

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Eugene Gencarelli, Jr. and
Ginger's Service Station, Inc.**

FILE NO.: OCI-UST-19-37-00668

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 18 October 2016 and 30 October 2018, DEM notified Respondents of the statutory deadline for the permanent closure of the underground storage tanks at the facility that is the subject of this Notice of Violation ("NOV") and the actions required to keep the facility in compliance with the law and the 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)* (the "UST Regulations"). Respondents failed to comply with the notices.

C. Facts

- (1) The property is located at 110 Oak Street, Assessor's Plat 48, Lot 50 in the Town of Westerly, Rhode Island (the "Property"). The Property includes a motor fuel filling station and underground storage tanks ("USTs" or "tanks") that are used for storage of petroleum products (the "Facility").
- (2) Respondent Eugene Gencarelli, Jr. owns the Property.
- (3) Respondent Ginger's Service Station, Inc. operates the Facility.
- (4) The Facility is registered with DEM and is identified as UST Facility No. 00668.

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

UST ID No.	Date Installed	Capacity	Product Stored
002	1 June 1987	8,000 gallons	Gasoline
004	1 June 1987	8,000 gallons	Gasoline
006	1 June 1987	6,000 gallons	Gasoline
008	1 October 1983	1,000 gallons	No. 2 Heating Oil

- (6) UST Nos. 002, 004 and 006 are single-walled.
- (7) On 9 August 2019, DEM inspected the Facility. The inspection revealed that UST Nos. 002, 004 and 006 were still in use.
- (8) As of the date of the NOV, DEM has not received an application from Respondents to permanently close UST Nos. 002, 004 and 006.

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) **R.I. Gen. Laws §46-12-3(21)** – requiring that single-walled USTs and product pipelines installed between 8 May 1985 and 20 July 1992 no longer remain in use after 32 years from the date of installation.
- (2) **UST Regulations, Rule 8.04(B) [recently amended to Part 1.10(D)(1)(b)]** – requiring owners/operators of single-walled USTs and product pipelines installed between 8 May 1985 and 20 July 1992 to permanently close the USTs and product pipelines within 32 years of the date of installation.

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, 004 and 006 from service and cease and desist from dispensing fuel from UST Nos. 002, 004 and 006.
- (2) **Within 7 days of receipt of the NOV**, procure the services of a qualified contractor to evacuate the contents of UST Nos. 002, 004 and 006 and the 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. Written verification of compliance shall be submitted to DEM's Office of Compliance and Inspection ("OC&I").

- (3) **Within 45 days of receipt of the NOV**, submit a completed *Permanent Closure Application for USTs* to DEM's Office of Waste Management ("OWM") and, **with OWM's consent and approval, complete the permanent closure of UST Nos. 002, 004 and 006** in accordance with Part 1.15 of the UST Regulations.
- (4) **Within 30 days of the removal of UST Nos. 002, 004 and 006**, complete and submit to OWM a *Closure Assessment Report* 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 *Oil Pollution Control Regulations* (the "OPC Regulations").
- (5) **Within 30 days of the removal of UST Nos. 002, 004 and 006**, 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 OWM, in accordance with Part 2.13 of the OPC Regulations.
- (6) If, after review of the *Closure Assessment Report*, OWM determines that a site investigation is required, complete the site investigation and submit a *Site Investigation Report* ("SIR") to OWM in accordance with Part 1.14(H) of the UST Regulations within the time frame specified by OWM.
- (7) If, after review of the SIR, OWM determines that a *Corrective Action Plan* ("CAP") is required, submit a proposed CAP in accordance with Part 1.10(I) of the UST Regulations within the time frame specified by OWM. OWM will review the proposed CAP and issue further instruction on how to proceed. The CAP shall be implemented in accordance with an *Order of Approval* issued by DEM.

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 against the respondents:

\$20,000

- (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 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 DEM's 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 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:

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 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) An original signed copy of the NOV is being forwarded to the Town of Westerly, Rhode Island, 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 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

Dated: _____

CERTIFICATION

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

Eugene Gencarelli, Jr.
110 Oak Street
Westerly, RI 02891

Ginger's Service Station, Inc.
c/o Eugene J. Gencarelli, Jr., Registered Agent
104 Oak Street
P.O. Box 1427
Westerly, RI 02891

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST
 File No.: OCI-UST-19-37-00668
 Respondents: Eugene Gencarelli, Jr. and Ginger's Service Station, Inc.

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) & (2) – Single-Walled USTs	Type I <i>(\$25,000 Max. Penalty) *</i>	Moderate	\$6,250	3 UST systems	\$18,750
<i>SUB-TOTAL</i>					\$18,750

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

ECONOMIC BENEFIT FROM NON-COMPLIANCE			
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:			
- THERE IS NO IDENTIFIABLE BENEFIT FROM NON-COMPLIANCE; OR			
- THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED.			
DESCRIPTION OF BENEFIT	CALCULATION		AMOUNT
Failing to cease operation and permanently close the USTs by the statutory deadline. The economic benefit of non-compliance was determined by using an EPA computer model titled <i>BEN</i> that performs a detailed economic analysis. The dates, dollar amounts and values used in this analysis are listed in this table.	<ul style="list-style-type: none"> ▪ Profit Status ▪ Filing Status ▪ Initial Capital Investment ▪ One-time Non-depreciable Expense ▪ First Month of Noncompliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	C Corp. \$50,000 June 2019 1 January 2020 1 December 2019 8.1%	
<i>SUB-TOTAL</i>			\$1,250

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 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 = \$20,000

PENALTY MATRIX WORKSHEET

CITATION: Single-Walled USTs

VIOLATION NOs.: D (1) & (2)

TYPE		
<u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	___ TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	___ TYPE III <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.		
<p>FACTORS CONSIDERED:</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: Respondents failed to permanently close UST Nos. 002, 004 and 006 by the statutory deadline and have continued to operate the USTs in violation of the R.I. Gen. Laws and the UST Regulations. Single-walled USTs and pipelines present a threat to the environment and public health and safety as there is no secondary containment to prevent releases of petroleum products and hazardous materials directly to the subsurface. Failure to comply increases the likelihood of a release 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 in a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. The Facility is in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. The Facility is located within 325 feet of a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. The Facility is located within 2,100 feet of a groundwater recharge area for some of the Town of Westerly's community water supply wells. The Facility is in the Tomaquag Brook/Pawcatuck River watershed. The Facility is located within 575 feet of freshwater wetlands. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) 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 can cause significant soil and groundwater contamination if released to the environment. Benzene, a component of gasoline, is a known human carcinogen. Certain other petroleum constituents are potentially harmful to human health and safety and the environment. (5) Duration of the violation: Respondents have been in violation of the subject statute and rule since 1 June 2019. (6) Areal extent of the violation: Considered, but not utilized for this calculation. 		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** Respondents failed to take reasonable and appropriate steps to prevent the non-compliance by ceasing operations and permanently closing the USTs before 1 June 2019. Respondents have yet to take any apparent steps to mitigate the violation despite receiving the informal written notice from DEM, which required that they 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 Respondents for the failure to comply with the requirements set forth in R. I. Gen. Laws §46-12-3(21) and the UST Regulations. Respondents, as owners and operators of the Facility, had full control over the occurrence of the violation.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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 \$6,250	\$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