

Department of Environmental Management
Administrative Adjudication Division
State of Rhode Island
RE: RAIMONDO, PASCO & SUSAN
AAD NO. 03-012/WME
NOTICE OF VIOLATION OC&I/UST 03-02081
November 15, 2004

DECISION AND ORDER

I. Facts and Travel

This matter came before the Administrative Adjudication Division ("AAD"), of the Department of Environmental Management ("Department" or "DEM") pursuant to a request for hearing on the Notice of Violation and Order ("NOV") issued on April 9, 2003 by the Office of Compliance and Inspection ("OCI") to Pasco Raimondo and Susan Raimondo ("Respondents"). Joseph LoBianco, Esq., represented OCI and Pasco Raimondo and Susan Raimondo appeared *pro se*.

This matter is properly before the Hearing Officer pursuant to R.I.G.L. Chapter 12 of Title 46 entitled "Water Pollution", specifically §46-12-9, R.I.G.L. §42-17.1-2 and §42-17.6, statutes governing the AAD, (R.I.G.L. §42-17.7-1 et seq.), the Administrative Procedures Act (R.I.G.L. §42-35-1 et seq.), the Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials ("UST Regulations"), the Rules and Regulations for Assessment of Administrative Penalties ("Penalty Regulations"), and the Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for the Department of Environmental Matters ("AAD Rules"). The proceedings were conducted in accordance with the above-noted statutes and regulations. The NOV alleges that the Respondents are the owners and operators of property located at 94 West Warwick Avenue, West Warwick, Rhode Island ("Facility") which operated, *inter alia*, as a gasoline service station. The NOV alleges that as owners and operators of the Facility, Respondents failed to comply with UST Regulations over the course of several years. Each violation is articulated and analyzed later in this Decision and Order.

The Prehearing Conference was held on September 5, 2003. Additional time was afforded to Respondents to November 21, 2003 to submit documents and identify witnesses. A Prehearing Conference Record was entered on March 16, 2004 in accordance with R.I. GEN. LAWS §42-17.7-5. As this matter is an enforcement proceeding, OCI bears the burden of proving the violations alleged in the NOV by a preponderance of the evidence. Once proven, the Rules and Regulations for the Assessment of Administrative Penalties, Section 12(c), shifts the burden to Respondents to prove by a preponderance of the evidence that the penalty was not calculated in accordance with the Penalty Regulations and statute. A list of Exhibits is attached to this Recommended Decision as "Appendix".

II. Witness Testimony

Tracey Tyrrell, a Supervising Environmental Scientist in the UST Section of the Office of Compliance and Inspection was OCI's only witness. She testified that her duties include multiple programs but specifically she reviews enforcement actions issued by OCI including UST enforcement actions. Ms. Tyrrell testified that she was familiar with this particular facility and had reviewed the files in the Office of Waste Management as well as OCI files concerning this Facility. She drafted the NOV and performed the calculation of the administrative penalty based on the information in the files. She stated that she calculated the administrative penalty using the standards required by the Rules and Regulations for the Assessment of Administrative Penalties. Ms. Tyrrell continued that the NOV, penalty summary and worksheet are regularly prepared in the ordinary course of issuing an NOV. She testified that the penalty summary and worksheet in this matter accurately reflect what she took into account in calculating the proposed administrative penalty.

Ms. Tyrrell also testified concerning a certified letter dated July 17, 2001 addressed to Pasco Raimondo (OCI 6 Full) detailing certain deficiencies in compliance with the UST Regulations noted pursuant to a Facility inspection conducted on June 12, 2001. It notified Respondent Pasco Raimondo

of UST Regulations that had not been complied with as of the date of the letter and requested that documentation be forwarded to Richard S. LeFebvre in the DEM Office of Compliance and Inspection. Although Mr. LeFebvre was not the author of the letter, he conducted the Facility inspection on June 12, 2001. The letter required Respondent Pasco Raimondo to, *inter alia*, submit records of inventory control, CMS testing documentation, a report concerning CMS alarms and verification of corrective action, to complete and submit a Facility Update Registration Form and to pay all past due registration fees and late fees. The receipt for certified mail indicated that the letter was received at the Facility and signed for on July 21, 2001. Ms. Tyrrell testified that there is no indication in Department files that either the Office of Compliance and Inspection or the Office of Waste Management received any documents in reply to this correspondence.

Ms. Tyrrell testified concerning each violation alleged and the penalties assessed for each violation according to the penalty matrix contained in OCI 10 (Full). She described each violation and the type and gravity of each according to the factors set forth in the penalty matrix. With regard to the economic benefit portion of the penalty, Ms. Tyrrell explained that registration and late fees that Respondents were required to pay to register the tanks totaled \$2,425.00. In order to accurately determine the economic benefit from failure to hire a qualified technician to perform annual monitoring of the CMS, DEM relies on the results from an annual survey of costs charged by such service providers. Based on that survey, the average annual cost is two hundred forty three dollars (\$243.00) per test. Using the same survey average, OCI assessed an economic benefit penalty of one hundred two dollars (\$102.00) per test for each failure to test line leak detectors.

On cross-examination by Mr. Raimondo, Ms. Tyrrell explained that although there are physically only four tanks on the property, one of the tanks is compartmentalized and must be considered as two separate tanks under the UST Regulations (Tank #9 and Tank #11).

Ms. Tyrrell was cross-examined on the reasons for requiring daily inventory and monthly reconciliation records. She testified that daily inventory records provide information on what goes in and out of each tank on a daily basis. Monthly reconciliation employs a mathematical computation using figures from the daily inventories that show, over time, what is occurring with each tank. This process is important because it keeps track of product gallonage in very small amounts (as small as one half cup (4 oz.)) which would otherwise escape detection. She concurred with Respondent that inventory control generally may be accomplished in several ways but regardless of the method employed, she testified that under applicable Regulations the results of daily inventory and monthly reconciliation must be written down and adequate records must be maintained.

Respondent Susan Raimondo was called to testify by Mr. Raimondo. Her testimony was very brief. She stated that she has no involvement in the operation of the Facility, does not work at the Facility and that her name is not on any Facility licenses. Cross-examination established that Susan Raimondo is an owner of the property.

Pasco Raimondo testified on his own behalf. As he appeared pro se, he was allowed to testify in a narrative format subject to cross-examination. Mr. Raimondo first addressed the issue of failure to maintain line leak detectors in working order. The Facility inspection performed by Mr. LeFebvre revealed that the piping collection sump sensors (which are a component of the line leak detection system) were filled with water and in an "alarm mode". Mr. Raimondo testified that the reason for this was not that he failed to properly maintain the system, but rather that there had been a recent rainstorm and the sumps fill with water after rainstorms as a result of improper grading caused by a construction project in the immediate vicinity of the Facility. Mr. Raimondo testified that every time a rainstorm occurs, the collectors fill with water. He further testified that the pumps inside the tanks are as deep as four inches (4") from the tank bottoms and he is confident that there is no water getting in the tanks.

Mr. Raimondo detailed the substantial improvements made to the Facility in the years 1992 and 1993. He testified that he installed four new tanks, new pump islands, monitoring equipment, leak detectors, overflow protection and spill containment. He stated that he maintains the equipment on a daily basis and employs Kennedy Company for repairs. Daily monitoring is accomplished by taking pump readings each day and evening. He indicated that he was present and cooperative during the Facility inspection of June 12, 2001 and showed Mr. LeFebvre the daily sheets that he maintains. Mr. Raimondo testified that because his equipment was new, he didn't know it had to be tested so soon. With regard to maintenance and testing of the line leak detection system, Mr. Raimondo stated that

all the piping is double walled and if there were any leaks the monitoring system would indicate so. Over the objection of counsel for OCI, (Resp 1 Full) was admitted into evidence. The document, an invoice from John W. Kennedy Company dated September 30, 2003, indicates that testing was ultimately accomplished but not until after issuance of the Notice of Violation.

On cross-examination Mr. Raimondo was asked a series of questions concerning the alleged violations. He admitted that he did not have a certified technician perform a cathodic protection survey in 1999 and then contradicted himself stating that testing may have been done. When asked about records verifying this test as well as records of annual line leak detection testing for 1994 - 2001, Mr. Raimondo indicated that he was sure testing was done for some years but could not recall which, nor did he, upon request of the Director, submit any invoices to verify that testing was accomplished for any of those years. He stated that he did not know he was required to test and keep records of line leak detection testing.

Counsel for OCI inquired if Mr. Raimondo tested the CMS (or "Veeder Root System") on a monthly basis for the years 1999 to 2001. Mr. Raimondo responded that some testing was done, but again, no records were kept or submitted to DEM. With regard to annual testing of the CMS, Mr. Raimondo "believed" that he retained a qualified technician to perform the tests for the years 1994 - 2001, but again, no such records were maintained by him. Mr. Raimondo testified that he kept product inventory control records for the period June 1999 through June of 2001. He stated that he did perform monthly reconciliation during that period and did keep such records. Again, Mr. Raimondo "believes" that he submitted such records to DEM.

Mr. Raimondo's shifting testimony proved to be of little probative value. His answers to questions posed by Mr. Lobianco were elusive and his testimony concerning testing of equipment at the Facility was contradictory. Mr. Raimondo stated that he was unaware of the testing requirements of the UST Regulations. He then testified that annual testing by a qualified person was not done, then testified that it was done. Although he testified that they "keep an eye" on all of the equipment, he did not state with specificity what annual testing, if any, was conducted or when it may have been done. He could not produce any records to verify such testing for any of the years indicated and even testified that in any event, because the tanks and piping system were new (1993), no testing was needed. For these reasons, I did not find Mr. Raimondo's testimony to be reliable.

As his next witness Mr. Raimondo called Douglas Staradumsky, a fifteen year employee of Pat's Service Station. Mr. Staradumsky testified that he takes inventory on the gas pumps each day. He does this by taking gallon readings off the pumps, taking a "stick" reading of the tanks at the end of the night and reconciling the amount sold to the price per gallon to determine inventory. He further testified that he keeps daily sheets reflecting this exercise, checks the CMS daily and contacts John Kennedy for repairs when needed.

On cross-examination, Mr. Staradumsky reiterated that he keeps only daily inventory control records for the USTs and performs daily reconciliation. He did not, and does not, perform monthly inventory reconciliation.

As his final witness Mr. Raimondo called Richard LeFebvre. This witness was allowed to testify over the objection of counsel for OCI. Although Mr. LeFebvre was not listed as a witness in Mr. Raimondo's prehearing submission, he did perform the inspection of the Facility on June 12, 2001 and prepared the UST Facility Compliance Inspection Checklist ("inspection report") (OCI 5 Full) which forms the basis of the Notice of Violation. Mr. LeFebvre was listed as an OCI witness in their prehearing memorandum but was not called as a witness in OCI's direct case. Because he prepared the inspection report, which was entered as a full exhibit, Mr. Raimondo was allowed to call him to question him regarding the inspection and his subsequent report.

Mr. LeFebvre is employed by the Department of Environmental Management, Office of Compliance and Inspection as an Environmental Scientist. His duties include enforcement of the UST Regulations. Mr. LeFebvre was examined concerning his inspection of June 12, 2001. Mr. LeFebvre acknowledged that he was shown daily inventory records maintained at the Facility but testified that the records provided were not complete and did not constitute compliance under the Regulations. Even accepting Mr. Staradumsky's description of daily inventory control, Mr. LeFebvre stated that the daily inventory practice performed each day was not sufficient to achieve regulatory compliance. The reason for this is that the procedure employed by Respondents constitutes only a portion of what the UST Regulations require.

With regard to the piping collection sumps, Mr. LeFebvre testified that he observed them in a "flooded" condition, filled with water and in an alarm mode.

On cross-examination Mr. LeFebvre was questioned regarding the import of the sumps filling with water. He explained that if the sumps fill with water, leak sensors will be forced into an alarm condition as if they are detecting product (gasoline). If the sumps fill with water, the alarm system (leak detection system) is disabled.

Mr. LeFebvre testified that when he inspected the Facility on June 12, 2001, the water he observed in the sumps was not clear. It was murky in appearance and contained debris, indicating to him that the water had been sitting in the sumps for some time and not the result of recent rainfall as contended by Mr. Raimondo.

Mr. LeFebvre further testified concerning the absence of Facility records during his inspection. He stated that he found no records of inspection of the line leak detection systems for the years 1994 through 2001. He stated that he requested those records, as well as records for monthly testing of the CMS (Veeder Root System) from Mr. Raimondo but none were provided to him. Similarly, Mr. LeFebvre indicated that he did not observe any records verifying annual testing of the CMS; that he requested such records from Mr. Raimondo; and again, none were provided.

Although Mr. LeFebvre conceded that Mr. Raimondo produced daily inventory records for gallons dispersed on a daily basis, he reiterated that no monthly records of reconciliation for each tank or monthly leak detection records for each tank were maintained at the Facility. Maintenance of daily inventory records constitutes only partial compliance with UST Regulations. Regardless of the existence of daily inventory records, it was Mr. LeFebvre's testimony that the Respondent failed to meet the requirements set forth in the UST Regulations as a result of his failure to maintain records verifying compliance with monthly reconciliation mandates of the Regulations.

On redirect, and under repeated questioning concerning the existence and adequacy of daily inventory records, Mr. LeFebvre remained firm that the daily sheets maintained at the facility did not constitute compliance with the reconciliation requirements of the Regulations.

III. Analysis of Violations Alleged

Violation #1 - Failure to pay registration fees and associated late fees

UST Regulations Rules 6.10 and 6.13 require as follows:

6.10 Registration Fees: All facility owner/operators shall pay to the Department an annual registration fee of seventy five dollars (\$)75.00) for each underground storage tank required to be registered at the facility.

6.13 Late Fees: Owners/operators who fail to pay a registration fee within the specified time frame shall be subject to a late fee charge of (\$)35.00 per tank per year.

The evidence establishes that registration fees and associated late fees in the amount of (\$)2,425.00 are due. Respondent Pasco Raimondo, as owner and operator of the Facility and Susan Raimondo as an owner of the Facility, are responsible for payment of these fees.

Violation #2 - Failure to maintain and operate the piping collection sumps and leak monitors in accordance with the UST Regulations.

Specifically, the NOV cites Respondents with violations of Rules 8.02(A), 8.13(A) and 8.14(D). They read in pertinent part:

8.02 General operations and maintenance:

(a) All USTs shall be maintained and operated by trained personnel and in compliance with the applicable national codes of practice for the handling and storage of petroleum or hazardous materials as listed in Appendix B.

8.13 Operation of Leak Monitoring Equipment:

(a) Leak monitoring devices shall be installed, calibrated, operated and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running conditions. All records pertaining to the equipment manufacturer, warranties,

maintenance requirements, repairs, maintenance, and testing shall be maintained on-site for the life of the system or at an alternate location approved by the Director in writing.

8.14 Spill Containment and Overfill Protection:

...
...
...

(d) Sumps: Piping collection and transition sumps, submersible pump head containment structures, and dispenser pans/sumps, where existing, shall be maintained such that all penetration fittings and entry boots are in good condition, all sensors are secured in an upright position and located at least one inch below the lowest penetration fitting or entry boot, and are kept clean and dry.

The evidence preponderates in OCI's favor on this violation. Mr. LeFebvre's inspection revealed that no maintenance records for leak monitoring equipment were present at the Facility as required of owners and operators of the Facility by Rule 8.13 A. Moreover, Mr. LeFebvre testified that he asked Mr. Raimondo for such records during the inspection but none were produced. Ultimately, a certified letter was sent to Pasco Raimondo outlining this deficiency (and others) and again requesting such records. The NOV requested these records be produced. The uncontradicted testimony establishes that the request was not complied with by either Respondent.

Even if I accept Mr. Raimondo's testimony that he checks his equipment routinely, Rule 8.13 requires that maintenance records be maintained for the life of the system. No maintenance records were present at the Facility, produced during the inspection, or provided to the Director as requested in the certified letter or the NOV. Moreover, no maintenance records or evidence thereof were provided at the hearing. With regard to Rule 8.14(D), Mr. LeFebvre's testimony establishes that the sensors on the piping collection sumps were not kept clean and dry as required by the Rule. The sumps were filled with water and debris effectively disabling the leak detection monitoring function.

The penalty for this violation was characterized as a Type II Minor violation and assessed a penalty of \$1,250.00, the lowest penalty in the penalty range for such a violation.

Violation #3 - Failure to have a complete operational survey of the cathodic protection system performed in the year 1999 by a qualified cathodic protection tester and/or failure to maintain testing records in violation of UST Regulations Rule 8.06(B) and 11.02(A)(8)

Rule 8.06 (B) reads as follows:

(b) All UST systems equipped with cathodic protection must be inspected and tested for proper operation by a qualified cathodic protection tester in accordance with the following requirements:

(1) ...

(2) All sacrificial anode (galvanic or *sti*-P3) systems must be tested within 6 months of installation or repair, at least every 3 years following the installation date, and whenever construction or maintenance in the area of the structure occurs, in order to determine that the tank-to-soil potential reading relative to copper is -850 millivolts or more negative.

(3) The criteria used to determine whether a cathodic protection system provides adequate cathodic protection must be in accordance with a nationally recognized code of practice listed in Appendix B.

(4) ...

Rule 11.02(A)(8) reads as follows:

11.02 Records: All owners/operators of UST facilities shall maintain on the facility premises or at an alternate location approved by the Director, for the period of time specified below, records of the following:

(a) Permanent Records: The following shall be maintained for three years beyond the operational life of the facility:

...
...

(8) All records pertaining to the operation and maintenance of approved corrosion protection methods as required in Rule 8.05 and 8.06;

The inspection report prepared by Mr. LeFebvre established that the cathodic protection system at the Facility is a sacrificial anode (galvanic or *sti*-P3) system and, according to Rule 8.06 (B), it must be tested every three years from the date of installation. The cathodic protection system was installed in

1993 at the time the Facility was upgraded. Following the requirements of Rule 8.06(B), Respondents were required to have the cathodic protection system tested in 1996 and again, three years later, in 1999. This violation cites Respondents with the failure to test and maintain testing records for the year 1999. The evidence is uncontradicted that no such testing records were present at the Facility or produced on the date of the inspection. Moreover, no testing records were submitted to the Director as requested in the certified letter nor were any testing records or evidence thereof introduced at the hearing. The penalty for this violation was characterized as a Type II Minor violation and assessed a penalty of \$1,250.00, the lowest penalty in the penalty range for such a violation.

Violation #4 - Failure to procure the services of a qualified person to perform annual testing of the line leak detectors for the USTs at the Facility as well as failure to maintain such testing records for the years 1994-2001 as required by Rules 8.10 and 11.02(A)(3)

Rule 8.10 states as follows:

8.10 Line Leak Detectors: All underground storage tanks at existing facilities that are equipped with pressurized piping are required to have been fitted with an approved line leak detection system by May 8, 1987. Line leak detectors are required to be tested annually in accordance with the manufacturer's requirements and procedures by trained, qualified personnel. Operation of a pressurized piping system with a defective or missing line leak detector is prohibited.

Rule 11.02(A)(3) reads as follows:

11.02 Records: All owners/operators of UST facilities shall maintain on the facility premises or at an alternate location approved by the Director, for the period of time specified below, records of the following:

(a) Permanent Records: The following shall be maintained for three years beyond the operational life of the facility:

...
...

(3) Annual test results of equipment or systems used for leak detection and inventory control; Mr. LeFebvre's testimony established that no records related to annual testing of line leak detectors were present at the Facility or produced at the time of the inspection. In his testimony, Mr. Raimondo indicated that he was unaware of regulatory requirements and was equivocal, at best, concerning whether line leak detectors were ever tested and if so, when they may have been tested. Mr. Raimondo admitted under cross-examination that he did not submit to the Director any records of annual testing of the Facility's line leak detection system. Because of the importance of properly functioning line leak detectors in the prevention of petroleum releases; the fact that the Facility is located in a densely developed area; and that the potential for public harm is great due to the volatile nature of gasoline, the violation was characterized as a Type II Moderate violation and assessed a penalty of \$2,500.00, the lowest amount in the penalty range for such a violation.

Violation #5 - Failure to perform monthly testing of the Continuous Monitoring System (CMS) and/or maintain testing records for the period June 1999 through June 2001 as is required by Rules 8.13(E) and 11.02(B)(3)

Rule 8.13(E) reads:

8.13 Operation of Leak Monitoring Equipment:

...
...

(e) All continuous monitoring systems and alarms shall be tested by the owner/operator on a monthly basis to ensure that they are operating effectively. Records of such tests shall be maintained in accordance with Rule 11 Maintaining Records.

Rule 11.02(B)(3) provides as follows:

11.02 Records: All owners/operators of UST facilities shall maintain on the facility premises or at an alternate location approved by the Director, for the period of time specified below, records of the following:

(b) Routine Record-keeping: The following records shall be maintained for a minimum period of three years from the date made, or for such longer periods as required by the Director in the resolution of enforcement actions:

...
...

(3) Records of monthly tests of continuous monitoring systems as required in Rules 8.13 (E) and 9.16 (E).

Assuming, *arguendo*, that Mr. Raimondo's testimony concerning monthly checks of the CMS are reliable, and constitute testing as contemplated by the Regulations, the recordkeeping requirements for monthly CMS testing were clearly not complied with. Both Mr. Lefebvre's testimony and the inspection report establish that records of monthly testing of the continuous monitoring system were not present at the Facility or produced at the time of the inspection. Moreover, no testing records were submitted to the Director as requested in the certified letter nor were any testing records or evidence thereof introduced at the hearing. This violation was characterized as a Type II Minor violation and assessed a penalty of \$1,250.00, the lowest amount in the penalty range for such a violation.

Violation #6 - Failure to procure the services of a qualified person to perform annual testing of the Veeder Root ILS 350 CMS and/or maintain testing records for the period 1994 through 2001 as required by Rule 8.13(F) and 11.02(A)(3).

Rule 8.13(F) reads as follows:

8.13 Operation of Leak Monitoring Equipment:

...
...

(f) All leak-monitoring devices shall be inspected, calibrated and tested annually to ensure proper operation. Such testing must be performed by trained, qualified persons. Records of such tests shall be maintained in accordance with Rule 8.13(A) and Rule 11 Maintaining Records.

Rule 11.02(A)(3) is cited above and requires that owners and operators maintain records of testing of all line leak monitoring devices at the Facility on a permanent basis and for three years beyond the operational life of the Facility. Again, Both Mr. Lefebvre's testimony and the inspection report establish that records of annual testing of the continuous monitoring system were not present at the Facility or produced at the time of the inspection. Furthermore, no testing records were submitted to the Director as requested in the certified letter nor were any testing records or evidence thereof introduced at the hearing. Because continuous monitoring systems are a vital component of leak detection programs at UST facilities; the fact that the Facility is located in a densely developed area; and that the potential for public harm is great due to the volatile nature of gasoline should there be a release, the violation was characterized as a Type II Moderate violation and assessed a penalty of \$2,500.00, the lowest amount in the penalty range for such a violation.

Violation #7 - Failure to maintain daily written inventory records and monthly reconciliation of product stored in the USTs for the period 1999 through June 2001 as required by Rule 11.03.

Rule 11.03 states in pertinent part:

11.03 Inventory Record-keeping and Leak Reporting: Inventory record keeping and leak reporting are to be conducted as follows:

- (a) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;
- (b) The equipment is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;
- (c) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;
- (D) Deliveries are made through a drop tube that extends to within six (6) inches of the tank bottom;

(e) Product dispensing is metered and recorded within the local standards for meter calibration or an accuracy of six (6) cubic inches for every five (5) gallons of product withdrawn;

(f) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth of an inch at least once a month;

(g) If inventory record keeping indicates a discrepancy of 1% or more of the flow-through plus 130 gallons on a monthly basis, then the owner/operator shall report such discrepancy in accordance with Rule 12 Leak and Spill Response.

(h) Any unusual occurrences that might affect the inflow, outflow, or volume on hand, shall be recorded each operating day, along with any adjustments that were made to the records.

The testimony of Mr. Staradumsky and Mr. Raimondo established that daily inventory control procedures were followed at the Facility. Daily sheets were present at the Facility on the date of the inspection and provided to Mr. LeFebvre. It was Mr. LeFebvre's testimony, however, that the daily inventory records were incomplete. Moreover, this Regulation additionally requires written monthly reconciliation and maintenance of such records for each UST. Ms. Tyrrell testified that the Regulations require that the daily records of input and output from each tank be reconciled on a monthly basis using a specific mathematical computation that would show, over time, any discrepancy in the volume of product in the tank. Because inventory recordkeeping is an integral component of leak detection programs at UST facilities and the failure to comply with these recordkeeping requirements could allow significant product loss and could allow leaks to remain undetected; the fact that the Facility is located in a densely developed area; that the potential for public harm is great due to the volatile nature of gasoline should there be a release; and the potential for gasoline to cause significant soil and groundwater contamination if released into the environment, the violation was characterized as a Type II Major violation and assessed a penalty of \$6,250.00, the lowest amount in the penalty range for such a violation.

Respondents failed to comply with the UST Regulations as alleged in the NOV. The evidence established that administrative penalties were calculated in accordance with the Penalty Regulations and statute and that they were appropriately characterized as to type and deviation from the standard. The lowest penalty amount allowed by Regulation was assessed based on the type and nature of each violation. Respondents did not introduce any evidence to prove that the penalties were not calculated properly nor did either Respondent present sufficient evidence of factors which might further mitigate the penalties.

Susan Raimondo's ownership interest in the Facility is sufficient to impose liability for violations of UST Regulations. The fact that she has no involvement in the day-to-day operation of the Facility is unavailing as the Regulations hold owners of such facilities equally liable for Regulatory violations. The UST Regulations provide as follows:

3.00h hRULEh h3h hAPPLICABILITY

The terms and provisions of these rules and regulations shall be liberally construed to permit the Department to effectuate the purposes of state law, goals, and policies.

3.01 General Applicability: Unless otherwise noted, these regulations apply to all proposed, new and existing underground storage tank facilities, at which petroleum product(s) and/or hazardous material(s) are or have been stored underground in a tank or tank system; whether such facilities serve institutional, industrial, commercial, educational, agricultural, governmental, residential or other purposes; and whether such facilities or USTs located there upon, have been abandoned; *and to persons who owned or operated such facilities after May, 1985.*

(emphasis added)

Additionally, all recordkeeping requirements of Rule 11 specifically apply to owners and operators of Facilities.

IV. Findings of Fact

Based on the documentary and testimonial evidence of record I make the following findings of fact:

1. The subject Facility is located at 94 West Warwick Avenue, West Warwick, Rhode Island (the "Facility")

2. The Facility is operated as Pat's Towing.
3. The Facility is identified by RIDEM as UST Facility ID #02081.
4. The Facility is owned by Pasco Raimondo and Susan Raimondo.
5. The Facility is operated by Pasco Raimondo.
6. Susan Raimondo has no involvement in the day-to-day operations of the Facility.
7. The Facility contains five (5) registered underground storage tanks ("USTs").
8. A RIDEM representative conducted a compliance inspection of the Facility on or about June 12, 2001 which revealed numerous regulatory violations.
9. By certified letter dated July 17, 2001, RIDEM notified Respondent Pasco Raimondo of the violations observed at the Facility during the June 12, 2001 inspection and requested that the Respondent submit copies of records of daily inventory and monthly product reconciliation; monthly testing of the continuous monitoring system; annual testing of the continuous monitoring system; annual testing of line leak detector systems; the results of a complete operational survey of the cathodic protection system; and complete enclosed registration forms and pay fees and associated late fees.
10. The DEM did not receive any answer or documentation in response to the July 17, 2001 letter.
11. On April 9, 2003 DEM issued a Notice of Violation ("NOV") to Respondents Pasco Raimondo and Susan Raimondo alleging numerous violations of the UST Regulations and again requiring the submission of testing records to DEM.
12. The following information regarding the UST systems at the Facility is registered with the Department:

UST ID NO. DATE INSTALLED SIZE (Gallons)/SUBSTANCE STORED

UST ID NO.	DATE INSTALLED	SIZE (Gallons)/SUBSTANCE STORED
002	February 1993	4,000/gasoline
005	February 1993	4,000/gasoline
009	February 1993	2,000/gasoline
010	February 1993	4,000/gasoline
011	February 1993	2,000/gasoline

13. The piping collection sumps and leak detection monitors are designed to detect product leaks and prevent release of product.
14. UST Regulations require that piping collection sumps be kept clean and dry.
15. During an inspection conducted on June 12, 2001 the sumps were filled with water and the leak detection sensors were in an alarm mode.
16. Operation of the UST systems with the sumps filled with water effectively disabled the leak detection system and created a potential for product leaks to go undetected.
17. Failure to maintain and operate the piping collection sumps and leak monitors in accordance with UST Regulations constitutes a Type II Moderate violation for which the lowest penalty amount referenced in the Penalty Matrix for Water Pollution Control was assessed (0)1,250.00).
18. UST Regulations require that line leak detectors be tested annually and that records of such testing be maintained for three years beyond the operational life of the Facility.
19. During an inspection conducted on June 12, 2001 there were no records at the Facility regarding annual testing of line leak detectors for UST Nos. 002, 005, 009, 010 and 011 for the years 1994 through 2001.
20. Line leak detectors are designed to prevent a release of petroleum product from piping failures and are an important component of leak prevention and detection programs for UST facilities.
21. Failure to maintain such records constitutes a Type II Moderate violation. The lowest penalty amount referenced in the Penalty Matrix for Water Pollution Control was assessed for this violation (0)1,250.00).
22. The amount of economic benefit accrued to Respondent for failure to perform annual testing of line leak detectors was))102.00 per test. The total economic benefit for this penalty is is))2,448.00 (3 line leak detectors x 8 years = 24 missing tests x 102.00 per test).
23. During an inspection conducted on June 12, 2001 there were no records at the Facility regarding cathodic protection testing or the cathodic protection system for UST Nos. 002, 005, 009, 010 and 011 for the year 1999.

24. A complete operational survey of the cathodic protection system for Facility USTs by a National Association of Corrosion Engineers specialist is required at least once every three years.

25. UST Regulations as applied required testing of the cathodic protection system in 1999 and the maintenance of such testing records for three years beyond the operational life of the Facility.

26. The failure to perform/maintain records of a complete operational survey of the cathodic protection system by a qualified tester constitutes a Type II Minor violation for which the lowest penalty amount referenced in the Penalty Matrix for Water Pollution Control was assessed ()1,250.00).

27. The amount of economic benefit accrued to Respondents for failure to conduct a complete operational survey of the cathodic protection system is))490.00.

28. A continuous monitoring system ("CMS") was installed in 1993 as part of a comprehensive upgrade of the Facility.

29. Continuous monitoring systems are an important part of leak detection programs at UST facilities.

30. Monthly testing of the Facility's continuous monitoring system and maintenance of such testing records is required by UST Regulations.

31. During an inspection conducted on June 12, 2001 no records of monthly testing of the continuous monitoring system for the period June 1999 through June 2001 were present at the Facility.

32. The failure to conduct monthly testing of the Facility's continuous monitoring system and/or maintain testing records is a Type II Minor violation for which the lowest penalty amount referenced in the Penalty Matrix for Water Pollution Control was assessed ()1,250.00).

33. Annual testing, calibration and inspection of a facility's continuous monitoring system by a trained/qualified person and maintenance of such testing records for three years beyond the operational life of the Facility is required by UST Regulations.

34. During an inspection conducted on June 12, 2001 no records of annual CMS testing were present at the Facility.

35. The failure to perform annual CMS testing by a qualified person and the failure to maintain records of such testing constitutes a Type II Moderate violation for which the lowest penalty amount referenced in the Penalty Matrix for Water Pollution Control was assessed ()1,250.00).

36. The amount of economic benefit accrued to Respondents for each of the eight failures to conduct annual testing of the CMS was determined by OCI to be))243.00 per test ()1,994.00 total).

37. Records of daily inventory and monthly reconciliation of product are required by UST Regulations.

38. Product inventory is checked daily at the Facility by taking a stick reading of each tank and reconciling the amount sold to the price per gallon.

39. During an inspection of the Facility conducted on June 12, 2001, daily inventory records were present at the Facility but were incomplete. Monthly reconciliation records were not present at the Facility for UST Nos. 002, 005, 009, 010 or 011.

40. The failure to maintain complete written records of daily inventory and written records of monthly product reconciliation constitutes a Type II Major violation.

41. Failure to maintain complete written daily inventory records and monthly product reconciliation records is a major violation because compliance with these record- keeping requirements constitutes an integral part of a leak detection program. The potential for harm is great if leaks are undetected due to a failure to comply with this requirement.

42. The lowest penalty amount referenced in the Penalty Matrix for Water Pollution Control was assessed for this Type II Moderate violation ()6,250.00).

43. The amount of economic benefit accrued to Respondents for failure to register USTs and associated late fees is))2,425.00.

44. In assessing the administrative penalty for each violation, OCI considered the extent to which the act or failure to act was out of compliance; environmental conditions; the nature and toxicity of the pollutant; duration of the violation; extent of the violation; whether reasonable steps were taken to prevent and/or mitigate the non-compliance and the degree of willfulness or negligence including how much control Respondent had over the occurrence of the violation and whether the violation was foreseeable.

V. Conclusions of Law

After consideration of the testimonial and documentary evidence in this proceeding, I conclude the following as a matter of law:

1. Susan Raimondo is not an operator of the Facility.
 2. Respondent Susan Raimondo, as an owner of the Facility, is liable for regulatory compliance with the UST Regulations at the Facility.
 3. Pasco Raimondo, as an owner and operator of the Facility is liable for regulatory compliance with the UST Regulations at the Facility.
 4. OCI proved by a preponderance of the evidence that Respondents violated UST Regulations 6.10 and 6.13 by failing to pay UST registration fees and associated late fees.
 5. The OCI proved by a preponderance of the evidence that the Respondents violated the UST Regulation 8.02(A), 8.13(A) and 8.14(D) by failing to maintain and operate the piping collection sumps and leak monitors in working order.
 6. The OCI proved by a preponderance of the evidence that the Respondents violated the UST Regulation 8.06(B) and 11.02(A)(8) by failing to perform a complete operational survey of the cathodic testing systems for UST Nos. 002, 005, 009, 010, and 011 for the year 1999 or to maintain testing records or to submit such testing results to the Director, upon request.
 7. OCI proved by a preponderance of the evidence that Respondents violated UST Regulations 8.10 and 11.02 (A)(3) by failing to procure the services of a qualified technician to perform annual testing of the line leak detectors for UST Nos. 002, 005, 009, 010, and 011 or to maintain testing records or to submit such testing results to the Director, upon request, for the years 1994 through 2001.
 8. OCI proved by a preponderance of the evidence that Respondents violated UST Regulation 8.13(E) and 11.02(B)(3) by failing to perform monthly testing of the Facility's continuous monitoring system and/or to maintain testing records or to submit such testing results to the Director, upon request, for the years 1999 through 2001.
 9. OCI proved by a preponderance of the evidence that Respondents violated UST Regulation 8.13(F) and 11.02 (A)(3) by failing to procure the services of a qualified technician to perform annual testing of the Facility's continuous monitoring system and/or to maintain testing records or to submit such testing results to the Director, upon request, for the years 1994 through 2001.
 10. OCI proved by a preponderance of the evidence that Respondents violated UST Regulation 11.03 by failing to maintain and/or submit complete records of daily inventory and monthly reconciliation for UST Nos. 002, 005, 009, 010 and 011 for the time period June 1999 through June 2001.
 11. The penalty assessments were properly calculated in accordance with the Rules and Regulations for the Assessment of Administrative Penalties and R.I. GEN. LAWS §42-17.6.
 12. Evidence presented by Respondents was insufficient to warrant a reduction in penalties for the violations proved.
 13. The penalty assessment for the violations proved is reasonable and warranted and is not excessive.
 14. Pasco Raimondo, as owner and operator of the Facility and Susan Raimondo, as an owner of the Facility, are jointly and severally liable for the violations and penalty assessment.
- Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby

ORDERED

1. The Notice of Violation is **SUSTAINED**.
2. The Respondents shall pay to the Department, jointly and severally, the total sum of twenty-two thousand, three hundred and seven dollars ()22,307.00) in administrative and economic benefit penalties as set forth herein.
3. The penalty assessment shall be paid within thirty (30) days of the date of the Final Decision and Order, and shall be in the form of a certified check made payable to the "General Treasurer, State of RI, for deposit in the Air and Water Protection Fund", and shall be forwarded to:
Office of Management Services
R.I. Department of Environmental Management
235 Promenade Street, Third Floor

Providence, Rhode Island 02908
Attention: Terrence Maguire
Entered as a Recommended Decision and Order this 27th day of October, 2004.
Kathleen M. Lanphear
Chief Hearing Officer
Entered as a Final Agency Order this 15th day of November 2004.
Frederick Vincent
Acting Director

APPENDIX

OCI's Exhibit List

- OCI 1 Copy of Application for Underground Storage Facilities - date 10/29/92
(Id) (3pages)
- OCI 2 Copy of Certified Correspondence - dated 5/4/2001 from Richard
(Id) LeFebvre to Pasco Raimondo, including envelope returned for "refused" delivery (2
pages)
- OCI 3 Copy of Correspondence - dated 5/17/2001 from Richard LeFebvre to
(Id) Pasco Raimondo, regular mail (1 page)
- OCI 4 Copy of Facility Summary for Facility ID #2081 -DEM report,
(Id) generation date 6/11/2001 (2 pages)
- OCI 5 UST Facility Compliance Inspection Checklist - dated 6/12/2001,
(Full) completed by Richard LeFebvre (8 pages)
- OCI 6 Copy of Certified Correspondence - dated 7/17/2001 from SeanCarney
(Full) to Pasco Raimondo, including original signed returnreceipt (4 pages)
- OCI 7 Copy of Certified Correspondence - dated 11/20/2001 from Richard
(Id) Le Febvre to Pasco Raimondo, including envelope returned for "unclaimed"
delivery (2 pages)
- OCI 8 Copy of Penalty Summary & Worksheet(s) - from NOV dated 4/9/2003
(Full) (7 pages) (constitutes a portion of OCI 10 which if Full)
- OCI 9 Copy of Notification for Underground Storage Tanks - dated 10/17/92
(Id) (3 pages)
- OCI 10 Copy of Notice of Violation and penalty Matrix issued to Pasco and
(Full) Susan Raimondo
- OCI 11 Notes to File - Form prepared by Richard LeFebvre
(Id)

Respondents' Exhibits

- Resp 1 Copy of Letter of Compliance with inspection from John W. Kennedy
(Full) Co. (obj)
- Resp 2 Copy of Cathodic Protection Inspection Report from Wilcox and Barton
(Id) dated 9/30/03
- Resp 3 Copy of Daily Gas Inventory Sheets (obj-relevance)
(Id)
- Resp 4 Copy of Manifest Sheets from gas hauler showing gas readings and

(Id)	0 water readings (obj-relevance)
Resp 4A	Gas Invoices from Mystic Bulk Carriers, Inc.
(Id)	
Resp 5	Photo of site and street to demonstrate lack of drainage etc.
(Id)	
Resp 6	Copy of prescriptions for medication
(Id)	