

**STATE OF RHODE ISLAND  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Robert L. Drake**

**FILE NO.: OCI-OWTS-23-83**

**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 Rhode Island Department of Environmental Management (“Director” of “RIDEM”) has reasonable grounds to believe that the above-named party (“Respondent”) has violated certain statutes and/or administrative regulations under RIDEM's jurisdiction.

**B. ADMINISTRATIVE HISTORY**

On December 13, 2013, RIDEM issued a Final Notice by certified mail (“FINAL NOTICE”) to Respondent regarding the property that is the subject of this Notice of Violation (“NOV”). The FINAL NOTICE advised Respondent that, in accordance with the *Rhode Island Cesspool Act of 2007* (“Act”), if the property has a cesspool and is in an area subject to the Act, Respondent must connect the plumbing for the building/dwelling on the property to public sewers by January 1, 2014 or, if public sewers are not available, apply to RIDEM for a new onsite wastewater treatment system (“OWTS”) and install the system within 1 year of RIDEM’s approval. The FINAL NOTICE was delivered on December 17, 2013. As of the date of the NOV, Respondent has failed to comply with the FINAL NOTICE and install an approved OWTS.

**C. FACTS**

- (1) The property is located at 634 Park Avenue, Assessor’s Plat 21, Lot 75 in Portsmouth, Rhode Island (“Property”).
- (2) The Respondent owns the Property.
- (3) The Property includes a dwelling that was constructed in 1900.
- (4) Respondent applied to RIDEM and received approval (“Approval”) over several years, including 2016, 2018, 2020, 2021, 2022 and 2023 (application no. 1427-1187) to install a new OWTS at the Property. The plans accompanying the 2023 application identify a cesspool servicing the Property. The cesspool is located within 200 feet of the inland edge of a shoreline bordering a tidal water area (corresponding to the jurisdiction of the Rhode Island Coastal Resources Management Council).
- (5) The Approval for the 2023 application (“2023 Approval”) expires on September 14, 2024.

- (6) On December 13, 2023, RIDEM contacted the Town of Portsmouth, Rhode Island to determine if the dwelling on the Property is connected to public sewers. RIDEM was informed that public sewers are not available.
- (7) As of the date of the NOV, Respondent has failed to install a new OWTS and abandon the cesspool.

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 23-19.15-6** – prohibiting the use of cesspools located within 200 feet of the inland edge of a shoreline bordering a tidal water area (corresponding to the jurisdiction of the Rhode Island Coastal Resources Management Council) and requiring by January 1, 2014 the proper abandonment and replacement of the cesspool with an approved OWTS or the connection of the building served by the cesspool to the public sewers.
- (2) **Rhode Island’s Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems (250-RICR-150-10-6) (“OWTS Rules”), Part 6.57(C)** – prohibiting the use of cesspools located within 200 feet of the inland edge of a shoreline bordering a tidal water area (corresponding to the jurisdiction of the Rhode Island Coastal Resources Management Council) and requiring by January 1, 2014 the proper abandonment and replacement of the cesspool with an approved OWTS or the connection of the building served by the cesspool to the public sewers.

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** cease use of the cesspool. No further use of the cesspool is allowed.
- (2) **Within 120 days of receipt of the NOV**, complete the following:
  - (a) Abandon the cesspool in accordance with Part 6.56 of the OWTS Rules and submit documentation to RIDEM’s Office of Compliance and Inspection (“OC&I”) to demonstrate compliance.
  - (b) Complete all work in accordance with the 2023 Approval as evidenced by the issuance of a Certificate of Conformance by RIDEM.

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:

**\$10,000**

- (2) The proposed administrative penalty is calculated pursuant to Rhode Island's *Rules and Regulations for Assessment of Administrative Penalties* (250-RICR-130-00-1) ("Penalty Rules") and must be paid to RIDEM within 30 days of your receipt of the NOV. Penalty payments shall be by one of two methods:

- (a) By certified check, cashier's check, or money order made payable to the **General Treasury – Water and Air Protection Program** and forwarded to:

Administrator, RIDEM Office of Compliance and Inspection  
235 Promenade Street, Suite 220  
Providence, RI 02908-5767

- (b) By wire transfer in accordance with instructions provided by RIDEM.

- (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 RIDEM 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 RIDEM'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 RIDEM'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  
RIDEM - 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).
  - (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 Rhode Island's *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:
- Tricia Quest, Esq.  
RIDEM - 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 RIDEM'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) An original signed copy of the NOV is being forwarded to the Town of Portsmouth 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 42-17.1-2(13), as amended.
  - (7) The NOV does not preclude RIDEM 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) Tricia Quest of RIDEM's Office of Legal Services at (401) 537-4413 or at [tricia.quest@dem.ri.gov](mailto:tricia.quest@dem.ri.gov). All other inquiries should be directed to Stephen Tyrrell of RIDEM's Office of Compliance and Inspection at (401) 537-4479 or at [stephen.tyrrell@dem.ri.gov](mailto:stephen.tyrrell@dem.ri.gov).

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: \_\_\_\_\_  
Christina Hoefsmit, Deputy Administrator  
RIDEM Office of Compliance and Inspection

Dated: \_\_\_\_\_

CERTIFICATION

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

Robert L. Drake  
634 Park Avenue  
Portsmouth, RI 02871

by Certified Mail.

\_\_\_\_\_



## ADMINISTRATIVE PENALTY SUMMARY

Program: OWTS  
File No.: OCI-OWTS-23-83  
Respondent: Robert L. Drake

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 (2) – Failure to abandon cesspool and install OWTS	Type I <i>(\$1,000 Max. Penalty) *</i>	Major	\$1,000	10 years	\$10,000
<b>SUB-TOTAL</b>					<b>\$10,000</b>

\*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 COMPLY. 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 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 RIDEM 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 RULES = \$10,000**

# PENALTY MATRIX WORKSHEET

CITATION: Failure to abandon cesspool and install OWTS

VIOLATION NOs.: D (1) and D (2)

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 VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b>FACTORS CONSIDERED:</b></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Rules.</p> <ol style="list-style-type: none"> <li>(1) <b>The extent to which the act or failure to act was out of compliance:</b> The Act requires that cesspools located within 200 feet of the inland edge of a shoreline bordering a tidal water area (corresponding to the jurisdiction of the Rhode Island Coastal Resources Management Council) be properly abandoned and replaced with an approved OWTS or the building served by the cesspool connected to the public sewers. Respondent failed to properly abandon the cesspool and replace the cesspool with an approved OWTS.</li> <li>(2) <b>Environmental conditions:</b> The cesspool is in a densely populated neighborhood and within 200 feet of the inland edge of a shoreline bordering a tidal water area (corresponding to the jurisdiction of the Rhode Island Coastal Resources Management Council).</li> <li>(3) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> Wastewater contains many kinds of bacteria, viruses, and parasites that can cause serious or fatal diseases in both humans and animals and contains pollutants that can cause groundwater and surface water impacts.</li> <li>(5) <b>Duration of the violation:</b> Approximately 10 years– the cesspool was required to be removed by January 1, 2014.</li> <li>(6) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</li> <li>(7) <b>Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:</b> Respondent failed to take reasonable and appropriate steps to prevent and/or mitigate the noncompliance despite being advised by RIDEM in the FINAL NOTICE of the need to comply with the Act.</li> <li>(8) <b>Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM has the authority or responsibility to enforce:</b> Considered, but not utilized for this calculation.</li> <li>(9) <b>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:</b> Respondent had full control over the violation. The violation was foreseeable.</li> <li>(10) <b>Any other factor(s) that may be relevant in determining the amount of a penalty:</b> Considered, but not utilized for this calculation.</li> </ol>		
<u>  X  </u> MAJOR	MODERATE	MINOR

Penalty Matrix where the applicable statute provides for a civil penalty up to \$1,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$800 to \$1,000 <b>\$1,000</b>	\$600 to \$800	\$400 to \$600
	MODERATE	\$600 to \$800	\$400 to \$600	\$200 to \$400
	MINOR	\$400 to \$600	\$200 to \$400	\$100 to \$200