

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Corado A. Dottor
Lucille Dottor**

FILE NO.: UST 2010-03035

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

DEM issued an informal notice to the Respondents on 1 July 2010 for the violations. The Respondents have failed to fully comply with the notice.

C. Facts

- (1) The subject property is located at 716 Hartford Avenue in the city of Providence, Rhode Island, Assessor's Plat 115, Lot 562 (the "Property").
- (2) The Property includes a gasoline service station and four underground storage tanks ("USTs" or "tanks"), which tanks are used for storage of petroleum products (the "Facility").
- (3) Respondents own the Property.
- (4) The Facility is subject to DEM's Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials, as amended (the "UST Regulations").
- (5) The Facility is registered with DEM in accordance with Section 6.00 of the UST Regulations and is identified as UST Facility No. 03035.

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

UST ID No.	Date Installed	Capacity	Product Stored
004	14 November 1994	10,000 gallons	Gasoline
005	14 November 1994	10,000 gallons	Gasoline
007	18 June 1999	4,000 gallons	Diesel Fuel
008	Unknown	1,000 gallons	No. 2 Fuel Oil

- (7) DEM inspected the Facility on 3 June 2010. The inspection revealed the following:
- (a) Inventory control records for UST Nos. 004, 005 and 007, consistent with the requirements of the UST Regulations, were not available.
 - (b) Written verification that the line leak detectors for UST Nos. 004, 005 and 007 had been tested by a qualified person during each of the years 2005, 2006, 2007, 2008 and 2009 was not available.
 - (c) Written verification that the dispenser shear valves had been tested during each of the years 2007, 2008 and 2009 was not available.
 - (d) The “power” status indicator lamp on the *Veeder Root TLS 350* continuous monitoring system (“CMS”) console was malfunctioning.
 - (e) Written verification that the CMS was tested on a monthly basis was not available.
 - (f) Written verification that the CMS had been certified/tested by a qualified person during each of the years 2005, 2006, 2008 and 2009 was not available.
 - (g) The spill containment basins for UST Nos. 004, 005, 007 and 008 were holding liquids.
 - (h) The fill port for UST No. 007 was not labeled to identify the product stored inside the tank.
- (8) As of the date of this Notice of Violation (“NOV”), Respondents have failed to fully 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) **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.
- (2) **UST Regulations, Rule 8.11** – requiring the owner/operator to retain a qualified tester to perform annual testing of line leak detectors.
- (3) **UST Regulations, Rule 8.12** – requiring the owner/operator to perform annual testing of shear valves.
- (4) **UST Regulations, Rule 8.15(B)** – requiring that any malfunction of leak monitoring devices be repaired within fifteen working days of its first occurrence. If the device(s) cannot be repaired within 15 days, the affected system(s) shall be temporarily closed in accordance with Rule 13.03 of the UST Regulations until satisfactory repairs are made.
- (5) **UST Regulations, Rule 8.15(E)** – requiring the owner/operator to perform monthly testing of UST continuous monitoring systems.
- (6) **UST Regulations, Rule 8.15(F)** – requiring the owner/operator to retain a qualified person annually to inspect, calibrate and test UST continuous monitoring systems.
- (7) **UST Regulations, Rule 8.16 (A)(1)** – requiring the owner/operator to keep spill containment basins free of liquids.
- (8) **UST Regulations, Rule 8.18** – requiring the owner/operator to permanently label, or otherwise permanently mark, all fill pipes and/or fill box covers so that the product inside the tank is identified.

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 OC&I written verification that you are now in compliance with the inventory control requirements for UST Nos. 004, 005, 007, 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 “power” status indicator lamp on the

CMS console has been repaired or replaced and that it is now fully functional, in accordance with Rule 8.15(B) of the UST Regulations.

- (3) Submit to OC&I written verification that you are now in compliance with the monthly CMS testing requirements set forth in Rules 8.15(E) and 11.02(B)(3) of the UST Regulations.
- (4) Submit to OC&I written verification that the spill containment basins for UST Nos. 004, 005, 007 and 008 are now clean, dry and in good working order in accordance with Rule 8.16(A)(1) of the UST Regulations.
- (5) Submit to OC&I written verification that the fill port for UST No. 007 is labeled or otherwise permanently marked to identify the material stored inside the tank in accordance with Rule 8.18 of the UST Regulations and API RP 1637.

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:

Eight Thousand Five Hundred and Thirty-Two Dollars (\$8,532.00)

- (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 certified 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 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, 3RD 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:

Joseph J. LoBianco, Esquire
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 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) An original signed copy of this NOV is being forwarded to the city of Providence, 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) 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 Joseph J. LoBianco (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

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:

Corrado A. Dottor
19 Green Valley Drive
Johnston, RI 02919

Lucille Dottor
19 Green Valley Drive
Johnston, RI 02919

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST

File No.: UST 2010 – 03035

Respondents: Corado A. Dottor and Lucille Dottor

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) – Failure to compile and maintain inventory control records	Type II (\$ 12,500 Max. Penalty)*	Moderate	\$3,000	1 violation	\$3,000.00
D (2), (3), (5) and (6) – Failure to test the line leak detectors, shear valves and CMS	Type II (\$ 12,500 Max. Penalty)*	Moderate	\$3,000	1 violation	\$3,000.00
SUB-TOTAL					\$6,000.00

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

ECONOMIC BENEFIT FROM NONCOMPLIANCE		
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 NONCOMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.		
DESCRIPTION OF BENEFIT	CALCULATION	AMOUNT
Cost of line leak detector testing	3 USTs X 5 years = 15 missing tests @ \$96 per test	\$1,440.00
Cost of tank monitor testing	1 CMS X 4 years = 4 missing tests @ \$273 per test	\$1,092.00
SUB-TOTAL		\$2,532.00

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$8,532.00

PENALTY MATRIX WORKSHEET

CITATION: Failure to compile and maintain inventory control records

VIOLATION NO.: D (1)

TYPE		
<p style="text-align: center;"><u> </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> X </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> </u> TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondents failed to compile inventory control records for UST Nos. 004, 005 and 007, consistent with the requirements of Rules 8.08(A)(2) and 11.03 of the UST Regulations. 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.</p> <p>(B) Environmental conditions: The facility is located in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. The facility is located in a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. The facility is located in the Woonasquatucket River watershed.</p> <p>(C) Amount of the pollutant: Not relevant.</p> <p>(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.</p> <p>(E) Duration of the violation: Respondents have been non-compliant with these rules since at least July of 2007.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
(continued)		

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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 compiling and maintaining inventory control records for UST Nos. 004, 005 and 007 during the time period of July 2007 through July 2010. Respondents failed to mitigate the non-compliance despite receiving a Letter of Noncompliance from DEM, which required that they do so.
- (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:** Not relevant.
- (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 their failure to comply immediately with the requirements set forth in UST Regulation Nos. 8.08(A)(2) and 11.03. The inventory control requirements are clearly established in the UST Regulations. Respondents, as owners 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.

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	\$2,500 to \$6,250 \$3,000	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to test the line leak detectors, shear valves and CMS
 VIOLATION NOS.: D (2), (3), (5) and (6)

TYPE		
<p>____TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>X</u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>____TYPE III <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>FACTORS CONSIDERED:</p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondents failed to procure the services of a qualified person to test the line leak detectors for UST Nos. 004, 005 and 007 during each of the years 2005, 2006, 2007, 2008 and 2009. Respondents failed to perform functionality testing of the dispenser shear valves during each of the years 2007, 2008 and 2009. Respondents failed to test the CMS on a monthly basis to ensure effective operation during the time period of July 2007 through July 2010. Respondents failed to procure the services of a qualified person to certify/test the CMS during each of the years 2005, 2006, 2008 and 2009. Line leak detectors and shear valves are important, required components of release prevention and fire safety programs at UST facilities. UST continuous monitoring systems are important, required components of leak detection programs at UST facilities. Annual functionality testing of these devices is required to ensure that they are operating in conformance with the manufacturer's performance standards. Failure to perform such testing as required would presumably reduce the likelihood of preventing or detecting a release from a UST system.</p> <p>(B) Environmental conditions: The facility is located in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. The facility is located in a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. The facility is located in the Woonasquatucket River watershed.</p> <p>(C) Amount of the pollutant: Not relevant.</p> <p>(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.</p> <p>(E) Duration of the violation: The penalty is being assessed for the non-compliance that occurred between 2005 and 2009.</p>		
<p>(continued)</p>		

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- (F) **Areal extent of the violation:** Not relevant.
- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the non-compliance by testing the line leak detectors, the shear valves and the CMS as required. Respondents mitigate some of the non-compliance when they had the line leak detectors, shear valves and CMS tested in August 2010 and reported that the equipment met the criteria for passing. Respondents have taken no apparent steps to mitigate the monthly CMS testing violation.
- (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:** Not relevant.
- (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 their failure to comply immediately with the requirements set forth in Regulation Nos. 8.11, 8.12, 8.15(E) and 8.15(F). The line leak detector, shear valve and tank monitor testing requirements are clearly established in the UST Regulations. Respondents, as owners 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.

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	\$2,500 to \$6,250 \$3,000	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500 \$1,500	\$250 to \$1,250