

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Salvatore Parente
Carmen Parente
Ralph N. Shippee**

FILE NO.: OWTS-14-251

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 Salvatore Parente and Carmen Parente ("Parentes"), and Ralph N. Shippee ("Shippee") (collectively, the "Respondents") have violated certain statutes and/or administrative regulations under the DEM's jurisdiction.

B. Administrative History

On 21 January 2015 the DEM issued a Notice of Intent to Enforce ("NIE") to the Parentes by certified mail for violations of the DEM's *Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems* (the "OWTS Regulations"). The NIE required specific actions to correct the violations. On 5 February 2015, the NIE was delivered to the Parentes. The Parentes have failed to comply with the NIE.

C. Facts

- (1) The properties are located at 226 Raccoon Run Road, Assessor's Plat 318, Lot 93 and an abutting property on Hill Farm Road, Assessor's Plat 318, Lot 104 in the town of Coventry, Rhode Island (collectively, the "Properties").
- (2) The Parentes own Plat 318, Lot 93 (the "Parentes Property").
- (3) The Ralph N. Shippee Trust owns Plat 318, Lot 104 (the "Shippee Property").
- (4) On 10 October 2014, an officer with the Coventry Police Department responded to a call from Carmen Parente that her neighbor dug on her property and broke her septic line. The report prepared by the officer stated the following:
 - (a) The septic line appears to be on the Shippee Property, but the extent of the damage was unknown;
 - (b) The digging was occurring on the Shippee Property;

- (c) There did not appear to be any effect on the Parentes plumbing system;
 - (d) This was part of an ongoing property dispute between the Parentes and Shippee; and
 - (e) Both parties were advised to separate and keep the peace.
- (5) On 20 October 2014, Carmen Parente spoke with a DEM program manager. Ms. Parente stated that:
- (a) She has been in a disagreement with Shippee over the location of the onsite wastewater treatment system that serves the dwelling on her property ("OWTS");
 - (b) The OWTS might be located on the Shippee Property; and
 - (c) She is concerned that Shippee will rip up the OWTS.
- (6) On 20 October 2014, the DEM program manager spoke with Shippee. The DEM program manager advised Shippee of the following:
- (a) He cannot alter the OWTS in any way, even if it is determined that the OWTS is on his property; and
 - (b) That he would need to work out his dispute with the Parentes through a legal process.
- Shippee informed the DEM program manager that he understood and would not alter the OWTS.
- (7) On 21 October 2014, the DEM program manager spoke with Shippee. Shippee informed the DEM that he was digging a hole on his property with a backhoe and broke a pipe connected to the OWTS.
- (8) On 24 October 2014, and 16 January 2015, the DEM inspected the Properties. The inspection on 16 January 2015 revealed that the OWTS had been altered as evidenced by:
- (a) Observation of an excavated hole with a green broken poly-vinyl chloride ("PVC") pipe present at the bottom of the hole (the "Broken Pipe");
 - (b) Observation of a concrete cover for the OWTS and a green PVC pipe inside the OWTS that led in the direction of the Broken Pipe; and
 - (c) Photographs showing the excavated hole and the Broken Pipe.
- (9) Shippee informed the DEM inspector at the time of the 16 January 2015 inspection that the excavated hole was definitely on his property.

- (10) The Broken Pipe represents an alteration to the OWTS (the "Altered OWTS").
- (11) The Altered OWTS is failed as that term is defined in the DEM's OWTS Regulations and requires repair in accordance with the DEM's OWTS Regulations.
- (12) As of the date of this Notice of Violation ("NOV"), the Parentes have failed to comply with the DEM's OWTS Regulations by submitting an application to the DEM for approval to repair the OWTS.

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) **DEM's OWTS Regulations**

- (a) **Rule 8.3** – prohibiting any person from altering, or causing any OWTS to be altered without first obtaining the Director's written approval of the plans and specifications for such work.
- (b) **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), the **Parentes** 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 machines located within the Dwelling. No use of any laundry washing machines are allowed until the OWTS is fully repaired.
- (3) **Within 30 days of receipt of this NOV**, submit a formal 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/isds/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 at a later time), and complete such work within 120 days of said approval or other date specified by the DEM. The OWTS must be repaired by a DEM licensed installer unless written permission is received from 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 against **Shippee**:

One Thousand Dollars (\$1,000)

- (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 - 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 accrue. The accrual of penalties and costs shall be suspended if the DEM 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'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 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, 2ND 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'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:

Christina A. Hoefsmit, 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 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 Coventry wherein the Properties are 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) 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) Christina A. Hoefsmit, Esq., at the DEM Office of Legal Services at (401) 222-6607, ext. 2023. All other inquiries should be directed to Patrick Hogan of the DEM Office of Compliance and Inspection at (401) 222-1360 ext. 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

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:

Salvatore Parente
20 Tampa Street
Cranston, RI 02920-2535

Carmen Parente
20 Tampa Street
Cranston, RI 02920-2535

Ralph N. Shippee
171 Hill Crest Drive North
Cranston, RI 02921-2618

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, OWTS SECTION
 File No.: OWTS -14-251
 Respondent: Ralph N. Shippee

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) – Alteration of an OWTS without DEM approval	Type I (\$1,000 Max. Penalty)*	Major	\$1,000	1 violation	\$1,000
SUB-TOTAL					\$1,000

*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 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 Respondent has either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot 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= \$1,000

PENALTY MATRIX WORKSHEET

CITATION: Alteration of an OWTS without DEM approval
 VIOLATION NO.: D(1)(a)

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
 THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** Respondent altered the OWTS without DEM approval. Alteration of an OWTS in accordance with plans and specifications approved by the DEM is a primary objective of the regulations and a major objective of the regulatory program.
- (B) **Environmental conditions:** Considered, but not utilized for this calculation.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** Considered, but not utilized for this calculation.
- (E) **Duration of the violation:** 1 day. Violation first observed on 16 January 2015.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

(continued)

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent did not take appropriate steps to prevent the non-compliance. The Respondent knew or suspected that the OWTS was on his property, but chose to excavate in the area of the OWTS without first determining whether the OWTS was in the area of the excavation. The Respondent has taken no action to mitigate the noncompliance.
- (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:** Respondent willfully violated the applicable laws and regulations with full control over the occurrence of the violation. The violation was foreseeable. The Respondent was involved in a property dispute with the Parentes over the location of the OWTS on his 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
--------------------	----------	-------

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