

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Cedar Tree Properties, Inc.

FILE NO.: OCI-SR-22-1

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 14 August 2019, RIDEM issued a *Letter of Non-Compliance* (“2019 LNC”) to Respondent for the alleged violations that are the subject of this *Notice of Violation* (“NOV”). The 2019 LNC required specific actions to correct the violations. On 11 September 2019, in response to the 2019 LNC, RIDEM received a letter from Attorney Mary B. Shekarchi on behalf of Respondent stating that Respondent intended to bring the property into compliance. On 2 July 2021, RIDEM issued a second *Letter of Non-Compliance* (“2021 LNC”) via Certified Mail to Respondent, which was delivered on 8 July 2021. On 1 October 2021, RIDEM issued a *Notice of Intent to Enforce* (“NIE”) via Certified Mail to Respondent, which was delivered on 7 October 2021. As of the date of this NOV, Respondent has failed to comply with the 2021 LNC and NIE.

C. FACTS

- (1) Respondent owns property located at 450 Pavilion Avenue and Evergreen Avenue, Assessor’s Plat 311, Lot 245 and Lot 246 in Warwick, Rhode Island (“Property”), taking title on 22 December 2016.
- (2) RIDEM is in receipt of at least 132 documents that identify concentrations of volatile organic compounds (“VOCs”) in soils on the Property that exceed the *Method One Direct Exposure Criteria* set forth in Rhode Island’s *Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases* (“Remediation Regulations”) and concentrations of VOCs in groundwater on the Property that exceed the *GB Groundwater Objectives* (“GBGO”) set forth in the Remediation Regulations.

- (3) Based on the documented presence and nature of the hazardous materials, RIDEM determined that a release of hazardous materials occurred at the Property, as per the Remediation Regulations. The Property has been known to RIDEM since September 1990 and is identified as SR-35-0795.
- (4) Respondent is a Responsible Party as defined in the Remediation Regulations.
- (5) On or about 21 November 2016, RIDEM received a *Groundwater and Soil Gas Assessment Report* for the Property, which was prepared by Sage on behalf of the former Property owner, Jay Bee Realty, LLC (“Jay Bee”). The report documented that groundwater samples obtained from 12 of 16 groundwater monitoring wells at the Property in October 2016 exceeded the GBGO for certain chlorinated volatile organic compounds (“CVOCs”) and that two of the wells contained measurable quantities of non-aqueous phase liquid. Sage also reported that sub-slab soil gas sampling at three downgradient properties revealed CVOCs vapor concentrations above the Massachusetts Department of Environmental Protection’s *Vapor Intrusion Guidance for Residential and Industrial/Commercial Sub-Slab Screening Values*.
- (6) On or about 15 December 2016, RIDEM received a report titled *Site Investigation Work Plan*, which was submitted by Sage on behalf of Jay Bee. The report described the site history, the remedial activities that had occurred to date, and the results of indoor air sampling for the downgradient, off-site buildings and included recommendations for further assessment and remediation.
- (7) On or about 20 December 2016, RIDEM received the fully executed transfer of the existing *Settlement Agreement and Covenant Not to Sue* (“Settlement Agreement”), in which the Settlement Agreement was transferred from Jay Bee to Respondent. RIDEM also received a copy of the *Bona Fide Prospective Purchaser Certification Statement* that was signed by RIDEM and Respondent.
- (8) On 20 February 2018, RIDEM issued a *Letter of Responsibility* (“LOR”) to Respondent, after not receiving any communication from Respondent since they assumed ownership of the Property. The LOR notified Respondent of its responsibility as the Property owner to investigate the existing soil and groundwater contamination at the Property and take all necessary remedial actions to bring the Property into compliance with the Remediation Regulations.
- (9) On or about 26 February 2019, RIDEM received a groundwater monitoring report for the Property, which was submitted by SAGE on behalf of Respondent. Sage reported that laboratory analysis of samples obtained from 12 of 15 groundwater monitoring wells at the Property revealed concentrations of CVOCs that exceeded the GBGO. Sage recommended the installation of additional groundwater monitoring wells at the Property to refine the understanding of the downgradient, off-site extent of the contaminant plume.

- (10) On 14 May 2019, RIDEM issued a letter to Respondent regarding the 1 March 2019 groundwater monitoring report (“15 May Letter”). The letter required that the downgradient extent of the plume be assessed and required monthly progress reports to be submitted by Respondent on the 15th of every subsequent month.
- (11) On or about 28 June 2019, RIDEM received a *Progress Report*, which was submitted by SAGE on behalf of Respondent. The report contained an update on the vapor intrusion assessments on the downgradient buildings and proposed locations for new groundwater monitoring wells.
- (12) On 17 October 2019, RIDEM sent an electronic mail message to Respondent, which included a copy of the 15 May Letter. RIDEM required that a sub-slab depressurization system (“SSDS”) at the 55 Evergreen Avenue residential dwelling (“55 Evergreen”) be turned on immediately and then operated continuously. RIDEM also required that it be notified by 25 October 2019 with confirmation that this task was completed, that new indoor air samples would be collected from 55 Evergreen to ensure the efficacy of the SSDS and that the sampling results be submitted to RIDEM by 31 December 2019.
- (13) On 25 October 2019, RIDEM was notified by Respondent that the SSDS was fully installed and operational at 55 Evergreen.
- (14) On 12 February 2020, Respondent submitted indoor air sampling data for 55 Evergreen. Respondent also requested a meeting with RIDEM and stated that it had selected “natural attenuation” as its remedial plan.
- (15) On 13 February 2020, RIDEM sent an electronic mail message to Respondent that:
 - (a) A natural attenuation remedy requires groundwater monitoring, which had not been compliantly performed at the Property.
 - (b) Natural attenuation would not be an acceptable remedy because CVOC contamination was continuing to adversely impact downgradient properties and the contaminant plume was not under control.
 - (c) The remedial requirements set forth by RIDEM in the 15 May Letter had yet to be completed.
 - (d) Monthly progress reports were not being submitted.
 - (e) RIDEM’s requirements and expectations for the Property had not changed since 2016 and were reiterated in every communication since.

- (16) On 17 February 2021, RIDEM received a report titled *Limited Phase II Site Investigation & Environmental Document Review* completed for the downgradient property on Airport Road (Plat 311, Lot 191), which was prepared by Whitestone Associates, Inc. on behalf of Northpoint Development, LLC. The report contained surface water sample data from the upgradient part of the unnamed stream on the property, which originates to the east of Evergreen Avenue. Whitestone reported that laboratory analysis of the surface water sample revealed concentrations of CVOCs that exceeded the *GA Groundwater Objectives* set forth in the Remediation Regulations. Whitestone advised that the CVOC contamination in the surface water sample indicated that the Property source areas had not been eliminated and that dissolved phase concentrations of CVOCs continue to migrate via the surface water pathway. RIDEM reviewed the report and determined that, based on groundwater flow data collected over the years at the Property and at downgradient, off-site locations, it was significantly likely that the CVOC contamination now present in the stream originated at the Property.
- (17) As of the date of the NOV, RIDEM has received no further correspondence from Respondent and the Property remains in non-compliance with the Remediation Regulations.

D. VIOLATION

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

- (1) **R.I. Gen. Laws Sections 23-19.1-22(a), 23-19.14-6, 46-12-5 and 46-13.1-4** – prohibiting the unpermitted release of hazardous materials to the land and waters of the State.
- (2) **Rhode Island's Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases (250-RICR-140-30-1)**
- (a) **Part 1.5.1 (previously Section 4.01)** – prohibiting the release of hazardous materials in any manner which may impact the classification or uses of the land, groundwater, or surface water without complying with all applicable rules and regulations.
- (b) **Part 1.5.2 (previously Section 4.02)** – requiring responsible parties who discover or are notified of the potential unpermitted disposal, release or presence of hazardous materials released from, present on or originating from its operations or property to immediately initiate investigations and remedial actions as specified in Parts 1.6 through 1.13.
- (c) **Part 1.9.3(B) (previously Section 8.03)** – requiring that groundwater contaminated because of a release of hazardous materials located in a GB groundwater classification zone undergo the remedial actions necessary to attain the applicable groundwater objectives.

- (d) **Part 1.9.8(B)(2)(b) (previously Section 8.08(B)(ii)(2)** – requiring performing parties to take affirmative steps to eliminate migration of any hazardous substance in any GB groundwater classification zone to other properties that are not under the control of the performing parties.
- (e) **Part 1.10.2(A) (previously Section 9.01)** – requiring performing parties to submit Remedial Action Work Plans that establish remedial objectives for all impacted media in a manner consistent with Part 1.9.

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** begin submitting biweekly status reports (via electronic mail to RIDEM's Office of Land Revitalization & Sustainable Materials Management ("LRSMM") Project Manager Ashley Blauvelt) until further notice.
- (2) **Within 10 days of receipt of the NOV**, submit a written response to LRSMM that acknowledges receipt of the NOV, states Respondent's intentions towards bringing the Property into compliance with the Remediation Regulations and provides written verification that Respondent has retained the services of a qualified environmental consultant to complete all required remedial actions set forth in this Order.
- (3) **Within 30 days of receipt of the NOV**, submit a comprehensive groundwater and surface water sampling plan for LRSMM approval that, at a minimum, includes the following:
 - (a) A report on the location and condition of all existing groundwater monitoring wells on the Property.
 - (b) A proposal for the installation of replacement groundwater monitoring wells for those wells that either, cannot be located, or are no longer viable.
 - (c) A proposal for new groundwater monitoring well locations downgradient from the Property including, but not limited to, locations on Evergreen Avenue, behind the properties on Evergreen Avenue and on Plat 311, Lot 191.
 - (d) A proposed surface water sampling plan for the unnamed stream that originates in the southwest corner of Plat 311, Lot 191 (exactly east of Plat 311, Lot 152).
 - (e) A drawn-to-scale plan that shall include all on-site and off-site sampling locations and all relevant on-site and off-site features
 - (f) A proposal for the laboratory analysis of samples that shall henceforth be obtained from each groundwater monitoring well and the unnamed stream on a quarterly basis.

- (4) Based on the laboratory analytical results of the first quarterly sampling round, your consultant shall map the location of the CVOC plume, which shall include concentration gradients and the downgradient extent of the plume. Additional well locations are to be proposed if more data is needed to identify the plume's downgradient extent.
- (5) **Within 30 days of receipt of the NOV**, contact the owners of all downgradient properties that are known to be impacted by elevated concentrations of CVOCs in the soil gas (as documented in the *Groundwater and Soil Gas Assessment Report* dated 21 November 2016) to request permission to perform soil gas monitoring. Should the soil gas be found to be impacted by the CVOC plume, install, monitor, and maintain a SSDS at all impacted properties. This shall also include the properties identified as 60 Evergreen Avenue and 82 Evergreen Avenue. If the owners of these properties continue to prohibit access, provide their contact information to LRSMM.
- (6) **Within 30 days of receipt of the NOV**, the SSDS installed at 55 Evergreen Avenue shall be inspected to verify that it is fully operational and functional in accordance with its design specifications. Indoor air sampling shall be performed to ensure that the SSDS remains effective at mitigating intrusion of CVOC impacted soil gas.
- (7) **Within 60 days of completion of the first quarterly sampling round**, submit a proposed *Remedial Action Work Plan* for LRSMM's review and approval. The RAWP shall include proposed strategies that both, contain the CVOC plume, and return the impacted groundwater and surface water to full compliance with the Remediation Regulations.

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:

\$87,500

- (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 – Environmental Response Fund** 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 RIDEM 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, Suite 350
Providence, RI 02908-5767

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b).
 - (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Part 1.7(B) of 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:

Joseph J. LoBianco, Esquire
RIDEM - Office of Legal Services
Promenade Street, Suite 425
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.

- (4) Each respondent must file a separate and timely request for an administrative hearing before 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 City of Warwick, Rhode Island, wherein the Property is located, to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and Section 42-17.1-2(31), 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) Joseph J. LoBianco of RIDEM's Office of Legal Services at (401) 222-6607 ext. 2772302 or at joseph.lobianco@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:

Cedar Tree Properties, Inc.
c/o Armando F. Lusi, Registered Agent
450 Pavilion Avenue
Warwick, RI 02888

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program:	Site Remediation
File No.:	OCI-SR-22-1
Respondent:	Cedar Tree Properties, Inc.

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 hazardous materials	Type I <i>(\$25,000 Max. Penalty) *</i>	Major	\$25,000	1 violation	\$25,000
D(2)(b), (c) (d) and (e) – Failure to investigate the release, develop a RAWP and perform all work	Type I <i>(\$25,000 Max. Penalty) *</i>	Major	\$12,500	5 years	\$62,500
SUB-TOTAL					\$87,500

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

ECONOMIC BENEFIT FROM NON-COMPLIANCE

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

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

A review of the record in this matter has revealed that Respondent has 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.

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 = \$87,500

PENALTY MATRIX WORKSHEET

CITATION: Release of hazardous materials

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

TYPE		
<p><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p><u> </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p><u> </u> TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR 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"> The extent to which the act or failure to act was out of compliance: Respondent's failure to perform the required remedial actions has resulted in CVOC contamination of groundwater on other off-site properties, CVOC vapor intrusion in other off-site residential and commercial structures and CVOC contamination in a freshwater stream located on another property. When Respondent assumed ownership, the contaminant plume was contained and the remedial actions were resulting in the breakdown of the chemicals. The unpermitted release of hazardous materials to the land or waters of the State is prohibited by the R.I. Gen. Laws and the Remediation Regulations. A release of hazardous materials to the land or waters of the State will typically cause adverse impacts to public health and safety and the environment. Environmental conditions: The Property is in a developed area with potential vapor receptors including residential and commercial structures. The Property is in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. Upon information and belief, there are no public or private drinking water supply wells proximate to the Property. The unnamed freshwater stream (with documented CVOC contamination) originates approximately 200 feet from the southeast corner of the Property. The Property is in Providence River watershed. CVOC soil and groundwater contamination has been discovered on and downgradient of the Property. Amount of the pollutant: Laboratory analysis of soil and groundwater samples collected from the Property and downgradient of the Property revealed concentrations of CVOCs that exceeded the <i>Method One Direct Exposure Criteria</i> and the <i>GB Groundwater Objectives</i> set forth in the Remediation Regulations. Analysis of groundwater samples obtained at the Site in October 2018 revealed the presence of cis-1,2-dichloroethene, 1,1-dichloroethene, trichloroethene and vinyl chloride at concentrations up to 194 times the GB Groundwater Objectives. Toxicity or nature of the pollutant: The volatile nature of CVOCs presents a potential public health hazard (due to potential inhalation of CVOC vapors). CVOCs can cause significant soil and groundwater contamination if released to the environment. CVOCs are potentially harmful to human health and safety and the environment. The detected CVOCs are all known human carcinogens. Duration of the violation: Considered, but not utilized for this calculation. Areal extent of the violation: Considered, but not utilized for this calculation. 		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** Respondent failed to prevent the non-compliance by continuing the investigatory and remedial actions that were already in place when it assumed ownership of the Property. Respondent has yet to mitigate the noncompliance despite receiving the LOR, the 2019 LNC, the 2021 LNC and the NIE from RIDEM, all of which required that it do so.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondent for the failure to comply with the R.I. Gen. Laws and the Remediation Regulations. As owner of the Property and as a responsible party, Respondent had control over the occurrence of the violation. The unpermitted release of hazardous materials is prohibited by the R.I. Gen. Laws and the Remediation Regulations.
- (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	MAJOR	\$12,500 to \$25,000 \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to investigate a release, develop a RAWP and perform all work
 VIOLATION NOS.: D (2)(b), (c), (d) and (e)

TYPE		
<u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.	TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.	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: <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> The extent to which the act or failure to act was out of compliance: Respondent failed to procure the services of a qualified environmental consultant to perform and complete all required investigatory and remedial actions for the release of hazardous materials at the Property in accordance with the Remediation Regulations. The release investigation and remedial action requirements set forth in Parts 1.5.2, 1.9.3, 1.9.8 and 1.10.2 of the Remediation Regulations are of prime importance to the regulatory program. Respondent's failure to comply has resulted in CVOC contamination of groundwater on other off-site properties, CVOC vapor intrusion in other off-site residential and commercial structures and in CVOC contamination in a freshwater stream located on another property. The investigatory and remedial requirements set forth by RIDEM in the Remediation Regulations are designed to prevent such adverse impacts to public health and safety and the environment. Environmental conditions: The Property is in a developed area with potential vapor receptors including residential and commercial structures. The Property is in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. Upon information and belief, there are no public or private drinking water supply wells proximate to the Facility. The unnamed freshwater stream (with documented CVOC contamination) originates approximately 200 feet from the southeast corner of the Property. The Property is in Providence River watershed. CVOC soil and groundwater contamination has been discovered on and downgradient of the Property. Amount of the pollutant: Laboratory analysis of soil and groundwater samples collected from the Property and downgradient of the Property revealed concentrations of CVOCs that exceeded the <i>Method One Direct Exposure Criteria</i> and the <i>GB Groundwater Objectives</i> set forth in the Remediation Regulations. Analysis of groundwater samples obtained at the Site in October 2018 revealed the presence of cis-1,2-dichloroethene, 1,1-dichloroethene, trichloroethene and vinyl chloride at concentrations up to 194 times the GB Groundwater Objectives. Toxicity or nature of the pollutant: The volatile nature of CVOCs presents a potential public health hazard (due to potential inhalation of CVOC vapors). CVOCs can cause significant soil and groundwater contamination if released to the environment. CVOCs are potentially harmful to human health and safety and the environment. The detected CVOCs are all known human carcinogens. Duration of the violation: Approximately 5 1/2 years – Respondent took title to the Property and assumed responsibility for the Settlement Agreement and the remediation requirements. Areal extent of the violation: Considered, but not utilized for this calculation. 		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** Respondent failed to prevent the non-compliance by commencing with the investigation and remediation of the CVOC contamination when it took ownership of the Property. Respondent has yet to mitigate the noncompliance despite receiving the LOR, the 2019 LNC, the 2021 LNC and the NIE from RIDEM, all of which required that it do so.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondent for the failure to comply with the Remediation Regulations. As owner of the Property and as a responsible party, Respondent had full control over the occurrence of the violations. The requirements and procedures for the investigation and remediation of hazardous material releases are clearly established in the Remediation Regulations.
- (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	MAJOR	\$12,500 to \$25,000 \$12,500	\$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