



RHODE ISLAND  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Office of Compliance and Inspection 235 Promenade Street, Providence, RI 02908-5767  
Telephone 401-222-1360 Fax 401-222-3811 TDD 401-222-4462

December 7, 2016

**CERTIFIED MAIL**

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

**RE: *Notice of Intent to Enforce* for APENTERPRISE, LLC  
OC&I File No. SR 2016-8**

Dear Mr. Palmer:

Enclosed please find a *Notice of Intent to Enforce* ("NIE") issued to APENTERPRISE, LLC concerning alleged failures to comply with the Rhode Island Department of Environmental Management's ("DEM") Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases and the DEM's Rules and Regulations for Composting Facilities and Solid Waste Management Facilities.

A written response is required within fifteen (15) days, stating the company's intentions of complying with the required actions in the time frame indicated. Failure to comply with the requirements of this NIE will result in the issuance of additional enforcement action by this Office, which would likely include the assessment of administrative monetary penalties and property encumbrance. Please be aware that administrative penalties of up to \$25,000 per day of violation are authorized under the *General Laws of Rhode Island*.

If there are any questions or concerns, you may contact me or Richard LeFebvre via telephone at (401) 222-1360, Ext. 7407 or 7527 or via electronic mail at [tracey.tyrrell@dem.ri.gov](mailto:tracey.tyrrell@dem.ri.gov) or [richard.lefebvre@dem.ri.gov](mailto:richard.lefebvre@dem.ri.gov).

**PLEASE NOTE:** Communication in any form other than writing shall not be deemed a satisfactory response to this NIE.

Sincerely,

Tracey D'Amadio Tyrrell  
Supervising Environmental Scientist  
DEM - Office of Compliance and Inspection

Enclosure

XC: Mark Dennen, DEM/OWM

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: APENTERPRISE, LLC**

**FILE NO.: SR 2016-8**

**NOTICE OF INTENT TO ENFORCE**

**A. Introduction**

Pursuant to *Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws* ("R.I.G.L."), as amended, 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 DEM's jurisdiction.

**B. Facts**

- (1) The subject properties are located on Walnut Street, Russell Avenue, Highland Avenue and Park Avenue in the Town of Portsmouth, Rhode Island, otherwise identified as Portsmouth Tax Assessor's Plat 20, Lots 1, 2 and 13 and Plat 25, Lot 2 (the "Properties" or "Site").
- (2) Respondent is the owner of the Properties.
- (3) The Site was utilized by the Town of Portsmouth as a solid waste landfill or open dump from approximately 1954 to 1974. Upon information and belief, residential and commercial solid waste was accepted at the Site and the waste was burned and covered daily.
- (4) On 4 November 2003, DEM received a *Site Investigation Report* ("SIR") dated 31 October 2003 for the Site, which was prepared by Vanasse Hangen Brustlin, Inc. ("VHB") on behalf of Respondent.
- (5) On 26 January 2006, DEM received a *Supplemental Site Investigation Report* ("SSIR") dated January 2006 for the Site, which was prepared by VHB on behalf of Respondent.
- (6) In the SIR and SSIR, VHB reported the following:
  - (a) Test pit excavations throughout the site revealed the presence of significant quantities of solid waste at depths ranging from 4 to 12 feet below grade;
  - (b) Laboratory analysis of soil samples obtained from the Site revealed the presence of metals, volatile organic compounds ("VOCs") and semi-volatile organic compounds ("SVOCs") at concentrations that exceeded the *Residential Direct Exposure Criteria*

and/or the *GA Leachability Criteria* set forth in the DEM's Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases (the "Remediation Regulations"); and

- (c) Laboratory analysis of groundwater samples obtained from groundwater monitoring wells installed on the Site revealed the presence of total metals, dissolved metals and VOCs at concentrations exceeding the *GA Groundwater Objectives* set forth in the Site Remediation Regulations.
- (7) On 19 March 2010, DEM received a *Remedial Action Work Plan* ("RAWP") for the Site, which was prepared by VHB on behalf of Respondent. VHB's proposed remedy for the Site including construction of a 24-inch soil cap atop the former landfill, groundwater monitoring and applying for DEM's approval of an Environmental Land Use Restriction.
- (8) By letter dated 8 July 2010, DEM notified Respondent that a *Beneficial Use Determination Application* would be required for the proposed utilization of soils meeting industrial/commercial standards.
- (9) On 11 August 2010, DEM received a response to DEM's comments on the proposed RAWP and a *Beneficial Use Determination Application* from VHB on behalf of Respondent.
- (10) On 20 September 2010, DEM issued a *Beneficial Use Determination Approval* ("BUDA") to Respondent, which approved the use of soils meeting the *Method One Industrial/Commercial Direct Exposure Criteria* set forth in the Remediation Regulations and set forth a number of conditions for the utilization of those soils.
- (11) On 28 September 2010, DEM issued a *Remedial Approval Letter* to Respondent, which notified Respondent that DEM had approved of the RAWP (as modified by VHB's response to comments letter dated 10 August 2010) and set forth a number of conditions for completion of the RAWP.
- (12) On 6 August 2013, Respondent submitted a request to DEM to renew the BUDA.
- (13) On 9 September 2014, DEM issued a *Beneficial Use Determination Renewal* ("BUDR") to Respondent, which set forth a number of conditions for the renewal and set forth a schedule for completion of the remedial activities. Respondent was notified that the BUDR would expire on 20 September 2015 and that no additional renewals would be considered. Condition Five of the BUDR required that placement of the final landfill cap be completed within one year of the BUDR's expiration date.
- (14) On 9 September 2016, DEM performed an inspection of the Site and observed that Respondent had failed to complete the construction of landfill cap in accordance with Condition Five of the BUDR.

- (15) On 13 September 2016, DEM issued a *Notice of Intent to Enforce* (“NIE”) to Respondent care of Mr. David Peter of Site Redevelopment Technologies, however, the NIE was returned “unclaimed”.
- (16) On 21 September 2016, DEM attempted to inspect the Site but found the gate locked. From the vantage point of the right-of-way, the DEM inspector was able to determine that construction of the landfill cap had yet to be completed.

**C. Violations**

Based on the foregoing facts, the Director has reasonable grounds to believe that Respondent is in violation the following regulations:

- (1) **Rule 4.02 of the Remediation Regulations** requiring responsible parties to investigate and remedy hazardous material releases in full compliance with Sections 5 through 12 of the Site Remediation Regulations.
- (2) **Rule 11.02 of the Remediation Regulations** requiring performing parties to comply with the terms and conditions set forth by DEM in Remedial Action Work Plan approvals.
- (3) **Rule 2.2.12 of the DEM’s Rules and Regulations for Composting Facilities and Solid Waste Management Facilities** (the “Solid Waste Regulations”) pertaining to final cover construction for sanitary landfills.
- (4) **Rule 2.3.04(c) of the Solid Waste Regulations** pertaining to final cover construction for sanitary landfills.

**D. Required Actions:**

Pursuant to *R.I.G.L. §42-17.1-2(21)*, DEM is hereby requiring that Respondent shall complete the following remedial actions:

- (1) Within 180 days of receipt of this NIE, complete the construction of the required landfill cap at the Site in full compliance with the RAWP dated March 2010, DEM’s *Remedial Approval Letter* dated 28 September 2010, the BUDR dated 9 September 2014, the Remediation Regulations and the Solid Waste Regulations.
- (2) Within 30 days of the completion the landfill cap’s construction, submit a compliance report to the DEM’s Office of Compliance and Inspection, which shall provide a detailed summary of the cap’s construction and the current status of the Site. The report shall be submitted to the attention of the undersigned at the following address: DEM – Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, RI 02908-5767.

**F. Failure to Comply:**

This NIE constitutes a notice of intent to assess an administrative penalty pursuant to *R.I.G.L. Chapter 42-17.6*, in the event that you fail to comply with this NIE in a timely and satisfactory manner. If Respondent promptly and satisfactorily complies with the requirements of this NIE, then DEM may decide to forego the assessment of administrative monetary penalties. Continued non-compliance, however, will result in the issuance of a *Notice of Violation and Order*, which will include the assessment of an administrative penalty, which may be as high as \$25,000 per violation for each and every day that violation continues to exist.

Questions regarding the required remedial actions at the Site shall be directed to the project manager, Mark M. Dennen, of the DEM's Office of Waste Management. Mr. Dennen may be contacted via telephone at (401) 222-2797, Ext. 7112 or via electronic mail at [mark.dennen@dem.ri.gov](mailto:mark.dennen@dem.ri.gov).

If you have any questions concerning this NIE or if you wish to schedule an informal meeting to discuss the alleged violations, please contact me or Richard LeFebvre at (401) 222-1360, Ext's. 7407 or 7527 or via electronic mail at [tracey.tyrrell@dem.ri.gov](mailto:tracey.tyrrell@dem.ri.gov) or [richard.lefebvre@dem.ri.gov](mailto:richard.lefebvre@dem.ri.gov).

Thank you for your anticipated cooperation in this matter.

FOR THE DIRECTOR,



Tracey D'Amadio Tyrrell  
Supervising Environmental Scientist  
DEM - Office of Compliance & Inspection

Date: December 7, 2016