

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

IN RE: City of Providence

File No.: SR-13-01

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 party (“Respondent”) have violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Facts

- (1) The property consists of three parcels located at 587, 589, and 591 Charles Street in the city of Providence, Rhode Island (the “Property”).
- (2) The Property is located in an Environmental Justice Focus Area (“EJ Area”), which is defined as an area where the highest fifteen percent (15%) of all census block groups in Rhode Island are racial minorities or an area where the highest fifteen percent (15%) of all census block groups in Rhode Island have an income which is at or below twice the federal poverty level.
- (3) The Property is owned by Respondent.
- (4) On September 2, 2011, DEM received a Release Notification and Site Investigation Report (“SIR”) from Resource Control Associates, Inc. (“Resource Control”) on behalf of the Respondent. The SIR identified benzo(a)pyrene and lead in soil on the Property that is above DEM’s residential and/or industrial/commercial direct exposure criteria. The highest concentration of contaminants were as follows:

Substance	Concentration Detected	Regulatory Criteria
Benzo(a)pyrene	0.96 mg/kg	0.8 mg/kg (industrial/commercial)
Lead	250 mg/kg	150 mg/kg (residential)
TCLP lead	0.59 mg/l	0.04 mg/L

- (5) The SIR identified the Property as a contaminated site as defined in the DEM's *Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases* (the "Remediation Regulations").
- (6) On September 28, 2011, the DEM issued a Letter of Responsibility ("LOR") with attached comments on the SIR (the "SIR Comments") to Peter Marinucci, the Deputy Director of the Providence Emergency Management Agency. The SIR Comments included the following:
 - (a) Conduct additional investigation, including soil sampling where no engineering controls were proposed, installing groundwater wells, addressing contamination across the entire Property;
 - (b) Update the site figure to illustrate the proposed groundcover; and
 - (c) Clarify the proposed preferred Remedial Alternative to address contamination across the entire site and to prevent direct exposure to contaminated soil.
- (7) The LOR notified Mr. Marinucci that the Respondent was required to:
 - (a) Conduct further investigation of the Property and groundwater in accordance with Section 7.0 of the DEM's Remediation Regulations and the SIR Comments and submit a site investigation report ("SIR") by December 28, 2011 for DEM's review and approval;
 - (b) Conduct public notice in accordance with Section 7.07A of the DEM's Remediation Regulations **prior to the implementation of any additional site investigation field activities**; and
 - (c) Comply with R.I. Gen. Laws 23-19.14, entitled *Industrial Property Remediation and Reuse Act* and Section 23-19.14-5 entitled *Environmental Equity and Public Participation*.
- (8) On January 22, 2013, DEM received a response to the LOR and SIR Comments from Resource Control on behalf of the Respondent. The Respondent requested permission not to install additional groundwater wells. No additional investigation was completed as required by the SIR Comments and the response did not adequately address DEM's request to clarify the preferred remedial alternative to prevent direct exposure to contaminated soils.
- (9) On February 19, 2013 DEM sent electronic mail to Mr. Marinucci stating that additional groundwater wells were not necessary, however, a site plan must be submitted illustrating all engineered controls.
- (10) On March 11, 2013, DEM received a telephone call from Mark House of Resource Control. Mr. House informed DEM that construction activities had commenced at the Property.

- (11) On March 11, 2013 DEM conducted an inspection of the Property. The inspection revealed that construction of a large building was occurring, uncovered soil piles were present and no erosion or dust controls were observed.
- (12) On August 20, 2013, DEM received an addendum to the SIR from Resource Control on behalf of the Respondent (the "Addendum"). The Addendum recommended a remedial alternative that requires limited excavation and off-site disposal of contaminated soil (the "RA").
- (13) DEM reviewed the Addendum and determined that it fully addressed the SIR Comments.
- (14) The Respondent failed to conduct public notice in accordance with DEM's Remediation Regulations.
- (15) The Respondent failed to conduct public notice in an EJ Area in accordance with DEM's Remediation Regulations

C. 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 Remediation Regulation Section 7.01(B)** – requiring a performing party for any contaminated site to conduct an investigation of the contaminated site to adequately assess the nature and extent of contamination and to evaluate and design a proposed remedy and submit the site investigation report to the DEM for approval prior to performing remedial work.
- (2) **DEM's Remediation Regulation Section 7.01(D)** – requiring a performing party to post signs at a contaminated site located in an EJ Area.
- (3) **DEM's Remediation Regulation Section 7.07A** – requiring a performing party to provide public notice prior to conducting site investigation field activities at a known contaminated site.
- (4) **DEM's Remediation Regulation Section 7.07B** – requiring a performing party to prepare and disseminate a site specific fact sheet in an EJ Area prior to conducting site investigation field activities at a known contaminated site.

D. 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 thirty (30) days of receipt of the NOV:**
 - (a) Submit documents to the DEM showing that all contaminated soil removed from the Property was properly disposed.
 - (b) Complete the public notice requirements for the site investigation field activities performed on the Property in accordance with DEM's Remediation Regulation 7.07A.
 - (c) Complete the public notice requirements in an EJ Area for the site investigation field activities performed on the Property in accordance with DEM's Remediation Regulation 7.07B.
- (2) **Within thirty (30) days of receipt of written notification of DEM approval of the RA**, submit a Remedial Action Work Plan ("RAWP") and Remedial Action Approval application fee in accordance with DEM's Remediation Regulation 9.00 and 10.02.

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 against the respondent:

Twenty Five Thousand Dollars (\$25,000.00)

- (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 thirty (30) days of your receipt of this NOV. Payment shall be in the form of a check 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 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 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 DEM's Administrative Adjudication Division, at the following address, within twenty (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 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:

Susan B. Forcier, Esquire
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 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) 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) Susan Forcier 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

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:

City of Providence
c/o Angel Taveras, Mayor
25 Dorrance Street
Providence, RI 02903

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, SITE REMEDIATION
 File No.: SR-13-01
 Respondent: City of Providence

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) through (4) – Failure to comply with site remediation requirements	Type I (\$ <u>25,000</u> Max. Penalty)*	Major	\$25,000	1 violation	\$25,000.00
SUB-TOTAL					\$25,000.00

*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 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= \$25,000.00

PENALTY MATRIX WORKSHEET

CITATION: Failure to comply with site remediation requirements
 VIOLATION NO.: C (1), (2), (3) and (4)

TYPE		
<p>X TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>INDIRECTLY</u> TYPE II related to protecting health, safety, welfare or environment.</p>	<p><u>INCIDENTAL</u> TYPE III to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<p>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</p>		
<p>FACTORS CONSIDERED:</p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondent commenced construction on a known contaminated site prior to receiving an approved site investigation report and remedial alternative from DEM. Respondent failed to conduct public notice in an environmental justice focus area and failed to properly notify abutters prior to undertaking construction activities on site.</p> <p>(B) Environmental conditions: The property involves land classified by DEM as a contaminated site for lead and benzo(a)pyrene that exceed the DEM's regulatory criteria. The property is located in an area designated by the DEM as having a GB groundwater classification and is in an EJ Area. DEM received a release notification and site investigation report that identified benzo(a)pyrene and lead on the property above DEM's method 1 residential and/or industrial/commercial direct exposure criteria. The highest concentration of contaminants discovered on the property were as follows: lead – 250 mg/kg; benzo(a)pyrene – 0.96 mg/kg and TCLP lead – 0.59 mg/L.</p> <p>(C) Amount of the pollutant: Considered, but not utilized in this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Lead and benzo(a)pyrene are toxic and suspected human carcinogens.</p> <p>(E) Duration of the violation: Full duration unknown. DEM sent comments to Respondent on February 19, 2013 requesting additional information to complete the site investigation report. Respondent's consultant contacted DEM on March 11, 2013 to report that construction had begun on the property. DEM inspected the property on March 11, 2013 and confirmed that construction of the building was well underway and uncovered soil piles were observed.</p> <p>(F) Areal extent of the violation: Considered, but not utilized in this calculation.</p>		
<p>(continued)</p>		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable steps to prevent the noncompliance by obtaining approval from DEM prior to commencing construction on the property and following public notice requirements. The Respondent submitted an addendum to the SIR to DEM that was received on August 30, 2013 that addressed the DEM's comments, months after construction activities commenced.
- (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 in 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 had complete control over the management of the property and was notified in writing of the requirements of the applicable regulations well in advance of the occurrence of the violations. The DEM issued a letter of responsibility to the Respondent on September 28, 2011 that clearly explained that no work was to occur on site prior to public notice and DEM approval of the site investigation report and remedial alternative.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized in 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	MAJOR	\$12,500 to \$25,000 \$25,000.00	\$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