

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: The Estate of Souhail Khoury

FILE NO.: OCI-UST-17-64-00456

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. Facts

- (1) The property is located at 676 Putnam Pike, Assessor's Plat 4, Lot 7, in the Town of Smithfield, Rhode Island (the “Property”). The Property includes a former motor vehicle service station and a motor fuel storage and dispensing system (the “Facility”).
- (2) Souhail Khoury is listed as the current owner of the Property in the tax assessor's database for the Town of Smithfield, RI.
- (3) Upon information and belief, Souhail Khoury, owner of the Property, died in 2015.
- (4) On or about 4 June 2015, Abdallah Khoury was appointed as Executor of the Estate of Souhail Khoury.
- (5) Underground storage tanks (“USTs” or “tanks”) are located on the Property, which tanks were used for storage of petroleum products and which 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”).
- (6) The Facility is registered with the DEM and is identified as UST Facility No. 00456.
- (7) The USTs are registered with the DEM as follows:

UST ID No.	Date Installed	Capacity	Product Stored
002	1 October 1986	4,000 gallons	Gasoline
004	1 October 1986	4,000 gallons	Gasoline
006	1 October 1986	4,000 gallons	Gasoline

- (8) On 16 March 2016, the DEM inspected the Facility. The inspection revealed that the USTs were not in service, and the Facility was in an abandoned state.
- (9) On 12 July 2017, the DEM inspected the Facility. The inspection revealed that the USTs were not in service, and the Facility was in an abandoned state.
- (10) On 20 April 2018, the DEM retained the services of Newton B. Washburn, LLC to evacuate the contents of the USTs. Approximately 437 gallons of a gasoline and water mixture were evacuated from the tanks and transported off-site for proper disposal.
- (11) To date, Respondent has not applied to the DEM for approval to place the USTs into temporary or permanent closure.
- (12) As of the date of this Notice of Violation (“NOV”), the USTs remain in place in an abandoned state.

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 13.02(A) [recently amended to Part 1.15(B)(1)]** – prohibiting the abandonment of USTs.
- (2) **UST Regulations, Rule 13.05 [recently amended to Part 1.15(D)(3)(a)]** – requiring the permanent closure of any USTs or product pipelines that have been abandoned.

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 45 days of receipt of the NOV**, submit a completed *Permanent Closure Application for Underground Storage Tanks* to the DEM – Office of Waste Management (“OWM”) **and, with their consent and approval, complete the removal of the USTs** in full compliance with Part 1.15 of the UST Regulations 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 30 days of the removal of the USTs**, submit to the OWM a *Closure Assessment Report* prepared by a qualified environmental consultant, in accordance with Part 1.15(D)(10) of the UST Regulations, the DEM's *UST Closure Assessment Guidelines*, October 1998, and Part 2.12 of the OPC Regulations.
- (3) **Within 30 days of the removal of the USTs**, remove and properly dispose of any contaminated soil excavated during the tank closure and, within 10 days of the soil disposal, submit documentation of disposal to the OWM, in accordance with Part 2.13 of the OPC Regulations.
- (4) **Within 60 days of receipt of written notification from the OWM to conduct a site investigation of the Property**, retain a qualified consultant to perform the site investigation and submit a *Site Investigation Report* to the OWM within the time frame specified in accordance with Part 1.14(H) of the UST Regulations.
- (5) **Within 60 days of receipt of written notification from the OWM to submit a Corrective Action Plan ("CAP")**, retain a qualified consultant to submit a proposed CAP to the OWM in accordance with Part 1.14(I) of the UST Regulations. The CAP shall be implemented in accordance with an order of approval issued by the OWM.

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:

\$13,474.99

- (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 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.

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'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, Room 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 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:

Christina Hoefsmit, Esq.
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
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 with regard to 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 Town of Smithfield, 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) Christina Hoefsmit 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 NOV was forwarded to:

The Estate of Souhail Khoury
c/o Abdallah Khoury, Executor
674 Putnam Pike
Smithfield, RI 02917

The Estate of Souhail Khoury
c/o Abdallah Khoury, Executor
263 Flanders Rd.
Niantic, CT 06357

The Estate of Souhail Khoury
c/o Abdallah Khoury, Executor
208 Route 12
Groton, CT 06340

Americo M. Scungio, Esq.
Scungio & Priolo
167 Main Street
Westerly, RI 02891

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY	
Program:	OFFICE OF COMPLIANCE AND INSPECTION, UST
File No.:	OCI-UST-17-64-00456
Respondent:	The Estate of Souhail Khoury

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) and (2) – Abandonment of USTs	Type I <i>(\$25,000 Max. Penalty)*</i>	Moderate	\$12,500	1 violation	\$12,500
<i>SUB-TOTAL</i>					\$12,500

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

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.	
DESCRIPTION OF COST	AMOUNT
Deployment of a Hydro Vactor truck to the Facility to evacuate the gasoline and water mixtures from the tanks and transport the material to an appropriate facility for disposal	\$974.99
<i>SUB-TOTAL</i>	\$974.99

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$13,474.99

PENALTY MATRIX WORKSHEET

CITATION: Abandonment of USTs

VIOLATION NOS.: C (1) and (2)

TYPE

 X TYPE I

DIRECTLY related to protecting health, safety, welfare or environment.

___ TYPE II

INDIRECTLY related to protecting health, safety, welfare or environment.

___ TYPE III

INCIDENTAL 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.

FACTORS CONSIDERED:

Taken from Part 1.10(A)(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:** Respondent removed the USTs from service and abandoned them. Prohibiting the abandonment of underground storage tanks is of primary importance to the regulatory program. Failure to comply could result in the release of hazardous materials to the groundwater and pollution of public drinking water supplies.
- (2) **Environmental conditions:** The Facility is in a developed area with numerous potential vapor receptors including commercial structures, residential structures and underground utilities. The USTs are installed within a GA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment. Upon information and belief, residences near the Facility rely on private drinking water wells. The USTs are installed within 2,200 feet of a non-community water supply wellhead protection area. The Facility is located within the Woonasquatucket River watershed and within 200 feet of the Stillwater River. The Property is designated as a leaking underground storage tank site (RI LUST No. 3133) by the DEM due to past releases of petroleum compounds from the USTs.
- (3) **Amount of the pollutant:** Full amount unknown – in April 2018 the DEM hired a contractor to evacuate the contents of the tanks. Approximately 437 gallons of a gasoline and water mixture was removed from the tanks.
- (4) **Toxicity or nature of the pollutant:** The volatile nature of gasoline presents both a public health hazard (due to the potential inhalation of benzene vapors) and a potential public safety hazard (due to the potential for explosion). Petroleum products can cause significant soil and groundwater contamination if released to the environment. Benzene, a component of gasoline, is a known carcinogen.
- (5) **Duration of the violation:** Full duration unknown – at least approximately 3 years. The DEM inspected the Facility on 16 March 2106 and observed that the USTs were in an abandoned state.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.
- (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 permanently closing the USTs in accordance with the UST Regulations or applying to the DEM for approval for temporary closure immediately after removing them from service. Upon information and belief, Respondent has made no attempt to mitigate the non-compliance.

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- (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:** As the owner of the Facility, Respondent had full control over the occurrence of the violation. Abandonment of USTs is expressly prohibited by the UST Regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Upon information and belief, the single-walled USTs have not been tested for tightness since 18 May 2011, and the leak detection equipment has not been tested since 15 December 2014.

MAJOR	<u>X</u> 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 \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250