

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: LMG Rhode Island Holdings, Inc.
The Providence Journal Company**

FILE NO.: OCI-UST-18-48-01315

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 17 April 2017, 19 February 2018 and 5 March 2018, the DEM notified Respondents of the statutory deadline for the permanent closure of the product pipelines for 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 have failed to fully comply with the notices.

C. Facts

- (1) The property is located at 204 Kinsley Avenue (also identified as 210 Kinsley Avenue), Assessor's Plat 26, Lot 248 in the City of Providence, Rhode Island (the “Property”). The Property includes industrial/commercial structures and underground storage tanks (“USTs” or “tanks”) that are used for storage of petroleum product and are subject to the UST Regulations (the "Facility").
- (2) LMG Rhode Island Holdings, Inc. owns the Property.
- (3) The Providence Journal Company operates the Facility.
- (4) The Facility is registered with the DEM and is identified as UST Facility No. 01315.

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

UST ID No.	Date Installed	Capacity	Product Stored
008	1 May 1986	10,000 gallons	No. 2 Fuel Oil
009	1 May 1986	10,000 gallons	No. 2 Fuel Oil

- (6) The product pipelines for the USTs were single-walled with no secondary containment and no continuous electronic leak monitoring.
- (7) On 10 July 2018, the DEM inspected the Facility. The inspection revealed that the USTs were still in use.
- (8) On or about 15 September 2018, the existing product pipelines were removed from the ground and replaced with new double-walled product pipelines.
- (9) As of the date of the NOV, Respondents have failed to submit documents to the DEM required by 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) **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 1.10D.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) **Within 30 days of receipt of the NOV**, submit all required documentation for the pipeline replacement project to the DEM's Office of Waste Management (the "OWM"), including, but not limited to, a completed *Certificate of Installation or Modification of UST Form*, a completed piping manufacturer's installation checklist and the consultant's soil screening report. The OWM will review the documentation and, if necessary, issue further instructions for investigation or submittal of additional documentation. Respondents shall comply with any such requirements issued by the OWM.

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:

\$5,363

- (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 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 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 1.7B 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, 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 regarding 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 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 City of Providence, 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 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, Administrator
Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

LMG Rhode Island Holdings, Inc.
c/o Corporation Service Company, Registered Agent
222 Jefferson Boulevard, Suite 200
Warwick, RI 02888

The Providence Journal Company
c/o Thomas McDonough, Registered Agent
75 Fountain Street
Providence, RI 02902

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST
 File No.: OCI-UST-18-48-01315
 Respondents: LMG Rhode Island Holdings, Inc. and The Providence Journal Company

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) – Use of Single-Walled Product Pipelines	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$2,500	2 UST systems	\$5,000
SUB-TOTAL					\$5,000

*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 COMPLY. 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
Failing to permanently close the product pipelines. 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. \$25,000 May 2018 15 September 2018 1 May 2019 7.3%
SUB-TOTAL		\$363

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 = \$5,363

PENALTY MATRIX WORKSHEET

CITATION: Use of single-walled product pipelines
 VIOLATION NOs.: D (1) & (2)

TYPE		
<p style="text-align: center;"><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> </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 Part 1.10A.1.b of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties</i> (250-RICR-130-00-1)</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 the product pipelines by the deadline and continued to operate the UST systems in violation of the law and the UST Regulations. The operation of single-walled product pipelines beyond the deadline is prohibited. 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 located in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. The Facility is located atop a groundwater reservoir. Upon information and belief, there are no drinking water supply wells in the vicinity. The USTs are installed within 130 feet of the Woonasquatucket River and within it's watershed. The Facility is located in an environmental justice area. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: No. 2 heating oil 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. (5) Duration of the violation: Approximately 4 1/2 months. The deadline to remove the pipelines was 1 May 2018. Respondents removed the pipelines on or about 15 September 2018. (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 permanently closing the product pipelines by 1 May 2018. Respondents removed the product pipelines on or about 15 September 2018 to mitigate the non-compliance; however, Respondents have failed to fully comply with the UST Regulations.
- (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 their failure to comply with the requirements set forth in the law 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	MODERATE	<u> X </u> 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	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250 \$2,500	\$1,250 to \$2,500	\$250 to \$1,250