

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: The Stop & Shop Supermarket Company, LLC

**FILE Nos.: OCI-HW-14-42,
14-46 and 14-49**

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 the DEM's jurisdiction.

B. Facts

- (1) The Respondent operates 3 retail stores that contain pharmacies in Rhode Island (the “Pharmacies”). The Pharmacies are engaged in the retail sale of pharmaceutical products and commercial chemical products. The locations of the Pharmacies are as follows:
 - (a) 11 Commerce Way in the town of Johnston;
 - (b) 300 Quaker Lane in the city of Warwick; and
 - (c) 91 Point Judith Road in the town of Narragansett.
- (2) The Respondent is registered as of September 2014 and February 2015 with the DEM as a conditionally exempt small quantity hazardous waste generator at each of the Pharmacies pursuant to the DEM’s *Rules and Regulations for Hazardous Waste Management* (the “Hazardous Waste Regulations”) and pursuant to Title 40 of the Code of Federal Regulations (“40 CFR”). The Pharmacies are registered under the site name and with the Environmental Protection Agency identification number (“EPA ID”) shown in the table below.

Pharmacies	Site Name	EPA ID
11 Commerce Way, Johnston	Stop & Shop Supermarket #703	RIR000512376
300 Quaker Lane, Warwick	Stop & Shop Supermarket #709	RIR000512335
91 Point Judith Road, Narragansett	Stop & Shop Supermarket #718	RIR000512319

- (3) The DEM inspected the Pharmacies on the dates listed in the table below (the “Inspections”).

Site Name	Inspection Date
Stop & Shop Supermarket #703	10 April 2014
Stop & Shop Supermarket #709	9 April 2014
Stop & Shop Supermarket #718	8 April 2014

- (4) The DEM determined from the Inspections and from its general knowledge of pharmacies the following:
- (a) The Respondent sells products containing warfarin, nicotine, epinephrine, m-cresol, selenium and mercury (collectively, the “Pharmaceuticals”) at the Pharmacies;
 - (b) The Respondent sells commercial products containing xylene, toluene and corrosive liquids (collectively, the "Commercial Products") at the Pharmacies;
 - (c) The Respondent periodically removes the Pharmaceuticals that are not eligible for sale from the Pharmacies (the “Unsaleable Pharmaceuticals”) and transfers custody of the Unsaleable Pharmaceuticals to GENCO, a company with a facility located at 6101 North 64th Street in Milwaukee, Wisconsin (“GENCO”);
 - (d) The Respondent does not manage the Unsaleable Pharmaceuticals as hazardous waste when stored at the Pharmacies and does not prepare a manifest for shipments of the Unsaleable Pharmaceuticals to GENCO;
 - (e) The Respondent receives the products containing warfarin in large containers (“Warfarin Containers”) and fills smaller containers with the products for retail sale to customers; and
 - (f) The Respondent managed and disposed of empty Warfarin Containers as solid waste.
- (5) The Pharmaceuticals containing warfarin, epinephrine and nicotine are listed in 40 CFR as acute hazardous waste in the concentrations that are used at the Pharmacies, and the Pharmaceuticals containing m-cresol, selenium and mercury are listed in 40 CFR as hazardous waste.
- (6) The Commercial Products when spilled, released or discarded are designated as listed or characteristic hazardous waste in 40 CFR.
- (7) 40 CFR 261.7(b)3 states that containers that held a pharmaceutical listed in 40 CFR as an acute hazardous waste are also acute hazardous wastes unless the containers have been:

- (a) Triple rinsed using a solvent capable of removing the pharmaceutical residue;
 - (b) Cleaned by another method to achieve equivalent removal; or
 - (c) The inner liner of the container that prevented contact of the pharmaceutical residue with the container is removed.
- (8) The Respondent did not comply with 40 CFR 261.7(b)(3) prior to the disposal of the empty Warfarin Containers as solid waste.
- (9) The DEM's Hazardous Waste Regulations (Rule 2.2(B)) and 40 CFR 261.2(f) require a hazardous waste generator to demonstrate that there is a known market or disposition for the Unsaleable Pharmaceuticals and that the generator meets the terms of the exclusion or exemption for the Unsaleable Pharmaceuticals to be exempt from the requirements of the DEM's Hazardous Waste Regulations and 40 CFR (the "Exemption").
- (10) On 9 May 2014, the DEM issued a letter to the Respondent requesting specific information relating to the management and final disposition of the Unsaleable Pharmaceuticals to GENCO (the "May Letter").
- (11) On 12 June 2015, the DEM received an electronic correspondence from the Respondent that contained a file comprised of a cover letter and 6 attachments. The DEM reviewed the correspondence and determined that:
- (a) The Respondent generates hazardous waste in the form of Empty Warfarin Containers;
 - (b) The Respondent demonstrated that it received credit for most of the Unsaleable Pharmaceuticals that are returned to GENCO and met the Exemption for these pharmaceuticals; and
 - (c) The Respondent did not receive a credit payment for 7 shipments of Unsaleable Pharmaceuticals and did not meet the Exemption (the "Non Exempt Unsaleable Pharmaceuticals").
- (12) The DEM also reviewed its records and determined the following:
- (a) Prior to the Inspections, the Respondent failed to ship empty Warfarin Containers, Non Exempt Unsaleable Pharmaceuticals and other wastes identified in Fact (6) as hazardous waste to a licensed hazardous waste disposal facility; and
 - (b) The Respondent failed to notify the DEM of its regulated waste activity at the Pharmacies at the time of the Inspections.

- (13) Upon information and belief, the Respondent disposed of hazardous waste, in the form of the empty Warfarin Containers, Non Exempt Unsaleable Pharmaceuticals, and other wastes identified in Fact (6) at unlicensed facilities.

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) **R.I. Gen. Laws Section 23-19.1-10, the DEM's Hazardous Waste Regulations 7.0 (B)(2) and 40 CFR 270.1(b)** – requiring a person to obtain a permit from the DEM prior to disposing of hazardous waste.
- (2) **DEM's Hazardous Waste Regulations 5.3** – requiring that a hazardous waste generator determine if the waste generated onsite meets the definition of a hazardous waste.
- (3) **DEM's Hazardous Waste Regulations 5.4** – requiring that a hazardous waste generator apply for and obtain an EPA ID prior to shipping hazardous waste offsite.

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 upon receipt of this Notice of Violation ("NOV") and thereafter**, dispose of all hazardous waste generated at the Pharmacies in accordance with the DEM's Hazardous Waste Regulations, including but not limited to, the Unsaleable Pharmaceuticals, the Commercial Products and empty Warfarin Containers; and
- (2) **IMMEDIATELY upon receipt of the NOV and thereafter**, manage all hazardous waste generated at the Pharmacies in accordance with the DEM's Hazardous Waste Regulations, including but not limited to, proper container labeling, employee training and preparation of contingency plans.

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:

\$47,500

- (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 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 the 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.

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's 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 the 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
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's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for 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 the 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 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) Joseph J. LoBianco at the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey Tyrrell of the 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 F above.

FOR THE DIRECTOR

By: _____
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:

The Stop & Shop Supermarket Company, LLC
c/o Corporation Service Company, Registered Agent
222 Jefferson Boulevard, Suite 200
Warwick, RI 02888

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, HAZARDOUS WASTE
 File Nos.: OCI-HW-14-42, 14-46 and 14-49
 Respondent: The Stop & Shop Supermarket Company, 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) - Disposal at an Unlicensed Facility	Type I (\$25,000 Max. Penalty)*	Moderate	\$12,500	3 violations (3 separate pharmacies)	\$37,500
C (2) – Waste Determination	Type I (\$25,000 Max. Penalty)*	Moderate	\$6,250	1 waste stream	\$6,250
C(3) – Notification of Regulated Waste Activity	Type II (\$12,500 Max Penalty)*	Minor	\$1,250	3 violations (3 separate pharmacies)	\$3,750
SUB-TOTAL					\$47,500

*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 cannot 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 = \$47,500

PENALTY MATRIX WORKSHEET

CITATION: Disposal at an Unlicensed Facility

VIOLATION NO.: C (1)

TYPE		
<p><u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM's <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: The Respondent shipped hazardous waste in the form of unsaleable pharmaceuticals, containers which held formerly acute hazardous waste and other regulated hazardous wastes to a facility that is not licensed to receive hazardous waste (from each of its 3 pharmacies). State and Federal regulations require generators to ensure that hazardous waste generated at their facility is properly disposed of at a licensed facility. This requirement is the core element of the regulatory program because a licensed facility has protocols and specialized equipment for the safe treatment and disposal of hazardous waste. Disposal of hazardous waste at an unlicensed facility may result in contamination of soil, surface and groundwater.</p> <p>(B) Environmental conditions: Considered, but not utilized for this calculation.</p> <p>(C) Amount of the pollutant: The amount of pollutant is unknown.</p> <p>(D) Toxicity or nature of the pollutant: The waste included, but was not limited to, warfarin, epinephrine, nicotine, m-cresol, selenium, mercury, xylene, toluene and corrosive liquids. All of these compounds and materials are hazardous wastes and some are federally listed acute hazardous wastes.</p> <p>(E) Duration of the violation: From 14 to 21 years. The Respondent commenced operations at the pharmacies in calendar years 1993, 1994 and 2000.</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:** The Respondent failed to take reasonable steps to prevent and/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:** 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:** The Respondent had complete control over the occurrence of the violation and made an effort to evaluate the wastes but reached an incorrect conclusion.
- (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 \$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

PENALTY MATRIX WORKSHEET

CITATION: Waste Determination

VIOLATION NO.: C (2)

TYPE		
<p><u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE III <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.

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM's *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 failed to properly characterize solid waste in the form of unsaleable pharmaceuticals, containers which held formerly acute hazardous waste and other regulated hazardous wastes (from each of its 3 pharmacies). State and Federal regulations require generators of waste to determine if their waste meets the definition of a hazardous waste. The failure to properly characterize waste may result in the mismanagement of hazardous waste and lead to improper disposal of hazardous waste.
- (B) **Environmental conditions:** Considered, but not utilized for this calculation.
- (C) **Amount of the pollutant:** The amount of pollutant is unknown.
- (D) **Toxicity or nature of the pollutant:** The waste included, but was not limited to, warfarin, epinephrine, nicotine, m-cresol, selenium, mercury, xylene, toluene and corrosive liquids. All of these compounds and materials are hazardous wastes and some are federally listed acute hazardous wastes.
- (E) **Duration of the violation:** 14 to 21 years. The Respondent commenced operations at the pharmacies in calendar years 1993, 1994 and 2000.
- (F) **Areal extent of the violation:** Considered, but 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 Respondent failed to take reasonable steps to prevent and/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:** 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:** The Respondent had complete control over the occurrence of the violation and made an effort to evaluate the wastes but reached an incorrect conclusion.
- (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

PENALTY MATRIX WORKSHEET

CITATION: Notification of Regulated Waste Activity
 VIOLATION NO.: C (3)

TYPE		
<u> </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> X </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's *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 failed to notify the DEM of regulated waste activities at each of its 3 pharmacies prior to commencing its operations. State and Federal regulations require generators of hazardous waste to notify the DEM prior to storing or offering hazardous waste for transport offsite.
- (B) **Environmental conditions:** Considered, but not utilized for this calculation.
- (C) **Amount of the pollutant:** The amount of pollutant is unknown.
- (D) **Toxicity or nature of the pollutant:** The waste included, but was not limited to, warfarin, epinephrine, nicotine, m-cresol, selenium, mercury, xylene, toluene and corrosive liquids. All of these compounds and materials are hazardous wastes and some are federally listed acute hazardous wastes.
- (E) **Duration of the violation:** 14 to 21 years. The Respondent commenced operations at the pharmacies in calendar years 1993, 1994 and 2000.
- (F) **Areal extent of the violation:** Considered, but 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 Respondent failed to take reasonable steps to prevent the noncompliance. The Respondent mitigated the noncompliance by filing the required forms with the DEM.
- (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:** 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:** Considered, but 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	\$1,250 to \$2,500 \$1,250	\$250 to \$1,250