

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Pasco Raimondo
Susan Raimondo**

FILE NO.: OCI-UST-17-4-02081

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 the DEM's jurisdiction.

B. Administrative History

On 19 July 2016, the DEM issued a Notice of Intent to Enforce (“NIE”) to Pasco Raimondo for many of the findings of noncompliance that are the subject of this Notice of Violation (“NOV”). The NIE required specific actions to correct the noncompliance. The NIE was delivered on 25 August 2016. As of the date of the NOV, Respondents have failed to comply with the NIE.

C. Facts

- (1) The property is located at 94 West Warwick Avenue, Assessor’s Plat 7, Lot 399 in the Town of West Warwick, Rhode Island (the Property”). The Property includes a service station and a motor fuel storage and dispensing system (the “Facility”).
- (2) Respondents own the Property.
- (3) 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 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. 02081.

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

UST ID No.	Capacity	Product Stored
002	4,000 gallons	Gasoline
005	4,000 gallons	Gasoline
009	2,000 gallons	Gasoline
010	4,000 gallons	Gasoline
011	2,000 gallons	Gasoline

- (6) On 14 July 2016, the DEM inspected the Facility. The inspection, review of the DEM's files for the Facility, and review of documents submitted to the DEM by Respondents revealed the following:
- (a) The Facility was not in operation;
 - (b) No application was submitted to the DEM to obtain approval for a temporary closure of the Facility;
 - (c) Registration fees and late fees totaling \$2,000 were not paid and the Facility did not have a valid registration certificate;
 - (d) Monthly inventory and reconciliation were not being performed;
 - (e) The line leak detectors were not tested in 2014, 2015 or 2016;
 - (f) The continuous monitoring system was not inspected monthly during the last 3 years by a registered Class A/B operator; and
 - (g) The Facility was not inspected monthly during the last 3 years by a registered Class A/B operator.
- (7) On 29 November 2016, the DEM received a copy of a primary product pipeline tightness test report for the USTs, which was prepared by P.M. Environmental, Inc. on behalf of Respondents. The report indicates that the tests were performed on 10 October 2016 and that one of the primary gasoline pipelines "failed" the tightness test (the "Failed Pipeline"). Respondents failed to:
- (a) Immediately report the test failure to the DEM;
 - (b) Submit a *Release Characterization Report* to the DEM; and
 - (c) Submit a copy of the test report to DEM within 15 days;
- (8) On 8 August 2017, the DEM inspected the Facility. The inspection revealed that the Facility was not in operation and vehicles were parked under the dispenser canopy to prevent access to the dispenser island.

- (9) As of the date of the NOV, Respondents have failed to demonstrate compliance with the findings described in Sections C (6) and C (7) above.
- (10) As of the date of the NOV, the DEM has determined that the Facility is abandoned.

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) **DEM's UST Regulations, Rule 8.10(D)** – requiring that failed tightness tests be reported to the DEM immediately and that tightness test reports be submitted to the DEM within 15 days of the tests.
- (2) **DEM's UST Regulations, Rule 8.11** – requiring annual testing of line leak detectors by qualified persons.
- (3) **DEM's UST Regulations, Rules 12.02, 12.04(C) and 12.07** – pertaining to the reporting and investigation of failed tightness tests and the requirement to submit a Release Characterization Report to the DEM within 7 days of a failed tightness test.
- (4) **DEM's UST Regulations, Rules 13.02 and 13.05** – prohibiting the abandonment of USTs and requiring the permanent closure of any USTs that have been removed from service for more than 180 days without the approval of the DEM.

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 remedial actions:

- (1) **Within 30 days of receipt of the NOV**, submit a completed *Permanent Closure Application for Underground Storage Tanks* (the "Closure Application") to the DEM. The Closure Application must include a *Release Characterization Report* for the Failed Pipeline in accordance with Rules 12.04(C) and 12.07 of the DEM's UST Regulations and payment for all past due UST registration and late fees.
- (2) **Within 30 days of approval of the Closure Application by the DEM**, complete the permanent closure of the USTs. The permanent closure shall be completed in full compliance with Section 13.00 of the DEM's UST Regulations.
- (3) **Within 30 days of the removal of the USTs**, submit to the DEM a *Closure Assessment Report* (the "Closure Report") that has been prepared by an environmental consultant in accordance with Section 13.11 of the DEM's UST Regulations, the *UST Closure Assessment Guidelines*, October 1998, and Section 13 of the DEM's *Oil Pollution Control Regulations*.

- (4) **Within 30 days of the removal of the USTs**, 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 the DEM.
- (5) Based on the information in the Closure Report, the DEM may require that a site investigation be performed by an environmental consultant and that a *Site Investigation Report* (“SIR”) be submitted in accordance with Rules 12.08, 12.09, and 12.10 of the DEM’s UST Regulations and within a time frame specified by the DEM. In the event that the DEM requires a SIR, Respondents shall complete the SIR as ordered. Based on the information in the SIR, the DEM may require submittal of a *Corrective Action Plan* (“CAP”) within a time frame specified by the DEM and 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 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, jointly and severally, against each named respondent:

\$25,486

- (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 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 the 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 the 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 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
235 Promenade Street, Room 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 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:

Joseph J. LoBianco, Esq.
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 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 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 West Warwick, 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) Joseph J. LoBianco of the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey Tyrrell of the 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, Chief
Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

Pasco Raimondo
2 Campbell Street
West Warwick, RI 02893

Susan Raimondo
2 Campbell Street
West Warwick, RI 02893

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY	
Program:	OFFICE OF COMPLIANCE AND INSPECTION, UST
File No.:	OCI-UST-17-4-02081
Respondents:	Pasco Raimondo and Susan Raimondo

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 (3) – Report Failed Pipeline Test	Type II (\$12,500 Max. Penalty) *	Major	\$6,250	1 violation	\$6,250
D(4) – Abandonment of USTs	Type I (\$25,000 Max. Penalty) *	Major	\$18,750	1 violation	\$18,750
<i>SUB-TOTAL</i>					\$25,000

*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 ARE IN COMPLIANCE. 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
Economic benefit of noncompliance identified by the DEM for failing to test the line leak detectors. The cost of the test was based on a DEM survey of vendors. The economic benefit gained by the noncompliance was calculated using an EPA computer model titled <i>BEN</i> , which performs a detailed economic analysis. The dates, dollar amounts and values used in this analysis are listed in this table.	Profit Status For profit Filing Status Other than a C Corporation Initial Capital Investment \$0 One Time Non Depreciable Expense \$0 Annual Recurring Cost \$288 (\$96 x 3 LLDs) First Date of Noncompliance 31 December 2014 Compliance Date 1 June 2017 Penalty Due Date 1 June 2017 Useful Life of Pollution Control Equipment N/A Annual Inflation Rate PCI Discount Compound Rate 7.3%	\$486
<i>SUB-TOTAL</i>		\$486

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 = \$25,486

PENALTY MATRIX WORKSHEET

CITATION: Report Failed Pipeline Test

VIOLATION NOs.: D (1) and (3)

TYPE

____ TYPE I
DIRECTLY related to protecting health, safety, welfare or environment.

X TYPE II
INDIRECTLY related to protecting health, safety, welfare or environment.

____ TYPE III
INCIDENTAL 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 Part 1.10A.1.b of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents failed to immediately report a failed pipeline tightness test to the DEM and submit the report within 7 days of the test and failed to submit a Release Characterization Report to the DEM. Tightness testing of pressurized product pipelines is significant to the regulatory program. Failure to comply with these requirements could allow a compromised pipeline to remain in use and result in a release of petroleum product to the environment.
- (2) **Environmental conditions:** The Facility is in a densely developed area with numerous potential vapor receptors including commercial structures, residential structures and underground utilities. The USTs are installed within a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. The USTs are installed within 200 feet of a GA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment. The Facility is located within 200 feet of the Pawtuxet River and within its watershed.
- (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 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 can cause significant soil and groundwater contamination if released to the environment.
- (5) **Duration of the violation:** 17 months - the pipeline failed a tightness test on 10 October 2016 and Respondents have yet to submit a Release Characterization Report to the DEM.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.
- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** Respondents failed to prevent the non-compliance by immediately reporting the test failure, submitting the test report within 15 days after the test failure and submitting a Release Characterization Report to the DEM within 7 days after the test failure. The test report was submitted to the DEM on 29 November 2016 (43 days late). To date, Respondents have failed to submit the Release Characterization Report.

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- (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:** As the owners of the Facility, Respondents had full control over the occurrence of the violations. Immediate reporting and investigation of failed tightness tests is expressly required by the DEM's UST Regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Respondents had the outer walls of the pipelines tested for tightness on 16 October 2016 and it was reported that the pipelines met the criteria for passing.

<u>X</u> MAJOR	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 \$6,250	\$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	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Abandonment of USTs

VIOLATION NO.: D (4)

TYPE

 X TYPE I
DIRECTLY related to protecting health, safety, welfare or environment.

_____ TYPE II
INDIRECTLY related to protecting health, safety, welfare or environment.

_____ TYPE III
INCIDENTAL 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 Part 1.10A.1.b of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents abandoned the USTs. Abandonment of USTs is expressly prohibited by the DEM's UST Regulations. Abandoned USTs present a threat to the environment if they are not emptied of the regulated substance or if persons attempt to put them back into service after a period of abandonment. Preventing the abandonment of USTs is of primary importance to the regulatory program.
- (2) **Environmental conditions:** The Facility is in a densely developed area with numerous potential vapor receptors including commercial structures, residential structures and underground utilities. The USTs are installed within a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. The USTs are installed within 200 feet of a GA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment. The Facility is located within 200 feet of the Pawtuxet River and within its watershed.
- (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 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 can cause significant soil and groundwater contamination if released to the environment.
- (5) **Duration of the violation:** 21 months – upon information and belief, the USTs have been abandoned since at least 14 July 2016.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.
- (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 or mitigate the non-compliance.

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- (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 submit prior written notification to and obtain the approval of DEM for the temporary closure of the USTs. As the owners of the Facility, Respondents had full control over the occurrence of the violations. Abandonment of USTs is expressly prohibited by the DEM's UST Regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u>X</u> MAJOR	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 \$18,750	\$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	\$250 to \$1,250