

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Lee Beausoleil
Artak Avagyan**

**FILE NOS.: OCI-SW-20-40 and
OCI-FW-21-183**

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 (“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 2 June 2020, DEM issued a *Letter of Non-Compliance* (“LNC”) by certified mail to Respondents for the alleged violations that are the subject of this *Notice of Violation* (“NOV”). The LNC required specific actions to correct the violations. The LNC was delivered to Respondents on 5 June 2020. Respondents failed to respond to or comply with the LNC. On 1 November 2020, DEM issued a *Notice of Intent to Enforce* (“NIE”) to Respondents by certified mail for the alleged violations that are the subject of the NOV. The NIE required specific actions to correct the violations. The NIE was delivered to Respondents on 4 November 2020. As of the date of the NOV, Respondents have failed to respond to or comply with the NIE.

C. Facts

- (1) The property is located at 175 Post Road, Assessor’s Plat 291, Lot 45 in Warwick, Rhode Island (“Property”).
- (2) Respondents own the Property. Respondents acquired the Property on 29 April 2019.
- (3) Respondents have neither applied for nor obtained a license or approval from the DEM to operate a solid waste management facility on the Property.
- (4) On 8 May 2020, DEM inspected the Property and observed several stockpiles of demolition debris and mixed solid waste.

- (5) On 6 October 2020, DEM inspected the Property. The inspection revealed the following:
- (a) Approximately 500 cubic yards of solid waste deposited on the ground. The solid waste was comprised of demolition debris that included painted, broken concrete block, brick, Styrofoam, wood waste, metal waste, plastic waste, asphalt material and other mixed solid waste.
 - (b) An approximately 800 cubic yard stockpile of abandoned plastic pipe and a plastic tank.
 - (c) Some of the waste may be recyclable and therefore not considered solid waste; however, there was at least 3 cubic yards of waste that was not recyclable.
- (6) On 20 September 2021, DEM inspected the Property (“September Inspection”). The inspection revealed the following:
- (a) Approximately 502 cubic yards of solid waste deposited on the ground. The solid waste was comprised of furniture, appliances, wood waste and a stockpile of demolition debris that included painted, broken concrete block, brick, Styrofoam, wood waste, metal waste, plastic waste, asphalt material and other mixed solid waste.
 - (b) An approximately 800 cubic yard stockpile of abandoned plastic pipe and a plastic tank.
- (7) On 19 April 2022, DEM inspected the Property. The inspection revealed similar conditions to the September Inspection.
- (8) DEM reviewed aerial photographs of the Property. The review revealed the following:
- (a) Clearing, filling (in the form of stockpiled materials and miscellaneous solid waste debris) and surface disturbance within the 200-foot Riverbank Wetland associated with Pawtuxet River (“Riverbank Wetland”).
 - (b) Some of these activities took place beyond the prior existing (historical) limits of disturbance within the Riverbank Wetland, extending into previously undisturbed, naturally vegetated land within the Riverbank Wetland.
 - (c) These activities took place after Respondents acquired the Property.
 - (d) The activities altered approximately 25,000 square feet of the Riverbank Wetland.

- (9) The activities described in subsection C (8) above were not exempt in accordance with the *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* (250-RICR-150-15-1) [effective 6 July 2014 to Current] (“FWW Rules”).
- (10) Respondents did not receive a permit from DEM to alter the Riverbank Wetland in the areas described in subsection C (8) above.

D. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes:

- (1) **R.I. Gen. Laws Section 23-18.9-5** – prohibiting the disposal of solid waste at other than a solid waste management facility.
- (2) **R.I. Gen. Laws Section 23-18.9-8** – prohibiting the operation of a solid waste management facility without first obtaining a license from DEM.
- (3) **R.I. Gen. Laws Section 2-1-21** – prohibiting activities that may alter freshwater wetlands without a permit from DEM.
- (4) **FWW Rules, Part 1.5(A)(1)** – prohibiting activities which may alter freshwater wetlands without a permit from DEM, unless the activities are exempt in accordance with Part 1.6.
- (5) **Rhode Island’s Rules and Regulations for Solid Waste Management Facilities and Organic Waste Management Facilities (250-RICR-140-05-01) [5 March 2018 to Current] (“SW Rules”), Part 1.6(A)** – prohibiting the operation of a solid waste management facility without first obtaining a license from DEM.

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 the disposal of solid waste on the Property.
- (2) **Within 60 days of receipt of the NOV**, 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) **Within 10 days of completion of the removal of the solid waste**, submit written verification to DEM that the solid waste was disposed of at a licensed solid waste management facility.

(4) **By 30 September 2022, restore the Riverbank Wetland as follows:**

- (a) Immediately install compliant biodegradable soil erosion/sediment controls (in the form of staked haybales, straw wattles, coir logs or coconut fiber logs) along the eastern limits of the unauthorized alterations, between all altered wetland areas and the adjacent undisturbed wetlands.
- (b) Remove all unauthorized fill material from the Riverbank Wetland. Fill material must be deposited within an appropriate upland location (on or off site), outside of all freshwater wetlands.
- (c) Following fill removal, within the previously undisturbed portions of the Riverbank Wetland, all disturbed surface areas must be covered with an appropriate plantable soil (4 inch minimum) and seeded with a proper wildlife conservation seed mixture, then covered with a thick mat of spread straw mulch, which is free of any contaminants that could promote the spread of invasive plant species.
- (d) Within the previously undisturbed portions of the Riverbank Wetland plant trees and shrubs, as follows:

- (i) Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, 10 feet on center, at least 5 feet tall after planting, throughout the areas defined above. Tree species must include an equal distribution of at least 2 of the following selections:

Red maple, *Acer rubrum*
Box elder (ashleaf maple), *Acer negundo*
White oak, *Quercus alba*
Northern red oak, *Quercus rubra*
Sassafras, *Sassafras albidum*
Gray birch, *Betula populifolia*
Black birch, *Betula lenta*
American beech, *Fagus grandifolia*

- (ii) Balled and burlapped, potted, or transplanted shrub species must be planted in an interspersed fashion 5 feet on center, at least 3 feet tall after planting, throughout the area defined above. Shrub species must include an equal distribution of at least 3 of the following selections:

Mountain laurel, *Kalmia latifolia*
Giant rhododendron, *Rhododendron maximum* (shaded areas only)
Gray (stiff, red panicle) dogwood, *Cornus foemina racemosa*
Silky dogwood, *Cornus amomum*
Arrowwood (southern), *Viburnum dentatum*

American cranberrybush, *Viburnum trilobum*
Mapleleaf viburnum, *Viburnum acerifolium*
Inkberry, *Ilex glabra*
Highbush blueberry, *Vaccinium corymbosum*
Lowbush blueberry, *Vaccinium angustifolium*
Sweet pepperbush, *Clethra alnifolia*
Black chokeberry, *Aronia melanocarpa*
Witch hazel, *Hamamelis virginiana*

- (iii) In addition, balled and burlapped or transplanted evergreen screening tree species must be planted in a straight line, 8 feet on-center (apart), at least 8 feet tall after planting, along the entire outer (landward/western) edge of the restored Riverbank Wetland [described in E(4)(c) above]. The tree species to be utilized for this screening line (described above) must include at least 2 of the following selections:

Northern white cedar, *Thuja occidentalis*
Eastern hemlock (disease-resistant variety), *Tsuga canadensis*
White pine, *Pinus strobus*
White spruce, *Picea glauca*.

- (5) If any or all the required plantings fail to survive at least 1 full year from the time they have been planted, replant and maintain the same plant species until such time that survival is maintained over 1 full year.
- (6) All restored freshwater wetland areas must be allowed to revert to a natural wild condition. Aside from those activities considered exempt under Part 1.6 of the FWW Rules, no future clearing, mowing, cutting, trimming, or other alterations are authorized in any wetland area on the Property without first obtaining a valid permit from DEM.

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:

\$9,076

- (2) The proposed administrative penalty is calculated pursuant to the *Rules and Regulations for Assessment of Administrative Penalties* (250-RICR-130-00-1) (“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 – Environmental Response Fund** 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 Respondents 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, Suite 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 the *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:
- Joseph J. LoBianco, Esquire
DEM - Office of Legal Services
235 Promenade Street, Suite 425
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 this 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 23-18.9-13, as is or 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 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 Tracey D'Amadio Tyrrell of DEM's Office of Compliance and Inspection at (401) 222-1360, ext. 2777407 or at tracey.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:

Lee Beausoleil
100 Hay Street
West Warwick, RI 02893

Artak Avagyan
100 Hay Street
West Warwick, RI 02893

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Programs: Solid Waste and Freshwater Wetlands
 File Nos.: OCI-SW-20-40 and OCI-FW-21-183
 Respondents: Lee Beausoleil and Artak Avagyan

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) – Disposal of Solid Waste at Other Than a Licensed Solid Waste Management Facility	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$4,375	1 violation	\$4,375
D (2) and D (5) – Operation of a Solid Waste Management Facility Without a License from DEM	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$4,375	1 violation	\$4,375
SUB-TOTAL					\$8,750

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

ADMINISTRATIVE PENALTY SUMMARY (continued)

ECONOMIC BENEFIT FROM NON-COMPLIANCE

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 NON-COMPLIANCE; OR
- THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED.

DESCRIPTION OF BENEFIT	CALCULATION		AMOUNT
<p>Delaying disposal of the solid waste. The economic benefit of non-compliance was determined by using an EPA computer model titled <i>BEN</i> that performs a detailed economic analysis. The dates, dollar amounts and values used in this analysis are listed in this table.</p>	<ul style="list-style-type: none"> ▪ Profit Status ▪ Filing Status ▪ Initial Capital Investment ▪ One-time Non-depreciable Expense ▪ First Month of Non-compliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	<p>For profit, other than a C Corp.</p> <p>\$5,804 (215 tons demolition waste X \$20/ton = \$4,300, 12.8 tons rigid plastic X \$115/ton = \$1,472 and 0.275 tons mixed solid waste X \$115/ton = \$31.62)</p> <p>May 2020</p> <p>1 June 2022</p> <p>1 May 2022</p> <p>6.6%</p>	
SUB-TOTAL			\$326

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 = \$9,076

PENALTY MATRIX WORKSHEET

CITATION: Disposal of Solid Waste at Other Than a Licensed Solid Waste Management Facility
 VIOLATION NO.: D (1)

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 PARTICULAR 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 Penalty Regulations.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents disposed of or allowed for the disposal of solid waste on the Property. Prohibiting the disposal of solid waste at other than a licensed solid waste management facility is of prime importance to the regulatory program. Failure to comply may result in threats or harm to public health and safety and the environment. (2) Environmental conditions: The Property is in an area zoned for industrial and commercial use. The Property is in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. A regulated freshwater stream flows through the Property. The Property is located within Pawtuxet River watershed. Some of the solid waste is stockpiled within 25 feet of Pawtuxet River within the Riverbank Wetland associated with Pawtuxet River. (3) Amount of the pollutant: Approximately 1,302 cubic yards of solid waste (as of 20 September 2021). (4) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation. (5) Duration of the violation: Full duration unknown – at least approximately 2 years. The penalty is being assessed for the noncompliance that has occurred since September 2021. (6) Areal extent of the violation: The solid waste has been deposited across areas encompassing approximately 55,500 square feet. 		
(continued)		

(continued from the previous page)

- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent the non-compliance (either by not disposing of solid waste on the Property or not prohibiting the disposal of solid waste on the Property). Respondents have yet to mitigate the non-compliance despite receiving the LNC and the NIE from DEM, which required that they 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:** Negligence is attributable to Respondents for the failure to comply with the requirements set forth in Rhode Island's *Refuse Disposal Act*. Respondents, as owners of the Property, had complete control over the occurrence of the violation.
- (10) **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
--------------	-----------------	----------------------------------

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 \$4,375	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Operating a Solid Waste Management Facility Without a License from DEM
 VIOLATION NOS.: D (2) and D (5)

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 <small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p>FACTORS CONSIDERED:</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: Respondents disposed of or allowed for the disposal of solid waste on the Property. Prohibiting the operation of a solid waste management facility without a license or approval from DEM is of prime importance to the regulatory program. DEM’s licensing process ensures that solid waste management facilities are appropriately located and operated in strict compliance with the SW Rules. Failure to comply will likely result in threats or harm to public health and safety and the environment. (2) Environmental conditions: The Property is situated in an area zoned for industrial and commercial use. The Property is in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. A regulated freshwater stream flows through the Property. The Property is located within Pawtuxet River watershed. Some of the solid waste is stockpiled within 25 feet of Pawtuxet River within the 200-foot Riverbank Wetland associated with Pawtuxet River. (3) Amount of the pollutant: Approximately 1,302 cubic yards of solid waste (as of 20 September 2021). (4) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation. (5) Duration of the violation: Full duration unknown – at least approximately 2 years. The penalty is being assessed for the noncompliance that has occurred since September 2021. (6) Areal extent of the violation: The solid waste has been deposited across areas encompassing approximately 55,500 square feet. 		
(continued)		

(continued from the previous page)

- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the non-compliance (either by not disposing of solid waste on the Property or not prohibiting the disposal of solid waste on the Property). Respondents have yet to mitigate the non-compliance despite receiving the LNC and the NIE from DEM, which required that they 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:** Negligence is attributable to Respondents for the failure to comply with the requirements set forth in Rhode Island's *Refuse Disposal Act*. Respondents, as owners of the Property, had complete control over the occurrence of the violation.
- (10) **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
--------------	-----------------	----------------------------------

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 \$4,375	\$1,250 to \$2,500	\$250 to \$1,250