

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Douglas G. Almeida

FILE NO.: OCI-OWTS-23-16

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 1 March 2023, RIDEM 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 10 March 2023, the NIE was delivered to Respondent. On 15 March 2023, Respondent had a telephone conversation with a RIDEM representative regarding the NIE and what he needed to do to comply 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 0 Mount Hope Avenue, Assessor's Plat 69, Lot 172B in Portsmouth, Rhode Island (the “Property”).
- (2) Respondent owns the Property. Respondent acquired the Property on 25 February 2011 from Hog Island, Inc.
- (3) On 30 July 2009, Respondent applied to RIDEM (application #0627-0721) to construct a new onsite wastewater treatment system (“OWTS”) for a new single-family house (“New Building Application”). Geralyn Small (“Small”) was the licensed OWTS designer who submitted the New Building Application.
- (4) Respondent stated on the New Building Application that he owned the Property.
- (5) On 6 August 2009, RIDEM approved the New Building Application. One condition of the approval was to have RIDEM inspect prior to covering any component of the system with backfill.

- (6) At the time the New Building Application was submitted and approved by RIDEM, Hog Island, Inc. owned the Property.
- (7) On 6 August 2014, the New Building Application expired.
- (8) On 22 December 2022, a RIDEM representative spoke with Respondent regarding the status of the OWTS installation. Respondent stated the following:
 - (a) He installed the OWTS himself in 2010 or 2011.
 - (b) He installed the OWTS in accordance with the plan RIDEM approved.
- (9) On 10 January 2023, RIDEM received a report from the Town of Portsmouth (“Portsmouth”) Wastewater Manager regarding an inspection of the Property on 7 October 2022 by Portsmouth’s OWTS inspector. The report stated that the inspector observed a 1,000-gallon plastic tank that had 2 inches of sludge at the bottom of the tank. No leachfield or other components of the OWTS were noted as present.
- (10) RIDEM was never contacted after RIDEM approved the New Building Application and RIDEM did not inspect the OWTS.
- (11) RIDEM has no record of a Certificate of Construction submitted by Small for the installation of the OWTS.
- (12) Upon information and belief, Small did not witness or inspect the installation of the OWTS.
- (13) Upon information and belief, the OWTS approved in the New Building Application was not installed.
- (14) As of the date of the NOV, Respondent is using an OWTS that is not approved by RIDEM.

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) **Rhode Island’s *Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems (250-RICR-150-10-6)* (“OWTS Rules”).**
 - (a) **Part 6.9(C)** – prohibiting the installation, construction, alteration, or repair of an OWTS without adhering to each and every term of the approval.
 - (b) **Part 6.18(A)** – requiring an applicant to provide all information in an accurate manner and own the property or hold a valid purchase and sales agreement for the property.

- (c) **Part 6.49(A)** – requiring an applicant for an OWTS permit to obtain a Certificate of Conformance from RIDEM prior to use of any OWTS.

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 use of the OWTS. No use of the OWTS is allowed until a Certificate of Conformance is issued by RIDEM’s Office of Water Resources (“OWR”) for an OWTS.
- (2) **Within 30 days of receipt of the NOV**, submit a formal application and plan to OWR that is prepared by a licensed OWTS designer in accordance with the OWTS Rules (“Application”). **Any repairs or modifications to the OWTS require the prior approval of RIDEM.** The list of licensed OWTS designers can be obtained by contacting OWR – OWTS Program at (401) 222-3961 or from RIDEM’s web page at:
www.dem.ri.gov/programs/benviron/water/licenses/OWTS/pdfs/deslist.pdf.
- (3) The Application shall be subject to RIDEM’s review and approval. Upon review, RIDEM shall provide written notice either granting formal approval or stating the deficiencies therein. Within 14 days (unless a longer time is specified) of receiving a notice of deficiencies in the Application, submit to RIDEM a modified proposal or additional information necessary to correct the deficiencies.
- (4) Commence work on the project in accordance with the method approved by RIDEM within 20 days of approval (unless otherwise expressly authorized by RIDEM in writing to commence work later) and complete such work within 120 days of said approval or other date specified by RIDEM.

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:

\$14,000

- (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 Rules”) 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 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.
- (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 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, 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:
- Maria I. Rice, Esq.
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) An original signed copy of the NOV is being forwarded to the Town of Portsmouth, 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 RIDEM 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) Maria Rice of RIDEM's Office of Legal Services at (401) 537-4198 or at maria.rice@dem.ri.gov. All other inquiries should be directed to Stephen Tyrrell of RIDEM's Office of Compliance and Inspection at (401) 537-4479 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: _____
Christina Hoefsmit, Deputy 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:

Douglas C. Almeida
76 Spring Garden Street, Floor 3
Warwick, RI 02888-1653

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OWTS
 File No.: OCI-OWTS-23-16
 Respondent: Douglas G. Almeida

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) – Improper installation of OWTS	Type I <i>(\$1,000 Max. Penalty) *</i>	Major	\$1,000	1 violation	\$1,000
D (2) – Submittal of incorrect information on an application	Type I <i>(\$1,000 Max. Penalty) *</i>	Major	\$1,000	1 violation	\$1,000
D (3) – Use of an OWTS that is not conformed by RIDEM	Type I <i>(\$1,000 Max. Penalty) *</i>	Major	\$ 1,000	12 years	\$12,000
SUB-TOTAL					\$14,000

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

ADMINISTRATIVE PENALTY SUMMARY (continued)

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 can not 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 RULES = \$14,000

PENALTY MATRIX WORKSHEET

CITATION: Improper installation of OWTS
 VIOLATION NO.: D (1)

TYPE		
<p style="text-align: center;"><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;">___ TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;">___ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.</p>
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 Rules.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent installed an OWTS without oversight by the licensed OWTS designer who designed the OWTS and without any inspections of the OWTS installation by RIDEM in violation of the approval RIDEM issued. Preventing the installation of an OWTS in noncompliance with an approval issued by RIDEM is a primary objective of the regulations and a major objective of the regulatory program. (2) Environmental conditions: Considered, but not utilized for this calculation. (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, as well as being the source of extremely objectionable odors. (5) Duration of the violation: Considered, but not utilized for this calculation. (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 the noncompliance by following the conditions of the permit to have the OWTS installation overseen by the licensed OWTS designer who designed the OWTS, GERALYN SMALL, and to have RIDEM inspect the OWTS prior to covering any component of the system with backfill. Respondent failed to take reasonable and appropriate steps to mitigate the noncompliance by submitting an OWTS application prepared by a licensed OWTS designer, despite receiving a NIE from RIDEM requiring him to do so. (8) Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM 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. The OWTS application includes the following certification above the applicant signature line: "...I will hire and retain the licensed OWTS designer of record to witness and inspect the installation of the system..." Respondent signed the application. The approval issued by RIDEM includes a condition that is circled stating: "System installation must be inspected by RIDEM prior to covering any component of the system with backfill." Respondent informed a RIDEM representative during a telephone conversation on 22 December 2022 that he installed the OWTS himself in 2010 or 2011. (10) Any other factor(s) that may be relevant in determining the amount of a penalty: The NIE stated the penalty could be up to \$1,000 per day per violation. The maximum penalty that can be assessed is \$2,000, as there are 2 separate and distinct violations. 		
<p><u> X </u> MAJOR</p>	<p>MODERATE</p>	<p>MINOR</p>

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 \$1,000	\$600 to \$800	\$400 to \$600
	MODERATE	\$600 to \$800	\$400 to \$600	\$200 to \$400
	MINOR	\$400 to \$600	\$200 to \$400	\$100 to \$200

PENALTY MATRIX WORKSHEET

CITATION: Submittal of incorrect information on an application

VIOLATION NO.: 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 Rules.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent submitted incorrect information regarding ownership of the property on the OWTS application submitted to RIDEM. The submittal of accurate ownership information on an application to RIDEM is a primary objective of the regulations and a major objective of the regulatory program. (2) Environmental conditions: Considered, but not utilized for this calculation. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation. (5) Duration of the violation: Considered, but not utilized for this calculation. (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 the noncompliance by including accurate information about the ownership of the property on the OWTS application submitted to RIDEM. Respondent submitted the application to RIDEM on 30 July 2009 as the property owner; however, according to the Portsmouth online tax assessor's database, the property was owned by Hog Island, Inc. Respondent did not acquire ownership until 25 February 2011. There are no steps that can be 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 RIDEM, or any law which RIDEM 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. The OWTS application includes the following certification above the applicant signature line: "I certify that ...I am the owner of the property indicated under the site information on this application..." Respondent signed the application as the owner. (10) Any other factor(s) that may be relevant in determining the amount of a penalty: The NIE stated the penalty could be up to \$1,000 per day per violation. 		
<input checked="" type="checkbox"/> MAJOR	MODERATE	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 \$1,000	\$600 to \$800	\$400 to \$600
	MODERATE	\$600 to \$800	\$400 to \$600	\$200 to \$400
	MINOR	\$400 to \$600	\$200 to \$400	\$100 to \$200

PENALTY MATRIX WORKSHEET

CITATION: Use of an OWTS that is not conformed by RIDEM

VIOLATION NO.: D (3)

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.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Rules.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent used an OWTS that is not conformed by RIDEM. Preventing the use of an OWTS that is not conformed by RIDEM is a primary objective of the regulations and a major objective of the regulatory program. (2) Environmental conditions: The property includes a 3-bedroom dwelling in a moderately populated area. The property abuts Narragansett Bay, and the dwelling is approximately 500 feet from the Bay. The OWTS application states that the depth to groundwater is 80 inches. The inspection performed by Portsmouth’s inspector revealed the presence of a 1,000-gallon plastic tank, but no evidence of a leachfield as shown on the plan approved by RIDEM as part of the OWTS application. (3) Amount of the pollutant: Unknown. It depends on the water usage and the efficacy of the OWTS. Upon information and belief, the dwelling is used on weekends from June 1 through September 30 each year. (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, as well as being the source of extremely objectionable odors. (5) Duration of the violation: Full duration unknown – at least approximately 12 years. Respondent informed a RIDEM representative during a telephone conversation on 22 December 2022 that he installed the OWTS himself in 2010 or 2011. (6) Areal extent of the violation: Unknown. It depends on the water usage and the efficacy of the OWTS. (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 noncompliance by using the OWTS. The NIE required Respondent to immediately cease use of the OWTS and that no use of the OWTS is allowed until a Certificate of Conformance is issued by RIDEM. RIDEM is unaware of whether Respondent complied with the NIE 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 RIDEM, or any law which RIDEM 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. (10) Any other factor(s) that may be relevant in determining the amount of a penalty: The NIE stated the penalty could be up to \$1,000 per day. The maximum penalty that can be assessed is \$320,000 (assuming 32 days of use each year for 12 years). 		
<u> X </u> MAJOR	MODERATE	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 \$1,000	\$600 to \$800	\$400 to \$600
	MODERATE	\$600 to \$800	\$400 to \$600	\$200 to \$400
	MINOR	\$400 to \$600	\$200 to \$400	\$100 to \$200