

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Peter Wilson d/b/a Price Auto Sales, Inc.
RP INVESTMENT COMPANY, LLC**

FILE NO.: OCI-HW-18-73

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 19 February 2020, DEM issued a *Notice of Intent to Enforce* (“NIE”) to Respondents by certified mail for some of the alleged violations that are the subject of this *Notice of Violation* (“NOV”). The NIE required specific remedial actions to correct the alleged violations. On 24 February 2020, the NIE was delivered to Respondents. Respondents failed to fully comply with the NIE. On 25 March 2021, DEM issued a second NIE to Respondents by certified mail for the alleged violations that are the subject of the NOV. The NIE required specific remedial actions to correct the alleged violations. On 29 March 2021, the NIE was delivered to RP INVESTMENT COMPANY, LLC (“RP”). The NIE sent to Peter Wilson (“Wilson”) was returned “Unclaimed – Unable to Forward”. On 5 April 2021, RP notified DEM that it had provided a copy of the NIE to Wilson and directed Wilson to comply with the NIE. As of the date of the NOV, Respondents have failed to comply with the NIE.

C. Facts

- (1) The property is located at 184 Danielson Pike, Assessor's Map 10, Lot 26A, Foster, Rhode Island (“Property”).
- (2) Price Auto Sales, Inc. operates an automobile repair shop (“Building”) and used car dealership at the Property (“Facility”).
- (3) RP owns the Property.
- (4) On 6 November 2014, Rhode Island’s Secretary of State revoked the Certificate of Registration/Organization for Price Auto Sales, Inc. Wilson is the last known president of the corporation.

- (5) On 11 September 2019, DEM inspected the Facility and spoke with Wilson. The inspection revealed the following:
 - (a) One 55-gallon container holding used oil located outdoors that was not stored under a roofed structure on an impervious surface.
 - (b) Petroleum stains on several sections of the asphalt parking lot.
 - (c) A used oil release in an area covered by crushed stone over a soil surface.
 - (d) No steps taken to contain and clean up the oil that was released to the ground.
- (6) On 25 March 2020, DEM inspected the Property. The inspection revealed no action was taken to clean up the oil releases to the asphalt pavement and ground surfaces.
- (7) On 16 December 2021, DEM inspected the Property. The inspection revealed the following:
 - (a) Used oil releases on the ground in locations to the south and west of the Building.
 - (b) Oil-stained soils on the ground surface in multiple locations throughout the Property.
 - (c) No evidence that action was taken in clean up the oil releases.
- (8) DEM did not issue Respondents a permit to discharge oil onto the land at the Property.
- (9) As of the date of the NOV, Respondents have yet to notify DEM that they have cleaned up the oil releases.

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 DEM.
- (2) **Rhode Island’s Oil Pollution Control Regulations (250-RICR-140-25-2) [effective 2 May 2018 to Current] (the “OPC Regulations”)**
 - (a) **Part 2.6(A)** – prohibiting the placement of oil or pollutants into the waters or 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.

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 10 days of receipt of the NOV**, submit to DEM’s Office of Compliance and Inspection (“OCI”) written verification that you have retained the services of a qualified environmental consultant or contractor to investigate the oil releases and implement all required remedial actions, which shall include the excavation and removal of petroleum contaminated soils.
- (2) **Within 30 days of receipt of the NOV**, submit a plan prepared by the consultant to OCI that includes a determination whether any remedial action will be required within freshwater wetlands on the Property, a proposed scope-of-work, and a schedule to complete the work (“RAP”).
- (3) The RAP shall be subject to DEM’s review and approval. Upon review, DEM shall provide written notification to you either granting formal approval or stating the deficiencies therein. **Within 14 days** (unless a longer time is specified) of receiving a notification of deficiencies in the RAP, submit to DEM a modified proposal or additional information necessary to correct the deficiencies. **Within 20 days of approval** (unless otherwise expressly authorized by DEM in writing to commence work later) commence work on the project in accordance with the methods approved by DEM and in full compliance with Part 2.12 of the OPC Regulations. The remedial action shall continue until the release has been mitigated to the satisfaction of DEM, as per Part 2.12 of the OPC Regulations.
- (4) **Prior to the initiation of site work**, install a continuous uninterrupted line of appropriate biodegradable soil erosion/sediment controls (e.g., staked straw wattles, staked coir logs/coconut fiber logs, and/or staked haybales,), along the outer edge of all oil spill/required clean-up zones, between all areas proposed to be disturbed and the landward limits of all adjacent freshwater wetlands. These soil erosion and sediment controls shall be regularly inspected and properly and continually maintained (and replaced, if necessary) during and following the completion of the required oil remediation project. These soil erosion and sediment controls shall remain in place until such time that all the surrounding areas are properly stabilized. **At the discretion and direction of DEM, additional soil erosion and sediment controls shall be installed on-site, as deemed necessary, to protect all freshwater wetlands.**

- (5) **Within 30 days of completion of the initial remedial action**, submit a written report prepared by the consultant detailing all remedial actions taken. The report shall include a laboratory analytical report for all confirmatory soil samples obtained from the bases and sidewalls of all excavation areas and written verification that all oil spill cleanup debris has been disposed of at a licensed solid waste management or recycling facility.
- (6) Notify OCI when excavation of the petroleum-impacted soils is complete to schedule an appointment for a follow-up inspection. OCI will evaluate the written report and the remedial work and determine whether the work completed is satisfactory or whether further remedial action is necessary.
- (7) All oil spill cleanup debris generated during the remedial action shall be managed and disposed of in full compliance with Part 2.13 of the OPC Regulations. Written verification that the waste has been removed from the site for lawful disposal or recycling shall be submitted to OCI within 10 days of the project's completion.
- (8) After all the oil spill cleanup debris has been removed, all disturbed surfaces within any freshwater wetlands (including Perimeter Wetland) shall be covered with 4 inches (minimum) of plantable topsoil, as necessary, seeded with a wildlife conservation seed mixture, and stabilized with a thick mat of loose straw mulch. Any slopes resulting from remediation activities that have a grade of 3:1 or steeper must also be covered with an acceptable biodegradable erosion control blanket material (e.g., jute mesh, coconut fiber matting or other biodegradable matting).
- (9) All restored freshwater wetland areas shall be allowed to revert to a natural wild condition. No future clearing, mowing, cutting, trimming, or other new improvements/alterations are authorized in any wetland area (including Perimeter Wetland) on the Property without first applying for and 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:

\$12,500

- (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.

- (3) 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.
- (4) 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.
- (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 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, Esquire
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 Foster, 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) 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 Tracey 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
DEM - Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

Peter Wilson d/b/a Price Auto Sales, Inc.
184 Danielson Pike
Foster, RI 02825

RP INVESTMENT COMPANY, LLC
c/o Gene M. Carlino, Esq., Resident Agent
1301 Atwood Avenue, Suite 215N
Johnston, RI 02919

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: Oil Pollution
 File No.: OCI-HW-18-73
 Respondents: Peter Wilson d/b/a Price Auto Sales, Inc. and RP INVESTMENT COMPANY, LLC

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)(a) – Release of oil to the land of the State	Type I <i>(\$25,000 Max. Penalty) *</i>	Moderate	\$6,250	1 violation	\$6,250
D (2)(b) – Failure to take remedial action after a release of oil	Type I <i>(\$25,000 Max. Penalty) *</i>	Moderate	\$6,250	1 violation	\$6,250
SUB-TOTAL					\$12,500

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

ECONOMIC BENEFIT FROM NON-COMPLIANCE
<p>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:</p> <ul style="list-style-type: none"> - THERE IS NO IDENTIFIABLE BENEFIT FROM NON-COMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED.
<p>A review of the record in this matter has revealed that Respondents have either enjoyed no identifiable benefit from the non-compliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.</p>

COST RECOVERY
<p>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.</p>
<p>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.</p>

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$12,500

PENALTY MATRIX WORKSHEET

CITATION: Release of oil to the land of the State

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

TYPE		
<u>X</u> TYPE I DIRECTLY related to protecting health, safety, welfare or environment.	___ TYPE II INDIRECTLY related to protecting health, safety, welfare or environment.	___ TYPE III INCIDENTAL 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.

FACTORS CONSIDERED:

Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents released or allowed for the release of oil and petroleum products to the Property. The unpermitted release of oil and petroleum products to the land of the State is prohibited by Rhode Island’s law 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 drinking water resources, public health and safety and the environment.
- (2) **Environmental conditions:** The Property is located in a wellhead protection area for a non-community drinking water supply well and within 850 feet of another. The Property is located in a GA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment. Residences in the vicinity rely on private drinking water wells. The Property is located within and around regulated freshwater wetlands and within 450 feet of a freshwater stream. The Property is in Quaduck Brook watershed.
- (3) **Amount of the pollutant:** Unknown. The remedial actions required by DEM will likely reveal the extent of the releases.
- (4) **Toxicity or nature of the pollutant:** Oil and petroleum products are capable of causing significant adverse impacts to subsurface soils, groundwater and surface water if released to the environment. Certain petroleum constituents are harmful to human health.
- (5) **Duration of the violation:** Approximately 2½ years. DEM first observed evidence of exterior oil spillage and releases on 11 September 2019.
- (6) **Areal extent of the violation:** Unknown. The remedial actions required by DEM will likely reveal the extent of the releases.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the noncompliance by allowing for the uncontrolled spillage and release of oil to asphalt and soil surfaces on the Property. Respondents failed to take steps to mitigate the noncompliance despite receiving the 2020 and 2021 NIEs 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:** As owners and operators of the Property and Facility, Respondents had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence. Negligence is attributable to Respondents for the failure to prevent the releases of oil and petroleum products to the land of the State.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	<u> X </u> 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	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500 \$6,250	\$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 (2)(b)

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 VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED: 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 failed to remediate 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 drinking water resources, public health and safety and the environment. (2) Environmental conditions: The Property is located in a wellhead protection area for a non-community drinking water supply well and within 850 feet of another. The Property is located in a GA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment. Residences in the vicinity rely on private drinking water wells. The Property is located within and around regulated freshwater wetlands and within 450 feet of a freshwater stream. The Property is in Quaduck Brook watershed. (3) Amount of the pollutant: Unknown. The remedial actions required by DEM will likely reveal the extent of the releases. (4) Toxicity or nature of the pollutant: Oil and petroleum products are capable of causing significant adverse impacts to subsurface soils, groundwater and surface water if released to the environment. Certain petroleum constituents are harmful to human health. (5) Duration of the violation: Approximately 2½ years. DEM first observed evidence of oil spillage and releases on 11 September 2019. (6) Areal extent of the violation: Unknown. The remedial actions required by DEM will likely reveal the extent of the releases. 		
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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the noncompliance by completing immediate corrective action when the oil and other pollutants were released to the land of the State. Respondents failed to take steps to mitigate the noncompliance despite receiving the 2020 and 2021 NIEs 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:** As owners and operators of the Property and Facility, Respondents had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence. Negligence is attributable to Respondents 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.

MAJOR	<u> X </u> 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	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500 \$6,250	\$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