

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: P I T REALTY, LLC

FILE NO.: SW 2014-35

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 20 June 2014, the DEM issued a Notice of Intent to Enforce ("NIE") to the Respondent. The NIE notified the Respondent of the violations that are the subject of this Notice of Violation ("NOV") and set forth the remedial actions required by the DEM to remedy the violations. On 9 July 2014, the DEM received a letter from the Respondent in response to the NIE. The Respondent stated that it did not believe it was in violation of the law based on its use of the material on the property. On 25 July 2014, the DEM issued a letter to the Respondent that explained the proper use of the material and set forth several remedial alternatives for the Respondent to remedy the violations. On 7 August 2014, the DEM received a letter from the Respondent stating again that it did not believe it was in violation of the law.

C. Facts

- (1) The property is located off New London Turnpike, Assessor's Plat 8, Lot 9 in the town of Coventry, Rhode Island (the "Property"). Said Property is a quarry.
- (2) The Respondent owns the Property.
- (3) On 10 June 2014, the DEM inspected the Property. The inspection revealed about 12,785 cubic yards of sand mixed with litter (including beverage containers, cigarette butts, plastic bags, plastic truck seals, and cedar shingles) deposited on the Property (the "Sand Material").
- (4) On 7 August 2014, the DEM received a letter dated 6 August 2014 from Stephen A. Cardi, II, and the manager for the Respondent. Mr. Cardi stated in the letter that with regard to the Sand Material "we have not and do not intend to utilize that material for road base".

- (5) On 12 May 2015, the DEM inspected property owned by XPRESS SWEEPING, INC. ("XPRESS") located at 6 Crudale Drive in the town of West Warwick and spoke with Henry DiPietro (the Vice President of XPRESS) at the time of the inspection. Mr. DiPietro stated that when his company sweeps streets for Cardi Corporation ("Cardi") it transports the material to Cardi's asphalt plant or the Property.
- (6) On 13 May 2015, the DEM inspected the Property and spoke with Bernard Alderson (the quarry manager for Cardi) at the time of the inspection. The inspection revealed that the Sand Material was still present. Mr. Alderson stated the following:
 - (a) The Sand Material contains street sweepings;
 - (b) Cardi stopped bringing in street sweepings after DEM's 10 June 2014 inspection;
 - (c) Street sweepings were present under piles of gravel, asphalt and soil observed during the 13 May 2015 inspection;
 - (d) Street sweepings were mixed with other materials that form a berm along the west side of the gravel entrance road;
 - (e) The photographs identified as numbers 9 and 10 on the DEM's 10 June 2014 inspection report were street sweepings; and
 - (f) The long term plan is to develop the Property and construct a paved two-lane road on the filled street sweepings.
- (7) Based upon the DEM's observations on 10 June 2014 and 13 May 2015, the DEM's general knowledge of street sweepings, and the information provided by Mr. DiPietro and Mr. Alderson, the Sand Material meets the definition of street sweepings in Appendix A of the DEM's *Rules and Regulations for Composting Facilities and Solid Waste Management Facilities* ("Appendix A").
- (8) In accordance with Appendix A, street sweepings are not considered solid waste provided that the street sweepings are used in one of the following ways:
 - (a) Landfill cover material;
 - (b) Road base or any base course application that will be covered with an asphalt or concrete layer;
 - (c) Backfill for public works construction projects such as drain pipes, culverts, and other drainage structures;
 - (d) Excess sand from resurfacing projects may be mixed with salt and reused for winter storm operations; or

- (e) Mixed with new or virgin sand and salt and reapplied during winter storm operations.
- (9) The Sand Material is not being used in any of the ways described in Paragraph 8 above.
- (10) The Respondent has neither requested nor received the approval of the DEM to use the Sand Material as unrestricted clean fill on the Property.
- (11) The DEM has not issued a license or approval to the Respondent to operate a solid waste management facility on the Property.
- (12) As of the date of the NOV, the Sand Material remains 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.
- (2) **R.I. Gen. Laws Section 23-18.9-8** - prohibiting the operation of a solid waste management facility unless a license is obtained from the DEM.
- (3) **DEM's Rules and Regulations for Composting Facilities and Solid Waste Management Facilities ("Solid Waste Regulations") No. 1.4.01** - prohibiting the construction, development, establishment, management, ownership or maintenance of a solid waste management facility without the approval of the DEM and prohibiting the operation of a solid waste management facility without first having obtained a license or registration to operate from the 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 acceptance of street sweepings on the Property.
- (2) **Within 60 days of receipt of the NOV**, remove all the Sand Material from the Property and dispose of it at a licensed solid waste management facility.
- (3) **Within 10 days of completion of the removal of the Sand Material**, submit to the DEM's Office of Compliance and Inspection written verification that the Sand Material has been disposed of at a licensed solid waste management facility.

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 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, cashier's 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 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
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:
- 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 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 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 town of Coventry 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 at the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey D'Amadio Tyrrell of the 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, 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:

P I T REALTY, LLC
c/o David M. Campanella, Esq., Registered Agent
222 Jefferson Boulevard
Warwick, RI 02888

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY	
Program:	OFFICE OF COMPLIANCE AND INSPECTION, SOLID WASTE
File No.:	SW 2014 – 35
Respondent:	P I T REALTY,LLC

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) and D (3) – Disposal of Solid Waste at other than a Licensed Solid Waste Management Facility	Type I (\$25,000 Max. Penalty)*	Major	\$12,500	1 violation	\$12,500
D (2) and D (3) – Operation of a Solid Waste Management Facility without a License from the DEM	Type I (\$25,000 Max. Penalty)*	Major	\$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
<p>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:</p> <ul style="list-style-type: none"> - THERE IS NO IDENTIFIABLE BENEFIT FROM NON-COMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED.
<p>A review of the record in this matter has revealed that the 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.</p>

COST RECOVERY
<p>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.</p>
<p>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.</p>

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 NOS.:	D (1) and (3)

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
 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:** The Respondent disposed of or allowed for the disposal of solid waste on the property. Prohibiting the disposal of solid waste at other than a licensed solid waste management facility is of importance to the regulatory program. Unlawful disposal of solid waste bypasses the public health and safety and environmental safeguards obtained by limiting disposal of solid waste to compliantly operated solid waste management facilities. The DEM's regulations allow for the re-use of street sweepings with certain stipulations, however, the Respondent has neither sought, nor obtained, the approval of the DEM to use the street sweepings as unrestricted clean fill on the property.
- (B) **Environmental conditions:** The property lies above a portion of a sole source aquifer for the population of southern Rhode Island. The property is located in a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. The property is located within the Pawtuxet River and Hunt River watersheds. A small swamp wetland exists on the property.
- (C) **Amount of the pollutant:** About 12,500 cubic yards.
- (D) **Toxicity or nature of the pollutant:** Street sweepings typically contain significant quantities of paper, plastic, metal, glass, cigarette butts and other debris and they are typically contaminated with varying concentrations of petroleum constituents, automotive fluids, lead and other contaminants.
- (E) **Duration of the violation:** Full duration unknown - at least 17 months. The DEM first observed the solid waste on 10 June 2014.
- (F) **Areal extent of the violation:** About 22,500 square feet.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** The Respondent did not take reasonable and appropriate steps to prevent the non-compliance. The Respondent has failed to mitigate the noncompliance by removing and properly disposing of the street sweepings or seeking the approval of DEM to utilize the street sweepings as unrestricted clean fill on the property.
- (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:** Negligence is attributable to the Respondent for the failure to comply with the requirements set forth in Rhode Island's solid waste statute. The Respondent, as owner of the Property, had complete control over the occurrence of the violation. Disposal of solid waste at other than a licensed solid waste management facility is expressly prohibited by State law.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u> </u> X 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	MAJOR	\$12,500 to \$25,000 \$12,500	\$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:	Operation of a Solid Waste Management Facility without a License from the DEM
VIOLATION NO.:	D (2) and (3)

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.
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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:** The Respondent operated a solid waste management facility on the property without a license from the DEM. Prohibiting the establishment, ownership and operation of unlicensed solid waste management facilities is of primary importance to the regulatory program. The unlawful operation of solid waste management facilities bypasses the public health and safety and environmental safeguards obtained by regulating the operation of solid waste management facilities and limiting the disposal of solid waste to compliantly operated solid waste management facilities. The DEM's regulations allow for the re-use of street sweepings with certain stipulations, however, the Respondent has neither sought, nor obtained, the approval of the DEM to use the street sweepings as unrestricted clean fill on the property.
- (B) **Environmental conditions:** The property lies above a portion of a sole source aquifer for the population of southern Rhode Island. The property is located in a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. The property is located within the Pawtuxet River and Hunt River watersheds. A small swamp wetland exists on the property.
- (C) **Amount of the pollutant:** About 12,500 cubic yards.
- (D) **Toxicity or nature of the pollutant:** Street sweepings typically contain significant quantities of paper, plastic, metal, glass, cigarette butts and other debris and they are typically contaminated with varying concentrations of petroleum constituents, automotive fluids, lead and other contaminants.
- (E) **Duration of the violation:** Full duration unknown - at least 17 months. The DEM first observed the solid waste on 10 June 2014.
- (F) **Areal extent of the violation:** 22,500 square feet.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** The Respondent failed to prevent the non-compliance. The Respondent has failed to mitigate the noncompliance by removing and properly disposing of the street sweepings or seeking the approval of DEM to utilize the street sweepings as unrestricted clean fill on the property.
- (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:** Negligence is attributable to the Respondent for the failure to comply with the requirements set forth in Rhode Island's solid waste statute. The Respondent, as owner of the Property, had complete control over the occurrence of the violation. The operation of a solid waste management facility without the approval of the DEM is expressly prohibited by State law.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u> </u> X 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	MAJOR	\$12,500 to \$25,000 \$12,500	\$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