

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

**IN RE: TLCE Realty Trust**

**FILE NO.: OCI-HW-20-47**

**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 September 3, 2020, RIDEM inspected the property that is the subject of this Notice of Violation (“NOV”) and spoke with Eric Chase (“Chase”), who identified himself as the property owner. RIDEM’s inspector advised Chase of the alleged violations that are the subject of the NOV and of the specific actions to correct the violations. On January 15, 2021, RIDEM issued a Notice of Intent to Enforce (“NIE”) to Respondent for the alleged violations that are the subject of the NOV. The NIE required specific actions to correct the violations. On June 4, 2021, RIDEM met with Chase and Attorney Steve Surdut (“Surdut”) at the property to discuss the NIE. Surdut informed RIDEM’s representative that he would confer with his client and submit a report to RIDEM within 2-3 weeks describing the actions taken to resolve the violations. No report was ever submitted to RIDEM. On November 20, 2021, RIDEM met again with Chase and Surdut at the property and discussed the violations. As of the date of the NOV, no information has been submitted to RIDEM in response to the NIE or the meetings.

**C. FACTS**

- (1) The property is located at 500 State Avenue, Assessor’s Plat 102, Lot 119 in Tiverton, Rhode Island (“Property”). The Property includes a facility used for storage of automobiles and aboveground storage tanks and containers holding heating oil (“Facility”) and a building (“Building”).
- (2) Respondent owns the Property.
- (3) On September 3, 2020, RIDEM inspected the Property in response to a complaint and met with Chase. The inspection revealed the following:
  - (a) An area located approximately 20 feet south of the western access gate to the Property that was impacted by an oil spill. Gravel was recently placed over the area but staining consistent with oil was still visible on the ground surface.

- (b) An accumulation of solid waste comprised of used mattresses, wood debris, used automotive tires, plastic debris, and used furniture that was pushed against a fence. An aboveground storage tank (“AST”) typically used for the storage of heating oil at residential properties was also present in this area.
- (c) On the north side of the Building there were numerous automobiles most of which did not have registration plates. One vehicle, a pickup truck, was filled with solid waste including plastic debris, used blankets, wood debris and scrap metal.
- (d) On the western side of the Building adjacent to a flatbed truck were two 55-gallon blue plastic containers. Chase informed RIDEM’s inspector that the containers held heating oil that was recovered from ASTs taken from residential properties. There was an accumulation of solid waste along the fence line at this location. In this location, RIDEM’s inspector observed an area of dark staining of the soil surface and detected a strong petroleum odor indicating that an oil release occurred in this area.
- (e) In an area near the southwest corner of the Building two recreational power boats were stored, one on top of the other, which Chase informed RIDEM’s inspector were being stored for friends. The boats were damaged and did not appear to be in working order. Next to the boats was an AST that Chase informed RIDEM’s inspector was going to be sent for scrap metal reclamation. The AST contained an unknown volume of oil and at least one fill port was open potentially allowing rainwater to enter the tank.
- (f) Southwest of the Building a box truck body was stored on top of a mobile office trailer. The trailer’s frame was compromised, and the unit did not appear to be in working order.
- (g) South of the Building in a storage area (“Storage Area”) there was a group of 8 ASTs several of which held liquid. Another AST was cut in half and each side held an accumulation of heating oil. The sections of the tank were exposed to the weather and collecting stormwater. The fill ports on the sides of the tanks were open. The soil was stained with a dark colored material and a strong petroleum odor was detected in the vicinity of the ASTs consistent with oil. There was an accumulation of solid waste, including but not limited to, plastic debris, wood debris, used automobile tires, a recreational vehicle, and nylon tarps.
- (h) On the southeastern section of the Storage Area there were six 55-gallon containers holding a dark colored liquid with a petroleum odor and five 275-gallon ASTs. Two containers were open and overflowing and the ground surface was stained with a dark colored material consistent with oil.

- (i) Adjacent to the east side of the Building there were two 500-gallon round ASTs and three 275-gallon ASTs standing on their sides that held heating oil, according to Chase. An accumulation of solid waste was present, including but not limited to, air conditioning units, a refrigerator, a sink countertop, used automotive tires, a door, a door frame, and a car fender.
  - (j) Near the northeast corner of the Building there were six 275-gallon ASTs stacked on their sides, six 55-gallon containers and one 30-gallon container. One (1) of the 55-gallon containers was open and held approximately 15 gallons of a dark colored liquid that exhibited a petroleum odor. The ground surface was stained with a dark colored material in and under the open container consistent with oil. In this area there was an accumulation of solid waste, including but not limited to, used automobile tires, plastic debris, a door, and frame. Along the northern side of the Building there were four 250-gallon totes holding a dark liquid described as heating oil by Chase. Two totes were open and filled to capacity with a dark liquid exhibiting a strong petroleum odor. At this location the ground surface was stained with a dark black color consistent with oil. This location is upgradient of a small, forested wetland that abuts the Property and drains under State Avenue via a culvert into a pond.
  - (k) Based on the RIDEM inspector's observations, greater than 3 cubic yards of solid waste was deposited on the ground throughout the Property.
- (4) On September 25, 2020, RIDEM inspected the Property and met with Blair Merriman ("Merriman). Merriman stated that she was authorized to allow RIDEM access to the Property. The inspections revealed the following:
- (a) In the Storage Area, an AST was cut in half and held a dark colored liquid with a petroleum odor. A pump and several hoses were inside the AST.
  - (b) In the Storage Area, a 55-gallon drum that was damaged and inverted over an AST, which was cut in half, draining liquid into the tank.
  - (c) In the Storage Area, a metal tray container that held ashes. In the prior inspection, this container held mixed solid waste and tree branches.
  - (d) On the south side of the Building an accumulation of solid waste mixed with scrap metal.
  - (e) Adjacent to the east side of the Building a group of 8 ASTs at least one of which contained an accumulation of liquid and was open.
  - (f) Adjacent to the east side of the Building three 55-gallon containers marked with the words "home heating oil" located north of the 8 ASTs.
  - (g) An oil release located near the eastern gate adjacent to State Avenue that was partially covered with absorbent material.

- (h) A 55-gallon drum located near the northeastern side of the Building was open and held approximately 15 gallons of a dark liquid with a petroleum odor.
  - (i) Four 250-gallon totes holding dark colored liquids located near the northeast corner of the Building marked with the words “home heating oil”.
  - (j) The ground surface near northeast corner of the Building was stained with a dark colored material consistent with oil.
  - (k) Based on the RIDEM inspector’s observations, greater than 3 cubic yards of solid waste was deposited on the ground throughout the Property.
- (5) During the September 25, 2020, inspection, RIDEM’s inspector requested permission from Merriman to collect soil samples and permission was granted. RIDEM’s inspector collected the following samples:
- (a) Sample E.C.-1 from the Storage Area.
  - (b) Sample E.C.-2 from a location near the southeast corner of the Building on an embankment adjacent to a wetland area.
  - (c) Sample E.C.-3 located near the northeastern corner of the building adjacent to a group of three 55-gallon containers.
- (6) On October 15, 2020, RIDEM received a copy of an analytical report titled *E.C. Yard (N/A)* dated October 15, 2020, containing the results of the analysis of the samples collected on September 25, 2020. Review of the analytical report revealed the following:
- (a) Sample E.C.-1 contained Total Petroleum Hydrocarbons (“TPH”) at a concentration of 3,790 parts per million (“ppm”) and exhibited characteristics of a heavy lubricating oil under a fingerprint analysis.
  - (b) Sample E.C.-2 contained TPH at a concentration of 1,630 ppm and exhibited characteristics of a heavy lubricating oil under a fingerprint analysis.
  - (c) Sample E.C.-3 contained TPH at a concentration of 29,300 ppm and exhibited characteristics of a fuel oil similar to #2 heating oil under a fingerprint analysis.
- (7) On November 20, 2021, RIDEM inspected the Property and met with Chase and Surdut. The inspection revealed the following:
- (a) An accumulation of solid waste, including but not limited to, plastic debris, furniture, processed lumber, scrap metal, fiberglass, and automobile tires located near the southwest corner of the Building.

- (b) Three aboveground storage tanks, one standing on its short side and the other two laying on the short side.
  - (c) In the Storage Area the ground surface was stained with a dark material and a visible petroleum sheen was present on accumulated stormwater. In previous inspections RIDEM's inspector observed an oil transfer operation at this location.
  - (d) Two damaged powerboats located near the southeast corner of the Building. One boat was filled with solid waste and there was solid waste scattered on the ground surface around the boats.
  - (e) Along the southside of the Building, an accumulation of solid waste in the form of processed wood, cardboard, and paper. Two ASTs lay on their side and one AST was standing on its legs.
  - (f) An area south of the Building, petroleum sheens were visible on stormwater accumulated in small depressions in several locations.
  - (g) Petroleum sheens on the surface of accumulated stormwater in a depression located near the southeast corner of the Building in the driveway. This area is adjacent to a forested wetland which contains a channel that conveys surface water into Cook's Pond north of State Avenue.
  - (h) On the north side of the Building, four 250-gallon totes that Chase informed RIDEM's inspector held heating oil. One tote was open, and the fill port was cracked allowing stormwater to enter the tote.
  - (i) Based on the RIDEM inspector's observations, greater than 3 cubic yards of solid waste was deposited on the ground throughout the Property.
- (8) During each inspection, RIDEM's inspector directed Respondent's agents to close all open containers and tanks holding oil, clean up all oil spills on the Property and properly dispose of the oil spill debris at a licensed facility. RIDEM's inspector also requested copies of records for the offsite shipment of solid waste and heating oil that was allegedly recovered at the Property.
- (9) Based on the observations by RIDEM's inspector during each inspection and the sample results, RIDEM has concluded that a release of oil occurred on the Property.
- (10) As of the date of the NOV, Respondent has not ceased the oil releases and removed the solid waste in accordance with the applicable regulations and statutes.

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 46-12.5.1-3** – prohibiting discharges of oil into or upon the waters or land of the State except by regulation or by permit from RIDEM.
- (2) **R.I. Gen. Laws Section 23-18.9-5** – prohibiting the disposal of solid waste at other than a solid waste management facility licensed by RIDEM.
- (3) **Rhode Island’s *Oil Pollution Control Regulations (250-RICR-140-25-2)* (“OPC Regulations”)**
  - (a) **Part 2.6(A)** – prohibiting the placement of oil or pollutants into the waters of or onto land of the State or in a location where they are likely to enter the waters of the State.
  - (b) **Part 2.12(B)(2)** – requiring any person responsible for a release of oil to immediately stop the discharge and begin containment and removal of the oil and waste material.
- (4) **Rhode Island’s *Rules and Regulations for Solid Waste Management Facilities and Organic Waste Management Facilities (250-RICR-140-05-01)* (“SW Rules”)**
  - (a) **Part 1.6(A)** – prohibiting the operation of a solid waste management facility without first obtaining a license from RIDEM.
  - (b) **Part 1.6(C)(1)** – prohibiting open burning of any type at a solid waste management facility.
- (5) **Rhode Island’s *Air Pollution Control Regulations titled *Open Fires (250-RICR-120-05-4)* (“APC Rules”), Part 4.5*** – prohibiting any person from burning any material in an open fire at a solid waste management facility and/or hazardous waste disposal facility or in connection with any salvage, industrial, commercial, or institutional operation.

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 discharge and release of oil onto the ground at the Property.
- (2) **IMMEDIATELY** cease the open burning of any material at the Property.

- (3) **Within 10 days of receipt of the NOV**, contain and clean up all released oil and soil material impacted by the oil release on the Property, place it into containers that are labeled “oil spill cleanup debris” and keep the containers closed while in storage onsite.
- (4) **Within 30 days of receipt of the NOV**, ship the containers holding oil spill cleanup debris to a licensed disposal facility. **Within 10 days of the offsite shipment of the oil spill cleanup debris**, submit a copy of the bill of lading to RIDEM’s Office of Compliance and Inspection (“OC&I”).
- (5) **Within 30 days of receipt of the NOV**, remove all solid waste from the Property and dispose of it a licensed solid waste management or recycling facility. Written verification of compliance shall be submitted to the OC&I **within 10 days of removal**.

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:

**\$45,510**

- (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 Regulations”) and must be paid to RIDEM within 30 days of your receipt of the NOV.

- (3) Penalty payments shall be by one of two methods:

- (a) By certified check, cashier’s check, or money order as follows:

- (i) One check or money order for \$38,010 made payable to the **General Treasury – Water and Air Protection Program**.
- (ii) One check or money order for \$7,500 made payable to the **General Treasury-Environmental Response Fund**.
- (iii) The checks or money orders shall be 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.

- (4) 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.
- (5) 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 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:

Christina Hoefsmit, Esquire  
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 Tiverton, 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 46-12.5.1-12(c), as amended.
- (7) The 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) Christina Hoefsmit of RIDEM's Office of Legal Services at (401) 222-6607 ext. 2772023 or at [christina.hoefsmit@dem.ri.gov](mailto:christina.hoefsmit@dem.ri.gov). All other inquiries should be directed to Tracey Tyrrell of RIDEM's Office of Compliance and Inspection at [tracey.tyrrell@dem.ri.gov](mailto:tracey.tyrrell@dem.ri.gov) or (401) 222-1360 ext. 2777407.

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  
RIDEM Office of Compliance and Inspection

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

CERTIFICATION

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 2022, the within Notice of Violation was forwarded to:

TLCE Realty Trust  
c/o Eric P. Chase  
P.O. Box 3662  
Newport, RI 02840

by Certified Mail.

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## ADMINISTRATIVE PENALTY SUMMARY

Program: Hazardous Waste  
 File No.: OCI-HW-20-47  
 Respondent: TLCE Realty Trust

<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) and D (3)(a) – Release of oil to the land of the State	Type I <i>(\$25,000 Max. Penalty) *</i>	Major	\$25,000	1 violation	\$25,000
D (3)(b) – Failure to take remedial action after a release of oil	Type I <i>(\$25,000 Max. Penalty) *</i>	Moderate	\$12,500	1 violation	\$12,500
D (2) – Solid waste disposal	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$2,500	1 violation	\$2,500
D (4)(a) – Operating a solid waste management facility without a license from RIDEM	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$2,500	1 violation	\$2,500
D 4(b) and D (5) – Open burning of solid waste	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$2,500	1 violation	\$2,500
<b><i>SUB-TOTAL</i></b>					<b>\$45,000</b>

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

## ADMINISTRATIVE PENALTY SUMMARY (continued)

<b>COST RECOVERY</b>		
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.		
DESCRIPTION OF COST	CALCULATION OF ACTUAL COST INCURRED	AMOUNT
Laboratory costs to analyze for RCRA 8 Metals – Total	\$75 per sample x 3 samples	\$225
Laboratory costs to analyze for TPH	\$95 per sample x 3 samples	\$285
<b><i>SUB-TOTAL</i></b>		<b>\$510</b>

<b>ECONOMIC BENEFIT FROM NONCOMPLIANCE</b>
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: <ul style="list-style-type: none"> <li>- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE, OR</li> <li>- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.</li> </ul>
<p>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.</p>

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$45,510**

# PENALTY MATRIX WORKSHEET

CITATION: Release of oil to the land of the State  
 VIOLATION NOs.: D (1) and (3)(a)

<b>TYPE</b>		
<p style="text-align: center;"><u>  X  </u> <b>TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u>      </u> <b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u>      </u> <b>TYPE III</b></p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
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 Regulations.</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> Respondent allowed for the release of oil and petroleum products to the Property. Multiple RIDEM inspections revealed oil and petroleum products spilled atop the asphalt pavement and soil surfaces on the Property. The unpermitted release of oil and petroleum products to the land of the State is prohibited by the R.I. Gen. Laws and the OPC Regulations. The release of oil and petroleum products to the land and/or waters of the State will likely result in adverse impacts to surface water resources, public health and safety and the environment.</li> <li>(2) <b>Environmental conditions:</b> The Property is adjacent to a freshwater wetland that contains a channel which travels via a culvert under State Avenue and discharges into Cook’s Pond in Fall River, Massachusetts. The Property is adjacent to a freshwater wetland that contains a channel which travels via a culvert under State Avenue and discharges into Cook’s Pond in Fall River, Massachusetts. The Facility is in a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. The Facility is in the Mount Hope Bay watershed</li> <li>(3) <b>Amount of the pollutant:</b> The amounts of oil and pollutants released to the land is unknown at this time. During one RIDEM’s inspection Respondent was storing approximately 1,900 gallons of petroleum products in containers and tanks. Several of the tanks and containers were open and overflowing with stormwater and oil onto the ground surface.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> Oil and petroleum products can cause significant adverse impacts to subsurface soils, groundwater and surface water if released to the environment. Certain petroleum constituents are harmful to human health.</li> <li>(5) <b>Duration of the violation:</b> Full duration unknown – at least 1½ years. RIDEM first observed evidence of oil spillage and releases on September 3, 2020.</li> <li>(6) <b>Areal extent of the violation:</b> Unknown at this time.</li> </ol>		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent the noncompliance by allowing for the uncontrolled spillage and release of oil to asphalt and soil surfaces on the Property. Respondent shipped some oil offsite but has not provided documentation to RIDEM confirming proper disposal. Respondent failed to take steps to fully mitigate the noncompliance despite receiving the NIE from RIDEM, which required immediate actions to control and prevent the releases.
- (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:** As the owner of the Property and Facility, Respondent had control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (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
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$12,500 to \$25,000 <b>\$25,000</b>	\$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	\$1,250 to \$2,500	\$250 to \$1,250

# PENALTY MATRIX WORKSHEET

CITATION: Failure to take remedial action after a release of oil  
 VIOLATION NO.: D (3)(b)

<b>TYPE</b>		
<p style="text-align: center;"><u>  X  </u> <b>TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u>      </u> <b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u>      </u> <b>TYPE III</b></p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
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 Regulations.</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> Respondent failed to complete the required remedial actions following the release of oil and petroleum products to the Property. The OPC Regulations require responsible parties to take immediate corrective action following the release of oil and petroleum products to the land or waters of the State. Failure to comply would likely result in adverse impacts to surface water resources, public health and safety and the environment.</li> <li>(2) <b>Environmental conditions:</b> The Property is adjacent to a freshwater wetland that contains a channel which travels via a culvert under State Avenue and discharges into Cook’s Pond in Fall River, Massachusetts. The Facility is in a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. The Facility is in the Mount Hope Bay watershed.</li> <li>(3) <b>Amount of the pollutant:</b> The amounts of oil and pollutants released to the land is unknown at this time.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> Oil and petroleum products can cause significant adverse impacts to subsurface soils, groundwater and surface water if released to the environment. Certain petroleum constituents are harmful to human health.</li> <li>(5) <b>Duration of the violation:</b> Full duration unknown – at least 1½ years. RIDEM first observed evidence of exterior oil spillage and releases on September 3, 2020.</li> <li>(6) <b>Areal extent of the violation:</b> Unknown at this time.</li> </ol>		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent the noncompliance by completing immediate corrective action when the oil and other pollutants were released to the land of the State. Respondent failed to take steps to mitigate the noncompliance despite receiving the NIE from RIDEM, which required the Respondent to take actions to remediate the release.
- (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:** As owner of the Property and Facility, Respondent had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence. Negligence is attributable to Respondent for the failure to take immediate corrective action following the releases.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<b>MAJOR</b>	<u>  X  </u> <b>MODERATE</b>	<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 <b>\$12,500</b>	\$2,500 to \$6,250	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250



# PENALTY MATRIX WORKSHEET

CITATION: Solid waste disposal  
 VIOLATION NO.: D (2)

<b>TYPE</b>		
<p style="text-align: center;"><u>  X  </u> <b>TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ <b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ <b>TYPE III</b></p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</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> Respondent disposed of or allowed for the disposal of solid waste on the Property. The disposal of solid waste at other than a licensed solid waste management facility is prohibited by the R.I. Gen. Laws. Failure to comply would likely result in adverse impacts to public health and safety and the environment.</li> <li>(2) <b>Environmental conditions:</b> The Property is adjacent to a freshwater wetland that contains a channel which travels via a culvert under State Avenue and discharges into Cook’s Pond in Fall River, Massachusetts. The Facility is located in a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. The Facility is located in the Mount Hope Bay watershed.</li> <li>(3) <b>Amount of the pollutant:</b> The most recent RIDEM inspection of the Property revealed that Respondent was storing greater than 3 cubic yards of solid waste.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> The solid waste was comprised of plastic debris, processed lumber, furniture, fiberglass, used tires and scrap metal.</li> <li>(5) <b>Duration of the violation:</b> Full duration unknown – at least 1½ years. RIDEM first observed solid waste on the Property on September 3, 2020.</li> <li>(6) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</li> </ol>		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent the non-compliance by ceasing disposal of solid waste on the Property or by prohibiting the disposal of solid waste on the Property. Respondent has removed some solid waste from the Property but failed to fully mitigate the non-compliance despite receiving the NIE from RIDEM. In addition, Respondent failed to submit documentation to RDEM to demonstrate proper disposal of the solid waste that was removed from the Property.
- (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:** As owner of the Property and Facility, Respondent had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<b>MAJOR</b>	<b>MODERATE</b>	<u>  X  </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>\$2,500</b>	\$1,250 to \$2,500	\$250 to \$1,250

# PENALTY MATRIX WORKSHEET

CITATION: Operating a solid waste management facility without a license from RIDEM  
 VIOLATION NO.: D (4)(a)

<b>TYPE</b>		
<u>  X  </u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.	<u>      </u> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.	<u>      </u> <b>TYPE III</b> <u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.
<b>DEVIATION FROM THE STANDARD</b> THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</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> Respondent 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 RIDEM is of prime importance to the regulatory program. RIDEM’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.</li> <li>(2) <b>Environmental conditions:</b> The Property is adjacent to a freshwater wetland that contains a channel which travels via a culvert under State Avenue and discharges into Cook’s Pond in Fall River, Massachusetts. The Facility is located in a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. The Facility is located in the Mount Hope Bay watershed.</li> <li>(3) <b>Amount of the pollutant:</b> The most recent RIDEM inspection of the Property revealed that Respondent was storing greater than 3 cubic yards of solid waste.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> Some of the solid waste is combustible and presents a fire hazard. The stockpiles of solid waste may provide harborage to rodents or disease vectors. The abandoned vehicles may contain or leak hazardous liquids or pollutants such as gasoline, diesel fuel, lubricating oils, hydraulic oils, transmission fluid or other materials.</li> <li>(5) <b>Duration of the violation:</b> Full duration unknown – at least 1½ years. RIDEM first observed solid waste on the Property on September 3, 2020.</li> <li>(6) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</li> </ol> <p style="text-align: right;">(continued)</p>		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent the non-compliance by ceasing disposal of solid waste on the Property or by prohibiting the disposal of solid waste on the Property. Respondent has removed some solid waste from the Property but failed to fully mitigate the non-compliance despite receiving the NIE from RIDEM. In addition, Respondent failed to submit documentation to RIDEM to demonstrate proper disposal of the solid waste that was removed from the Property.
- (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 Respondent for the failure to comply with Rhode Island's *Refuse Disposal Act*. Respondent, as owner of the Property and Facility, 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.

<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>\$2,500</b>	\$1,250 to \$2,500	\$250 to \$1,250

# PENALTY MATRIX WORKSHEET

CITATION: Open burning of solid waste  
 VIOLATION NOs.: D (4)(b) and D (5)

<b>TYPE</b>		
<b><u>  X  </u> TYPE I</b> DIRECTLY related to protecting health, safety, welfare, or environment.	<b><u>      </u> TYPE II</b> INDIRECTLY related to protecting health, safety, welfare, or environment.	<b><u>      </u> TYPE III</b> INCIDENTAL to protecting health, safety, welfare, or environment.
<b>DEVIATION FROM THE STANDARD</b>		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<b><u>FACTORS CONSIDERED:</u></b> Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.		
(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent burned solid waste in an open fire on the Property. Prohibiting the open burning of solid waste is of prime importance to the regulatory program. The SW Rules and the APC Rules prohibit the open burning of solid waste. Failure to comply will likely result in threats or harm to public health and safety and the environment.		
(2) <b>Environmental conditions:</b> Residential properties are located within 275 feet of the Facility. The Facility is located within 40 feet of Cook’s Pond.		
(3) <b>Amount of the pollutant:</b> The amount of solid waste that was burned is unknown at this time.		
(4) <b>Toxicity or nature of the pollutant:</b> The open burning of mixed solid waste results in the release of pollutants to the air, which may result in adverse impacts to public health and safety.		
(5) <b>Duration of the violation:</b> Full duration unknown.		
(6) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the non-compliance. RIDEM has no knowledge of what steps, if any, Respondent took to mitigate the noncompliance.
- (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 Respondent for the failure to comply with the SW Rules and APC Rules. Respondent, as owner of the Property and Facility, 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.

<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>\$2,500</b>	\$1,250 to \$2,500	\$250 to \$1,250