

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Rhode Island Department of Administration FILE NO.: OCI-UST-19-7-01281

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

On 27 March 2019, DEM issued a Letter of Noncompliance (“LNC”) to Respondent for the violations that are the subject of this Notice of Violation (“NOV”). The LNC described the specific actions required to correct the violations. On 29 August 2019, DEM received electronic correspondence from Respondent stating its intention to replace the facility. Since the issuance of the LNC, DEM officials have communicated (by telephone and through electronic correspondence) with Respondent regarding the violations. As of the date of the NOV, Respondent has failed to correct the violations.

C. Facts

- (1) The property is located at 122 Wyatt Road in the Town of Middletown, Rhode Island, otherwise identified as Middletown Tax Assessor’s Plat 113, Lot 188 (the “Property”). The Property includes a garage and a motor fuel storage and dispensing facility (the "Facility").
- (2) The State of Rhode Island owns and operates the Facility. Respondent is responsible for maintenance and repair of the Facility.
- (3) Two 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 regulations titled *Rules and Regulations for Underground Storage Facilities Used for Regulated Substances and Hazardous Materials* (the “UST Regulations”).
- (4) The Facility is registered with DEM and is identified as UST Facility No. 01281.

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

UST ID No.	Date Installed	Capacity	Product Stored
006	12 November 1998	6,000 gallons	Gasoline
007	12 November 1998	6,000 gallons	Diesel

- (6) The secondary product pipelines for UST Nos. 006 and 007 are double walled.
- (7) On 12 March 2019, DEM performed a compliance inspection of the Facility and was informed that the secondary product pipelines for UST Nos. 006 and 007 had not been tested for tightness within the last 2 years.
- (8) On 14 March 2019, Respondent procured the services of ATS Environmental Services, Inc. (“ATS”) to test the secondary product pipelines for UST Nos. 006 and 007 for tightness; however, it was not possible to perform the tests as the piping was not equipped with test boots.
- (9) UST No. 006 also failed a tank interstitial space tightness test on 14 March 2019 and was immediately placed into temporary closure.
- (10) On 14 March 2019, Respondent had the primary product pipelines for UST Nos. 006 and 007 tested for tightness by ATS and reported that the piping met the criteria for passing.
- (11) As of the date of the NOV, a tightness test report for the secondary product pipelines for UST Nos. 006 and 007 for the year 2018 has not been received by DEM.
- (12) As of the date of the NOV, UST No. 007 continues in operation.

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 [effective 26 April 2011 through 20 November 2018], Rule 8.09(A)(2)(a)** – requiring tightness testing of double walled secondary product pipelines by a DEM-licensed tightness tester at 20 years of age and every 2 years thereafter.

- (2) **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)* [effective 20 November 2018 through Current], Part 1.10(G)(2)(b)(1)** – requiring tightness testing of double walled secondary product pipelines by a DEM licensed tightness tester at 20 years of age and every 2 years thereafter.

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) **IMMEDIATELY upon receipt of the NOV**, remove UST No. 007 from service and cease and desist from dispensing fuel from the UST.
- (2) **Within 7 days of receipt of the NOV**, procure the services of a qualified contractor to evacuate the contents of UST No. 007 and its product pipelines. The tank shall be evacuated to 1 inch or less of liquid at the bottom of the tank and the fill port for the tank shall be locked. In accordance with Part 1.15(C) of the UST Regulations, complete and submit an *Underground Storage Tank Temporary Closure Application* to DEM's Office of Land Reclamation and Sustainable Materials Management ("LRSMM"). Written verification of compliance shall be submitted to DEM's Office of Compliance and Inspection ("OC&I").
- (3) **Within 1 year of receipt of the NOV**, if LRSMM approves the temporary closure, the product pipelines for UST Nos. 006 and 007 shall be modified to allow for interstitial space tightness testing or replaced with new double-walled pipelines in full compliance with the Part 1.11 and/or Part 1.12 of the UST Regulations. Any modification to the existing pipelines or installation of new product piping shall only be completed with prior written notification to and approval by DEM, as per Part 1.11 and Part 1.12 of the UST Regulations.
- (4) **If LRSMM approves the temporary closure and UST Nos. 006 and 007 are not returned to service within 1 year of receipt of the NOV** (with new or modified double-walled product pipelines), submit a completed *Permanent Closure Application for USTs* to LRSMM and, **with LRSMM's consent and approval, complete the permanent closure of UST Nos. 006 and 007** in accordance with Part 1.15 of the UST Regulations. The permanent closure of the USTs shall be completed within 410 days of receipt of the NOV.
- (5) **Within 30 days of the removal of the USTs**, complete and submit to LRSMM a *Closure Assessment Report* (the "Closure Assessment") in accordance with Part 1.15(D)(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").

- (6) **Within 30 days of the removal of the USTs**, remove and properly dispose of any contaminated soil encountered during the closure and within 10 days of the soil disposal, submit documentation of disposal to LRSMM, in accordance with Part 2.13 of the OPC Regulations.
- (7) If, after review of the Closure Assessment, LRSMM determines that a Site Investigation (the “SI”) is required, complete the SI and submit a Site Investigation Report (the “SIR”) to LRSMM in accordance with Part 1.14(H) of the UST Regulations within the time frame specified by LRSMM.
- (8) If, after review of the SIR, LRSMM determines that a Corrective Action Plan (the “CAP”) is required, complete a CAP in accordance with Part 1.14(I) of the UST Regulations within the time frame specified by LRSMM. The CAP must be implemented in accordance with any Order of Approval issued by LRSMM.

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:

\$1,500

- (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 DEM within 30 days of your receipt of the NOV. Payment shall be in the form of an electronic transfer to DEM’s Water & Air Protection Program account.
- (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 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 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 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 1.7(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:

Susan Forcier, 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 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) Susan Forcier of DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey Tyrrell of 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

Date: _____

CERTIFICATION

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

Rhode Island Department of Administration
c/o Brett Smiley, Director
One Capitol Hill
Providence, RI 02908-5853

Hall 35 Campus Avenue, Kingston, R.I. 0288

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST
 File No.: OCI-UST-19-7-01281
 Respondent: Rhode Island Department of Administration

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 D (2) – Piping Testing	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,500	1 violation	\$1,500
SUB-TOTAL					\$1,500

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

ECONOMIC BENEFIT FROM NONCOMPLIANCE
<p>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:</p> <ul style="list-style-type: none"> - THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.
<p>A review of the record in this matter has revealed that Respondent has either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.</p>

COST RECOVERY
<p>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.</p>
<p>A review of the record in this matter has revealed that 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.</p>

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$1,500

PENALTY MATRIX WORKSHEET

CITATION: Piping Testing
 VIOLATION NOs.: D (1) and 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		
<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 1.10(A)(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 secondary product pipeline tested for tightness by a DEM-licensed tightness tester. Failure to comply reduces 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 GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells proximate to the Facility. The Facility is located in the Aquidneck Island – Frontal Atlantic 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 1½ years – Respondent has been in violation since 12 November 2018. (6) Areal extent of the violation: Considered, but not utilized for this calculation. 		
<p>(continued)</p>		

(continued from the previous page)

- (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 secondary pipeline tested for tightness. Respondent has yet to take any steps to mitigate the non-compliance despite receiving the LNC from DEM requiring that it do so.
- (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 its failure to comply with the requirements set forth in the UST Regulations. Respondent, as operator of the Facility, had full control over the occurrence of the violation, and has been aware of the violation since at least March of 2019.
- (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