

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: 167 Putnam Avenue LLC

**FILE NO.: WP 12-6
X-ref. UIC 001438**

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 DEM’s jurisdiction.

B. Administrative History

On May 26, 2011 DEM issued an informal written notice to the Respondent for the violations involving the underground injection control system in the former automotive garage. The notice required the Respondent to take certain actions to correct the violations. Thus far, the Respondent has failed to comply with the notice.

C. Facts

- (1) The subject property is located at 167 Putnam Avenue, Assessor’s Plat 40, Lot 227 in the town of Johnston (the “Property”).
- (2) The Respondent owns the Property.
- (3) On January 22, 2010, the DEM received an application from the Respondent to install an underground injection control system to treat storm water at the Property (the “Stormwater UIC”).
- (4) On December 15, 2010, the DEM received an application from the Respondent to close two drywells that were used to discharge fluid to the subsurface from three floor drains located in a former automotive garage at the Property (the “UIC Closure Application”).
- (5) On March 10, 2011, the DEM approved the UIC Closure Application (the “UIC Closure Approval”).
- (6) On December 16, 2011, the DEM inspected the Property. The inspection revealed that the Stormwater UIC was installed.

- (7) The Respondent did not receive approval from DEM to install the Stormwater UIC.
- (8) As of the date of this Notice of Violation (“NOV”), the Respondent has not submitted documents to the DEM showing that work required under the UIC Closure Approval was completed.

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 Underground Injection Control Program Rules and Regulations**
 - (a) **Rule 6.01** – prohibiting the injection of fluid into the ground without first having obtained DEM approval.
 - (b) **Rule 6.02** - prohibiting the construction of a UIC without DEM approval.
 - (c) **Rule 6.03** – prohibiting the disposal of fluid through subsurface disposal without an approval issued by 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 use of the Stormwater UIC. No use of the Stormwater UIC is allowed until an approval to construct the Stormwater UIC is obtained from the DEM and the Stormwater UIC is constructed in accordance with said approval.
- (2) **Within 10 days of receipt of the NOV**, install any necessary soil erosion controls at the Property in accordance with the Rhode Island Soil Erosion and Sediment Control Handbook.
- (3) **Within 45 days of receipt of the NOV**, complete the work under the UIC Closure Approval.
- (4) **Within 90 days of receipt of the NOV**, remove the Stormwater UIC unless approval for the UIC is obtained from the DEM prior to that deadline.

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:

Five Thousand Dollars (\$5,000.00)

- (2) The proposed administrative penalty is calculated pursuant to the DEM Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the DEM within twenty (20) 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 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 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 Director 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 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 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
Office of Administrative Adjudication
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:
- Joseph J. LoBianco, 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) An original signed copy of this NOV is being forwarded to the town of Johnston 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 46-12-9(c).
- (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) Joseph J. LoBianco at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to me at (401) 222-1360 ext. 7400.

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:

167 Putnam Avenue, LLC
c/o Michael A. Grieco, Registered Agent
12 Dario Drive
Lincoln, RI 02865

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution

File No.: WP 12-6 X-ref UIC No. 001438

Respondent: 167 Putnam Avenue 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)(a) & (c) – Discharge of fluids to UIC for automotive garage without DEM approval	Type I (\$25,000 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500.00
D(1)(b) – Construction of a UIC for storm water without DEM approval	Type I (\$25,000 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500.00
<i>SUB-TOTAL</i>					\$5,000.00

*Maximum Penalties represent the maximum penalty amounts per day, per violation.

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$5,000.00

PENALTY MATRIX WORKSHEET

CITATION: *Discharge of fluids to UIC for automotive garage without DEM approval*
 VIOLATION NO.: D(1)(a) & (c)

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 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 discharged fluids from an automotive garage to an unapproved UIC and failed to properly close the UIC. Elimination of unapproved UIC's is a major objective of the program.
- (B) **Environmental conditions:** The UIC served a multi-bay vehicle service garage located in an area with groundwater classified as GA, which is suitable for public or private drinking water use without treatment.
- (C) **Amount of the pollutant:** Not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** Not utilized for this calculation.
- (E) **Duration of the violation:** Unknown. DEM approved the closure of the UIC on March 10, 2011.
- (F) **Areal extent of the violation:** Not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** On March 10, 2011 the Respondent obtained an approval from DEM to close the UIC. The Respondent has failed to complete the work in accordance with the approval.
- (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:** 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:** The Respondent has full knowledge of the violation and full control over the Property. The violation is foreseeable.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** DEM Office of Water Resources notified the Respondent on May 26, 2011 that failure to close the UIC would result in the referral of the case to the DEM Office of Compliance and Inspection to initiate enforcement action.

MAJOR	MODERATE	<u> X </u> 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	\$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 \$2,500	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: *Construction of a UIC for storm water without DEM approval*
 VIOLATION NO.: D(1)(b)

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 Rules and Regulations for Assessment of Administrative Penalties

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondents constructed a storm water UIC at the Property without first having obtained DEM approval. Obtaining the required permit prior to construction of a UIC is important to the UIC Regulatory program.
- (B) **Environmental conditions:** The storm water UIC was constructed in an area with groundwater classified as GA, which resources the Director has designated to be suitable for public or private drinking water use without treatment.
- (C) **Amount of the pollutant:** Not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** Not utilized for this calculation.
- (E) **Duration of the violation:** The violation was discovered on December 16, 2011.
- (F) **Areal extent of the violation:** Not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondents did not take steps to prevent or mitigate the violation. The Respondent constructed the storm water UIC without the required permit.
- (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:** 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:** The violation was knowing and willful. The Respondent was fully aware of the need for the UIC permit and had submitted and application for the UIC permit; however the application was determined to be deficient.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not utilized for this calculation.

MAJOR	MODERATE	<u> X </u> 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	\$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 \$2,500	\$1,250 to \$2,500	\$250 to \$1,250