

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Lee McFarland Leete**

**FILE NO.: OCI-SR-16-5**

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 28 April 2016, DEM issued a *Notice of Intent to Enforce* (“NIE”) to Respondent for a kerosene spill on the property. The NIE required specific actions to address the spill. On 6 May 2016, DEM received a letter from Respondent in response to the NIE. The letter stated that when DEM responded to the spill, she was informed that no further action was needed. On 5 January 2017, DEM sent a letter to Respondent, which notified her that DEM reviewed the matter further and determined that the spill was significant, and that action was required to address the spill. On 12 January 2017 and 16 January 2017, DEM received letters from Respondent requesting DEM’s assistance and instruction for addressing the spill. On 19 January 2017, DEM sent a letter to Respondent that included a list of qualified environmental consultants that could assist her. As of the date of this *Notice of Violation* (“NOV”), Respondent has failed to comply with the NIE.

C. Facts

- (1) The property is located at 84 Mail Road, Assessor’s Map 71, Block 4, Lot 6 in Exeter, Rhode Island (the “Property”).
- (2) Respondent owns the Property.
- (3) On 1 February 2016, in response to a verbal report of an oil spill, DEM inspected the Property. The inspection revealed oil-stained soil on the ground below the aboveground oil storage tank (“AST”) on the Property (the “Spill”).

- (4) DEM's inspector spoke with representatives of Dial Oil Service – South, Inc. (“Dial”) and A. Barber Environmental, Inc. (“Barber”) at the time of inspection. DEM's inspector was informed that:
  - (a) Dial had made a delivery of 160 gallons of kerosene on 28 January 2016;
  - (b) The AST was now empty due to a leak; and
  - (c) Barber would be installing a new AST that day.
- (5) As of the date of the NOV, Respondent has failed to investigate the Spill and take remedial action in accordance with the *Oil Pollution Control Regulations* (the “OPC Regulations”).

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 46-12.5.1-3(a)** – prohibiting the discharge of oil upon the land of the State.
- (2) **OPC Regulations [effective 31 December 2001 to 2 May 2018]**
  - (a) **Section 6(a)** – prohibiting the placement of oil upon the land of the State.
  - (b) **Section 12(e)** – requiring responsible parties to take all appropriate remedial actions in response to an oil spill, as specified by DEM.
- (3) **OPC Regulations [effective 2 May 2018 to Current], Part 2.12(E)** – requiring responsible parties to take all appropriate remedial actions in response to an oil spill, as specified by 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:

- (1) **Within 10 days of receipt of the NOV**, retain the services of a qualified environmental consultant to prepare a site status report and a remedial action plan for the Spill (the “Remedial Plan”) in accordance with Part 2.12(E) of the OPC Regulations.
- (2) **Within 30 days of receipt of the NOV**, submit the Remedial Plan to DEM's Office of Emergency Response at 235 Promenade Street, Fourth Floor, Providence, RI 02908-5767 (Attention: James Ball).

- (3) Complete all work at the Property in accordance with the procedures and schedules approved by DEM (and in accordance with the Remedial Plan) until the contaminant concentrations are at or below the applicable standards, in full compliance with Part 2.12 and Part 2.13 of the OPC Regulations.

F. 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 DEM's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through E 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 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 *Rules and Regulations for the Administrative Adjudication Division* [effective November 27, 2014 to Current].
- (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, 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 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 Exeter, 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 2021 Public Laws 147 and 148.
- (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) Joseph J. LoBianco of DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey Tyrrell of DEM's Office of Compliance and Inspection at (401) 222-1360, Ext 2777407.

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 F above.

FOR THE DIRECTOR

By: \_\_\_\_\_  
David E. Chopy, Administrator  
Office of Compliance and Inspection

Dated: \_\_\_\_\_

**CERTIFICATION**

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

Lee McFarland Leete  
84 Mail Road  
Exeter, RI 02822

by Certified Mail.

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