

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: ANM REALTY, LLC
Allens Ave Metals, LLC**

FILE NO.: WP 14-74

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 the DEM's jurisdiction.

B. Administrative History

On 9 July 2014, the DEM issued a Notice of Intent to Enforce ("NIE") by certified mail to ANM REALTY, LLC for the violations that are the subject of this Notice of Violation ("NOV"). The NIE required that the company submit an application to the DEM to obtain a permit to discharge storm water to the Providence River associated with the scrap metal recycling business on its property. On 10 July 2014, the NIE was delivered to ANM REALTY, LLC. On 26 November 2014, the DEM received an incorrect permit application from ANM REALTY, LLC and the former scrap metal operator at the property, Rhode Island Recycled Metals, LLC. On 29 January 2015, the DEM issued a letter by certified mail to ANM REALTY, LLC advising it that the application was deficient and requiring the submission of a proper and complete application. On 4 February 2015, the letter was delivered to ANM REALTY, LLC. On 12 May 2015, the DEM inspected the property and spoke with Michael Sheehan, who identified himself as an employee of Allens Ave Metals, LLC and the facility site manager. The DEM inspector advised Mr. Sheehan that a permit was required to discharge storm water from the property. Mr. Sheehan informed the DEM inspector that he had spoken with his consultant about options and thought the consultant was handling it. To date, no application for a permit has been submitted to the DEM.

C. Facts

- (1) The property is located at 278 Allens Avenue, Assessor’s Plat 47, Lot 146 in the city of Providence, Rhode Island (the “Property”).
- (2) The Property includes a business engaged in scrap metal recycling (the “Facility”).

- (3) ANM REALTY, LLC ("ANM") owns the Property. ANM acquired the Property on 7 July 2012.
- (4) Allens Ave Metals, LLC ("Allens Ave Metals") operates the Facility.
- (5) Allens Ave Metals was incorporated on 29 April 2015.
- (6) The Facility was previously operated by Rhode Island Recycled Metals, LLC ("RI Recycled Metals").
- (7) On 25 June 2014, the DEM Office of Compliance and Inspection ("OC&I") inspected the Property. The inspection revealed a discharge of stormwater associated with industrial activity (in the form of scrap metal recycling) to the Providence River. RI Recycled Metals was operating the Facility at the time of the inspection.
- (8) On 26 November 2014, the DEM received a Notice of Intent for a General Permit for Stormwater Discharge Associated with Construction Activity that was submitted by Coneco Engineers & Scientists ("Coneco") on behalf of ANM and RI Recycled Metals (the "CGP Application").
- (9) On 29 January 2015, the DEM issued a letter by certified mail to ANM advising the company that the CGP Application was incorrect (the "Deficiency Letter"). The Deficiency Letter stated that ANM needed to submit an application for a Multi-Sector General Permit Associated with Industrial Activity (the "MSGP Application").
- (10) On 4 February 2015, the Deficiency Letter was delivered to ANM.
- (11) On 12 May 2015, the OC&I inspected the Property. The inspection revealed a discharge of stormwater associated with industrial activity (in the form of scrap metal recycling) to the Providence River. The DEM inspector spoke with Michael Sheehan at the time of the inspection, who identified himself as an employee of Allens Ave Metals, LLC and the Facility site manager. The DEM inspector advised Mr. Sheehan that a permit was required to discharge storm water from the Property. Mr. Sheehan informed the DEM inspector that he had spoken with Coneco about options and thought Coneco was handling it.
- (12) As of the date of the NOV, the Respondents have not submitted an MSGP Application to the DEM.
- (13) As of the dated of the NOV, the Respondents have not obtained approval from the DEM to discharge stormwater associated with industrial activity to the Providence River from the Property.

D. Violation

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

- (1) **Rhode Island's Water Pollution Act, Section 46-12-5(b)** – requiring the discharge of any pollutant into waters of the State comply with the terms and conditions of a permit and applicable regulations.
- (2) **DEM's Water Quality Regulations, Rule 13(A)** – prohibiting the discharge of any pollutant into or conducting any activity which will likely cause or contribute pollution to the waters of the State without having obtained all required approvals from the DEM.
- (3) **DEM's Rhode Island Pollutant Discharge Elimination System Program Regulations, Rule 31(a)(1)(ii)** – requiring a permit for a stormwater discharge associated with industrial activity.

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 receiving any scrap metal. No scrap metal shall be received until the Respondents obtain a storm water permit from the DEM and constructs the stormwater controls required pursuant to the permit.
- (2) **Within 60 days of receipt of the NOV**, remove all scrap metal from the Property.
- (3) **Within 7 days of completing ordered actions E(2) above**, clean and sweep the Property of any waste debris associated with the metal recycling business and properly dispose of the waste in accordance with all applicable laws and 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 against each named respondent:

(a) **ANM - \$25,000**

(b) **Allens Ave Metals - \$12,500**

- (2) The proposed administrative penalty is calculated pursuant to the DEM's *Rules and Regulations for Assessment of Administrative Penalties*, as amended, and must be paid to the DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a certified check, cashiers check, or money order made payable to the "General Treasury - Water & Air Protection Program Account" 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 the 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 DEM 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'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 the DEM's Administrative Adjudication Division, at the following address, within 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
Office of Administrative Adjudication
One Capitol Hill, 2ND 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's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters*.

- (2) A copy of each request for hearing must also be forwarded to:

Tricia Quest, Esquire
DEM - 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 the 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 city of Providence 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 46-12-9(c).
- (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) Tricia Quest at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to me at (401) 222-1360 ext. 7400.

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

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:

ANM REALTY, LLC
c/o John F. Neary, Esq., Registered Agent
103 Cottage Street
Pawtucket, RI 02860

Allens Ave Metals, LLC
c/o Robert A. Peretti, Esq., Registered Agent
1536 Westminster Street
Providence, RI 02909

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution
 File No.: WP 14-74
 Respondent: ANM REALTY, LLC

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), D(2) and D(3) – Discharge of stormwater associated with industrial activity without a permit	Type I (\$25,000 Max. Penalty)*	Major	\$25,000	1 violation	\$25,000
SUB-TOTAL					\$25,000

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

ECONOMIC BENEFIT FROM NONCOMPLIANCE

COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT ARE IN COMPLIANCE. 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 ANM REALTY, LLC has either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.

COST RECOVERY

ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.

A review of the record in this matter has revealed that the DEM 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 = \$25,000

PENALTY MATRIX WORKSHEET

CITATION: Discharge of stormwater associated with industrial activity without a permit
 VIOLATION NO.: D(1), D(2) and D(3)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.

DEVIATION FROM THE STANDARD
 THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Section 10(a)(2) of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** ANM REALTY, LLC allowed for the discharge of storm water associated with industrial activity (scrap metal recycling) from its property without a permit from the DEM.
- (B) **Environmental conditions:** The property is located directly adjacent to the Providence River. The Providence River is a class SB1{a} water of the State, which waters are designated for primary and secondary contact recreational activities and for fish and wildlife habitat. However, primary contact recreational activities may be impacted due to pathogens from approved wastewater discharges. These waters shall have good aesthetic value. The Providence River in the area of the property is impacted by sewage overflows after heavy rainstorms, which results in the discharge of tens of millions of gallons of untreated wastewater and stormwater into the river.
- (C) **Amount of the pollutant:** Unknown – depends on the pollutants deposited on the land and the intensity and duration of rain storms.
- (D) **Toxicity or nature of the pollutant:** The scrap metal recycling operation that the DEM observed on 12 May 2015 involved the recycling of ferrous and non-ferrous metals. The storm water runoff to the Providence River likely includes the following pollutants of concern: dirt, metals, and suspended solids.
- (E) **Duration of the violation:** Full duration unknown - at least 14 months. On 25 June 2014, the DEM inspected the property and documented ongoing industrial activity that required a stormwater permit. Thus far, no permit has been issued to ANM REALTY, LLC by DEM to discharge stormwater associated with industrial activity on the property to the Providence River.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** ANM REALTY, LLC did not take reasonable action to prevent or mitigate the violation. On 9 July 2014, the DEM issued a Notice of Intent to Enforce (NIE) to ANM REALTY, LLC for the violation. The NIE required that the company submit an application to the DEM to obtain a permit to discharge storm water to the Providence River associated with the scrap metal recycling business on its property. On 26 November 2014, the DEM received an incorrect permit application. On 29 January 2015, the DEM issued a letter by certified mail to the company advising it that the application was deficient and requiring the submission of a proper and complete application. On 4 February 2015, the letter was delivered. The company has failed to respond to or comply with the letter. Upon information and belief, after Rhode Island Recycled Metals, LLC ceased its scrap metal recycling operation at the property (which was after the 29 January 2015 letter was delivered), ANM REALTY, LLC allowed a new company, Allens Ave Metals, LLC to begin the same operation at the property without applying for or receiving a permit from the DEM.
- (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:** Considered, but not utilized for this calculation.
- (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:** ANM REALTY, LLC had knowledge of the required permit and has complete control over the operations occurring at the property. The company allows for the operation of activities at the property without a permit for financial gain.
- (J) **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



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution
 File No.: WP 14-74
 Respondent: Allens Ave Metals, LLC

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
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	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D(1), D(2) and D(3) – Discharge of stormwater associated with industrial activity without a permit	Type I (\$25,000 Max. Penalty)*	Major	\$12,500	1 violation	\$12,500
SUB-TOTAL					\$12,500

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

ECONOMIC BENEFIT FROM NONCOMPLIANCE

COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT ARE IN COMPLIANCE. 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 Allens Ave Metals, LLC has either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.

COST RECOVERY

ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.

A review of the record in this matter has revealed that the DEM 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 = \$12,500

PENALTY MATRIX WORKSHEET

CITATION: Discharge of stormwater associated with industrial activity without a permit
 VIOLATION NO.: D(1), D(2) and D(3)

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:

Taken from Section 10(a)(2) of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** Allens Ave Metals, LLC is discharging storm water associated with industrial activity (scrap metal recycling) from its facility without a permit from the DEM.
- (B) **Environmental conditions:** The facility is located directly adjacent to the Providence River. The Providence River is a class SB1{a} water of the State, which waters are designated for primary and secondary contact recreational activities and for fish and wildlife habitat. However, primary contact recreational activities may be impacted due to pathogens from approved wastewater discharges. These waters shall have good aesthetic value. The Providence River in the area of the facility is impacted by sewage overflows after heavy rainstorms, which results in the discharge of tens of millions of gallons of untreated wastewater and stormwater into the river.
- (C) **Amount of the pollutant:** Unknown – depends on the pollutants deposited on the land and the intensity and duration of rain storms.
- (D) **Toxicity or nature of the pollutant:** The scrap metal recycling operation that the DEM observed on 12 May 2015 involved the recycling of ferrous and non-ferrous metals. The storm water runoff to the Providence River likely includes the following pollutants of concern: dirt, metals, and suspended solids.
- (E) **Duration of the violation:** Full duration unknown - at least 3 months. On 12 May 2015, the DEM inspected the facility and documented ongoing industrial activity that required a stormwater permit. Thus far, no permit has been issued to Allens Ave Metals, LLC by DEM to discharge stormwater associated with industrial activity from its facility to the Providence River.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Allens Ave Metals, LLC did not take reasonable action to prevent or mitigate the violation. On 12 May 2015, the DEM inspector spoke with Michael Sheehan, who identified himself as an employee of Allens Ave Metals, LLC and the facility site manager. The DEM inspector informed Mr. Sheehan of the violation and the necessary actions to comply with the law and the DEM's regulations. Mr. Sheehan stated that he had spoken with his consultant, Coneco, about options for a stormwater treatment system and that he thought Coneco was handling the issues. The company has failed to respond to or comply with the directive of the DEM inspector.
- (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:** Considered, but not utilized for this calculation.
- (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:** Allens Ave Metals, LLC had knowledge of the required permit and has complete control over the operations occurring at the facility. The company operates the facility at the property without a permit for financial gain.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** During the 12 May 2015 inspection, Mr. Sheehan informed the DEM inspector that Edward Sciaba, the owner/manager of Rhode Island Recycled Metals, has nothing to do with his business. As Mr. Sheehan was familiar with Mr. Sciaba and his company, Mr. Sheehan was also well aware that the DEM cited Mr. Sciaba and Rhode Island Recycled Metals for the same violations that the DEM is alleging against Allens Avenue Metals.

<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