

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Clough Realty, LLC and
C & C Service, Inc.**

FILE NO.: UST 2010-02375

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 subject property is located at 781 Victory Highway in the town of North Smithfield, Rhode Island (the "Property"). The Property includes a gasoline service station (the "Facility").
- (2) Clough Realty, LLC owns the Property.
- (3) C & C Service, Inc. operates the Facility.
- (4) Respondents are the owners and/or operators of underground storage tanks ("USTs" or "tanks") that are located on the Property, which tanks are used for storage of petroleum products and which are subject to DEM's Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials, as amended (the "UST Regulations").
- (5) The Facility is registered with DEM in accordance with Section 6.00 of the UST Regulations and is identified as UST Facility No. 02375.
- (6) On 22 January 2010, DEM issued a letter to all registered UST owners/operators that required the owners/operators to inspect their facility and complete and submit to DEM a Compliance Certification Checklist, a Certification Statement form and any necessary Return to Compliance Plans (the "Compliance Certification Forms").
- (7) On 17 September 2010 DEM issued a Notice of Intent to Enforce ("NIE") to the Respondents. The NIE required the Respondents to inspect the Facility and

complete and submit the Compliance Certification Forms to DEM on or before 7 October 2010.

- (8) As of the date of this Notice of Violation (“NOV”), the Respondents have not submitted the Compliance Certification Forms to DEM.

C. 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 8.03** – requiring UST owners/operators to inspect their facility and complete and submit the Compliance Certification Forms within the time frame specified by the 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 thirty days of receipt of the NOV**, submit the Compliance Certification Forms to DEM in accordance with Rule 8.03 of the UST Regulations.

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:

Three Thousand Dollars (\$3,000.00)

- (2) The proposed administrative penalty is calculated pursuant to the DEM Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the Director within twenty days of your receipt of this NOV. Payment shall be in the form of a certified 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 the respondents in this 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 the Director determines that reasonable efforts have been made to comply promptly with this 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 the DEM 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 twenty (20) days of your receipt of this 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, 3RD Floor
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 Rule 7.00(b) of the DEM Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters.

(2) A copy of each request for hearing must also be forwarded to:

Susan Forcier, 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 with regard to 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 (v) and 42-17.6-4(b) and (c).

- (5) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) This 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) Susan Forcier at the DEM Office of Legal Services at (401) 222-6607 extension 2305. All other inquiries should be directed to Tracey Tyrrell of the DEM 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 F above.

FOR THE DIRECTOR

David E. Chopy, Chief
DEM Office of Compliance and Inspection

Date: _____

CERTIFICATION

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

Clough Realty, LLC
c/o David DiPalma, Esq., Registered Agent
138 Warren Avenue
East Providence, RI 02914

C & C Service, Inc.
c/o David DiPalma, Esq., Registered Agent
138 Warren Avenue
East Providence, RI 02914

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST

File No.: UST 2010-02375

Respondents: Clough Realty, LLC and C & C Service, Inc.

| 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 | |
| C (1) – Failure to submit ERP Compliance Certification Forms | Type II (\$12,500 Max. Penalty)* | Moderate | \$3,000 | 1 | \$3,000.00 |
| SUB-TOTAL | | | | | \$3,000.00 |

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

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$3,000.00

PENALTY MATRIX WORKSHEET

CITATION: *Failure to submit ERP Compliance Certification Forms*
 VIOLATION NO.: C (1)

| TYPE | | |
|---|---|--|
| <u> </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment. | <u> X </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 Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondents failed to submit completed Compliance Certification Forms to DEM. The UST Regulations require all UST owners/operators to certify their compliance with the UST Regulations by completing and submitting the Compliance Certification Forms within the time frame specified by DEM.</p> <p>(B) Environmental conditions: Not relevant.</p> <p>(C) Amount of the pollutant: Not relevant.</p> <p>(D) Toxicity or nature of the pollutant: The volatile nature of gasoline presents both a public health hazard (due to the potential inhalation of benzene) and a public safety hazard (due to the potential for explosion). Gasoline, racing fuel and diesel fuel are capable of causing significant soil and groundwater contamination if released to the environment.</p> <p>(E) Duration of the violation: The Compliance Certification Forms were due on or before 7 October 2010.</p> <p>(F) Areal extent of the violation: Not relevant.</p> <p style="text-align: right;">(continued)</p> | | |

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the non-compliance by submitting completed Compliance Certification Forms to DEM. Respondents have made no apparent attempt to mitigate the violation despite receiving an informal notice from DEM dated 17 September 2010.
- (H) **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:** Not relevant.
- (I) **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:** Respondents had full control over the occurrence of the violation. DEM issued a letter to the UST owners/operators on 22 January 2010 requiring the owners/operators to comply with the ERP compliance certification rule and directing the owners/operators to the DEM website to obtain the necessary forms and workbooks. DEM issued an informal notice to the Respondents on 17 September 2010 requiring the Respondents to submit completed Compliance Certification Forms to DEM on or before 7 October 2010.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

| | | |
|-------|-----------------------|-------|
| MAJOR | <u> X </u> MODERATE | MINOR |
|-------|-----------------------|-------|

| 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 \$3,000 | \$1,250 to \$2,500 |
| | MINOR | \$2,500 to \$6,250 | \$1,250 to \$2,500 | \$250 to \$1,250 |