

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

IN RE: Stephen A. Cary

FILE NO.: OCI-HW-22-33

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 23 May 2013, 13 June 2013, and 14 March 2016, RIDEM inspected the property that is the subject of this Notice of Violation (“NOV”). The inspections revealed the same violations that are the subject of the NOV. At that time, Respondent informed RIDEM that oil from a decommissioned above ground oil tank was placed onto the driveway at the property for the purpose of applying a topcoat. On 11 January 2017, RIDEM issued a Notice of Violation (“2017 NOV”) to Respondent. Respondent paid an administrative penalty to resolve the 2017 NOV.

C. FACTS

- (1) The property is located at 7 Englewood Lane in Warwick, Rhode Island (“Property”). The Property includes a residence.
- (2) Respondent owns the Property.
- (3) On 13 April 2022, RIDEM received a complaint alleging that the Respondent takes heating oil tanks to the Property, allows the oil to leak onto the driveway, and then brushes the oil on the driveway using a broom.
- (4) On 14 April 2022, RIDEM inspected the Property. The inspection revealed the following:
 - (a) One half of the driveway was observed to be darker in color, and a strong odor of heating oil was detected.
 - (b) Respondent informed RIDEM’s inspector that a driveway sealant purchased at a local home improvement store had been applied.
 - (c) RIDEM’s inspector determined that it did not appear or smell like the typical sealant commercially available.

- (5) Respondent did not receive approval from RIDEM to place oil on the Property.

D. VIOLATION

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

- (1) **R.I. Gen Laws Section 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) **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, control the release 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 **IMMEDIATELY upon receipt of the NOV**, cease and desist the placement of oil on the Property.

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:

\$10,000

- (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. 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, 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.
- (3) 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.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if the Director determines 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:

Jenna Giguere, Esquire
RIDEM - 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 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) 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) Jeanna Giguere of RIDEM's Office of Legal Services at (401) 222-6607 ext. 2772306 or at jenna.giguere@dem.ri.gov. All other inquiries should be directed to Tracey Tyrrell of RIDEM'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
RIDEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

Stephen A. Cary
7 Englewood Lane
Warwick, RI 02888

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: Oil Pollution Control
File No.: OCI-HW-22-33
Respondent: Stephen A. Cary

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) – Placement of Oil to the Land	Type I <i>(\$25,000 Max. Penalty) *</i>	Moderate	\$10,000	1 violation	\$10,000
SUB-TOTAL					\$10,000

*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 RIDEM 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 = \$10,000

PENALTY MATRIX WORKSHEET

CITATION: Placement of Oil to the Land

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

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.		
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: Respondent placed oil on the Property. State regulations prohibit the placement of oil to the land. (2) Environmental conditions: Oil was placed onto the driveway. (3) Amount of the pollutant: Unknown. (4) Toxicity or nature of the pollutant: Oil is known to cause soil and water contamination when released to the environment. (5) Duration of the violation: Full duration unknown - RIDEM documented that oil was placed on the land on the Property on 14 April 2022. (6) Areal extent of the violation: Considered, but not utilized for this calculation. <div style="text-align: right;">(continued)</div>		

(continued from the previous page)

- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable steps to prevent the noncompliance. RIDEM is unaware of what steps, if any, Respondent has taken 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:** Respondent was issued the 2017 NOV for the exact same violation and paid a \$4,000 penalty to resolve the 2017 NOV. At that time, Respondent informed RIDEM that oil from a decommissioned above ground oil tank was placed onto the driveway at the property for the purpose of applying a topcoat.
- (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 complete control over the violation and the violation was foreseeable.
- (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
-------	-----------------------	-------

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 \$10,000	\$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