

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Town of Coventry**

**FILE NO.: UST 2010-01396**

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 DEM's jurisdiction.

B. Administrative History

DEM issued informal notices to the Respondent on 21 June 2002 and 29 June 2007 and a formal notice to the Respondent on 27 February 2003 for violations of the underground petroleum storage tank regulations. The notices involved the same facility and some of the same violations that are the subject of this notice of violation.

C. Facts

- (1) The subject property is located at 1668 Flat River Road in the town of Coventry, Rhode Island (the “Property”).
- (2) The Property includes a public works garage and two underground storage tanks (“USTs” or “tanks”), which tanks are used for storage of petroleum products (the “Facility”).
- (3) Respondent owns the Property.
- (4) Respondent operates the Facility.
- (5) The Facility is subject to DEM’s Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials, as is or as amended (the “UST Regulations”).
- (6) The Facility is registered with DEM in accordance with Section 6.00 of the UST Regulations and is identified as UST Facility No. 01396.

- (7) The USTs are registered with DEM as follows:

| UST ID No. | Date Installed | Capacity      | Product Stored |
|------------|----------------|---------------|----------------|
| 004        | 1 May 1995     | 8,000 gallons | Diesel Fuel    |
| 005        | 1 May 1995     | 4,000 gallons | Gasoline       |

- (8) DEM inspected the Facility on 23 November 2010. The inspection revealed the following:
- (a) Inventory control records for UST Nos. 004 and 005 were not available.
  - (b) The “power” status indicator lamp on the *Veeder Root TLS 300C* continuous monitoring system (“CMS”) console was malfunctioning.
  - (c) The lamp for the remote high-level overfill alarm was malfunctioning.
  - (d) The dispenser sumps were holding liquids.
- (9) As of the date of this Notice of Violation (“NOV”), the Respondent has failed to comply with the UST Regulations.

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) **Regulations, Rule 8.02 (A)** – requiring that all USTs be maintained and operated in compliance with the applicable national codes of practice
- (2) **UST Regulations, Rules 8.08 (A) (2), 11.02 (B)(4) and 11.03** – requiring the owner/operator to compile and maintain inventory control records for USTs.
- (3) **UST Regulations, Rule 8.15 (B)** – requiring that the owner/operator repair any malfunction of a leak monitoring device within fifteen working days of its first occurrence. If the device(s) cannot be repaired within fifteen days, the affected system(s) shall be temporarily closed in accordance with Rule 13.03 of the UST Regulations until satisfactory repairs are made.
- (4) **UST Regulations, Rule 8.16 (D)** – requiring the owner/operator to keep all containment sumps clean and dry.

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 complete the following **within sixty days of receipt of this NOV**:

- (1) Submit to the DEM Office of Compliance and Inspection (“OC&I”) written verification that you are now in compliance with the inventory control requirements for UST Nos. 004 and 005, as set forth in Rules 8.08(A)(2), 11.02(B)(4) and 11.03 of the UST Regulations.
- (2) Submit to OC&I written verification that the lamp for the remote high-level overfill alarm and the “power” status indicator lamp on the CMS console have been repaired or replaced and that they are now fully functional, in accordance with Rules 8.02(A) and 8.15(B) of the UST Regulations.
- (3) Submit to OC&I written verification that the dispenser containment sumps are now clean, dry and in good working order in accordance with Rule 8.16(D) of the UST Regulations. All wastes removed from these sumps shall be managed and disposed of in accordance with the DEM’s Rules and Regulations for Hazardous Waste Management.

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:

**Six Thousand Two Hundred and Fifty Dollars (\$6,250.00)**

- (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 check 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 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.

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 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 DEM's Administrative Adjudication Division, at the following address, within twenty 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, 3<sup>RD</sup> 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, 4<sup>TH</sup> 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 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 Susan Forcier (or if you are represented by an attorney, please have your attorney contact) at the DEM - Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey D'Amadio 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 G above.

FOR THE DIRECTOR

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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:

Thomas R. Hoover, Town Manager  
Town of Coventry  
1670 Flat River Road  
Coventry, RI 02816-8911

by Certified Mail.

\_\_\_\_\_



# ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST

File No.: UST 2010 – 01396

Respondent: Town of Coventry

| GRAVITY OF VIOLATION  |                                      |           |                     |                                  |            |
|---|--------------------------------------|-----------|---------------------|----------------------------------|------------|
| SEE ATTACHED "PENALTY MATRIX WORKSHEETS."                         |                                      |           |                     |                                  |            |
| VIOLATION No.<br>&<br>CITATION                                    | APPLICATION OF MATRIX                |           | PENALTY CALCULATION |                                  | AMOUNT     |
|   | Type                                 | Deviation | Penalty from Matrix | Number or Duration of Violations |            |
| D (2) – Failure to compile and maintain inventory control records | Type II<br>(\$ 12,500 Max. Penalty)* | Major     | \$6,250             | 1 violation                      | \$6,250.00 |
| <b>SUB-TOTAL</b>  |                                      |           |                     |                                  | \$6,250.00 |

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

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$6,250.00**

**PENALTY MATRIX WORKSHEET**

CITATION: Failure to compile and maintain inventory control records  
 VIOLATION NO.: D (2)

| <b>TYPE</b>  |   |  |
|--|---|--|
| <u>      </u> <b>TYPE I</b><br><u>DIRECTLY</u> related to protecting health, safety, welfare or environment. | <u>  <b>X</b>  </u> <b>TYPE II</b><br><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment. | <u>      </u> <b>TYPE III</b><br><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.

**FACTORS CONSIDERED:**

Taken from Section 10 (a) (2) of the DEM *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** Respondent failed to compile inventory control records for UST Nos. 004 and 005, consistent with the requirements of Rules 8.08(A)(2) and 11.03 of the UST Regulations, during the time period of November 2007 through November 2010. Inventory control is an important and required component of leak detection programs at UST facilities. Failure to perform inventory control would presumably reduce the likelihood of detecting a release from a UST system.
- (B) **Environmental conditions:** The facility is located in a GAA groundwater classification zone, which are groundwater resources designated as 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 and groundwater dependent areas. The facility is located in the wellhead protection area for a non-community, transient water supply. The facility is located within 500 feet of the Flat River Reservoir and in the Pawtuxet River watershed.
- (C) **Amount of the pollutant:** Not relevant.
- (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 fuel are capable of causing significant soil and groundwater contamination if released to the environment. Certain petroleum constituents are potentially harmful to human health and safety and the environment. Benzene, a component of gasoline, is a known carcinogen.
- (E) **Duration of the violation:** At least 3 years. The Respondent received a Letter of Noncompliance from DEM on 29 June 2007 for this violation and returned to compliance. The penalty is being assessed for the non-compliance that has occurred from November 2007 through November 2010.
- (F) **Areal extent of the violation:** Not relevant.

(continued)



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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent the non-compliance by compiling and maintaining inventory control records for UST Nos. 004 and 005 during the time period of November 2007 through November 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:** Respondent was previously cited for violations of the UST Regulations in Letters of Non-Compliance issued on 21 June 2002 and 29 June 2007 and a Notice of Violation issued on 27 February 2003. Violations of the inventory control rules were cited in each enforcement action.
- (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 Respondent for their failure to comply immediately with the requirements set forth in Regulation Nos. 8.08(A)(2) and 11.03. The inventory control requirements are clearly established in the UST Regulations. Respondent, as owner and operator of the facility, had complete control over the occurrence of the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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

| Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 25,000 |              | TYPE I               | TYPE II                               | TYPE III           |
|--|--------------|----------------------|---------------------------------------|--------------------|
| DEVIATION<br>FROM<br>STANDARD  | <b>MAJOR</b> | \$12,500 to \$25,000 | \$6,250 to \$12,500<br><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   |