

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: SEHI, LLC  
COUNTRY FOOD MART, LLC**

**FILE NO.: UST 2017-5-02268**

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. Administrative History

On 19 July 2017, the DEM issued a Notice of Intent to Enforce (“NIE”) to Respondents for the violations that are the subject of this Notice of Violation (“NOV”). The NIE required specific actions to correct the violations. On 21 July 2017 and 22 July 2017, the NIE was delivered to SEHI, LLC and COUNTRY FOOD MART, LLC, respectively. As of the date of the NOV, Respondents have failed to comply with the NIE.

C. Facts

- (1) The property is located at 4063 South County Trail, Assessor’s Plat 28, Lot 170 in the Town of Charlestown, Rhode Island (the “Property”). The Property includes a motor fuel storage and dispensing system and a convenience store (the “Facility”).
- (2) SEHI, LLC owns the Property.
- (3) COUNTRY FOOD MART, LLC operates the Facility.
- (4) Underground storage tanks (“USTs” or “tanks”) are located on the Property, which tanks are used for storage of petroleum products and which are subject to the DEM’s *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the “UST Regulations”).
- (5) The Facility is registered with the DEM and is identified as UST Facility No. 02268.

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

UST ID No.	Date Installed	Capacity	Product Stored
002	1 July 1992	10,000 gallons	Gasoline
003	1 July 1992	8,000 gallons	Gasoline
004	1 July 1992	4,000 gallons	Diesel

- (7) On 21 July 2016, the DEM inspected the Facility. The inspection revealed that no records were available to show that the secondary product pipelines for the USTs were tested for tightness by a DEM-licensed tightness tester during 2012, 2014 and 2016.
- (8) On 12 October 2017, the DEM received a report prepared by Hazard's Testing LLC. The report stated that all the secondary pipelines were tested for tightness on 27 July 2017, and the pipelines failed to meet the criteria for passing (the "Failed Pipelines").
- (9) As of the date of the NOV, Respondents have failed to:
- (a) Submit a Release Characterization Report for the Failed Pipelines to the DEM; and
  - (b) Repair the Failed Pipelines.

D. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that Respondents have violated the following regulations:

- (1) **DEM's UST Regulations, Rule 8.09(A)(2)(a)** – requiring tightness testing of secondary product pipelines at 20 years of age and every 2 years thereafter.
- (2) **DEM's UST Regulations, Rule 8.09(A)(2)(d)** – requiring that tightness test reports be submitted to the DEM within 15 days of the test's completion.
- (3) **DEM's UST Regulations, Rules 8.09(A)(2)(e) and 12.04(C)** – requiring that failed tightness tests be immediately reported to the DEM.
- (4) **DEM' UST Regulations, Rule 8.09(A)(2)(f) and 12.04(C)** – requiring the submittal of a Release Characterization Report to the DEM within 7 days of a failed tightness test.
- (5) **DEM's UST Regulations, Rule 8.09(A)(2)(g)** – requiring that failed secondary pipelines be repaired within 30 days.

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 receipt of the NOV**, procure the services of a qualified contractor to evacuate the contents of the USTs and place the tank systems into temporary closure in full compliance with Rule 13.03 of the DEM's UST Regulations.
- (2) **Within 10 days of receipt of the NOV**, complete and submit an *Underground Storage Tank Temporary Closure Application* to the DEM's Office of Waste Management ("OWM") in full compliance with the DEM's UST Regulations (the "Temporary Closure Application").
- (3) **Within 10 days of receipt of the NOV**, submit to the DEM's Office of Compliance and Inspection a Release Characterization Report for the Failed Pipelines in full compliance with Rules 8.09(A)(2)(f) and 12.07 of the DEM's UST Regulations.
- (4) **Within 180 days of receiving the DEM's approval for the Temporary Closure Application,**
  - (a) Permanently close the existing product pipelines for the USTs in full compliance with Section 13.00 of the DEM's UST Regulations and install new, double-walled product pipelines in full compliance with Sections 9.00 and 10.00 of the DEM's UST Regulations. Prior written notification to and approval by the DEM is required for the removal and replacement of the product pipelines.

OR

- (b) Submit a completed *Permanent Closure Application for Underground Storage Tanks* for the USTs to the OWM and, with its consent and approval, complete the permanent closure of the USTs in full compliance with Section 13.00 of the DEM's UST Regulations.
- (5) **Within 30 days of the removal of the USTs**, submit to the OWM a *Closure Assessment Report* that has been prepared by an environmental consultant in accordance with Section 13.11 of the DEM's UST Regulations, the *UST Closure Assessment Guidelines* and Section 13 of the DEM's *Oil Pollution Control Regulations*.

- (6) **Within 30 days of the removal of the USTs**, remove and properly dispose of any contaminated soil encountered during the tank closure and, within 10 days of the soil disposal, submit documentation of disposal to the OWM, in accordance with Section 13 of the DEM's *Oil Pollution Control Regulations*.
- (7) Based on the information in the *Closure Assessment Report*, the OWM may require that a site investigation be performed by an environmental consultant and that a *Site Investigation Report* ("SIR") be submitted in accordance with Rules 12.08, 12.09 and 12.10 of the DEM's UST Regulations and within a time frame specified by the OWM. If the OWM requires a SIR, Respondents shall complete the SIR within the time frame specified. Based on the information in the SIR, the OWM may require submittal of a *Corrective Action Plan* ("CAP") within a time frame specified by OWM and in accordance with Rules 12.12 through 12.18 of the DEM's UST Regulations. Respondents shall implement the CAP in accordance with an approval issued by the OWM.

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:

**\$9,065**

- (2) The proposed administrative penalty is calculated pursuant to the DEM's *Rules and Regulations for Assessment of Administrative Penalties*, as amended, 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 Director 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  
One Capitol Hill, 2<sup>ND</sup> Floor  
Providence, RI 02903

- (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 DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters*.
- (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 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 Charlestown, 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, Chief  
Office of Compliance and Inspection

Dated: \_\_\_\_\_

CERTIFICATION

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

SEHI, LLC  
c/o John V. McGreen, Registered Agent  
21 Garden City Drive  
Cranston, RI 02920

COUNTRY FOOD MART, LLC  
c/o Irfan Saeed, Registered Agent  
4063 South County Trail  
Charlestown, RI 02813

by Certified Mail.

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<b>ADMINISTRATIVE PENALTY SUMMARY</b>	
Program:	OFFICE OF COMPLIANCE AND INSPECTION, UST COMPLIANCE
File No.:	UST 2017-5-02268
Respondents:	SEHI, LLC and COUNTRY FOOD MART, LLC

<b>GRAVITY OF VIOLATION</b>					
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) – Pipeline Testing	Type II (\$12,500 Max. Penalty)*	Moderate	\$2,500	1 violation	\$2,500
D (2) through (5) – Reporting And Test Failure Response	Type II (\$12,500 Max. Penalty)*	Major	\$6,250	1 violation	\$6,250
<b>SUB-TOTAL</b>					<b>\$8,750</b>

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

<b>ECONOMIC BENEFIT FROM NON-COMPLIANCE</b>		
COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT ARE IN COMPLIANCE. 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
Economic benefit of noncompliance identified by the DEM for avoidance of pipeline tightness testing costs. The economic benefit gained by the instances of noncompliance was calculated by utilizing an EPA computer model entitled "BEN", which performs a detailed economic analysis. The dates, dollar amounts and values used in this analysis are as listed in this table.	Profit Status	C Corporation
	Filing Status	C Corporation
	Initial Capital Investment	\$0
	One Time Non-Depreciable Expense	\$609
	First Date of Noncompliance	31 December 2012
	Compliance Date	1 February 2018
	Penalty Due Date	1 January 2018
	Useful Life of Pollution Control Equipment	N/A
	Annual Inflation Rate	PCI
	Discount Compound Rate	7.3%
<b>SUB-TOTAL</b>		<b>\$315</b>



**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 = \$9,065**

**PENALTY MATRIX WORKSHEET**

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

**TYPE**

       **TYPE I**  
DIRECTLY related to protecting health, safety, welfare or environment.

  **X**   **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 1.10A.1.b of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** Respondents failed to test the secondary product pipelines for the USTs for tightness. Biennial testing of the pipelines is significant to the regulatory program. This test, which is required after the pipelines reach 20 years of age, verifies whether the pipelines can contain releases from the pressurized primary pipelines. Failure to comply could allow a compromised or faulty pipeline to remain in use and result in a release of petroleum product to the environment.
- (B) **Environmental conditions:** There are multiple residences within 500 feet of the Facility that rely on private drinking water wells. The Facility is located in a GAA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment and which are located in groundwater reservoirs and portions of their recharge areas, wellhead protection areas for community water supply wells or in groundwater dependent areas. The Facility is located in a sole source aquifer. The Facility is located in the Shannock Water District's community water supply wellhead protection area and within the wellhead protection area for a non-community, transient water supply wellhead protection area. The Facility is located in the Usquepaug/Pawcatuck Rivers watershed. The Facility is located in a developed area with potential vapor receptors including commercial and residential structures.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **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 and diesel can cause significant soil and groundwater contamination if released to the environment. Benzene, a component of gasoline, is a known carcinogen.
- (E) **Duration of the violation:** Approximately 5 years – 31 December 2012 to the present. The secondary product pipelines were required to be tested in 2012, 2014 and 2016.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the non-compliance by having the secondary product pipelines tested for tightness. Respondents mitigated the noncompliance by testing the pipelines on 27 July 2017; however, all the pipelines failed to pass the test.
- (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:** Considered, but not utilized for this calculation.
- (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:** Negligence is attributable to Respondents for the failure to comply with the requirements set forth in Rule 8.09(A)(2) of the DEM's UST Regulations. As owners and operators of the Facility, Respondents had full control over the occurrence of the violation. The secondary product pipeline tightness testing requirements are clearly established in the DEM's UST Regulations.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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

**PENALTY MATRIX WORKSHEET**

CITATION: Reporting And Test Failure Response  
 VIOLATION NOS.: D (2) through (5)

**TYPE**

       **TYPE I**  
DIRECTLY related to protecting health, safety, welfare or environment.

  **X**   **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 1.10A.1.b of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** Respondents failed to: report a pipeline test failure, submit a copy of the tightness test report, submit a Release Characterization Report and repair the defective pipelines. Operating a pressurized product pipeline without compliant secondary containment presents a threat to the environment and public health and safety. The protocols set forth in the DEM's UST Regulations for responding to a tightness test failure are of primary importance to the regulatory program.
- (B) **Environmental conditions:** There are multiple residences within 500 feet of the Facility that rely on private drinking water wells. The Facility is located in a GAA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment and which are located in groundwater reservoirs and portions of their recharge areas, wellhead protection areas for community water supply wells or in groundwater dependent areas. The Facility is located in a sole source aquifer. The Facility is located in the Shannock Water District's community water supply wellhead protection area and within the wellhead protection area for a non-community, transient water supply wellhead protection area. The Facility is located in the Usquepaug/Pawcatuck Rivers watershed. The Facility is located in a developed area with potential vapor receptors including commercial and residential structures.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **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 and diesel can cause significant soil and groundwater contamination if released to the environment. Benzene, a component of gasoline, is a known carcinogen.
- (E) **Duration of the violation:** Approximately 4 months – 27 July 2017 to the present.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the non-compliance by immediately reporting the failed test to the DEM, submitting a Release Characterization Report to the DEM, repairing the failed pipelines or placing the USTs into temporary closure. Respondents have not mitigated the non-compliance, despite receiving the NIE dated 19 July 2017 from the DEM, which required that they do so. Respondents have continued to operate the USTs despite the test failure and their failure to complete the remedial actions required by the DEM's UST Regulations following a test failure.
- (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:** Considered, but not utilized for this calculation.
- (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:** Negligence is attributable to Respondents for the failure to comply with the requirements set forth in Rules 8.09(A)(2), 12.04(C) and 12.07 of the DEM's UST Regulations. As owners and operators of the Facility, Respondents had full control over the occurrence of the violation. The required actions for tightness test failures are clearly established in the DEM's UST Regulations.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u>  X  </u> MAJOR	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	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500 <b>\$6,250</b>	\$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	\$250 to \$1,250