

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Rhode Island Convention Center Authority FILE NO.: OCI-UST-18-34-03413

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 party (“Respondent”) has violated certain statutes and/or administrative regulations under the DEM's jurisdiction.

B. Administrative History

On 23 September 2016 and 6 April 2017, the DEM notified Respondent 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”). Respondent failed to remove the piping by the deadline. As of the date of the NOV, Respondent has failed to comply with 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”) relating to the removal of the piping.

C. Facts

- (1) The property is located at 1 Sabin Street in the City of Providence, Rhode Island (the “Property”). The Property includes a convention center and an emergency back-up generator (the "Facility").
- (2) Respondent owns the Property.
- (3) Respondent operates the Facility.
- (4) An underground storage tank (“UST” or “tank”) was located on the Property, which tank was used for storage of petroleum product and which was subject to the UST Regulations.
- (5) The Facility is registered with the DEM and is identified as UST Facility No. 03413.

(6) The UST was registered with the DEM as follows:

UST ID No.	Date Installed	Capacity	Product Stored
001	20 July 1993	4,000 gallons	Diesel Fuel

- (7) The primary product supply and return pipelines for the UST (the “Primary Piping”) were single walled, and the secondary product supply and return pipelines for the UST (the “Secondary Piping”) were double-walled; however, as configured, it was not possible to test the Secondary Piping for tightness.
- (8) By letter dated 9 May 2016, Respondent requested a variance approval from the DEM to allow operation of the Secondary Piping as single walled until 22 December 2017, at which time the Primary Piping and Secondary Piping would be permanently closed.
- (9) On 2 June 2016, the DEM approved a variance (the “Variance Approval”) from the UST Regulations to allow operation of the Primary Piping and Secondary Piping until 22 December 2017, at which time the Primary Piping and Secondary Piping would be permanently closed.
- (10) On 28 November 2017, the DEM inspected the Facility and determined that the Primary Piping had not been tested for tightness by a DEM-licensed tightness tester during the year 2017.
- (11) The Variance Approval expired on 22 December 2017.
- (12) On 31 May 2018, the DEM inspected the Facility. The inspection revealed that the UST system was still in place and, upon information and belief, in use.
- (13) On 14 June 2018, the UST and its product supply and return pipelines were removed from the ground and closed.
- (14) Upon information and belief, Respondent did not perform a test for tightness of the interstitial space for the Primary Piping in 2017.
- (15) As of the date of the NOV, Respondent has not submitted a Closure Assessment Report to the DEM.

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]** – 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, Rule 8.09(B)(2) [recently amended to Part 1.10G.3]** – requiring annual tightness testing for single-walled product pipelines.
- (3) **UST Regulations, Rule 13.11(D) [recently amended to Part 1.15D.10.d]** – requiring owners/operators to submit a Closure Assessment Report to the DEM within 30 days of a tank closure.

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:

- (1) **Within 10 days of the receipt of the NOV**, submit to the DEM’s Office of Waste Management (“OWM”) a Closure Assessment Report prepared in accordance with Part 1.15D.10 of the UST Regulations, the *UST Closure Assessment Guidelines*, October 1998, and Part 2.12 and Part 2.13 of the Rhode Island Code of Regulations titled *Oil Pollution Control Regulations (250-RICR-140-25-2)* (the “OPC Regulations”).
- (2) **Within 10 days of receipt of the NOV**, submit written verification that any petroleum-contaminated soil encountered during the closure has been removed from the Property for disposal at a licensed solid waste management facility in accordance with Part 2.13 of the OPC Regulations.
- (3) If, after review of the Closure Assessment Report, the OWM determines that a site investigation is required, complete the site investigation and submit a Site Investigation Report (“SIR”) to the OWM in accordance with Part 1.14H of the UST Regulations within the time frame specified by the OWM.
- (4) If, after review of the SIR, the OWM determines that a Corrective Action Plan (“CAP”) is required, submit a proposed CAP in accordance with Part 1.14I of the UST Regulations within the time frame specified by the OWM. The OWM will review the proposed CAP and issue further instruction on how to proceed. The CAP shall be implemented in accordance with an Order of Approval issued by the DEM.

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:

\$4,170

- (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, RI 02908-5767.
- (3) Penalties assessed against Respondent 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 the DEM determines that reasonable efforts have been made to comply promptly with the NOV.

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 F 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 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) 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:

Rhode Island Convention Center Authority
c/o James P. McCarvill, Executive Director
One LaSalle Square, DDC
Providence, RI 02903

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST

File No.: OCI-UST-18-34-03413

Respondent: Rhode Island Convention Center Authority

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) and (2) – Primary and Secondary Piping Testing	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,250	2 missed tests	\$2,500
D (3) – Closure Assessment Report	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,250	1 violation	\$1,250
<i>SUB-TOTAL</i>					\$3,750

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

ADMINISTRATIVE PENALTY SUMMARY (continued)

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
<p>Failing to test the Secondary 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.</p>	<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 	<p>Not for profit organization</p> <p>\$203</p> <p>December 2017 14 June 2018 1 June 2019</p> <p>4.1%</p>	<p>\$210</p>
<p>Failing to test the Primary 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.</p>	<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 	<p>Not for profit organization</p> <p>\$203</p> <p>February 2017 14 June 2018 1 June 2019</p> <p>4.1%</p>	<p>\$210</p>
SUB-TOTAL			<p>\$420</p>

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 = \$4,170

PENALTY MATRIX WORKSHEET

CITATION: Primary and Secondary Piping Testing
 VIOLATION NOs.: D (1) and (2)

TYPE		
<p>_____ TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> X </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>_____ TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<p>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</p>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10A.1.b of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent failed to have the Primary Piping and Secondary Piping tested for tightness by a DEM-licensed tightness tester. Failure to comply reduced 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 GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. There are no known drinking water supply wells in the vicinity of the Facility. The Facility is located in the Providence River watershed. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: Diesel fuel 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: Considered, but not utilized for this calculation. (6) Areal extent of the violation: Considered, but not utilized for this calculation. 		
<p>(continued)</p>		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** Respondent failed to prevent the non-compliance by having the piping tested for tightness. Respondent mitigated the non-compliance by closing the UST and removing the piping on 14 June 2018. The DEM issued Respondent written notices on 23 September 2016 and 6 April 2017 informing Respondent of the required actions to comply with the law and the UST Regulations.
- (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 Respondent for the failure to comply with the requirements set forth in the UST Regulations. Respondent, as owner and operator of the Facility, had full control over the occurrence of the violations.
- (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 \$1,250	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Closure Assessment Report
 VIOLATION NO.: D (3)

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		
<p>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</p>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10A.1.b of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent has failed to submit a Closure Assessment Report to the DEM. Failure to comply withholds information that is important to the regulatory program in meeting its environmental and public health and safety protection obligations. (2) Environmental conditions: The Facility is located in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. There are no known drinking water supply wells in the vicinity of the Facility. The Facility is located in the Providence River watershed. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: Diesel fuel 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 7 months – the Closure Assessment Report was required to have been submitted before 15 July 2018 (within 30 days of completion of the tank closure). (6) Areal extent of the violation: Considered, but not utilized for this calculation. 		
<p>(continued)</p>		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** Respondent failed to prevent the non-compliance by submitting a Closure Assessment Report. Respondent has yet to mitigate the non-compliance.
- (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 Respondent for the failure to comply immediately with the requirements set forth in the UST Regulations. Respondent, as owner and operator 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 \$1,250	\$250 to \$1,250