

**STATE OF RHODE ISLAND
PROVIDENCE, SC**

SUPERIOR COURT

**THE STATE OF RHODE ISLAND,
BY AND THROUGH PETER F. NERONHA,
ATTORNEY GENERAL**

Plaintiff,

v.

C.A. No.: PC-2025-

BARLETTA HEAVY DIVISION INC.

Defendant.

COMPLAINT

The Rhode Island Office of Attorney General and the Rhode Island Department of Environmental Management, acting by and through the Attorney General Peter F. Neronha, file this civil Complaint against the below-described Defendants and allege as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to R.I. Gen. Laws §§ 8-2-13, 10-1-2, 10-20-3, 23-18.9-11.

2. Venue is proper, pursuant to R.I. Gen. Laws §§ 9-4-2, 9-4-4, and 10-1-2.

II. PLAINTIFFS

3. The Rhode Island Office of Attorney General and the Rhode Island Department of Environmental Management, acting by and through the Attorney General, Peter F. Neronha (collectively "Rhode Island" or "State").

III. DEFENDANTS

4. Barletta Heavy Division, Inc. (“Barletta” or the “Company”) is a Massachusetts corporation with its principal place of business located at 40 Shawmut Road, Canton, Massachusetts, 02021.

5. Barletta’s Registered Agent is listed as Daniel Calenda, 438 Broadway Street, Providence, R.I. 02909.

IV. FACTS

6. On December 19, 2017, the Rhode Island Department of Transportation (“RIDOT”) contracted for the completion of the Reconstruction of the Route 6/10 Interchange project (the “Project”), contract number 2017-DB-014, with the 6/10 Constructors Joint Venture (“6/10JV”) for \$247,630,000.

7. The 6/10JV consists of Barletta (40% owner), D.W. White and O & G (25% each), and Aetna Bridge (10%).

8. Barletta is the primary contractor on the Project.

9. RIDOT has oversight and administration over the Project.

10. The Project is a highway construction project involving the reconstruction of the entire 6/10 interchange within the existing highway right of way, while replacing or removing nine structurally deficient bridges within the project area.

11. In February 2018, as required by Rhode Island Department of Environmental Management (“RIDEM”) regulations, the 6/10 JV's environmental consultant AECOM completed a

Phase I Environmental Assessment for the Project. Based on the results of that assessment, in November 2018, the RIDOT prepared the Soil and Materials Management Plan ("SMMP") and submitted it to RIDEM for approval.

12. The SMMP states that the SMMP was being completed by AECOM in conjunction with RIDOT and the 6/10 JV, and that the 6/10 JV would be adhering to all the terms of the SMMP.

13. In December 2018, RIDEM approved the SMMP. The letter approving the SMMP states "[a]ll work must be performed in accordance with all applicable regulations and the Department approved [SMMP]." The letter goes on to state in relevant part that "[i]t is the sole responsibility of the Performing Party and their consultant to analyze the material, certify that the material meets the Department's Residential Direct Exposure Criteria ["RDEC"], as defined by the Remediation Regulation, for all constituents, and is suitable for use on the Site."

14. RIDEM's December 2018 approval concludes, in relevant part that "the Department hereby approves the SMMP for the Route 6 & 10 Interchange Relocation Project ... provided that all activities and procedures detailed in the SMMP are strictly adhered to."

15. The terms of the SMMP are part of the 6/10 JV's contract and must be adhered to in connection with all work completed on the Project.

16. Construction on the Project started in January 2018.

17. Each monthly invoice submitted by Barletta for the Project is certified under penalty of perjury that all "work performed and materials supplied under this invoice have been completed in accordance with the contract."

18. RIDOT notified Barletta of its failure to follow the terms of the SMMP on several occasions before the summer of 2020.

19. One of the main types of material used on the Project is gravel, which is made on site using sand and stone.

20. Prior to July 2020, Barletta was purchasing stone from a supplier that RIDOT had previously approved as being one which provided stone meeting RIDEM's RDEC for material suitable for use at the Project.

21. If Barletta changed the source of the stone it was using at the Project, it was required to provide RIDOT with paperwork indicating that the stone met the environmental criteria for use at the Project.

22. At the beginning of July 2020, Barletta's Superintendent for the Project arranged to import stone ("MBTA stone") Barletta had excavated from a Massachusetts Bay Transportation Authority ("MBTA") Green Line B&C project ("MBTA project") Barletta was working on in Massachusetts, stone that had been stockpiled in Jamaica Plain, Massachusetts (any reference to Jamaica Plain below likewise refers to the location of the stockpiled material, not a project in Jamaica Plain).

23. The Excavated Materials Management Plan ("EMMP") for Barletta's MBTA project dated May 27, 2020, states, in relevant part: "Soil accumulated in stockpiles will be sampled in order to characterize the presence and nature of contamination and determine the appropriate disposition of environmental media."

24. Prior to moving the MBTA stone to the Project, Barletta knew that the stone had not been tested to determine the presence and nature of contamination.

25. Prior to moving the MBTA stone to the Project, Barletta knew that it was Barletta's responsibility to provide RIDOT with paperwork indicating that the stone met environmental criteria for use at the Project.

26. Prior to moving the MBTA stone to the Project, Barletta did not know if the stone met RIDEM RDEC for use on the Project.

27. Barletta trucked ninety-three (93) loads of MBTA stone that had been stockpiled in Jamaica Plain to the Project from July 7, 2020, through July 28, 2020, totaling approximately 3,460 tons, or approximately 2,604 cubic yards.

28. On or about July 21, 2020, RIDEM and RIDOT received a complaint that Barletta was importing contaminated material from Massachusetts.

29. On July 28, 2020, RIDOT notified Barletta that it had received a complaint that Barletta was importing contaminated material from Massachusetts.

30. RIDOT informed Barletta that it needed to provide RIDOT with paperwork to demonstrate that use of the imported material was allowed under RIDEM criteria for the Project.

31. In response to RIDOT's request, the Superintendent on the Project contacted the MBTA Jamaica Plain Project Superintendent asking for test results for the stone brought to the Project. The Jamaica Plain Project Superintendent stated: "[y]ou know we don't have test results."

32. The Superintendent on the Project subsequently contacted several other Barletta employees working on other MBTA projects in Massachusetts and ultimately secured an environmental report for stone excavated from another MBTA project at Orient Heights, not the MBTA stone stored at Jamaica Plain, where the level of contamination met RIDEM RDEC for use on the Project.

33. Later in the day on July 28, 2020, knowing that the Orient Heights environmental report did not analyze the stone imported from the MBTA stone stored at the Jamaica Plain site to the Project, the Superintendent on the Project caused the Orient Heights environmental report to be sent to RIDOT as proof that the stone it had imported met RIDEM criteria for use on the Project.

34. RIDOT forwarded the Orient Heights report to RIDEM for its review. Based on its review of the Orient Heights report, RIDEM concluded that the stone Barletta had imported met the RDEC for material suitable for use at the Project.

35. On August 3, 2020, Barletta received environmental test results for the MBTA stone stored at Jamaica Plain imported to the Project. The test results concluded that the stone did not meet the environmental standards for use on the Project.

36. After learning of the test results on August 3, 2020, the Superintendent on the Project asked another Barletta employee to either: (1) change the test results; (2) wash the stone before taking another sample and having it retested; or (3) take a known clean sample and call it MBTA stone stored at Jamaica Plain.

37. Barletta continued to use the imported MBTA Jamaica Plain stone at the Project through August 23, 2020.

38. On or about September 8, 2020, RIDOT received notice of an allegation that the stone Barletta had imported from Massachusetts had not come from Orient Heights as represented in the environmental report the Superintendent on the Project had provided on July 28, 2020, but Jamaica Plain.

39. On September 9 and 23, 2020, the Superintendent on the Project falsely stated at weekly Project meetings which included RIDOT and FHWA officials, that the stone from the Jamaica Plain stockpile was actually stone from Orient Heights that had been brought from Orient Heights to Jamaica Plain and temporarily stockpiled for testing. The Superintendent on the Project further claimed that after the stone passed environmental testing it was brought to the Project.

40. On September 16, 2020, the Superintendent on the Project caused a letter to be sent to RIDOT arguing that the imported stone was not in contravention of the SMMP. The letter falsely claimed that the stone had been tested and passed the RDEC for reuse on the site.

41. On October 8, 2018, RIDOT awarded Barletta the Pawtucket/Central Falls Rail Station and Bus Hub contract for \$35,796.00 million ("Pawtucket").

42. In October of 2019, Barletta secured an environmental assessment of the site and developed a Remedial Action Workplan ("RAWP") which was submitted to RIDEM. Based on the contaminants found, the RAWP included a Construction Soils Management Plan ("CSMP") which allowed for the reuse of contaminated soils onsite and the use of certain controls to prevent human exposure.

43. On July 8, 2020, Barletta began work at the site and assigned the Superintendent on the Project to oversee it. The Superintendent instructed workers to remove several feet of soil from the Pawtucket site and arranged to truck the material to the Project.

44. Both the RIDOT inspector assigned to Pawtucket and Barletta's environmental consultant for Pawtucket informed Barletta that it was not permitted to remove dirt from the site.

45. On July 17, 2020, the Superintendent on the Project was provided with the CSMP for Pawtucket.

46. Despite being notified that he could not remove soil from Pawtucket and being sent the CSMP, for several more days, the Superintendent on the Project continued to direct that soil from Pawtucket be removed and brought to the Project.

47. On July 21, 2020, in addition to receiving a complaint about Barletta importing material from Massachusetts, RIDOT also received a complaint about the movement of dirt from Pawtucket to the Project.

48. In response to RIDOT's inquiries about the movement of material from Pawtucket to the Project, Barletta falsely informed RIDOT that the movement of Pawtucket material took place on just one day and amounted to 3-6 truckloads only. Barletta also falsely informed RIDOT that only top soil had been removed and was only taken to the Project to be screened.

49. On September 9 and 23rd, 2020, at the same weekly project meetings referenced in Paragraph 33, the Superintendent on the Project falsely informed RIDOT officials that none of the Pawtucket material had been used on the Project. In fact, Barletta's movement of material from Pawtucket took place over four days and amounted to fifty-two (52) truckloads. In addition, sixteen

(16) loads of the fifty-two (52) loads, or 265 cubic yards, were directly dumped at two locations at the Project.

V. COUNT I

Dispose of Refuse at Other Than a Licensed Facility, in violation of R.I. Gen. Laws § 23-18.9-5.

50. The State repeats and realleges the allegations set forth in paragraphs 1 through 49 as if fully set forth herein.

51. The 6/10 construction site is not a licensed solid waste management facility.

52. The allegations set forth herein constitute violation(s) of R.I. Gen. Laws § 23-18.9-5.

53. Wherefore, the State prays for relief as set forth below.

VI. COUNT II

Operating a Solid Waste Management Facility Without a License, in violation of R.I. Gen. Laws § 23-18.9-9(a)(1).

54. The State repeats and realleges the allegations set forth in paragraphs 1 through 49 as if fully set forth herein.

55. The Company has never applied for a license to operate a solid waste management facility at the 6/10 construction site.

56. The allegations set forth herein constitute violation(s) of R.I. Gen. Laws § 23-18.9-9(a)(1).

57. Wherefore, the State prays for relief as set forth below.

VII. COUNT III

***Giving False Document to Agent, Employee, or Public Official,
in violation of R.I. Gen. Laws § 11-18-1.***

58. The State repeats and realleges the allegations set forth in paragraphs 1 through 49 as if fully set forth herein.

59. The allegations set forth herein constitute violation(s) of R.I. Gen. Laws § 11-18-1.

60. Wherefore, the State prays for relief as set forth below.

VIII. PRAYER FOR RELIEF

The Plaintiff, **STATE OF RHODE ISLAND**, seeks judgment against **BARLETTA** for:

61. Payment of penalties allowed by regulation or statute, including but not limited to R.I. Gen. Laws §§ 23-18.9-1 *et seq.* and 11-18-1 *et seq.*

62. Compensatory damages arising from the health impacts on the citizens of Rhode Island;

63. Costs (including reasonable attorney's fees, court costs, and other expenses of litigation);

64. Prejudgment interest; and

65. Any other and further relief as the Court deems just, proper, and equitable.

IX. JURY TRIAL DEMAND

Plaintiffs hereby demand a jury trial on all causes of action for which a jury is available under the law.

STATE OF RHODE ISLAND

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