

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

IN RE: City of Pawtucket

FILE NO.: OCI-SW-19-72

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 27 September 2018, DEM issued a Notice of Intent to Enforce (“NIE”) to Respondent for the alleged violations that are the subject of this Notice of Violation (“NOV”). The NIE notified Respondent of the issues of non-compliance revealed by DEM inspections and set forth the remedial actions required to return the subject facility to compliance. By letter dated 7 December 2018, Respondent notified DEM of its intention to comply with the NIE and put forth a proposed schedule for completion. By letter dated 24 January 2019, DEM notified Respondent that the proposed schedule was too protracted. DEM required that plans for facility improvements be submitted to DEM by 30 April 2019 and that the work commence by 15 July 2019. On 10 May 2019, Respondent submitted some preliminary plans; however, the submittal failed to meet the requirements of the NIE. As of the date of the NOV, Respondent has failed to comply with the NIE.

C. Facts

- (1) The subject property is located at 240 Grotto Avenue in the City of Pawtucket, Rhode Island, otherwise identified as Pawtucket Tax Assessor’s Plat 58, Lot 14 (the “Property”). The Property includes a solid waste transfer station (the “Facility”).
- (2) Respondent owns the Property and the Facility.
- (3) On 7 September 2016, DEM issued a license (the “License”) to Respondent to operate the Facility.

- (4) The License requires Respondent to operate the Facility in full compliance with a plan titled *Operation and Maintenance Plan* (July 2012 revision) that was approved by DEM (the “Approved O&M Plan”), the Rhode Island Code of Regulations titled *Rules and Regulations for Solid Waste Management Facilities and Organic Waste Management Facilities (250-RICR-140-05-1)* (the “Solid Waste Regulations”) and the Rhode Island Code of Regulations titled *Solid Waste Regulation No. 3 - Transfer Stations and Collection Stations (250-RICR-140-05-3)* (the “Transfer Station Regulations”).
- (5) The Approved O&M Plan requires that:
 - (a) All solid waste processing operations and solid waste storage take place within the confines of a 3-sided building (the “Protective Structure”); and
 - (b) Liquids generated during the solid waste processing operations be collected through a drain on the tipping floor of the Protective Structure that discharges to an oil/grease/particulate/water separator and then to the Narragansett Bay Commission sewerage system (the “Leachate Collection System”).
- (6) On 12 April 2018, DEM inspected the Facility. The inspection revealed the following:
 - (a) Sections of walls of the Protective Structure were damaged or missing;
 - (b) Leachate was being released to the land;
 - (c) Solid waste transfer operations (vehicle loading) were being performed outside the confines of the Protective Structure;
 - (d) Solid waste was being stored outside of the Protective Structure; and
 - (e) The Leachate Collection System was no longer present.
- (7) The License expired on 15 May 2018; however, in accordance with Part 1.8(H) of the Solid Waste Regulations, the License remains in effect until it is revoked.
- (8) On or about 8 June 2018, the City submitted a completed *Solid Waste & Recycling Facility License and Registration Application or Renewal Form* to DEM.
- (9) On 6 September 2018 and 23 September 2019, DEM inspected the Facility. The inspections revealed the following:
 - (a) Sections of walls of the Protective Structure were damaged or missing;
 - (b) The Leachate Collection System was not present; and

- (c) Solid waste transfer operations (vehicle loading) were being performed outside the confines of the Protective Structure.
- (10) As of the date of the NOV, the non-compliance issues set forth in subsection C (10) above have not been corrected.

D. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following regulations:

- (1) **Part 1.9(N) of the Solid Waste Regulations** – requiring that solid waste management facilities be operated in conformance with the DEM-approved operating and engineering plans.
- (2) **Part 3.2(C) of the Transfer Station Regulations** – requiring that wastewater and leachate generated at solid waste transfer stations be disposed of in a manner that prevents pollution of the waters of the State.
- (3) **Part 3.2(E) of the Transfer Station Regulations** – requiring that all transfer operations, refuse storage and collection stations be conducted within the confines of a protective structure.

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 upon receipt of the NOV**, conduct all transfer operations, refuse storage and collection within the confines of the Protective Structure.
- (2) **Within 60 days of receipt of the NOV**, repair or replace the damaged or missing sections of the walls of the Protective Structure, so that the structure has four walls and a roof.
- (3) **Within 60 days of receipt of the NOV**, submit to DEM's Office of Land Revitalization and Sustainable Materials Management ("LRSMM") engineering plans (stamped by a professional engineer) and a schedule to install a leachate collection system for the Facility.
- (4) The plans and schedule required in subsection E (3) above shall be subject to LRSMM's review and approval. Within 14 days (unless a longer time is specified) of receiving comments from LRSMM, submit revised plans or other documents or information that fully addresses the comments.
- (5) Once the plans and schedule required in subsection E (3) and E (4) above have been approved by LRSMM, promptly install the system in accordance with the approved schedule.

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:

\$35,327

- (2) The proposed administrative penalty is calculated pursuant to the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* and must be paid to DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a check made payable to the “General Treasury – Environmental Response Fund” and shall be forwarded to DEM’s Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against 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 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 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 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
235 Promenade Street, Room 350
Providence, RI 02908-5767

- (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 Part 1.7(B) of the Rhode Island Code or Regulations titled *Rules and Regulations for the Administrative Adjudication Division (250-RICR-10-00-1)*.
- (2) A copy of each request for hearing must also be forwarded to:

Susan 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 regarding 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) 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) Susan Forcier of DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey D'Amadio Tyrrell of 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, Administrator
DEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

I hereby certify that on the _____ day of _____
the within Notice of Violation was forwarded to:

City of Pawtucket
c/o The Honorable Donald R. Grebien, Mayor
137 Roosevelt Avenue
Pawtucket, RI 02860

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, SOLID WASTE
 File No.: OCI-SW-19-72
 Respondent: City of Pawtucket

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)– Operational Deficiencies	Type I <i>(\$25,000 Max. Penalty) *</i>	Moderate	\$6,250	1 violation	\$6,250
D (1) and D (2) – Facility Deficiencies	Type I <i>(\$25,000 Max. Penalty) *</i>	Major	\$12,500	1 violation	\$12,500
SUB-TOTAL					\$18,750

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

ADMINISTRATIVE PENALTY SUMMARY (continued)

ECONOMIC BENEFIT FROM NON-COMPLIANCE			
COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT COMPLY. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS: - THERE IS NO IDENTIFIABLE BENEFIT FROM NON-COMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED.			
<i>DESCRIPTION OF BENEFIT</i>	<i>CALCULATION</i>		AMOUNT
Delaying expenditures required to complete the necessary facility repairs and improvements. The economic benefit of non-compliance was determined by using an EPA computer model titled <i>BEN</i> that performs a detailed economic analysis. The dates, dollar amounts and values used in this analysis are listed in this table.	<ul style="list-style-type: none"> ▪ Profit Status ▪ Filing Status ▪ Initial Capital Investment ▪ One-time Non-depreciable Expense ▪ First Month of Non-compliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	Municipality \$252,500 May 2018 1 December 2020 1 November 2020 4.0%	
<i>SUB-TOTAL</i>			\$16,577

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 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 = \$35,327

PENALTY MATRIX WORKSHEET

CITATION: Operational Deficiencies

VIOLATION NOs.: D (1) and D (3)

TYPE		
<u>X</u> TYPE I DIRECTLY related to protecting health, safety, welfare or environment.	___ TYPE II INDIRECTLY related to protecting health, safety, welfare or environment.	___ TYPE III INCIDENTAL 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.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i>.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Solid waste transfer operations were being performed outside the confines of the Protective Structure. The damaged and missing wall sections were allowing debris and litter to escape containment and scatter throughout the Facility. Vehicles were being loaded outside of the structure. Based on these and other observed operational deficiencies, DEM determined that the Facility was not being operated in conformance with the Approved O&M Plan, the Solid Waste Regulations and the Transfer Station Regulations. (2) Environmental conditions: The Facility is located in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. The Facility is located above a groundwater reservoir. The Property lies on the western bank of the Moshassuck River and within its watershed. The transfer station building is situated within 550 feet of the river. There are residential structures located within 150 feet of the northwest boundary of the Property. Regulated freshwater wetlands are located at the southeast corner of the Property. The Property is located within 450 feet of an environmental justice area. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: The solid waste is combustible and presents a fire hazard. Some of the solid waste is putrescible and malodorous. The stockpiles of solid waste attract and may provide harborage to rodents and/or disease vectors. (5) Duration of the violation: Full duration unknown – at least approximately 26 months. DEM first observed the alleged violations on 12 April 2018. (6) Areal extent of the violation: Considered, but not utilized for this calculation. 		
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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the non-compliance by operating the Facility in full compliance with the Approved O&M Plan, the Solid Waste Regulations and the Transfer Station Regulations. Respondent has yet to fully mitigate the non-compliance despite receiving the NIE from DEM, which required that they do so.
- (8) **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.
- (9) **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 Respondent for the failure to immediately comply with the applicable regulations and operate in conformance with the Approved O&M Plan. Respondent, as owner and operator of the Facility, had complete control over the occurrence of the violations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	<u> X </u> 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	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500 \$6,250	\$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: Facility Deficiencies
 VIOLATION NOs.: D (1) and D (2)

TYPE		
<u> X </u> TYPE I DIRECTLY related to protecting health, safety, welfare or environment.	_____ TYPE II INDIRECTLY related to protecting health, safety, welfare or environment.	_____ TYPE III INCIDENTAL 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 Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)*.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent is operating the Facility with damaged or missing walls for the Protective Structure and without the Leachate Collection System. The Solid Waste Regulations and Transfer Station Regulations require all transfer station activities to take place within the confines of a protective structure and that all leachate and wastewater generated as a result of Facility operations be managed to prevent pollution of the land or waters of the State. The Approved O&M Plan requires compliance with these provisions. Failure to comply with these requirements would likely result in the release of pollutants to the land or waters of the State, unsanitary conditions at the Facility and adverse impacts to surrounding residential properties. Unsanitary conditions would likely attract rodents and disease vectors.
- (2) **Environmental conditions:** The Facility is located in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. The Facility is located above a groundwater reservoir. The Property lies on the western bank of the Moshassuck River and within its watershed. The transfer station building is situated within 550 feet of the river. There are residential structures located within 150 feet of the northwest boundary of the Property. Regulated freshwater wetlands are located at the southeast corner of the Property. The Property is located within 450 feet of an environmental justice area.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** The solid waste is combustible and presents a fire hazard. Some of the solid waste is putrescible and malodorous. The stockpiles of solid waste may attract and provide harborage to rodents and/or disease vectors. Leachate and wastewater generated during the waste handling operations is typically contaminated with varying concentrations of pollutants or biological contaminants.
- (5) **Duration of the violation:** Full duration unknown -at least approximately 26 months. DEM first observed the alleged violations on 12 April 2018.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the non-compliance by properly maintaining the Protective Structure and the Leachate Control System. Respondent has yet to mitigate the non-compliance despite receiving the NIE from DEM, which required that they do so.
- (8) **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.
- (9) **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 Respondent for the failure to operate and maintain the Facility in compliance with the Solid Waste Regulations, the Transfer Station Regulations and the Approved O&M Plan. Respondent, as owner and operator of the Facility, had complete control over the occurrence of the violations.
- (10) **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	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