

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: APENTERPRISE, LLC

FILE NO.: OCI-SR-16-8

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 party (“Respondent”) has violated certain statutes and/or administrative regulations under the DEM’s jurisdiction.

B. Administrative History

On 7 December 2016, the DEM issued a Notice of Intent to Enforce (“NIE”) to Respondent requiring completion of a landfill cap on the property that is the subject of this Notice of Violation (“NOV”) within 180 days of receipt of the NIE. On 28 December 2016, the DEM received a letter from Respondent in response to the NIE. Respondent requested an extension to 13 January 2017 to submit a formal response to the NIE. After meeting with DEM on 13 January 2017, Respondent submitted a formal response to the NIE on 20 January 2017. Despite several update meetings in the following months, Respondent failed to comply with the NIE. On 11 August 2017, the DEM issued an Expedited Citation Notice (“ECN”) to Respondent requiring completion of the cap and payment of a \$2,500 penalty within 60 days of receipt of the ECN. On 17 August 2017, the ECN was delivered to Respondent. Respondent failed to respond to or comply with the ECN.

C. Facts

- (1) The properties are located on Walnut Street, Russell Avenue, Highland Avenue and Park Avenue, Assessor’s Plat 20, Lots 1, 2 and 13 and Plat 25, Lot 2 in the Town of Portsmouth, Rhode Island (the “Property”). The Property is a former solid waste landfill (the “Landfill”)
- (2) Respondent owns the Property. Respondent acquired the Property on 27 June 2005.
- (3) On 19 March 2010, the DEM received a Remedial Action Work Plan (“RAWP”) for the Property. The RAWP included construction of a soil cap (the “Cap”) for the Landfill.
- (4) On 20 September 2010, the DEM issued an approval to Respondent for use of soils for the Cap, and on 28 September 2010, the DEM issued an approval to Respondent for the RAWP (collectively, the “Approvals”).

- (5) On 9 September 2014, the DEM renewed the Approvals. The renewal required completion of the Cap by 20 September 2016.
- (6) On 21 September 2016, 31 May 2017 and 27 March 2018 the DEM inspected the Property. The inspections revealed that the Cap was not completed.
- (7) As of the date of the NOV, the Cap is not completed.

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) **DEM's Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases (the "Remediation Regulations"), Section 11.01** – requiring performing parties to complete remedial actions as required by the DEM.

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 **within 60 days of receipt of the NOV**, complete the construction of the Cap in full compliance with the Approvals.

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:

\$26,261

- (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, cashier's 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 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 the DEM 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 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 the NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - 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); **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 Part 1.7 (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:

Susan Forcier, 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 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 23-18.9-13, as is or 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) Susan Forcier of the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey D'Amadio Tyrrell of the DEM's 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

By: _____
David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

APENTERPRISE, LLC
c/o Arthur Palmer, Resident Agent
28 Teal Drive
Wakefield, RI 02879

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, SITE REMEDIATION
 File No.: OCI-SR-16-8
 Respondent: APENTERPRISE, 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) – Landfill Closure	Type I (\$25,000 Max. Penalty)*	Major	\$12,500	1 year	\$12,500
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
Purchasing approximately 12,000 cubic yards ("CY") of soil for completion of the Cap. The economic benefit of noncompliance 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 Noncompliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	For profit other than a C-Corp Active \$0 \$360,000 [12,000 CY @ \$30 per CY] October 2016 1 March 2018 1 March 2018 6.9%	\$13,761
SUB-TOTAL			\$13,761

ADMINISTRATIVE PENALTY SUMMARY (continued)

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 = \$26,261

PENALTY MATRIX WORKSHEET

CITATION: Landfill Closure

VIOLATION NO.: D (1)

TYPE		
<p><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>_____TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>_____TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<p>THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</p>		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10A.1.b of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent failed to complete the Cap. The compliant closure and capping of solid waste landfills is significant to the regulatory program. A compliant closure provides public health safety and environmental protections required by statute and regulation. Failure to comply prolongs the threat of human exposure to the contaminants of concern and increases the possibility of further environmental harm. (2) Environmental conditions: The Property is in a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. The Property has been designated a non-attainment zone due to the known degradation of the groundwater resources. The Property is located within the Sakonnet River watershed and lies within 500 feet of the Sakonnet River. The Property is surrounded by coastal wetlands (to the north, west and south) and residential properties (to the east). Dust and soil vapor intrusion are concerns for the nearby residences. The coastal wetland areas provide important habitat and breeding grounds for fish and wildlife. Upon information and belief, there are no drinking water supplies in the proximity of the Property. (3) Amount of the pollutant: Test pit excavations throughout the Property revealed significant quantities of solid waste at depths ranging from 4 to 12 feet below grade. (4) Toxicity or nature of the pollutant: Laboratory analysis of soil samples obtained from the Property revealed the presence of metals, volatile organic compounds ("VOCs") and semi-volatile organic compounds ("SVOCs") at concentrations that exceed the <i>Residential Direct Exposure Criteria</i> and/or the <i>GA Leachability Criteria</i> set forth in the DEM's Remediation Regulations. Laboratory analysis of groundwater samples obtained from monitoring wells installed on the Property revealed the presence of total metals, dissolved metals and VOCs at concentrations exceeding the <i>GA Groundwater Objectives</i> set forth in the DEM's Remediation Regulations. The metals, VOCs and SVOCs detected are hazardous and toxic to humans and aquatic organisms. (5) Duration of the violation: Approximately 19 months – Respondent was required to complete the Cap by 20 September 2016. (6) Areal extent of the violation: Considered, but not utilized for this calculation. 		
(continued)		

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- (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 completing the Cap. Respondent has yet to mitigate the noncompliance despite receiving the NIE and the ECN from DEM, 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 requirements set forth in Section 11.01 of the DEM's Remediation Regulations. 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:** The DEM received a letter from Respondent's attorney dated 8 June 2017 stating that of the 45,500 CY needed for the Cap, all but 14,000 CY has been supplied and that her client was reasonably confident that the completion of the Cap would be done by early Fall, 2017.

<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