



**Rhode Island
Department of Environmental Management**

235 Promenade St., Providence, RI 02908-5767 TDD 401.222.4462

Certified Mail

Notice of Intent to Enforce (OWM/WFM # 317)

October 30, 2014

Mr. Arthur Palmer
AP Enterprises, LLC c/o David Peter
Site Redevelopment Technologies
18 Shoreline Dr.
Foxboro, MA 02035

SF Pacific LLC
C/O Barry T Mori
Lawrence Investments LLC
101 Ygnacio Valley Rd Ste 320
Walnut Creek, CA 94596

Dear Responsible Parties:

Enclosed please find a Notice of Intent to Enforce (NOI) issued to the AP Enterprises LLC and SF Pacific LLC (hereafter the *Parties*) regarding the Former Portsmouth Town Dump Landfill located on Plat 20 Lots 1,2,13 and Plat 25- Lot 2 in Portsmouth, Rhode Island, in connection with soils recently received at the site.

As is stated in the NOI, a written response is required within ten (10) days indicating your compliance with the required actions in the time frame indicated. While the Department is evaluating enforcement action regarding the materials, we feel immediate action is necessary as discussed below. Lack of action may result in additional enforcement actions.

Please contact Mark Dennen at (401)-222-2797, extension 7112 (email: mark.dennen@dem.ri.gov) if you have any questions concerning your responsibilities; however, communication in any form other than writing shall not be deemed a satisfactory response to this NOI.

Sincerely,

Laurie Grandchamp, Supervising Engineer
Department of Environmental Management
Office of Waste Management

Enclosure

CC: Terrence Gray, Assistant Director
Leo Hellested, Chief, OWM
Tracey Tyrrell, OCI
Tim O'Connor, Tim O'Connor Consulting

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF WASTE MANAGEMENT
WASTE FACILITY MANAGEMENT PROGRAM

IN RE: Former Portsmouth Town Dump located on Plat 20 Lots 1,2,13 and Plat 25- Lot 2,
Portsmouth, Rhode Island

OWM/WFM # 317

NOTICE OF INTENT TO ENFORCE

You are hereby notified that the Director of the Department of Environmental Management (the “Director”) has reasonable grounds to believe that the following Parties have violated certain provisions of the *Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases* (Hereafter *Remediation Regulations*) and/or the *Rules and Regulations for Composting Facilities and Solid Waste Management Facilities* (*Solid Waste Regulations*).

While the Department reserves the right to take additional enforcement actions, immediate action is necessary as discussed below. Lack of action may result in additional enforcement actions. If you have any questions regarding this Notice, then please contact Mark Dennen at (401) 222-2797 extension 7112.

A. Parties

1. AP Enterprises LLC is the owner/operator of the above-referenced site. Therefore, AP Enterprises LLC is potentially responsible, in whole or in part, for the violations identified in this Notice.
2. SF Pacific LLC is the owner/operator of a site located on 590 Bellevue Avenue that shipped soils alleged to contain elevated naturally occurring arsenic to the Former Portsmouth Town Dump

B. “Findings of Fact” Surrounding the Alleged Noncompliance

1. AP Enterprises was issued a *Remedial Action Approval* on September 28, 2010 that included, by reference a *Beneficial Use Determination Approval (BUDA)* dated September 20, 2010 (most recently renewed on September 20, 2014) and is subject to the conditions of both the *BUDA* and the *Remedial Action Approval* issued under the authority of the *Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases* (*Remediation Regulations*) and the *Rules and Regulations for Composting Facilities and Solid Waste Management Facilities* (*Solid Waste Regulations*).
2. At the time of inspection, shipping documents list the location of material origin as 590 Bellevue Avenue, known to the Department as Beechwood Avenue (file SR-22-0116B).

As of October 24, 2014, records of the Newport Tax Assessor list the owners of this property to be SF Pacific LLC.

3. SF Pacific LLC was issued a Remedial Action Approval by the Department on April 15, 2014.
4. Soil that originated from 590 Bellevue Avenue in Newport, RI was sampled by the Department on September 12, 2014 and October 6, 2014. Field investigation Reports and analyses are attached. While the sample taken on September 12, 2014 did not differ significantly from those submitted by AP Enterprises, the level of arsenic in the sample that was taken on October 6, 2014 from the truck as it was deposited contained arsenic at 61 mg/kg. This level is significantly higher than both the maximum level reported (27 mg/kg) and the highest allowable standard set forth in the BUD (40 mg/kg).

C. Alleged Violations

Based on the findings of fact set forth above, the *Parties* are found to be non-compliant with and are in violation of the following Regulations and Approvals:

1. **AP Enterprises LLC is in violation of the following Regulations and requirements:**

Remediation Regulations Rule 11.02 Proper Operation and Maintenance requires the Performing Party shall operate and maintain all portions, activities and/or operations in accordance with all the terms and conditions of its *Remedial Action Approval (and its incorporated BUDA)*, and all other applicable laws and regulations.

Condition 17 of the BUDA requires that:

AP Enterprises shall only accept soils with greater than 7 mg/kg under the following conditions:

- ◆ *This approval is only for soils with naturally occurring levels of arsenic and shall not include media that has been contaminated from a release as defined in the Department's Remediation Regulations.*
- ◆ *Shall notify the Department 48 hours prior to the acceptance of the material. This notification should include the source and quantity of material.*
- ◆ *As described in your request of December 2010, all sources will have at least 10 samples collected during the assessment. No sample shall exceed 40 mg/kg of arsenic and the average arsenic level shall not exceed 20 mg/kg. The soils shall contain only naturally occurring arsenic and will be identified as such by the absence of any other contaminants above Residential Direct Exposure standards (organic or inorganic) within the sample.*
- ◆ *As described in the attached "Elevated, Naturally Occurring Arsenic Soil Handling Plan", of 3/1/2011, A.P. Enterprises shall execute the following:*

- A. *Within 14 days of receiving elevated arsenic soils, the soils will be covered with at least 6 inches of soil cover with arsenic levels below 7 mg/kg; or*
- B. *If the soils are not covered within 14 days, APE shall post financial assurance in the amount of two (2) dollars for each ton accepted in a mechanism as described in Solid Waste Regulation 1.5.10. Said assurance shall be required to ensure funds are available to complete the work in a timely manner.*

Specifically APE is in non-compliance with Condition 17 of the BUD as described below:

- A. The material from 590 Bellevue Avenue is a site known to have had a release of arsenic and is currently under the jurisdiction of the Department's Site Remediation Program due to the arsenic release.
- B. AP Enterprises, LLC accepted the 590 Bellevue Avenue Newport material that was not naturally occurring and contained levels of arsenic greater than 40 mg/kg.

2. SF Pacific LLC is in violation of the Following Regulations and Requirements:

Remediation Regulations Rule 11.02 Proper Operation and Maintenance requires the Performing Party shall operate and maintain all portions, activities and/or operations in accordance with all the terms and conditions of its Remedial Action Approval and all other applicable laws and regulations.

Specifically SF Pacific is in non-compliance with Condition 3 of the Remedial Approval of April 15, 2014 as described below:

All excavated regulated soil, if not encapsulated onsite or if not encapsulated on the 570 & 580 properties, shall be disposed of off-site at an appropriately licensed disposal facility in accordance with all local, State, and Federal laws.

The former Portsmouth Town Dump is not permitted to accept any soils above 7 mg/kg except for soils with naturally occurring elevated arsenic at levels below 40 mg/kg with an average below 20 mg/kg.

D. Required Actions

The following actions are required in order for the Parties to comply with the above-mentioned Regulations and License Conditions:

Within fourteen (14) days of receipt of this Notice:

1. The Parties shall excavate and remove the soil that originated from 590 Bellevue Avenue from the Portsmouth Landfill.
2. SF Pacific LLC shall dispose of the soils at an alternate location permitted to accept the material and provide the Department with the appropriate documentation.
3. The Parties shall ensure that no additional material is sent to the former Portsmouth Town Dump from the 590 Bellevue Avenue site.

4. AP Enterprises LLC shall reimburse the Department for the sampling. A check for the amount of \$1,026.80 made payable to Rhode Island General Treasurer should be mailed to the Office of Waste Management.
5. AP Enterprises LLC shall submit a plan to the Department describing measures that will be instituted in order to prevent inappropriate material being accepted by the Landfill. Measures could include increased sampling frequency for acceptance of material or AP Enterprises conducts sampling of the material to confirm analytic results.

E. Assessment of Penalty

This Notice constitutes a notice of intent to issue a Notice of Violation and assess an administrative penalty pursuant to R.I. General Laws Chapter 42-17.6 for any violations and/or continued noncompliance. If the Parties promptly and satisfactorily comply with the requirements of this Notice, the Department may not assess an administrative penalty. As previously mentioned, the Department reserves the right to issue additional enforcement action. Failure to comply with the aforementioned items may result in additional enforcement actions as specified in the *Remediation and Solid Waste Regulations* that may be as high as \$25,000 per violation for each and every day that the violation continues to exist.

Within ten (10) days of receipt of this Notice, you must notify this office in writing of your intent to comply with the above-required actions in the time frame indicated.

FOR THE DIRECTOR

LEO HELLESTED, P.E., Chief
Office of Waste Management

Date: _____, 2014