

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

IN RE: The Estate of Thomas E. Gonyea

FILE NO.: OCI-SW-12-25

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Department of Environmental Management (the “Director” of “RIDEM”) has reasonable grounds to believe that The Estate of Thomas E. Gonyea (“Respondent”) has violated certain statutes and/or administrative regulations under RIDEM's jurisdiction.

B. Administrative History

On 1 August 2012, RIDEM issued a Notice of Intent to Enforce (“NIE”) to Respondent for the alleged violations that are the subject of this *Notice of Violation* (“NOV”). The NIE required specific actions to correct the violations. On 26 September 2012, in response to the NIE, RIDEM received a letter from Respondent’s attorney, Kevin Heitke. The letter did not identify any actions Respondent would take to correct the violations. On 22 October 2019, RIDEM’s inspector met with Attorney Heitke and Daniel Gonyea (“Gonyea”), who stated he owns 97 Ross Road, the property that abuts the property that is the subject of the NOV. Attorney Heitke and Gonyea stated that they did not think Gonyea was responsible for the violations that are the subject of the NOV. As of the date of the NOV, Respondent has failed to comply with the NIE.

C. Facts

- (1) The subject property is located at 95 Ross Road, Assessors Plat 173, Lot 1 in Burrillville, Rhode Island (the “Property”).
- (2) Thomas E. Gonyea was conveyed sole ownership to the property on 29 December 2008.
- (3) Thomas E. Gonyea passed away on 27 June 2010, with a will, and was entered into The Probate Court of Burrillville, Rhode Island on 7 November 2011, creating The Estate of Thomas E. Gonyea.
- (4) Respondent owns the Property.
- (5) Respondent has neither sought nor obtained an approval, permit or license from RIDEM to operate a solid waste management facility on the Property.

- (6) On 21 June 2012, RIDEM inspected the Property and an adjacent lot (Assessor's Plat 156, Lot 57) that was also owned by Respondent. The inspection revealed approximately 281 cubic yards of solid waste deposited on the ground, which consisted of multiple piles of construction and demolition debris, wood waste, a discarded boat, plastic waste, metal waste, approximately 2,100 used rubber tires, 2 trailer frames, a partly dismantled truck and other mixed solid waste
- (7) On 10 April 2019, RIDEM inspected the Property. The inspection revealed approximately 289 cubic yards of solid waste deposited on the ground, which consisted of approximately 1,325 used rubber tires, 10 unregistered and inoperable motor vehicles, a vehicle chassis, an abandoned camper, vehicle parts, wood waste, LCD monitors, a steel tank and other mixed solid waste. Ash and partially burnt solid waste was inside a steel tank.
- (8) On 14 December 2021, RIDEM inspected the Property. The inspection revealed approximately 258 cubic yards of solid waste deposited on the ground, which consisted of approximately 1,520 used rubber tires, multiple piles of wood waste, old windows, plastic waste, metal waste, 4 cathode ray tube monitors ("CRTs"), a deteriorated boat, an abandoned camper and other mixed solid waste.
- (9) On 16 November 2023, RIDEM inspected the Property. The inspection revealed approximately 264 cubic yards of solid waste deposited on the ground, which consisted of approximately 1,480 used rubber tires, wood waste, vehicle parts, windows, plastic waste, metal waste, four CRTs, a deteriorated boat, an abandoned camper and other mixed solid waste.
- (10) As of the date of the NOV, Respondent has failed to properly dispose of the solid waste found at the Property and continues to operate a Solid Waste Management Facility without having approval, a permit, or a license to do so.

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 23-18.9-5** – prohibiting the disposal of solid waste at other than a solid waste management facility.
- (2) **R.I. Gen. Laws Section 23-18.9-8** – prohibiting the operation of a solid waste management facility without first obtaining a license from RIDEM.
- (3) **Rhode Island's Rules and Regulations for Solid Waste Management Facilities and Organic Waste Management Facilities (the "Solid Waste Regulations"), 250 RICR. 140-05, Part 1.6(A)** – prohibiting the operation of a solid waste management facility without first obtaining a license from RIDEM.

(4) **Rhode Island’s *Rules and Regulations for Hazardous Waste Management* (the “Hazardous Waste Regulations”) 250 RICR 140-10**

- (a) **Part 1.14.5(A)(9)(a)(1)** – requiring generators to store all used electronics inside a building with a roof and 4 walls, in a portable storage unit that is completely enclosed and weatherproof or in the cargo-carrying portion of a truck.
- (b) **Part 1.14.5(A)(10)(a)(1)** – requiring generators of used electronic devices to label or mark cathode ray tube devices with the words “Universal Waste-Cathode Ray Tube(s)”, “Waste Cathode Ray Tube(s)” or “Used Cathode Ray Tube(s).”

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 the disposal of solid waste on the Property.
- (2) **IMMEDIATELY** move the CRTs inside a protective structure for compliant storage and label or mark them in accordance with the Hazardous Waste Regulations.
- (3) **Within 30 days of receipt of the NOV**, remove and properly dispose the CRTs in full compliance with the Hazardous Waste Regulations
- (4) **Within 10 days of completion of the removal and proper disposal of the CRT’s**, submit to RIDEM’s Office of Compliance and Inspection (“OC&I”) written verification that the CRT’s were disposed of at a licensed hazardous waste management facility.
- (5) **Within 60 days of receipt of the NOV**, remove all solid waste from the Property and dispose of it at a licensed solid waste management facility. The solid waste shall not be burned or buried.
- (6) **Within 10 days of completion of the removal of the solid waste**, submit to OC&I written verification that the solid waste was disposed of at a licensed solid waste management facility or recycling facility.

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:

\$12,944

- (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 et seq. (the "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 250 RICR 10-00-1.7(B), *Rules and Regulations for the Administrative Adjudication Division*.
- (2) A copy of each request for hearing must also be forwarded to:
- Johann Donall, Esquire
RIDEM - Office of Legal Services
235 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 this 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 Burrillville, 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 23-18.9-13, as is or as amended.
- (7) This 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) Johann Donall, Esq. of RIDEM's Office of Legal Services at (401) 537-4081 or at Johann.Donall@dem.ri.gov. All other inquiries should be directed to Tracey D'Amadio 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: _____
Christina Hoefsmit, Deputy Administrator
Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

The Estate of Thomas E. Gonyea
c/o Kevin D. Heitke, Esq., Executor
Heitke Cook Associates LLC
365 Eddy Street
Providence, RI 02903

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: SOLID WASTE
 File No.: OCI-SW-12-25
 Respondent: The Estate of Thomas E. Gonyea

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) – Disposal of Solid Waste at Other Than a Licensed Solid Waste Management Facility	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$6,250	1 violation	\$6,250
D (2) through D (3) – Operation of a Solid Waste Management Facility Without a License from RIDEM	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$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			
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 CANNOT BE QUANTIFIED.			
DESCRIPTION OF BENEFIT	CALCULATION		AMOUNT
Delaying the cost of tire disposal. The economic benefit of non-compliance was determined by using an EPA computer model titled <i>BEN</i> that performs a detailed economic analysis. The dates, dollar amounts and values used in this analysis are listed in this table.	<ul style="list-style-type: none"> ▪ Profit Status ▪ Filing Status ▪ Initial Capital Investment ▪ One-time Non-depreciable Expense ▪ First Month of Non-compliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	For profit, other than a C Corp. \$11,840 December 2021 1 March 2024 1 February 2024 7.4%	\$382.00

ADMINISTRATIVE PENALTY SUMMARY (continued)

<p>Delaying the cost of mixed solid waste disposal. The economic benefit of non-compliance was determined by using an EPA computer model titled <i>BEN</i> that performs a detailed economic analysis. The dates, dollar amounts and values used in this analysis are listed in this table.</p>	<ul style="list-style-type: none"> ▪ Profit Status ▪ Filing Status ▪ Initial Capital Investment ▪ One-time Non-depreciable Expense ▪ First Month of Non-compliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	<p>For profit, other than a C Corp.</p> <p>\$1,915</p> <p>December 2021</p> <p>1 March 2024</p> <p>1 February 2024</p> <p>7.4%</p>	<p>\$62.00</p>
	<i>SUB-TOTAL</i>		\$444

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 = \$12,944

PENALTY MATRIX WORKSHEET

CITATION: Disposal of Solid Waste at Other Than a Licensed Solid Waste Management Facility
 VIOLATION NO.: D (1)

TYPE		
<u> X </u> TYPE I DIRECTLY related to protecting health, safety, welfare, or environment.	<u> </u> TYPE II INDIRECTLY related to protecting health, safety, welfare, or environment.	<u> </u> TYPE III INCIDENTAL 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.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent disposed of or allowed for the disposal of solid waste on the Property. Prohibiting the disposal of solid waste at other than a licensed solid waste management facility is of prime importance to the regulatory program. Failure to comply may result in threats or harm to public health and safety and the environment. (2) Environmental conditions: The Property is in a residential area. The Property is in a GAA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment, and which are in groundwater reservoirs and portions of their recharge areas, wellhead protection areas for community water supply wells and in groundwater dependent areas. The Property is within a groundwater recharge area for a community water supply well. The northeastern corner of the Property is comprised of regulated freshwater wetland. The Property is within 300 feet of Ross Pond and within Clear River watershed. (3) Amount of the pollutant: Approximately 264 cubic yards of solid waste (as of 16 November 2023). (4) Toxicity or nature of the pollutant: Some of the solid waste is combustible and presents a fire hazard. The stockpiles of solid waste may provide harborage to rodents or disease vectors. The abandoned vehicle may contain or leak hazardous liquids or pollutants such as gasoline, diesel fuel, lubricating oils, hydraulic oils, transmission fluid or other materials. (5) Duration of the violation: Full duration unknown – at least 11 years. RIDEM first observed solid waste on the Property on 21 June 2012. (6) Areal extent of the violation: The solid waste is deposited throughout much of the 1.8-acre lot. 		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent the non-compliance by ceasing disposal of solid waste on the Property or prohibiting the disposal of solid waste on the Property. Respondent has yet to mitigate the non-compliance despite receiving the NIE from RIDEM, 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 Rhode Island's *Refuse Disposal Act*. Respondent, as owner of the Property, had complete control over the occurrence of the violation.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	MODERATE	<u> X </u> 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	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250 \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Operating a Solid Waste Management Facility Without a License from RIDEM
 VIOLATION NOs.: D (2) through D (3)

TYPE		
<u> X </u> TYPE I DIRECTLY related to protecting health, safety, welfare, or environment.	<u> </u> TYPE II INDIRECTLY related to protecting health, safety, welfare, or environment.	<u> </u> TYPE III INCIDENTAL to protecting health, safety, welfare, or environment.
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<u>FACTORS CONSIDERED:</u>		
Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.		
<p>(1) The extent to which the act or failure to act was out of compliance: Respondent disposed of or allowed for the disposal of solid waste on the Property. Prohibiting the operation of a solid waste management facility without a license or approval from RIDEM is of prime importance to the regulatory program. RIDEM’s licensing process ensures that solid waste management facilities are appropriately located and operated in strict compliance with the Solid Waste Rules. Failure to comply will likely result in threats or harm to public health and safety and the environment.</p> <p>(2) Environmental conditions: The Property is in a residential area. The Property is in a GAA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment, and which are in groundwater reservoirs and portions of their recharge areas, wellhead protection areas for community water supply wells and in groundwater dependent areas. The Property is within a groundwater recharge area for a community water supply well. The northeastern corner of the Property is comprised of regulated freshwater wetland. The Property is within 300 feet of Ross Pond and within Clear River watershed.</p> <p>(3) Amount of the pollutant: Approximately 264 cubic yards of solid waste (as of 16 November 2023).</p> <p>(4) Toxicity or nature of the pollutant: Some of the solid waste is combustible and presents a fire hazard. The stockpiles of solid waste may provide harborage to rodents or disease vectors. The abandoned vehicles may contain or leak hazardous liquids or pollutants such as gasoline, diesel fuel, lubricating oils, hydraulic oils, transmission fluid or other materials.</p> <p>(5) Duration of the violation: Full duration unknown – at least 11 years. RIDEM first observed solid waste on the Property on 21 June 2012.</p> <p>(6) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent the non-compliance by ceasing disposal of solid waste on the Property or by prohibiting the disposal of solid waste on the Property. Respondent has yet to mitigate the non-compliance despite receiving the NIE from RIDEM, 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 Rhode Island's *Refuse Disposal Act* and the Solid Waste Rules. Respondent, as owner of the Property, had complete control over the occurrence of the violation.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	MODERATE	<u> X </u> 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	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250 \$6,250	\$1,250 to \$2,500	\$250 to \$1,250