

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Wayne P. Spicer  
Kerri Lynn Desnoyers  
Lina J. Spicer**

**FILE NO. SW 2010-60**

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 parties (“Respondents”) have violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Administrative History

On 30 September 2008 DEM issued an informal notice to Wayne Spicer for the violations. On 12 August 2010 DEM issued an informal notice to Kerri Lynn Desnoyers for the violations. The Respondents failed to respond to or comply with the notices.

C. Facts

- (1) The subject property is located at 41 Colwell Road in the town of Smithfield, Rhode Island, Assessor’s Plat 47, Lot 49C (the “Property”).
- (2) Respondents own the Property.
- (3) On 11 July 2008, 10 December 2008 and 22 July 2010, DEM inspected the Property. The inspections revealed solid waste deposited on the ground as evidenced by:
  - (a) On 11 July 2008 approximately 52 cubic yards of solid waste deposited on the ground consisting of abandoned motor vehicles, plastic barrels, steel drums, used tires, metal waste, processed wood, a lawn tractor and other mixed solid waste; and
  - (b) On 10 December 2008 and 22 July 2010 approximately 150 cubic yards of solid waste deposited on the ground consisting of abandoned motor vehicles, metal waste, used tires, plastic barrels holding unknown liquid waste (the “unknown liquid waste”), steel drums, vehicle parts, lawn tractors and other

mixed solid waste.

- (4) As of the date of this Notice of Violation (“NOV”), Respondents have failed to remove and properly dispose of the solid waste on the Property at a licensed solid waste management facility.
- (5) Respondents have neither applied for nor obtained a license or approval from the DEM to operate a solid waste management facility on the Property.

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 23-18.9-5** – prohibiting the disposal of solid waste at other than a licensed solid waste management facility.

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 complete the following **within sixty (60) days of receipt of this NOV**:

- (1) Test the unknown liquid waste to determine whether it meets the definition of hazardous waste in Rule 5.8 of DEM’s Rules and Regulations for Hazardous Waste Management (the “Hazardous Waste Regulations”) and Title 40 of the Code of Federal Regulations (“40 CFR”) 262.11. Testing of the unknown liquid waste must be conducted by a certified analytical laboratory in accordance with an approved method as set forth in 40 CFR 260.11 or 40 CFR 261, Subpart C. All analytical test results shall be submitted to the DEM-Office of Compliance and Inspection (“OC&I”) within ten (10) days of your receipt of the certificate of analysis. **You may choose not to perform the determination** and to voluntarily declare the unknown liquid waste hazardous waste. You are then required to properly dispose of the hazardous waste in accordance with the Hazardous Waste Regulations.
- (2) 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.
- (3) Submit documentation to OC&I that the unknown liquid waste, if determined to be hazardous waste, was properly disposed, and that all solid waste was disposed at a licensed solid waste management facility through receipts, bills, or weight slips.

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:

**Six Thousand Two Hundred and Fifty Dollars (\$6,250.00)**

- (2) The proposed administrative penalty is calculated pursuant to DEM's 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 respondents 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.

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 the DEM 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 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, 3<sup>RD</sup> 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, 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) An original signed copy of this NOV is being forwarded to the town of Smithfield, 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 G above.

FOR THE DIRECTOR

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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:

Wayne P. Spicer  
41 Colwell Road  
Smithfield, RI 02917

Kerri Lynn Desnoyers  
34 Angel Road  
Chepachet, RI 02814

Lina J. Spicer  
41 Colwell Road  
Smithfield, RI 02917

by Certified Mail.

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## ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, SOLID WASTE

File No.: SW 2010-60

Respondents: Wayne P. Spicer, Kerri Lynn Desnoyers and Lina J. Spicer

<b>GRAVITY OF VIOLATION</b>					
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)– Disposal of solid waste at other than a licensed solid waste management facility	Type I (\$ <u>25,000</u> Max. Penalty)*	Minor	\$6,250	1 violation	\$6,250.00
<b><i>SUB-TOTAL</i></b>					<b>\$6,250.00</b>

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

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$6,250.00**

**PENALTY MATRIX WORKSHEET**

CITATION: Disposal of solid waste at other than a licensed solid waste management facility  
 VIOLATION NO.: D (1)

<b>TYPE</b>		
<p><b><u>X</u> TYPE I</b>  <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><b>TYPE II</b>  <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><b>TYPE III</b>  <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
<p>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</p>		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> Respondents disposed of or allowed for the disposal of more than three cubic yards of solid waste on the property. Prohibiting the disposal of solid waste at other than a licensed solid waste management facility is of importance to the regulatory program</p> <p>(B) <b>Environmental conditions:</b> The property is located in a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. Residences in the vicinity rely on private drinking water supply wells. The property is located in the Woonasquatucket River watershed within 500 feet of the Upper Sprague Reservoir. 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) <b>Amount of the pollutant:</b> The most recent inspection of 22 July 2010 revealed approximately 150 cubic yards of solid waste on the property.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> The stockpiles of solid waste could provide harborage for rodents. Discarded tires can provide breeding places for mosquitoes or other disease vectors. The drums contain unknown liquid wastes, which may be hazardous waste.</p> <p>(E) <b>Duration of the violation:</b> Unknown. DEM first observed the violation on 11 July 2008.</p> <p>(F) <b>Areal extent of the violation:</b> Not relevant.</p>		
<p>(continued)</p>		

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the non-compliance by prohibiting the disposal of solid waste on the property. Respondents have yet to mitigate the non-compliance despite receiving informal notices from DEM on 30 September 2008 and 12 August 2010, which required that they do so.
- (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:** Negligence is attributable to the Respondents for the failure to comply immediately with the requirements set forth in the Rhode Island Refuse Disposal Act. Respondents, as owners of the property, 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.

<b>MAJOR</b>	<b>MODERATE</b>	<u>  <b>X</b>  </u> <b>MINOR</b>
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 25,000		<b>TYPE I</b>	TYPE II	TYPE III
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	<b>MODERATE</b>	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250 <b>\$6,250</b>	\$1,250 to \$2,500	\$250 to \$1,250