

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Maria Esquiaqui
Elizabeth Esquiaqui
Columbia Auto Service, Corp.**

FILE NO.: OCI-UST-18-27-02082

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 23 September 2016, 31 March 2017, 27 November 2017 and 22 January 2018, the DEM notified one or both Respondents of the statutory deadline for the permanent closure of the underground storage tanks at the facility that is the subject of this Notice of Violation (“NOV”) and the actions required to comply with the law and 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”). Respondents failed to remove the tanks 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 1156 (aka 1160) Westminster Street, Assessor's Plat 32, Lot 529 in the City of Providence, Rhode Island (the “Property”). The Property includes a motor vehicle service station and included underground storage tanks (“USTs” or “tanks”) that were used for storage of petroleum products and that were subject to the UST Regulations (the "Facility").
- (2) Maria Esquiaqui and Elizabeth Esquiaqui own the Property.
- (3) Colombia Auto Service, Corp. operated the Facility. Nahum Sanchez (“Sanchez”) is the President of Columbia Auto Service, Corp.
- (4) The Facility was registered with the DEM and is identified as UST Facility No. 02082.

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

UST ID No.	Date Installed	Capacity	Product Stored
001	1974	3,000 gallons	Gasoline
002	1974	3,000 gallons	Gasoline
003	1974	3,000 gallons	Gasoline
004	1974	4,000 gallons	Gasoline

- (6) The USTs were single-walled with no secondary containment.
- (7) On 24 January 2018, the USTs were removed from the ground and permanently closed.
- (8) As of the date of the NOV, Respondents have not submitted to the DEM a *Closure Assessment Report* prepared by a qualified environmental consultant.

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 8.04(A) [recently amended to Part 1.10D.1.a]**– requiring owners/operators of single-walled USTs and product pipelines installed before 8 May 1985 to permanently close the USTs and product pipelines by 22 December 2017.
- (2) **UST Regulations, Rule 13.11(D) [recently amended to Part 1.15D.10.d]** – requiring owners/operators to submit to the DEM a *Closure Assessment Report* prepared by a qualified environmental consultant within 30 days of the completion of a UST permanent closure project.

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 30 days of receipt of the NOV**, submit to the DEM - Office of Waste Management (“OWM”) a *Closure Assessment Report* prepared by a qualified environmental consultant (“Consultant”) in accordance with Part 1.15D.10 of the UST Regulations, the *UST Closure Assessment Guidelines*, October 1998, 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) If, after review of the *Closure Assessment Report*, the OWM determines that a site investigation is required, the Consultant shall 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.

- (3) If, after review of the SIR, the OWM determines that a *Corrective Action Plan* (“CAP”) is required, submit a proposed CAP prepared by the Consultant 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 by the Consultant 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:

\$7,396

- (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.
- (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 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 Providence, 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:

Maria Esquiaqui
667 George Washington Highway
Lincoln, RI 02865

Elizabeth Esquiaqui
667 George Washington Highway
Lincoln, RI 02865

Colombia Auto Service, Corp.
c/o Elizabeth Esquiaqui, Registered Agent
1160 Westminster Street
Providence, RI 02909

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST

File No.: OCI-UST-18-27-02082

Respondents: Maria Esquiaqui, Elizabeth Esquiaqui and Colombia Auto Service, Corp.

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) – Maintenance of single-walled USTs	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,500	4 UST systems	\$6,000
D(2) – Closure Assessment Report	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,250	1 violation	\$1,250
<i>SUB-TOTAL</i>					\$7,250

*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.		
<i>DESCRIPTION OF BENEFIT</i>	<i>CALCULATION</i>	<i>AMOUNT</i>
Failing to permanently close the UST systems. 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 Non-compliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	C Corp. \$50,000 December 2017 24 January 2018 1 June 2019 7.3%
<i>SUB-TOTAL</i>		\$146

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 = \$7,396

PENALTY MATRIX WORKSHEET

CITATION: Maintenance of single-walled USTs
 VIOLATION NO.: D (1)

TYPE		
<p style="text-align: center;">_____ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> X </u> 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		
<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</i> (250-RICR-130-00-1)</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 permanently close the USTs by the deadline. The maintenance of single-walled USTs beyond the deadline is prohibited. Single-walled USTs present a threat to the environment and public health and safety as there is no secondary containment to prevent releases of petroleum products and hazardous materials directly to the subsurface. Failure to comply increases the likelihood of a release 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 an environmental justice area. The Facility is located in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. The Facility is located above a groundwater reservoir. Upon information and belief, there are no drinking water supply wells in the vicinity. The Facility is located in the Providence River watershed. Evidence of significant petroleum contamination was discovered in the ground on the Property during the tank closure. (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: 33 days. The deadline for removal of the tanks was 22 December 2017. The USTs were removed from the ground on 24 January 2018. (6) Areal extent of the violation: Considered, but not utilized for this calculation. 		
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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 USTs before 22 December 2017. The DEM issued one or both Respondents written notices on 23 September 2016, 31 March 2017 and 27 November 2017 informing them of the required actions to comply with the law and the UST regulations. Respondents mitigated the noncompliance by removing the USTs from the ground on 24 January 2018.
- (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 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 \$1,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Closure Assessment Report

VIOLATION NO.: D (2)

TYPE		
<p style="text-align: center;">_____ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___X___ 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>FACTORS CONSIDERED:</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: Respondents 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 densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. The Facility is located in an environmental justice area. The Facility is located in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. The Facility is located above a groundwater reservoir. Upon information and belief, there are no drinking water supply wells in the vicinity. The Facility is located in the Providence River watershed. Evidence of significant petroleum contamination was discovered in the ground on the Property during the tank closure. (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 1 year – the Closure Assessment Report was required to have been submitted by 24 February 2018 (within 30 days of completion of the tank closure). (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 prevent the non-compliance by submitting a Closure Assessment Report. Respondents have 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 Respondents for the failure to comply immediately 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 \$1,250	\$250 to \$1,250