

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Brian K. Wilkinson
Helen J. Wilkinson**

FILE NO.: OCI-UST-21-3-04883

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 DEM's jurisdiction.

B. Facts

- (1) The property is located at 1616 Warwick Avenue, Assessor’s Plat 319, Lot 46 in Warwick, Rhode Island (the “Property”). The Property includes an automobile service facility (the "Facility").
- (2) Respondents own the Property.
- (3) An underground storage tank (“UST” or “tank”) was located on the Property, which tank was used for storage of petroleum product and which is subject to the *Rules and Regulations for Underground Storage Facilities Used for Regulated Substances and Hazardous Materials (250-RICR-140-25-1)* [effective 20 November 2018 to Current] (the “UST Regulations”).
- (4) On 15 October 2019, Respondents submitted a *Permanent Closure Application for Underground Storage Tanks* to DEM for the UST. As part of the permanent closure permitting process, the Facility was registered with DEM in accordance with the UST Regulations and is identified as UST Facility No. 04883.
- (5) The UST is registered with DEM as follows:

UST ID No.	Date Installed	Date Removed	Capacity	Product Stored
001	unknown	29 October 2019	1,000 gallons	No. 2 Heating Oil

- (6) On 29 October 2019, the UST was removed from the ground and permanently closed. DEM's inspection during the closure revealed that the UST was significantly corroded and had multiple holes and a strong petroleum odor was prevalent within the tank grave. At the time of inspection, DEM's inspector notified Brian K. Wilkinson ("Wilkinson") that, due to the conditions described above, he had to procure the services of a qualified environmental consultant to oversee further excavation of the remaining contaminated soils, perform a closure assessment and prepare a closure report.
- (7) By electronic mail message dated 13 November 2019 and by letter dated 5 December 2019 sent by regular mail, DEM again notified Wilkinson to procure the services of a qualified environmental consultant to oversee further excavation of the remaining contaminated soils, perform a closure assessment and prepare a *Closure Assessment Report* for DEM's review in accordance with Part 1.15(D)(10) of the UST Regulations.
- (8) By certified letter dated 17 September 2020, DEM issued a *Notice of Intent to Enforce* ("NIE") to Respondents for the alleged violations that are the subject of this *Notice of Violation* ("NOV"). The NIE was delivered to Respondents on 21 September 2020.
- (9) As of the date of the NOV, DEM has not received a *Closure Assessment Report* for the Facility from Respondents, nor has DEM received any other documentation from Respondents to verify that the required remedial actions have been completed.

C. Violations

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) **UST Regulations, Part 1.15(D)(10)** – requiring UST owners/operators to procure the services of a qualified environmental consultant to perform a closure assessment when USTs are permanently closed, prepare a *Closure Assessment Report* and submit it to DEM within 30 days of the tank closure.
- (2) **UST Regulations, Part 1.15(D)(11)** – requiring UST owners/operators to perform soil sampling, soil sample analysis, contaminated soil excavation and contaminated soil removal during tank closure projects, when required to do so by DEM.

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 10 days of receipt of the NOV**, submit to OC&I written verification that you have procured the services of a qualified environmental consultant to oversee the excavation of contaminated soils at the Facility, perform a closure assessment and prepare a Closure Assessment Report in full compliance with Parts 1.15(D)(10) and 1.15(D)(11) of the UST Regulations.
- (2) **Within 10 days of receipt of the NOV**, have your consultant contact Raymond Taylor of DEM's Office of Land Revitalization & Sustainable Materials Management ("LRSMM") for instructions on the extent of, and how to proceed with, the required remedial actions. Mr. Taylor may be contacted via electronic mail at raymond.taylor@dem.ri.gov or via telephone at 401-222-2797, ext. 77705.
- (3) **Within 45 days of receipt of the NOV**, your consultant shall complete and submit to the LRSMM a *Closure Assessment Report*, which shall be prepared in accordance with Part 1.15(D)(10) of the UST Regulations, the UST *Closure Assessment Guidelines*, October 1998, and Part 2.13 of the *Oil Pollution Control Regulations (250-RICR-140-25-2)* [effective 2 May 2018 to Current] (the "OPC Regulations").
- (4) **Within 30 days of the excavation activities**, remove and properly dispose of any contaminated soil that is excavated during the assessment and, within 10 days of the soil disposal, submit documentation of disposal to LRSMM, in accordance with Part 2.13 of the OPC Regulations.
- (5) If, after review of the *Closure Assessment Report*, DEM determines that a site investigation is required, then Respondents' consultant shall perform a site investigation and submit a *Site Investigation Report* to LRSMM in accordance with Part 1.14(H) of the UST Regulations within the time frame specified by the LRSMM.
- (6) If, after review of the *Site Investigation Report*, LRSMM determines that corrective action is required, then Respondents' consultant shall develop a proposed *Corrective Action Plan* ("CAP") in accordance with Part 1.14(I) of the UST Regulations within the time frame specified by LRSMM. The CAP shall only be implemented in accordance with an *Order of Approval* issued by LRSMM.

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:

\$8,750

- (2) The proposed administrative penalty is calculated pursuant to the *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* [effective 31 December 2001 to Current] (the “Penalty Regulations”) and must be paid to DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a check made payable to the “General Treasury - Water & Air Protection Program” and shall be forwarded to DEM’s Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against Respondents in the 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 DEM determines that reasonable efforts have been made to comply promptly with the 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 DEM's 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 DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of the NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
235 Promenade Street, Suite 350
Providence, RI 02908-5767

- (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 Part 1.7(B) of the *Rules and Regulations for the Administrative Adjudication Division (250-RICR-10-00-1)* [effective 27 November 2014 to Current].
- (2) A copy of each request for hearing must also be forwarded to:

Tricia Quest, Esquire
DEM - Office of Legal Services
235 Promenade Street, Suite 425
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 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 regarding any violation set forth herein, then the 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 (vi) and 42-17.6-4(b) and (c).
- (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) An original signed copy of the NOV is being forwarded to the City of Warwick, Rhode Island, 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 (31), as amended.
- (7) The 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) Tricia Quest of DEM's Office of Legal Services at (401) 222-6607 or at tricia.quest@dem.ri.gov. All other inquiries should be directed to Tracey Tyrrell of DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 77407 or at tracey.tyrrell@dem.ri.gov.

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

By: _____
David E. Chopy, Administrator
DEM Office of Compliance and Inspection

Date: _____

CERTIFICATION

I hereby certify that on the _____ day of _____
the within Notice of Violation was forwarded to:

Brian K. Wilkinson
1861 West Shore Road
Warwick, RI 02889

Helen J. Wilkinson
1861 West Shore Road
Warwick, RI 02889

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: Office of Compliance and Inspection – UST
 File No.: OCI-UST-21-3-04883
 Respondents: Brian K. Wilkinson and Helen J. Wilkinson

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 perform a closure assessment in accordance with the UST Regulations	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$4,375	1 violation	\$4,375
D (2) – Failure to collect/analyze soil samples and excavate/remove contaminated soils	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$4,375	1 violation	\$4,375
SUB-TOTAL					\$8,750

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

ECONOMIC BENEFIT FROM NON-COMPLIANCE
<p>COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT COMPLY. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:</p> <ul style="list-style-type: none"> - THERE IS NO IDENTIFIABLE BENEFIT FROM NON-COMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED.
<p>A review of the record in this matter has revealed that Respondents have either enjoyed no identifiable benefit from the non-compliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.</p>

COST RECOVERY
<p>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.</p>
<p>A review of the record in this matter has revealed that 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.</p>

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$8,750

PENALTY MATRIX WORKSHEET

CITATION: Failure to perform a closure assessment in accordance with the UST Regulations
 VIOLATION NO.: D (1)

TYPE		
<p style="text-align: center;"><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents failed to procure the services of a qualified environmental consultant to perform a closure assessment and submit a <i>Closure Assessment Report</i> to DEM. Failure to comply prevents DEM from assessing the nature and extent of the subsurface petroleum contamination on the Property and prevents DEM from fulfilling its public health and safety and environmental protection obligations. (2) Environmental conditions: The Facility is located in a GB groundwater classification zone but within 75 feet of a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. Upon information and belief, there are no drinking water wells proximate to the Facility. The Facility is located within 700 feet of regulated freshwater wetlands. The UST was installed within the Upper Narragansett Bay watershed. (3) Amount of the pollutant: Unknown at this time due to Respondents' non-compliance. (4) Toxicity or nature of the pollutant: No. 2 heating oil can cause significant soil and groundwater contamination if released to the environment. Certain petroleum constituents are potentially harmful to human health and safety and the environment. (5) Duration of the violation: Approximately 19 months – Respondents have been in violation of this requirement since about 1 December 2019. The <i>Closure Assessment Report</i> was due within 30 day of removal of the UST. (6) Areal extent of the violation: Unknown at this time due to Respondents' non-compliance. 		
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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** Respondents failed to prevent the non-compliance by procuring the services of a qualified environmental consultant to perform a closure assessment and submit a *Closure Assessment Report* to DEM. Respondents have yet to take any steps to mitigate the non-compliance despite receiving a verbal notice, an electronic mail message and 2 written notices from DEM, which required that they do so.
- (8) **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.
- (9) **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:** Negligence is attributable to Respondents for their failure to comply with the UST Regulations. Respondents, as owners of the Property, have full control over the occurrence of the violation.
- (10) **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 \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250 \$4,375	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to collect/analyze soil samples and excavate/remove contaminated soils
 VIOLATION NO.: D (2)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <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.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents failed to procure the services of a qualified environmental consultant to assess the nature and extent of the subsurface soil contamination, collect soil samples for laboratory analysis and oversee the excavation of contaminated soils. Failure to comply prevents DEM from assessing the nature and extent of the subsurface petroleum contamination on the Property and it prevents DEM from fulfilling its public health and safety and environmental protection obligations. (2) Environmental conditions: The Facility is located in a GB groundwater classification zone but within 75 feet of a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. Upon information and belief, there are no drinking water wells proximate to the Facility. The Facility is located within 700 feet of regulated freshwater wetlands. The USTs are installed within the Upper Narragansett Bay watershed. (3) Amount of the pollutant: Unknown at this time due to Respondents' non-compliance. (4) Toxicity or nature of the pollutant: No. 2 heating oil can cause significant soil and groundwater contamination if released to the environment. Certain petroleum constituents are potentially harmful to human health and safety and the environment. (5) Duration of the violation: Approximately 19 months – Respondents have been in violation of this requirement since about 1 December 2019. (6) Areal extent of the violation: Unknown at this time due to Respondents' non-compliance. 		
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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** Respondents failed to prevent the non-compliance by procuring the services of a qualified environmental consultant to assess the existing soil contamination and oversee the excavation of the contaminated soils on the Property. Respondents have yet to take any steps to mitigate the non-compliance despite receiving a verbal notice, an electronic mail message and 2 written notices from DEM, which required that they do so.
- (8) **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.
- (9) **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:** Negligence is attributable to Respondents for their failure to comply with the UST Regulations. Respondents, as owners of the Property, have full control over the occurrence of the violation.
- (10) **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 \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250 \$4,375	\$1,250 to \$2,500	\$250 to \$1,250