

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Rhode Island Department of Administration      FILE NO.: OCI-UST-18-72-1830**

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 7 November 2018, DEM advised Respondent in electronic correspondence of the alleged violation that is the subject of this Notice of Violation (“NOV”) and the specific actions required to correct the violation. On 15 January 2019, DEM received electronic correspondence from Respondent stating that a scope of work was being prepared to put out to bid. On 27 March 2019, DEM issued a Letter of Noncompliance (“LNC”) to Respondent. Since the issuance of the LNC, DEM officials have had numerous communications (by telephone and through electronic correspondence) with Respondent regarding the violation. As of the date of the NOV, Respondent has failed to correct the violation.

C.     Facts

- (1)     The property is located at 0 Main Street/301 South County Trail in the Town of Exeter, Rhode Island, otherwise identified as Exeter Tax Assessor’s Map 67, Block 4, Lot 1 (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. 18309.

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

UST ID No.	Date Installed	Capacity	Product Stored
002	15 May 1998	3,000 gallons	Gasoline
003	15 May 1998	2,000 gallons	Diesel

- (6) The secondary product pipelines for UST Nos. 002 and 003 are double walled.
- (7) On 7 November 2018, DEM performed a compliance inspection of the Facility and was informed that the secondary product pipelines for UST Nos. 002 and 003 had not been tested for tightness within the last 2 years.
- (8) A 13 March 2019 testing report from ATS Environmental Services indicated that it is not possible to test the secondary product pipelines for UST Nos. 002 and 003 for tightness as the piping is not equipped with test boots.
- (9) A tightness test report for the secondary product pipelines for the years 2018 and 2020 have not been received by DEM in accordance with Part 1.10(H)(4) of the UST Regulations.
- (10) As of the date of the NOV, UST Nos. 002 and 003 continue 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 Nos. 002 and 003 from service and cease and desist from dispensing fuel from the USTs.
- (2) **Within 7 days of receipt of the NOV**, procure the services of a qualified contractor to evacuate the contents of UST Nos. 002 and 003 and their product pipelines. The tanks shall be evacuated to 1 inch or less of liquid at the bottom of the tanks and the fill port for each 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. 002 and 003 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. 002 and 003 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. 002 and 003** 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.

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# ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST  
 File No.: OCI-UST-18-72-18309  
 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
<b>SUB-TOTAL</b>					<b>\$1,500</b>

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

ECONOMIC BENEFIT FROM NONCOMPLIANCE
<p>COSTS OF COMPLIANCE, EQUIPMENT, O&amp;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"> <li>- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR</li> <li>- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.</li> </ul>
<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)

<b>TYPE</b>		
<p style="text-align: center;">_____ <b>TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_X_ <b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ <b>TYPE III</b></p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
<p>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</p>		
<p><b><u>FACTORS CONSIDERED:</u></b></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"> <li>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent failed to have the secondary product pipelines 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.</li> <li>(2) <b>Environmental conditions:</b> 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 wellhead protection areas for community water supply wells, groundwater reservoirs and portions of their recharge areas and groundwater dependent areas. The Facility is located in the wellhead protection area for a non-community water supply well, within 85 feet of a community water supply wellhead protection area, in a groundwater recharge area, in a sole source aquifer and within a groundwater reservoir. The USTs are installed within 120 feet of regulated freshwater wetlands and within 460 feet of Queen’s Fort Brook. The Facility is located in both the Usquepaug River and the Chipuxet River – Pawcatuck River watersheds.</li> <li>(3) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> 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 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. Benzene, a component of gasoline, is a known carcinogen.</li> <li>(5) <b>Duration of the violation:</b> Approximately 2 years – Respondent has been in violation since 15 May 2018.</li> <li>(6) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</li> </ol>		
<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 pipelines tested for tightness before 15 May 2018 and then again before May 2020. 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 knew of the violation since at least November 2018.
- (10) **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>	<b>MODERATE</b>	<u><b>X</b></u> <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	<b>MAJOR</b>	\$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	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250	\$1,250 to \$2,500 <b>\$1,500</b>	\$250 to \$1,250