

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: South Shore – Tiverton LLC

**FILE NOS.: 2010-57-HW and
2011-SW-02**

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. Facts

- (1) The subject property is located at 411, 411A, 413 and 0 Bulgarmarsh Road in the town of Tiverton, Rhode Island, Assessor’s Plat 117, Lots 30 & 30A (the “Property”).
- (2) The Property includes an auto junkyard with a building and associated storage areas (the “Facility”).
- (3) The Respondent owns the Property.
- (4) The Respondent is registered with the DEM as a small quantity hazardous waste generator at the Facility pursuant to DEM’s Rules and Regulations for Hazardous Waste Management (the “Hazardous Waste Regulations”) and pursuant to Title 40 of the Code of Federal Regulations under the name “South Shore Tiverton LLC” with the U.S. Environmental Protection Agency identification number RIR000506980.
- (5) On April 30, 2010, DEM inspected the Property. The inspection revealed the following:
 - (a) Twelve 5-gallon containers, two 2-gallon containers, eighteen 1-gallon containers (collectively, the “containers”) and one 100-gallon above ground storage tank (the “tank”) that held used oil;
 - (b) The containers and the tank were not labeled with the words “Used Oil”;
 - (c) The tank was open;

- (d) Four of the 5-gallon containers were stored on the soil and were not protected from precipitation or flooding;
- (e) Several areas of dark stained soils indicating a spill or release of gasoline and oil occurred (the “release”);
- (f) No evidence that any steps were taken to contain or clean up the release; and
- (g) Approximately one hundred twenty cubic yards of solid waste deposited on the ground and partially buried, as evidenced by:
 - (i) wood, tarpaper construction debris, structural aluminum parts, tires, steel drums on the ground and partially covered with soil;
 - (ii) seventeen bales of filled burlap bags on the ground; and
 - (iii) one steel drum filled with concrete on the ground.
- (6) The Respondent failed to notify the DEM of the release.
- (7) Respondent has neither sought nor obtained an approval, permit or license from DEM to operate a solid waste management facility on the Property.
- (8) As of the date of this Notice of Violation (“NOV”), the Respondent has failed to comply with the Hazardous Waste Regulations, DEM’s Oil Pollution Control Regulations, DEM’s Rules and Regulations for the Investigation and Remediation of Hazardous Materials Releases (the “Remediation Regulations”) and the Rhode Island Refuse Disposal Act.

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 Oil Pollution Control Regulations, Section 6 (a)** – prohibiting the placement of oil and gasoline onto the land.
- (2) **DEM’s Oil Pollution Control Regulations, Section 12 (b)(2)** – requiring the owner to immediately begin the cleanup of an oil and gasoline release onto the land.
- (3) **DEM’s Oil Pollution Control Regulations, Section 12 (b)(3)** – requiring an owner to immediately report to DEM a release of oil and gasoline onto the land.
- (4) **Hazardous Waste Regulation 5.10 and 15.04D, 40 CFR 279.22(d) and Remediation Regulations 4.02** – requiring that a hazardous waste generator notify the DEM immediately upon the discovery of a spill or release of used oil,

hazardous waste or materials and take immediate steps to prevent, contain and/or clean the spill or release.

- (5) **Hazardous Waste Regulations 15.4A.3 and 15.4B.** – requiring that a used oil generator label all containers and above ground storage tanks holding used oil with the words “Used Oil”.
- (6) **Hazardous Waste Regulation 15.4B.4** – requiring that a used oil generator close all above ground storage tanks holding used oil except when adding or removing used oil.
- (7) **Hazardous Waste Regulation 15.04A.4** – requiring that a used oil generator store all containers holding used oil on an impervious surface under a roofed structure.
- (8) **R.I. Gen. Laws Section 23-18.9-5** – prohibiting the disposal of solid waste at other than a solid waste management facility.

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) **IMMEDIATELY** cease the disposal of solid waste on the Property.
- (2) **Within sixty (60) days of receipt of the NOV:**
 - (a) Remove all soil impacted by the release and properly dispose of the contaminated soil in accordance with all applicable DEM regulations.
 - (b) Collect representative soil samples from all areas that were impacted by the release and have the samples analyzed to confirm that the Property is in compliance with the requirements of Remediation Regulation 8.02.
 - (c) Submit a copy of the analytical test results obtained in Section D.2 (b) above to DEM’s Office of Compliance and Inspection (“OC&I”).
 - (d) Label all containers and tanks holding used oil with the words “Used Oil”.
 - (e) Store all containers holding used oil that are kept outside on an impervious surface under a roofed structure.
 - (f) Remove all solid waste from the Property and dispose of it at a licensed solid waste management facility. The solid waste shall not be burned or buried.
 - (g) Submit documentation of disposal of the solid waste (e.g. receipts, bills, weight slips, etc.) to OC&I Attn: Dan Lawton.

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, jointly and severally, against each named respondent:

Seventeen Thousand Five Hundred Dollars (\$17,500.00)

- (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 Director within twenty days of your receipt of this NOV. Payment shall be in the form of a certified 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 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.

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 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
235 Promenade Street, 3RD Floor
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 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 Tiverton 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 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) Joseph J. LoBianco 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:

South Shore – Tiverton LLC
c/o Paul Barrile, Registered Agent
166 Lepas Road
Tiverton, RI 02878

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, HAZARDOUS WASTE,
SITE REMEDIATION & SOLID WASTE

File No.: 2010-57-HW

Respondent: South Shore – Tiverton 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	
C (1), (2), (3) & (4) – Spills and releases of used oil, hazardous wastes and materials	Type I (\$ <u>25,000</u> Max. Penalty)*	Moderate	\$6,250	1 violation	\$6,250.00
C (5), (6) & (7) – Lack of labels on containers and tanks, failure to close a tank and store containers properly	Type I (\$ <u>25,000</u> Max. Penalty)*	Moderate	\$8,750	1 violation	\$8,750.00
C (8) – Disposal of solid waste	Type I (\$ <u>25,000</u> Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500.00
SUB-TOTAL					\$17,500.00

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

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$17,500.00

PENALTY MATRIX WORKSHEET

CITATION: Spills and releases of used oil, hazardous wastes and materials

VIOLATION NO.: C (1), (2), (3) & (4)

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:** Respondent spilled or released used oil and gasoline, failed to report the spills or releases to DEM and failed to take appropriate steps to contain and clean up the spills or releases. State and Federal regulations prohibit the release of hazardous materials, including gasoline and used oil, into the environment unless a permit is issued for the activity. These regulations also require the person who is responsible for causing a spill or release to notify the DEM and immediately take steps to control and contain the spill or release. Respondent's failure to act has caused a direct impact on the soil surface in several locations on the property.
- (B) **Environmental conditions:** The property is located in a GA groundwater classification zone, which are groundwater resources designated to be suitable for drinking water use without treatment.
- (C) **Amount of the pollutant:** The amount of pollutant spilled or released to the environment is unknown; however, the Respondent was storing significant quantities of gasoline and used oil in open containers on the property.
- (D) **Toxicity or nature of the pollutant:** Gasoline contains benzene which is a known human carcinogen and methyl tert-butyl ether which is a known groundwater pollutant. Used oil is known to cause soil contamination when released to the environment.
- (E) **Duration of the violation:** Unknown.
- (F) **Areal extent of the violation:** Several areas of stained soils were observed throughout the storage yard in location where containers were stored.

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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 or mitigate the noncompliance.
- (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:** DEM issued a Letter of Non-Compliance to Respondent on June 6, 2008 for failing to notify the DEM of a release of used oil on the property and failing to take immediate steps to clean up the impacted area.
- (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 had complete control over the occurrence of the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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: Lack of labels on containers and tanks, failure to close a tank and store containers properly
 VIOLATION NO.: C (5), (6) & (7)

TYPE		
<p style="text-align: center;"><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ TYPE III</p> <p><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><u>FACTORS CONSIDERED:</u></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 failed to label the containers and tanks with the words “used oil”, failed to keep a tank closed and failed to store containers on an impervious surface under a roofed structure. The failure to properly manage the containers and tanks holding used oil may have contributed to the release of hazardous materials on the property.</p> <p>(B) Environmental conditions: The property is located in a GA groundwater classification zone, which are groundwater resources designated to be suitable for drinking water use without treatment. Thirty two containers and one above ground storage tank holding used oil were not labeled. The tank was not kept closed and four containers were not stored on an impervious surface under a roofed structure.</p> <p>(C) Amount of the pollutant: Based on the volume of the containers and tanks the total volume of used oil could have potentially equaled 182 gallons.</p> <p>(D) Toxicity or nature of the pollutant: Used oil is known to cause soil contamination when released to the environment.</p> <p>(E) Duration of the violation: Unknown.</p> <p>(F) Areal extent of the violation: Not relevant.</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 and mitigate the noncompliance.
- (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:** DEM issued a Letter of Non-Compliance to Respondent on June 6, 2008 for failing to label containers holding used oil stored on the property.
- (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 had complete control over the occurrence of the violations.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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 \$8,750	\$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: Disposal of solid waste

VIOLATION NO.: C (8)

TYPE		
<p style="text-align: center;"><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> </u> TYPE III</p> <p><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><u>FACTORS CONSIDERED:</u></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 disposed of or allowed for the disposal solid waste on the property.</p> <p>(B) Environmental conditions: The property is located in a GA groundwater classification zone, which are groundwater resources designated to be suitable for drinking water use without treatment. Mixed solid waste is disposed of at the property in an uncontrolled manner and without the protective controls required at a licensed solid waste management facility.</p> <p>(C) Amount of the pollutant: The April 30, 2010 inspection revealed an approximate quantity of 120 cubic yards of solid waste on the property.</p> <p>(D) Toxicity or nature of the pollutant: The storage of used tires presents a fire hazard and tires also provide breeding places for disease vectors such as mosquitoes.</p> <p>(E) Duration of the violation: Unknown. The activity was not noted during a previous inspection on March 24, 2008.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent and mitigate the non-compliance.
- (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 relevant.
- (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:** As the property owner, Respondent has full control over the property. The State statute expressly prohibits the disposal of solid waste at other than a licensed solid waste management facility.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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