

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Michael F. Albernaz  
Joseph Albernaz  
John E. Albernaz  
Margaret A. Mello  
Joanne Pankowski**

**FILE NO.: SW 2010-12**

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 “DEM”) has reasonable grounds to believe that the above-named parties (“Respondents”) have violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Administrative History

DEM issued an informal written notice to each of the Respondents on July 9, 2010 for the violations. The notice required that specific actions be taken to correct the violations. The Respondents failed to respond to or comply with the notice.

C. Facts

- (1) The subject property is located at 100 Cory’s Lane in the town of Tiverton, Rhode Island, Parcel ID 99-84 (the “Property”).
- (2) The Respondents own the Property.
- (3) On 29 April 2010 and May 20, 2011, DEM inspected the Property. The inspections revealed the following:
  - (a) approximately ninety (90) cubic yards of solid waste deposited on the ground on April 29, 2010, which included plastic waste, metal waste, used tires, abandoned watercraft in varying states of disrepair, abandoned unregistered vehicles, old furniture, old shelving units and other mixed solid waste; and
  - (b) approximately two hundred fifty one (251) cubic yards of solid waste deposited on the ground on May 20, 2011, which included plastic waste, metal waste, construction and demolition debris, steel drums, used tires,

abandoned watercraft in varying states of disrepair, abandoned unregistered vehicles, and other mixed solid waste.

- (4) Respondents have neither sought nor obtained an approval, permit or license from the DEM to operate a solid waste management facility on the Property.
- (5) As of the date of this Notice of Violation (“NOV”), the Respondents have failed to comply with Rhode Island’s Refuse Disposal Act

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.

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) **Within sixty (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 on the Property.
- (3) **Within ten (10) days of completion of the removal of the solid waste**, submit documentation to DEM that the solid waste was disposed at a licensed solid waste management facility through receipts, bills, or weight slips.

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:

**Six Thousand Two Hundred and Fifty Dollars (\$6,250.00)**

- (2) The proposed administrative penalty is calculated pursuant to DEM’s Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the DEM within twenty (20) days of your receipt of this NOV. Payment shall be in the form of a certified check, cashiers check, or money order made payable to the “General Treasury - Environmental Response Fund,” and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.

- (3) Penalties assessed against Respondents in this 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 that reasonable efforts have been made to comply promptly with this 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 the DEM Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through F above. All requests for hearing MUST:
  - (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b),
  - (b) Be **RECEIVED** by DEM's Administrative Adjudication Division, at the following address, within twenty (20) days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk  
DEM - Administrative Adjudication Division  
One Capitol Hill, 2<sup>nd</sup> Floor  
Providence, RI 02903

- (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); **AND**
  - (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 Rule 7.00(b) of the DEM Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters.
- (2) A copy of each request for hearing must also be forwarded to:

Joseph J. LoBianco, Esquire  
DEM - Office of Legal Services  
235 Promenade Street, 4<sup>TH</sup> Floor  
Providence, RI 02908-5767

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

- (4) Each respondent must file a separate and timely request for an administrative hearing before DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then this 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 (v) 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 this NOV is being forwarded to the town of Tiverton, 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) Joseph J. LoBianco at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey D'Amadio Tyrrell of the DEM Office of Compliance and Inspection at (401) 222-1360 ext. 7407.

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

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David E. Chopy, Chief  
DEM Office of Compliance and Inspection

Date: \_\_\_\_\_

CERTIFICATION

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

Michael F. Albernaz  
62 Thomas Street  
Tiverton, RI 02878

Joseph Albernaz  
3 Keith Drive  
Westport, MA 02790

John E. Albernaz  
85 Barlow Street  
Fall River, MA 02723

Margaret A. Mello  
16 South Berryman Street  
Westport, MA 02790

Joanne Pankowski  
139 East DeMello Drive  
Tiverton, RI 02878

by Certified Mail.

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## ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, SOLID WASTE

File No.: SW 2010 – 12

Respondents: Michael F. Albernaz, Joseph Albernaz, John E. Albernaz, Margaret A. Mello, and Joanne Pankowski

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 (\$ <u>25,000</u> Max. Penalty)*	Minor	\$6,250	1 violation	\$6,250.00
<b>SUB-TOTAL</b>					<b>\$6,250.00</b>

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

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$6,250.00**

**PENALTY MATRIX WORKSHEET**

CITATION: *Disposal of solid waste at other than a licensed solid waste management facility*  
 VIOLATION NO.: D (1)

<b>TYPE</b>		
<p><u><b>X</b></u> <b>TYPE I</b>  <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>____ <b>TYPE II</b>  <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>____ <b>TYPE III</b>  <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><b>FACTORS CONSIDERED:</b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> Respondents 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 importance to the regulatory program. Proper management of solid waste is an essential part of protecting public health and safety and the environment.</p> <p>(B) <b>Environmental conditions:</b> The property is located in a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. Upon information and belief, the residences on Cory’s Lane rely on private wells for drinking water. The property is located within the Quequechan River watershed and is adjacent to South Watuppa Pond. Portions of the property are comprised of wooded swamp wetland. The property is located in a residential area.</p> <p>(C) <b>Amount of the pollutant:</b> The 29 April 2010 inspection revealed approximately 90 cubic yards of solid waste on the property. The 20 May 2011 inspection revealed approximately 251 cubic yards of solid waste on the property.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Some of the solid waste is combustible and presents a fire hazard. Some of the solid waste materials may provide harborage to rodents or disease vectors.</p> <p>(E) <b>Duration of the violation:</b> Unknown. DEM first observed solid waste on the property on 27 March 2007.</p> <p>(F) <b>Areal extent of the violation:</b> The solid waste disposal has occurred throughout much of the 7 acre parcel.</p>		
(continued)		



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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the non-compliance by prohibiting the disposal of solid waste on the property. Respondents have yet to mitigate the non-compliance despite receiving a Notice of Intent to Enforce dated 9 July 2010 from DEM, which required that they to do so.
- (H) **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:** Not relevant.
- (I) **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 the Respondents for the failure to comply immediately with Rhode Island's Refuse Disposal Act. Respondents, as owners of the property and the solid waste deposited thereon, had complete control over the occurrence of the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

<b>MAJOR</b>	<b>MODERATE</b>	<u>  <b>X</b>  </u> <b>MINOR</b>
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 25,000		<b>TYPE I</b>	TYPE II	TYPE III
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	<b>MODERATE</b>	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250 <b>\$6,250</b>	\$1,250 to \$2,500	\$250 to \$1,250