

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Mohamed Y. Sasa
Rhonda A. Sasa**

FILE NO.: SW 2013-6

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

B. Administrative History

The DEM notified the Respondents of the violations in an informal notice that was issued on 9 September 2011. The notice required specific actions to correct the violations. The Respondents failed to respond to or comply with the notice.

C. Facts

- (1) The subject property is located off of Pine Grove Avenue, Assessor's Plat 46, Lot 39, Lot 40 and Lot 41, in the town of Johnston, Rhode Island (the “Property”).
- (2) The Respondents own the Property.
- (3) On 18 August 2011, 15 January 2013, and 22 July 2013 the DEM inspected the Property. The inspections revealed solid waste deposited on the ground and buried, which consisted of televisions, bottles and cans, used tires, metal waste, and other mixed solid waste. The volume of solid waste was about 351 cubic yards (including about 2630 tires).
- (4) As of the date of this Notice of Violation (“NOV”), the Respondents have failed to remove and dispose of the solid waste at a licensed solid waste management facility.

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.

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) **Within sixty (60) days of receipt of the NOV**, remove all solid waste from the Property and dispose of it at a licensed solid waste management facility. **Seven (7) days before the removal of solid waste commences**, the Respondent shall notify DEM so an inspector can monitor the work. **If the work requires disturbance of any freshwater wetlands, the Respondent must meet with DEM at the Property prior to commencing any work and must comply with all instructions from DEM regarding the work within the freshwater wetlands.** The solid waste shall not be burned or buried. If necessary, a continuous uninterrupted line of staked hay bales or silt fence shall be installed and maintained between the area of work and any adjacent freshwater wetlands. These soil erosion and sediment (“E&S”) controls shall be regularly inspected and properly and continually maintained (and replaced, if necessary) during and following the completion of the required work on the Property and until such time that all of the surrounding areas are properly stabilized. At the discretion and direction of the DEM, additional E&S controls must be installed, as necessary, to protect any and all freshwater wetlands. As part of the work, dig test pits of a depth and number as determined by DEM to demonstrate that all the solid waste has been removed.
- (2) **Within ten (10) days of completion of the removal of the solid waste**, submit documentation to the DEM that the solid waste was disposed at a licensed solid waste management facility through receipts, bills, or weight slips.
- (3) All disturbed soil resulting from any work required in this NOV shall be seeded with a wildlife conservation grass seed mixture and mulched with a mat of loose hay.
- (4) Upon stabilization of all disturbed areas, all artificial E&S controls (e.g., silt fence and silt curtain) shall be removed. Staked haybales, spread hay mulch, and other naturally-based/bio-degradable E&S controls may remain in place to decompose naturally. Prior to the removal of the controls and/or prior to the contractor vacating the Property, all accumulated sediment shall be removed to a suitable upland area and all disturbed surfaces shall be stabilized as described above.

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:

Six Thousand Two Hundred and Fifty Dollars (\$6,250.00)

- (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 the NOV. Payment shall be in the form of a certified check, cashiers 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 Respondents 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.

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
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 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) 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 23-18.9-13, as is or 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) Susan Forcier at the DEM Office of Legal

Services at (401) 222-6607. All other inquiries should be directed to Tracey D'Amadio 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 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:

Mohammed Y. Sasa
40 Hopkins Avenue
Johnston, RI 02919

Rhonda A. Sasa
40 Hopkins Avenue
Johnston, RI 02919

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, SOLID WASTE

File Nos.: SW 2013 – 6

Respondents: Mohamed Y. Sasa and Rhonda A. Sasa

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) – Disposal of solid waste at other than a licensed solid waste management facility	Type I (\$ <u>25,000</u> Max. Penalty)*	Moderate	\$6,250.00	1 violation	\$6,250.00
SUB-TOTAL					\$6,250.00

*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 Respondents have 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= \$6,250.00

PENALTY MATRIX WORKSHEET

CITATION: Disposal of solid waste at other than a licensed solid waste management facility
 VIOLATION NO.: D (1)

TYPE		
<p style="text-align: center;"><u> X </u> TYPE I</p> <p style="text-align: center;"><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ TYPE II</p> <p style="text-align: center;"><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ TYPE III</p> <p style="text-align: center;"><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<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: Respondents 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.</p> <p>(B) Environmental conditions: The property is located within the Pocasset River watershed and a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. The property is located adjacent to a residential area. The solid waste has been placed into or near a regulated freshwater wetland.</p> <p>(C) Amount of the pollutant: 351 cubic yards (including 2630 tires).</p> <p>(D) Toxicity or nature of the pollutant: The solid waste consists of used tires, metal waste, and other mixed solid waste. The used tires are combustible and they present a fire hazard. The stockpiles of solid waste may provide harborage to rodents or disease vectors.</p> <p>(E) Duration of the violation: Unknown. At least 2 years. DEM first observed solid waste on the property on 18 August 2011.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to mitigate the non-compliance despite receiving an informal written notice from DEM in September 2011, which required that they to do so.
- (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 Respondents for the failure to comply immediately with the requirements set forth in Rhode Island's solid waste statute. Respondents, as owners of the property, have an obligation to remove and properly dispose of the solid waste.
- (J) **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