditions of the ELUR shall run with the land and shall be binding on each owner and any other party entitled to control, possession or use of the Property during such period of ownership or possession.
- (8) On 3 May 2013 the DEM inspected the Property. The inspection revealed the following:
- (a) Construction equipment was present on Lot 57;
  - (b) The building on Lot 57 was torn down;
  - (c) The soils at the bottom of the sloped area where the building on Lot 57 was located were exposed;
  - (d) A portion of the pavement on Lot 57 was torn;
  - (e) A large part of the building on Lot 53 was demolished and the cap was disturbed; and
  - (f) Access to Lot 53 and Lot 57 was not restricted and no attempt was being made to prevent exposure to contaminated soil.
- (9) On 14 May 2013 the DEM approved the continued demolition of the building on Lot 53 with the condition that the underlying soils were not disturbed.
- (10) On 15 November 2013 the DEM inspected the Property and spoke with Mr. Dominic Shelzi, who identified himself as the vice president for Omni Property Group, Inc. The inspection and discussion with Mr. Shelzi revealed the following:
- (a) Mr. Shelzi stated that the pavement was mostly intact underneath the construction debris and layer of dirt on Lots 53 and 57;
  - (b) The DEM inspector observed that a portion of the pavement on Lot 57 was torn. Mr. Shelzi informed the DEM inspector that the company is aware it's an issue and installed silt fencing to prevent erosion or spreading of contaminated soil;

- (c) Mr. Shelzi stated that the footprint of the former building on Lot 53 is the only area of cap disturbance on this lot;
  - (d) The DEM inspector observed that the area of cap disturbance on Lot 53 was not covered and contaminated soil was exposed at the surface; and
  - (e) The DEM inspector observed that a fence is installed around the Property and that it appeared to be in good working condition with no evidence of trespassing. Mr. Shelzi stated that the gate for the fence is locked at the end of each day.
- (11) CJF and Omni Combined failed to notify the DEM of the change in ownership of the Property.
- (12) As of the date of this NOV, Omni 1C has failed to request or obtain written permission from the DEM to disturb the soil at the Property or alter any portion of the Property inconsistent with the ELUR.

C. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that the Omni 1C has violated the following statutes and/or regulations:

- (1) **DEM's Remediation Regulations, Section 8.09** – requiring compliance with all conditions of an ELUR.
- (2) **DEM's Remediation Regulations, Section 10.03A** – requiring notification to DEM at least 30 days prior to any change in ownership of a contaminated site.
- (3) **DEM's Remediation Regulations, Section 11.09** – requiring maintenance of all post-closure requirements as specified in a remedial approval letter.

D. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), Omni 1C is hereby ORDERED to **within 30 days of receipt of the NOV**:

- (1) Submit documents to the DEM that verify proper disposal of any contaminated soil removed from the Property.
- (2) Submit to the DEM a report that details all activities that have occurred at the Property, including, but not limited to, the locations of the soil cap disturbance, the volume and depth of the soil material excavated and any other jurisdictional soil that has been removed from the Property.
- (3) Retain an environmental consultant and have the consultant submit a plan to the DEM for review and approval to return the Property to compliance with the DEM's Remediation Regulations and the ELUR.

- (4) Complete the required actions in accordance with the approval.

E. 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 the following respondents:
  - (a) **Omni 1C for violations C(1) and C(3) – Twelve Thousand Five Hundred Dollars (\$12,500.00)**
  - (b) **CJF for violation C(2) – One Thousand Two Hundred Fifty Dollars (\$1,250.00)**
  - (c) **Omni Combined for violation C(2) – One Thousand Two Hundred Fifty Dollars (\$1,250.00)**
- (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 this NOV. Payment shall be in the form of a certified check, cashiers 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 the 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 DEM determines that reasonable efforts have been made to comply promptly with this NOV.

F. 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 Paragraphs B through E 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, 2<sup>ND</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 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 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 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 Providence 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 23-19.1-33, 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 Bianculli at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey 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 F 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:

Omni 1C, LLC  
c/o Steven P. Deluca, Esq., Registered Agent  
56 Pine Street, Suite 700  
Providence, RI 02903

Omni Combined W.E., LLC  
c/o Steven P. Deluca, Registered Agent  
Wieck Deluca & Gemma Incorporated  
56 Pine Street, Suite 700  
Providence, RI 02903

The CJF Group, Ltd.  
c/o E. Jill Tobak, Registered Agent  
2 Fox Place  
P.O. Box 6186  
Providence, RI 02940

by Certified Mail.

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# ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, SITE REMEDIATION  
 File No.: SR-13-02  
 Respondents: Omni 1C, LLC, Omni Combined W.E., LLC and The CJF Group, Ltd.

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	
C (1) and (3)– Failure to comply with an ELUR	Type I (\$ 25,000 Max. Penalty)*	Major	\$12,500	1 violation	\$12,500.00
C(2)– Failure to notify DEM of change of ownership	Type III (\$6,250 Max. Penalty)*	Minor	\$1,250	2 violations	\$2,500.00
<b>SUB-TOTAL</b>					<b>\$15,000.00</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 the Respondents have 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= \$15,000.00**

**PENALTY MATRIX WORKSHEET**

CITATION: Failure to comply with an ELUR  
 VIOLATION NO.: C (1) and (3)

<b>TYPE</b>		
<p><u>  X  </u> <b>TYPE I</b>  <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>      </u> <b>TYPE II</b>  <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>      </u> <b>TYPE III</b>  <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<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> Omni 1C performed activities on Lots 53 and 57 in non-conformance with an environmental land use restriction (ELUR) and soil management plan (SMP) for the property that was approved by DEM.</p> <p>(B) <b>Environmental conditions:</b> The property had several commercial buildings with a parking lot located along the intersection of Cedar Street and Fox Place. The surrounding area is developed and mostly utilized for industrial/commercial purposes. Historically the property was used for industrial/commercial purposes. Two of the buildings on the property have been torn down and a portion of Lot 53 is under the control of the RIDOT, which is using the property for the reconstruction of Route 95.</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> TPH, arsenic, lead, and benzo(a)pyrene are present in the soil on the property at levels that exceed the DEM's direct exposure industrial/commercial criteria, both at the surface and at depth.</p> <p>(E) <b>Duration of the violation:</b> Full duration unknown. At least 8 months. DEM first became aware of the violation during an inspection on May 3, 2013.</p> <p>(F) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** Omni 1C failed to take reasonable steps to prevent the non-compliance by performing activities that exposed contaminated soil without approval by DEM. Access to the property was not restricted and no attempt was made to prevent exposure to the contaminated soil, putting employees and the public at risk. Omni 1C installed fencing as required by DEM in a telephone conversation in May 2013; however, to date Omni 1C has failed to provide DEM with any updates or reports on the activities at the property, despite repeated requests by DEM that it 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:** Considered, but not utilized for this calculation.
- (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:** Omni 1C had complete control over the management of the property and was aware of the ELUR and SMP. The ELUR and SMP were recorded in the land evidence records of the city of Providence prior to Omni 1C taking ownership of the property.
- (J) **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
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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	<b>MAJOR</b>	\$12,500 to \$25,000 <b>\$12,500.00</b>	\$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	\$1,250 to \$2,500	\$250 to \$1,250

**PENALTY MATRIX WORKSHEET**

CITATION: Failure to notify DEM of change of ownership

VIOLATION NO.: C (2)

<b>TYPE</b>		
<p style="text-align: center;"><u>    </u> <b>TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u>    </u> <b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u>  X  </u> <b>TYPE III</b></p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b><u>FACTORS CONSIDERED:</u></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> CJF and Omni Combined failed to notify DEM of a change of ownership of the property, which is a contaminated site.</p> <p>(B) <b>Environmental conditions:</b> Considered, but not utilized for this calculation.</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> 1 year. The property was transferred from CJF to Omni Combined on 5 February 2013. Omni Combined transferred the property to Omni 1C on 14 February 2013.</p> <p>(F) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</p> <p style="text-align: right; margin-top: 20px;">(continued)</p>		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** CJF and Omni Combined failed to take reasonable steps to notify DEM of the sale of the property. To date, neither company has notified DEM of the transfer of the property to Omni 1C.
- (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:** Considered, but not utilized for this calculation.
- (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:** CJF and Omni Combined 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:** Considered, but not utilized for this calculation.

<b>MAJOR</b>	<b>MODERATE</b>	<u><b>X</b></u> <b>MINOR</b>
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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	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	<b>MODERATE</b>	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250 <b>\$1,250.00</b>