

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

IN RE: Joseph S. Piscopio

FILE NO.: OCI-OWTS-19-91

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. Administrative History

On October 8, 2019, DEM issued a Notice of Intent to Enforce (“NIE”) to Respondent by certified mail for the violations that are the subject of this Notice of Violation (“NOV”). The NIE required specific actions to correct the violations. On October 12, 2019, the NIE was delivered. On July 2, 2020, DEM issued a follow up notice to Respondent. On or about January 21, 2021, DEM’s representative spoke with Respondent regarding the notices. As of the date of the NOV, Respondent has failed to comply with the notices.

C. Facts

- (1) The property is located at 78 Blackburn Street, Assessor’s Plat 278, Lot 95 in Warwick, Rhode Island (the “Property”). The Property includes a 2-unit, 6-bedroom dwelling (the “Dwelling”).
- (2) Respondent owns the Property.
- (3) On October 4, 2019, DEM inspected the Property. The inspection revealed that the onsite wastewater treatment system (“OWTS”) at the Property has failed, and wastewater was discharged from the OWTS to the surface of the ground as evidenced by:
 - (a) Observation of the breakout of fluids on the surface of the ground in the area around the OWTS.
 - (b) Photographs showing evidence of the breakout of fluids on the surface of the ground in the area around the OWTS.
 - (c) Detection of odors associated with wastewater in the area around the OWTS.

- (4) On December 15, 2021, DEM's representative spoke with the City of Warwick regarding the connection of the plumbing for the Dwelling to the City of Warwick sewerage system. DEM was informed that a connection is available; however, no connection from the Dwelling has been made.
- (5) As of the date of the NOV, Respondent has failed to comply with Rhode Island's *Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems* (the "OWTS Regulations").

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) **OWTS Regulations [effective November 25, 2018 to December 28, 2021], Part 6.9(H)** – prohibiting the discharge of wastewater to the surface of the ground.

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** take steps to reduce the discharge of sewage to the OWTS, such as through the installation and use of water conservation devices and fixtures and arrange to have the OWTS pumped by a permitted septage transporter as frequently as necessary to prevent the OWTS from overflowing or breaking out onto the surface of the ground. A list of permitted septage transporters can be obtained by contacting DEM's Office of Water Resources - OWTS Permitting at 222-6820 or from DEM's web page at: www.dem.ri.gov/programs/benviron/waste/transport/septage.pdf.
- (2) **IMMEDIATELY** cease use of any/all laundry washing machine(s) located on the Property. No laundry use is allowed until the OWTS is fully repaired.
- (3) **Within 30 days of receipt of the NOV**, retain a licensed OWTS designer to inspect the OWTS to determine the cause of the OWTS failure and have the licensed designer submit a report of the findings to DEM (the "System Assessment"). The System Assessment must be signed by the designer, must identify the size and location of the OWTS components, and must set forth the probable cause(s) for the OWTS failure. If, based on the results of the System Assessment, DEM determines that the OWTS requires repair, connect the plumbing for the Dwelling to the public sanitary sewerage system **within 60 days of completion of the System Assessment**. **Within 5 days of connection**, submit proof of the connection to DEM (such as a copy of the field inspection card or a contractor's invoice) and submit proof to DEM that the OWTS was properly abandoned in accordance with Part 6.56 of the OWTS Regulations [effective

January 4, 2022 to Current]. The list of licensed OWTS designers can be obtained by contacting general information at 222-3961 or from DEM's web page at:

www.dem.ri.gov/programs/benviron/water/licenses/OWTS/pdfs/deslist.pdf.

OR

In lieu of conducting a System Assessment, **within 60 days of your receipt of the NOV**, connect the plumbing from the Dwelling to the public sanitary sewerage system. **Within 5 days of connection**, submit proof of the connection to DEM (such as a copy of the field inspection card or a contractor's invoice) and submit proof to DEM that the OWTS was properly abandoned in accordance with Part 6.56 of the OWTS Regulations [effective January 4, 2022 to Current].

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:

\$1,000

- (2) The proposed administrative penalty is calculated pursuant to Rhode Island's *Rules and Regulations for Assessment of Administrative Penalties* [effective January 4, 2022 to Current] (the "Penalty Regulations") and must be paid to DEM 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, DEM Office of Compliance and Inspection
235 Promenade Street, Suite 220
Providence, RI 02908-5767

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

- (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 DEM 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 DEM'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 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
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* [effective January 4, 2022 to Current].
- (2) A copy of each request for hearing must also be forwarded to:

Joseph J. LoBianco, Esq.
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 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 City of Warwick, Rhode Island 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 DEM 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 of DEM's Office of Legal Services at (401) 222-6607 or at joseph.lobianco@dem.ri.gov. All other inquiries should be directed to Stephen Tyrrell of DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 2777406 or at 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: _____
David E. Chopy, Administrator
Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

Joseph S. Piscopio
137 Kilvert Street
Warwick, RI 02886

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, OWTS
 File No.: OCI-OWTS-19-91
 Respondent: Joseph S. Piscopio

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) – Discharge of Wastewater to Ground Surface	Type I <i>(\$1,000 Max. Penalty) *</i>	Major	\$1,000	1 violation	\$1,000
<i>SUB-TOTAL</i>					\$1,000

*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 enjoyed an identifiable benefit from the noncompliance alleged in this enforcement action by failing to pump the OWTS to prevent an overflow to the ground surface; however, no economic benefit has been included in the administrative penalty because the penalty assessed is the maximum allowed by statute per day per violation.

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 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 = \$1,000

PENALTY MATRIX WORKSHEET

CITATION: Discharge of Wastewater to Ground Surface
 VIOLATION NO.: D (1)

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 VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Wastewater was discharged to the ground surface from a failed OWTS. Preventing the discharge of wastewater to the surface of the ground is a primary objective of the regulations and a major objective of the regulatory program. (2) Environmental conditions: The Property includes a 2-unit home in a densely populated neighborhood. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: Wastewater contains many kinds of bacteria, viruses, and parasites that can cause serious or fatal diseases in both humans and animals, as well as being the source of extremely objectionable odors. (5) Duration of the violation: Full duration unknown. The inspection on October 4, 2019 revealed evidence of wastewater breakout to the surface of the ground. (6) Areal extent of the violation: Considered, but not utilized for this calculation. (7) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance: Respondent failed to have the system pumped as necessary to prevent discharge to the ground surface. Respondent has taken no action to mitigate the noncompliance, despite receiving 2 notices from DEM requiring that he do so. (8) 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. (9) 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: Respondent had full control over the violation. The violation was foreseeable. (10) Any other factor(s) that may be relevant in determining the amount of a penalty: Considered, but not utilized for this calculation. 		
<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	MAJOR	\$800 to \$1,000 \$1,000	\$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