

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Robert Curran

FILE NO.: D2003

X-ref. OWTS-12-125

NOTICE OF VIOLATION AND LICENSE REVOCATION

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 September 27, 2012, DEM issued an informal written notice for the violations. The notice gave the Respondent the opportunity to show cause why the DEM should not suspend or revoke his license. The Respondent submitted a letter to the DEM on October 11, 2012 wherein he stated that he did not wish to appeal any action taken by the DEM with regard to this matter.

C. Facts

- (1) The Respondent holds Onsite Wastewater Treatment System ("OWTS") License No. D2003 to design OWTSs in the State of Rhode Island.
- (2) The Respondent is the designer of record for application no. 0627-0788 for the installation of an OWTS at property located at 42 Sloop Drive in the town of Portsmouth, Rhode Island (the "Property OWTS").
- (3) The DEM's Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems (the "OWTS Regulations") require that all licensed designers involved with a DEM permitted installation or repair of an OWTS adhere to the following rules:
  - (a) Witness and inspect the installation of the OWTS that he or she designed;
  - (b) Directly witness and inspect the OWTS during installation to resolve any instances of non-compliance;

- (c) Inspect the OWTS during installation prior to calling the DEM for any DEM required inspections; and
  - (d) Complete and submit a Certificate of Construction that certifies that the OWTS was installed in accordance with the approved plans and specifications and in accordance with the OWTS permit and the DEM's OWTS Regulations.
- (4) DEM determined that the Respondent demonstrated gross negligence, incompetence or misconduct in representation of site conditions and preparation of a certification submitted to the DEM of the Property OWTS installation as evidenced by the following:
- (a) Failure to witness and inspect the Property OWTS installation as evidenced by:
    - (i) A record of a telephone call made to DEM by the Respondent on July 18, 2011 wherein the Respondent informed the DEM that the Property OWTS was being installed by Robert Houghton (license no. L0735);
    - (ii) Submission of a Certificate of Construction to the DEM on August 23, 2011 wherein the Respondent certified that Mr. Houghton installed the Property OWTS;
    - (iii) Submission of a letter to the DEM dated May 28, 2012 by the Respondent wherein the Respondent stated that he never spoke to OWTS licensed installer Mr. Houghton;
    - (iv) A telephone conversation between Mr. Houghton and the DEM on July 9, 2012 wherein Mr. Houghton stated that he had no communication with the Respondent concerning the Property OWTS installation and that he, Mr. Houghton, has not worked with the Respondent for 1½ to 2 years;
    - (v) A witness statement made to the DEM Division of Law Enforcement on July 11, 2012 by Mr. Houghton wherein Mr. Houghton states that he never talked to the Respondent;
    - (vi) Submission of a letter to the DEM dated October 9, 2012 by the Respondent wherein the Respondent stated that he was under the assumption that a licensed installer was doing the work; and
    - (vii) The Respondent's inability to produce copies of his inspection reports and photographs documenting the Property OWTS installation as requested by the DEM on July 12, 2012.
  - (b) Failure to directly witness and inspect the Property OWTS installation to resolve any instances of non-compliance as evidenced by an inspection conducted by the DEM on August 1, 2011 wherein it was determined

that the aggregate material used was not in accordance with the DEM approved Property OWTS plan as further described in the DEM's *Guidance for the Design and Use of Bottomless Sand Filters*.

- (c) Failure to inspect the Property OWTS installation prior to calling DEM on August 1, 2011 for a required final cover inspection as evidenced by the DEM's inspection conducted on the same day which revealed that the Property OWTS installation was not complete.
  - (d) Failure to properly certify that the Property OWTS was installed in accordance with the approved plans, specifications, permit and the DEM's OWTS Regulations as evidenced by the Certificate of Construction submitted by the Respondent to the DEM with his signature dated July 2, 2011, which was thirty two (32) days prior to the actual completion of the Property OWTS on August 3, 2011.
- (5) On November 17, 2003, the DEM issued a warning letter to the Respondent regarding his performance as a licensed designer regarding the installation of an OWTS (application no. 8905-0240) on Kings Factory Road in the town of Charlestown, Rhode Island. The letter warned the Respondent that further instances of failure to comply with the DEM's OWTS Regulations may result in suspension or revocation of his license.
- (6) The Respondent has not shown cause why the DEM should not revoke his OWTS designer license.

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) **Rhode Island General Laws Section 5-56.1-8(2)** – authorizing the DEM to suspend or revoke an OWTS designer license if the licensee demonstrates gross or repeated negligence, incompetence or misconduct in an inspection or certification of an installation of an OWTS.
- (2) **DEM's OWTS Regulations, Rule 12.2.2** – authorizing the DEM to suspend or revoke an OWTS designer license if the licensee demonstrates gross or repeated negligence, incompetence or misconduct in representation of site conditions, preparation of any certifications submitted to the DEM, or in the inspection of an installation of an OWTS.

E. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 5-56.1-8(2) and Rule 12.2.2 of the DEM's OWTS Regulations, **OWTS designer license no. D2003 issued to Robert Curran is hereby revoked.** The Respondent may not engage in any work associated with OWTS design until such time that the Respondent possesses an OWTS designer license. The Respondent may not re-apply for an OWTS designer license for a period of not less than five (5) years from the date of issuance of this Notice of Violation (the "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 Sections 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 (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, 2<sup>ND</sup> 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:

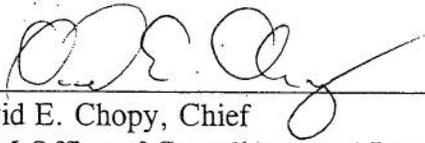
Joseph LoBianco, Esquire  
DEM - Office of Legal Services  
235 Promenade Street, 4<sup>TH</sup> Floor  
Providence, RI 02908-5767

- (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) 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 LoBianco at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Patrick Hogan of the DEM Office of Compliance and Inspection at (401) 222-1360 ext. 7119.

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: February 14, 2013

CERTIFICATION

I hereby certify that on the 4<sup>th</sup> day of February 2013  
the within Notice of Violation and License Revocation was forwarded to:

Robert Curran  
P.O. Box 707  
East Greenwich, RI 02818

by Certified Mail.

