

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

IN RE: Calvin Hill, Jr.

FILE NO.: OCI-OWTS-19-34

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 April 22, 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 that specific actions be taken to correct the violations. On May 29, 2019, Respondent acknowledged receipt of the NIE. On January 29, 2021, DEM issued a letter to Respondent as a follow up to the NIE. The letter stated that Respondent was in noncompliance with the NIE. On February 15, 2021, Respondent sent electronic correspondence to DEM in response to the letter. Respondent stated that financial and personal issues have prevented him from complying with the NIE. As of the date of the NOV, Respondent has failed to comply with the NIE.

C. Facts

- (1) The property is located at 2 Brenden Street, Assessor's Plat 36, Lot 139, in Westerly, Rhode Island ("Property").
- (2) Respondent owns the Property. On June 30, 2017, the Property was transferred to Respondent ("Transfer").
- (3) The Property includes a 2-bedroom residential dwelling ("Dwelling") that was constructed in 1958.
- (4) DEM reviewed its records for the Property. The review revealed that no permit was issued by DEM for an onsite wastewater treatment system ("OWTS") for the Dwelling.
- (5) DEM contacted the Town of Westerly, Rhode Island to determine if the Dwelling is connected to public sewers. DEM was informed that public sewers are available, and there is no record of a connection to public sewers for the Dwelling.
- (6) Prior to 1968, cesspools were a common means of sewage disposal. Regulations enacted in Rhode Island in 1968 prohibited installation of cesspools.

- (7) Upon information and belief, DEM has determined that a cesspool services the Dwelling.
- (8) Upon information and belief, the Transfer was not:
 - (i) Between current spouses.
 - (ii) Between parents and their children.
 - (iii) Between full siblings.
 - (iv) Where the grantor transfers the real property to be held in a revocable or irrevocable trust, where at least one of the designated beneficiaries is of the first degree of relationship to the grantor.
- (9) As of the date of the NOV, Respondent has failed to connect the plumbing for the Dwelling to the public sewers.

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 §23-19.15-12(a)** – requiring that any cesspool found to be serving a building or use subject to sale or transfer shall be removed and replaced with an OWTS or the building served by the cesspool shall be connected to a public sewer system within 12 months of the date of sale or transfer.
- (2) **Rhode Island’s Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems (250-RICR-150-10-6) [November 25, 2018 to Current] (“OWTS Regulations”), Part 6.57(C)(2) [previously, Rule 53.3.2 (June 27, 2016 to November 25, 2018)]** – requiring that any cesspool found to be serving a building or use subject to sale or transfer shall be removed or abandoned within 12 months of the date of sale or transfer.

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) **Within 30 days of receipt of the NOV**, connect the plumbing for the Dwelling to the public sewerage system for the Town of Westerly, properly abandon the cesspool in accordance with Part 6.56 of the OWTS Regulations and submit documentation to DEM’s Office of Compliance and Inspection to demonstrate compliance.

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:

\$1,200

- (2) The proposed administrative penalty is calculated pursuant to Rhode Island's *Rules and Regulations for Assessment of Administrative Penalties* ("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.
- (c) 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.
- (d) 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*.
- (2) A copy of each request for hearing must also be forwarded to:

Tricia Quest, 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 Town of Westerly, 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) Tricia Quest of DEM's Office of Legal Services at (401) 222-6607 or at tricia.quest@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
DEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

Calvin D. Hill, Jr.
2 Brenden Street
Westerly, RI 02891

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, OWTS
 File No.: OCI-OWTS-19-34
 Respondent: Calvin D. Hill

| GRAVITY OF VIOLATION | | | | | |
|--|---|-----------|---------------------|----------------------------------|----------------|
| SEE ATTACHED "PENALTY MATRIX WORKSHEETS." | | | | | |
| VIOLATION No. & CITATION | APPLICATION OF MATRIX | | PENALTY CALCULATION | | AMOUNT |
| | Type | Deviation | Penalty from Matrix | Number or Duration of Violations | |
| D (1) and D (2) – Failure to Abandon Cesspool | Type I <i>(\$1,000 Max. Penalty) *</i> | Minor | \$400 | 3 years | \$1,200 |
| SUB-TOTAL | | | | | \$1,200 |

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

ECONOMIC BENEFIT FROM NONCOMPLIANCE

COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT COMPLY. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:

- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE, OR
- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.

A review of the record in this matter has revealed that Respondent has either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.

COST RECOVERY

ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.

A review of the record in this matter has revealed that 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 = \$1,200

PENALTY MATRIX WORKSHEET

CITATION: Failure to Abandon Cesspool

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

| TYPE | | |
|---|---|--|
| <input checked="" type="checkbox"/> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare, or environment. | <input type="checkbox"/> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment. | <input type="checkbox"/> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare, or environment. |
| DEVIATION FROM THE STANDARD | | |
| THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED. | | |
| <p>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: The Rhode Island Cesspool Phase Out Act requires that any cesspool found to be serving a building or use subject to sale or transfer shall be removed or abandoned within 12 months of the date of sale or transfer. Respondent failed to remove and properly abandon the cesspool on the Property. (2) Environmental conditions: The cesspool serves a 2-bedroom residential dwelling 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 and contains pollutants that can cause groundwater and surface water impacts. (5) Duration of the violation: 3 years, 10 months – the cesspool was required to be removed by June 30, 2018. (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 take reasonable and appropriate steps to prevent and/or mitigate the noncompliance despite being advised by DEM in notices issued on or about April 22, 2019 and January 28, 2021 that the cesspool needed to be removed. (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: The notices issued on April 22, 2019 and January 28, 2021 stated the penalty could be up to \$1,000 per day. | | |
| MAJOR | MODERATE | <input checked="" type="checkbox"/> 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 | \$600 to \$800 | \$400 to \$600 |
| | MODERATE | \$600 to \$800 | \$400 to \$600 | \$200 to \$400 |
| | MINOR | \$400 to \$600 \$400 | \$200 to \$400 | \$100 to \$200 |