

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Rescom E. Peabody, Jr.  
Julie Peabody**

**FILE NO.: OWTS-14-247**

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. Facts

- (1) The property is located at 830 Third Beach Road, Assessor's Plat 131, Lot 6/B in the town of Middletown, Rhode Island (the “Property”).
- (2) The Respondents own the Property.
- (3) The DEM inspected the Property on 22 October 2014. The inspection revealed that an above ground sewage holding tank with an approximate capacity of 2,000 gallons was installed under a bathhouse to collect waste from two toilets.
- (4) On 27 October 2014 Rescom E. Peabody, Jr. stated to the DEM during a telephone conversation that Hallman Septic had sold him the tank and that his son-in-law installed the tank and made the necessary connections sometime in the spring of 2014.
- (5) A review of the DEM’s records revealed that the Respondents did not submit an application to the DEM for the installation of the tank.
- (6) The Respondents did not receive approval from the DEM to install the tank.

C. 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 Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems (the "OWTS Regulations")**
  - (a) **Rule 8.3** – prohibiting any person from installing, constructing, altering or repairing, or causing any OWTS to be installed, constructed, altered or repaired without first obtaining the DEM's written approval of the plans and specifications for such work.
  - (b) **Rule 17.7** – requiring submittal of a repair application for a repair, modernization or upgrade to an OWTS.

D. 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 30 days of receipt of this NOV**, submit a formal application and plan to the DEM in accordance with the DEM's OWTS Regulations (the "Application") for the design and installation of an OWTS at the Property. The list of licensed OWTS designers can be obtained by contacting Deb Knauss at 222-4700, Ext. 7612 or from the DEM's web page at:  
[www.dem.ri.gov/programs/benviron/water/licenses/isds/pdfs/deslist.pdf](http://www.dem.ri.gov/programs/benviron/water/licenses/isds/pdfs/deslist.pdf).
- (2) The Application shall be subject to the DEM's review and approval. Upon review, the DEM shall provide written notification to you either granting formal approval or stating the deficiencies therein. Within 14 days (unless a longer time is specified) of receiving a notification of deficiencies in the Application, you must submit to the DEM a modified proposal or additional information necessary to correct the deficiencies.
- (3) Commence work on the project in accordance with the method approved by the DEM within 20 days of approval (unless otherwise expressly authorized by the DEM in writing to commence work at a later time), and complete such work within 120 days of said approval or other date specified by the DEM.

E. 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:

**One Thousand Dollars (\$1,000)**

- (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 this 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.

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 the DEM 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 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  
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's *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:
- Mary E. Kay, Executive Counsel  
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 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 town of Middletown 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 42-17.1-2(13), 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) Mary E. Kay, Executive Counsel at the DEM Office of Legal Services at (401) 222-6607, ext. 2023. All other inquiries should be directed to Patrick Hogan of the DEM Office of Compliance and Inspection at (401) 222-1360 ext. 7119.

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

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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:

Rescom E. Peabody, Jr.  
960 Mitchell's Lane  
Middletown, RI 02842

Julie Peabody  
960 Mitchell's Lane  
Middletown, RI 02842

by Certified Mail.

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# ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, OWTS SECTION  
 File No.: OWTS -14-247  
 Respondents: Rescom E. Peabody, Jr. & Julie Peabody

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) – Failure to submit a repair application and installation of an OWTS without DEM approval	Type I (\$1,000 Max. Penalty)*	Major	\$1,000	1 violation	\$1,000
<b>SUB-TOTAL</b>					<b>\$1,000</b>

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

<b>COST RECOVERY</b>
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.

<b>ECONOMIC BENEFIT FROM NONCOMPLIANCE</b>
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 the Respondents have 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.

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$1,000**

**PENALTY MATRIX WORKSHEET**

CITATION: Failure to submit a repair application and installation of an OWTS without DEM approval  
 VIOLATION NO.: D(1)

<b>TYPE</b>		
<u><b>X</b></u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	_____ <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	_____ <b>TYPE III</b> <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:** The Respondents failed to submit a repair application to the DEM to repair, upgrade or modernize the OWTS. The Respondents caused the installation of a holding tank to serve as the OWTS for two toilets without DEM approval. The design and installation of septic systems in accordance with plans and specifications approved by the DEM is a primary objective of the regulations and a major objective of the regulatory program.
- (B) **Environmental conditions:** Considered, but not utilized for this calculation.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** Considered, but not utilized for this calculation.
- (E) **Duration of the violation:** Full duration unknown – sometime during the spring of 2014. The DEM first observed the violation on 22 October 2014.
- (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:** The Respondents did not take reasonable steps to prevent the violation. The Respondents failed to retain a licensed designer to evaluate the system and prepare and submit a repair application for DEM review. The Respondents then installed the holding tank without DEM approval.
- (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:** The Respondents willfully violated the applicable laws and regulations. The Respondents had full control over the occurrence of the violations. The violations were foreseeable.
- (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 \$1,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$800 to \$1,000 <b>\$1,000</b>	\$600 to \$800	\$400 to \$600
	MODERATE	\$600 to \$800	\$400 to \$600	\$200 to \$400
	MINOR	\$400 to \$600	\$200 to \$400	\$100 to \$200