

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF COMPLIANCE & INSPECTION

IN RE: 75 Goff Ave Realty Trust

FILE NO.: UST 2014-74-00544

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 (“Respondent”) has violated certain statutes and/or administrative regulations under the DEM's jurisdiction.

B. Facts

- (1) The property is located at 42 Dexter Street (a/k/a 75 Goff Avenue), Assessor's Plat 44, Lot 493, in the city of Pawtucket, Rhode Island (the “Property”). The Property includes a service station and underground storage tanks (the “Facility”).
- (2) The Respondent owns the Property.
- (3) Underground storage tanks (“USTs” or “tanks”) are located on the Property, which tanks were used for storage of petroleum products and which are subject to the DEM's *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the “UST Regulations”).
- (4) The Facility is registered with the DEM and is identified as UST Facility No. 00544.
- (5) The USTs are registered with the DEM as follows:

| UST ID No. | Date Installed | Capacity | Product Stored |
|------------|----------------|--------------|----------------|
| 002 | unknown | 5000 gallons | Diesel |
| 004 | unknown | 8000 gallons | Gasoline |
| 006 | unknown | 8000 gallons | Gasoline |

- (6) On 6 February 2015, the DEM issued a *Notice of Intent to Prohibit Delivery* (“NIPD”) to the Respondent, which notified the Respondent that, unless the Facility was brought into compliance with the DEM's UST Regulations within 7 days, the DEM would proceed with the delivery prohibition actions set forth in the DEM's UST Regulations.

- (7) On 11 March 2015, in response to the NIPD, the DEM met with Johannes Bien, who identified himself as the Property owner. Mr. Bien stated that he has a lease with a Facility operator; however, the Facility was not open and he was not dispensing any gasoline.
- (8) The Respondent failed to comply with the NIPD.
- (9) On 24 March 2015, the DEM inspected the Facility and spoke with Mr. Bien at the time of the inspection. The inspection revealed the following:
 - (a) The dispenser island was blocked to vehicular traffic;
 - (b) The office of the service station was locked and vacant; and
 - (c) There was no visual display for the continuous monitoring system ("CMS") or the automatic tank gauge ("ATG") and the power lamp on the CMS was not illuminated, which are indications that the CMS and ATG were shut down.
- (10) During the 24 March 2015 inspection, the DEM inspectors installed red tags and locks on the fill ports for the USTs prohibiting delivery of gasoline to the USTs, handed Mr. Bien a Notice of Delivery Prohibition ("NDP") and notified him that he was required to permanently close the USTs in accordance with the DEM's UST Regulations unless he complied with the NDP within 180 days.
- (11) On 25 August 2015, the DEM inspected the Facility and spoke with Mr. Bien at the time of the inspection. The inspection revealed that the red tags and locks were still affixed on the fill ports for the USTs. Mr. Bien stated that he was not dispensing gasoline at the Facility.
- (12) Upon information and belief, the USTs have been out of service since at least 24 March 2015.
- (13) As of the date of this Notice of Violation ("NOV"), the USTs remain in place in an abandoned state.

C. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) **DEM's UST Regulations, Rules 8.21(H)** – requiring the permanent closure of USTs that have not been returned to compliance within 180 days of receipt of a NDP.
- (2) **DEM's UST Regulations, Rule 13.02(A)** – prohibiting the abandonment of USTs.

- (3) **DEM's UST Regulations, Rule 13.05** – requiring the permanent closure of any USTs that have been removed from service for more than 180 days or are abandoned.

D. 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) **Within 90 days of receipt of the NOV**, submit a permanent closure application to the DEM – Office of Waste Management ("OWM") UST Management Program at 235 Promenade Street, Suite 380, Providence, RI 02908-5767 and complete the removal of the USTs in full compliance with Section 13.00 of the DEM's UST Regulations and Section 13.00 of the DEM's *Oil Pollution Control Regulations* (the "OPC Regulations").
- (2) **Within 30 days of the removal of the USTs**, submit to the OWM a *Closure Assessment Report* prepared by a qualified environmental consultant, in accordance with Section 13.11 of the DEM's UST Regulations, the DEM's *UST Closure Assessment Guidelines* and Section 13.00 of the DEM's OPC Regulations.
- (3) **Within 30 days of the removal of the USTs**, remove and properly dispose of any contaminated soil excavated during the tank closure and, within 10 days of the soil disposal, submit documentation of disposal to the OWM, in accordance with Section 13 of the DEM's OPC Regulations.
- (4) **Within 60 days of receipt of written notification from the OWM to conduct a site investigation of the Property**, retain a qualified consultant to perform the site investigation and submit a *Site Investigation Report* to the OWM within the time frame specified in accordance with Rules 12.08, 12.09 and 12.10 of the DEM's UST Regulations.
- (5) **Within 60 days of receipt of written notification from the OWM to submit a Corrective Action Plan ("CAP")**, retain a qualified consultant to submit a proposed CAP to the OWM in accordance with Rules 12.12 through 12.18 of the DEM's UST Regulations. The CAP shall be implemented in accordance with an order of approval issued by the OWM.

E. 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:

\$7,792

- (2) The proposed administrative penalty is calculated pursuant to the DEM's *Rules and Regulations for Assessment of Administrative Penalties*, as amended, and must be paid to the 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 the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against the 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 DEM determines that reasonable efforts have been made to comply promptly with this NOV.

F. 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's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through E 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 the DEM's Administrative Adjudication Division, at the following address, within 20 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
One Capitol Hill, 2ND Floor
Providence, RI 02903
 - (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's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters*.

- (2) A copy of each request for hearing must also be forwarded to:

Christina A. Hoefsmit, Esq.
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 the 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 (vi) 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 the NOV is being forwarded to the city of Pawtucket, 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 (or if you are represented by an attorney, please have your attorney contact) Christina Hoefsmit at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey 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 F above.

FOR THE DIRECTOR

By: _____
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:

75 Goff Ave Realty Trust
c/o Johannes Bien
75 Goff Avenue
Pawtucket, RI 02860

by Certified Mail.



| ADMINISTRATIVE PENALTY SUMMARY | |
|---------------------------------------|--|
| Program: | OFFICE OF COMPLIANCE AND INSPECTION, UST |
| File No.: | UST 2014-74-00544 |
| Respondents: | 75 Goff Ave Realty Trust |

| 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 | |
| C (1), (2) and (3) – Abandonment of USTs | Type I (\$25,000 Max. Penalty)* | Moderate | \$7,500 | 1 violation | \$7,500 |
| SUB-TOTAL | | | | | \$7,500 |

*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 |
| Economic benefit of noncompliance identified by the DEM for failing to permanently close the facility. The expense associated with the cost of permanently closing the facility was based on the average cost to remove multiple USTs at a facility. The economic benefit gained by the instances of noncompliance was calculated by utilizing an EPA computer model entitled "BEN". The model calculates the economic gain of noncompliance by performing a detailed economic analysis. The dates, dollar amounts and values used in this analysis are as listed in this table. | Profit Status | C-Corporation | \$292 |
| | Filing Status | C-Corporation | |
| | Initial Capital Investment | \$0 | |
| | One Time Non Depreciable Expense | \$25,000 | |
| | First Date of Noncompliance | 24 September 2015 | |
| | Compliance Date | 1 March 2016 | |
| | Penalty Due Date | 1 March 2016 | |
| | Useful Life of Pollution Control Equipment | N/A | |
| | Annual Inflation Rate | PCI | |
| | Discount Compound Rate | 7.2% | |
| SUB-TOTAL | | | \$292 |

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 the 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 = \$7,792

| PENALTY MATRIX WORKSHEET | |
|---------------------------------|---------------------|
| CITATION: | Abandonment of USTs |
| VIOLATION Nos.: | C (1), (2) and (3) |

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

FACTORS CONSIDERED:

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

- (A) **The extent to which the act or failure to act was out of compliance:** USTs have been removed from service and abandoned. Abandoned USTs present a threat to the environment if they are not evacuated of their contents or if persons attempt to re-use them after an extended period of abandonment.
- (B) **Environmental conditions:** The property is located in a developed area with numerous potential vapor receptors including residential structures, commercial structures and underground utilities. The property is located in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells proximate to the property. The property is located within 1,500 feet of the Seekonk River and it lies within its watershed.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** The volatile nature of gasoline presents both a public health hazard (due to the potential inhalation of benzene vapors) and a potential public safety hazard (due to the potential for explosion). Petroleum products are capable of causing significant soil and groundwater contamination if released to the environment.
- (E) **Duration of the violation:** Full duration unknown - at least 2 ½ months. The USTs have not been in service since at least 24 March 2015 and have been abandoned since at least 24 September 2015.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.
- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to prevent the non-compliance by permanently closing the USTs within 180 days of the date that they were removed from service. The Respondent has taken no apparent steps to mitigate the non-compliance despite receiving multiple written notices from the DEM, which required that he do so.

(continued)

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- (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:** The Respondent was previously cited by the DEM for violations of the DEM's UST Regulations in a Notice of Violation dated 17 October 2002 and in Notices of Intent to Enforce dated 24 August 2010, 5 October 2010 and 31 January 2014.
- (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:** As the property owner, the Respondent had full control over the occurrence of the violation. Abandonment of USTs is expressly prohibited by the DEM's UST Regulations. The DEM provided the Respondent with written notification of the violation on multiple occasions.
- (J) **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 |
|--------------|---------------------------------|--------------|

| 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 \$7,500 | \$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 |