

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: MADJOE LLC
Broad Street Gas LLC**

FILE NO.: OCI-UST-18-24-00914

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 the DEM's jurisdiction.

B. Administrative History

On 26 September 2017 and 20 November 2017, the DEM notified Respondents of the requirement to remove by 22 December 2017 the underground storage tank piping at the facility that is the subject of this Notice of Violation (“NOV”). Respondents failed to remove the piping by the deadline and, as of the date of the NOV, have failed to fully comply with the notices.

C. Facts

- (1) The property is located at 939 (aka 957) Broad Street, Assessor's Plat 2, Lot 21 in the City of Central Falls, Rhode Island (the “Property”). The Property includes a motor fuel filling station, a convenience store and underground storage tanks (“USTs” or “tanks”) that are used for storage of petroleum products (the “Facility”) and are subject to the Rhode Island Code of Regulations titled *Rules and Regulations for Underground Storage Facilities Used for Regulated Substances and Hazardous Materials (250-RICR-140-25-1)* (the “UST Regulations”).
- (2) MADJOE LLC owns the Property.
- (3) Broad Street Gas LLC operates the Facility.
- (4) The Facility is registered with the DEM and is identified as UST Facility No. 00914.

- (5) The USTs are registered with the DEM as follows:

UST ID No.	Date Installed	Capacity	Product Stored
005	July 1990	1,000 gallons	No. 2 Heating Oil
010	July 1990	12,000 gallons	Gasoline
011	July 1990	12,000 gallons	Gasoline
012	July 1990	12,000 gallons	Gasoline

- (6) The former product pipelines for UST Nos. 010, 011 and 012 (the “Piping”) were double-walled; however, as configured, it was not possible to test the Piping for tightness.
- (7) By letter dated 21 November 2014, MADJOE LLC requested a variance approval from the DEM to allow operation of the Piping until 22 December 2017, at which time the Piping would be permanently closed.
- (8) By letter dated 24 November 2014, the DEM approved a variance (the “Variance Approval”) to allow operation of the Piping until 22 December 2017, at which time the Piping would be permanently closed.
- (9) The Variance Approval expired on 22 December 2017.
- (10) On 21 February 2018, the DEM inspected the Facility. The inspection revealed that the Piping was still in the ground but not in operation.
- (11) By letter dated 12 March 2018, the DEM approved plans and specifications that were submitted by MADJOE LLC for the installation of new product pipelines for UST Nos. 010, 011 and 012. The approval required submission to the DEM of a completed *Certificate of Installation or Modification of UST Form*, a completed piping manufacturer’s installation checklist and the consultant’s soil screening report (collectively, the “Required Documents”).
- (12) On or about 4 April 2018, the Piping was removed from the ground and replaced with new product pipelines.
- (13) As of the date of the NOV, Respondents have failed to submit to the DEM the Required Documents.

D. Violation

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, Rule 8.09(A)(2) [recently amended to Part 1.10G.2.b]** – requiring owners/operators of double-walled product pipelines to perform a test for tightness on the interstitial space after 20 years of installation and every 2 years thereafter.

- (2) **UST Regulations, Rules 9.03(A), 9.11 and 9.12(C) [recently amended to Part 1.11.C.1, Part 1.11J and Part 1.11K.3]** – requiring owners/operators to submit certain documents to the DEM during facility modification and installation projects to certify compliance with the installation standards set forth in the UST Regulations.
- (3) **UST Regulations, Rule 10.04(C) [recently amended to Part 1.12D.1d]** – requiring owners/operators to have an environmental consultant on-site during facility modifications to screen soils for contamination and submit a report to the DEM within 30 days of the project’s completion.

E. 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 **within 30 days of receipt of the NOV**, submit the Required Documents to the DEM’s Office of Waste Management.

F. 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:

\$2,120

- (2) The proposed administrative penalty is calculated pursuant to the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* and must be paid to the DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a certified check, cashier’s check or money order made payable to the “General Treasury - Water & Air Protection Program Account” and shall be forwarded to the DEM 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.

G. 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 the 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 the 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 1.7B of the Rhode Island Code of Regulations titled *Rules and Regulations for the Administrative Adjudication Division (250-RICR-10-00-1)*.
- (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 the 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 this 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 Central Falls, 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 the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey Tyrrell of the DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 7407.

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 G above.

FOR THE DIRECTOR

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

Dated: _____

CERTIFICATION

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

MADJOE LLC
c/o Joseph Raheb, Esq., Registered Agent
650 George Washington Highway, Suite 201
Lincoln, RI 02865

Broad Street Gas LLC
c/o Shahid Hashmi, Registered Agent
957 Broad Street
Central Falls, RI 02863

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST
 File No.: OCI-UST-18-24-00914
 Respondents: MADJOE LLC and Broad Street Gas LLC

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) – Piping Testing	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,750	3 product pipelines with one missed test each	\$1,750
<i>SUB-TOTAL</i>					\$1,750

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

ECONOMIC BENEFIT FROM NON-COMPLIANCE			
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:			
- THERE IS NO IDENTIFIABLE BENEFIT FROM NON-COMPLIANCE; OR			
- THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED.			
DESCRIPTION OF BENEFIT	CALCULATION		AMOUNT
Failing to test the Piping for tightness. The economic benefit of non-compliance was determined by using an EPA computer model titled <i>BEN</i> that performs a detailed economic analysis. The dates, dollar amounts and values used in this analysis are listed in this table.	<ul style="list-style-type: none"> ▪ Profit Status ▪ Filing Status ▪ Initial Capital Investment ▪ One-time Non-depreciable Expense ▪ First Month of Noncompliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	For profit, other than a C Corp. \$609 December 2017 1 May 2018 1 May 2019 7.3%	
<i>SUB-TOTAL</i>			\$370

ADMINISTRATIVE PENALTY SUMMARY (continued)

COST RECOVERY

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.

A review of the record in this matter has revealed that the 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.

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$2,120

PENALTY MATRIX WORKSHEET

CITATION: Piping Testing
 VIOLATION NO.: D (1)

TYPE		
<p>_____ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>X</u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>_____ 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.

FACTORS CONSIDERED:

Taken from Part 1.10A.1.b of the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)*

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents failed to have the Piping tested for tightness by a DEM-licensed tightness tester. Failure to comply reduces the likelihood of detecting or preventing releases of the regulated substance to the environment and the resultant threats to groundwater resources and public health and safety.
- (2) **Environmental conditions:** The Facility is located in a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. The Facility is located in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells in the vicinity. The Facility is located within 1,300 feet of the Blackstone River and within its watershed.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** The volatile nature of gasoline presents both a potential public health hazard (due to potential inhalation of benzene) and a potential public safety hazard (due to the potential for explosion). Gasoline 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 3 1/2 months – Respondents were in violation of the rule from the time the Variance Approval expired on 22 December 2017 until 4 April 2018, when the Piping was removed and replaced with new piping.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.

(continued)

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** Respondents failed to take reasonable and appropriate steps to prevent the non-compliance by permanently closing the Piping by 22 December 2017. The DEM issued Respondents written notices on 26 September 2017 and 20 November 2017 informing them of the required actions to comply with the law and the UST Regulations. Respondents mitigated the noncompliance by removing the Piping and replacing it with new piping.
- (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 the failure to comply with the requirements set forth in the UST Regulations. Respondents, as owners and operators of the Facility, had 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.

MAJOR	MODERATE	<u>X</u> 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	\$1,250 to \$2,500 \$1,750	\$250 to \$1,250