

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

IN RE: RWR Real Estate Investment Group, LLC

FILE NO.: OCI-UST-21-8-02372

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

B. Administrative History

On 6 May 2021, DEM sent electronic correspondence to Respondent for some of the alleged violations that are the subject of this *Notice of Violation* (“NOV”). The correspondence required specific actions to correct the violations. DEM did not receive a response to the correspondence. On 25 May 2021, DEM issued a *Letter of Non-Compliance* (“LNC”) to Respondent by certified mail for some of the alleged violations that are the subject of the NOV. The LNC required specific actions to correct the violations. The LNC was delivered to Respondent on 2 June 2021. As of the date of the NOV, Respondent has failed to respond to or comply with the LNC.

C. Facts

- (1) The property is located at 2905/2907 Post Road, Assessor's Plat 267, Lot 202 in Warwick, Rhode Island (the “Property”). The Property includes a commercial office building (the "Facility").
- (2) Respondent owns the Property. Respondent acquired the Property on 5 January 2021.
- (3) Underground storage tanks (“USTs” or “tanks”) are located on the Property, which tanks are used for storage of petroleum product and subject to Rhode Island’s *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the “UST Regulations”).
- (4) The Facility is registered with DEM and is identified as UST Facility No. 02372.

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

UST ID No.	Date Installed	Capacity	Product Stored
001	1963	3,000 gallons	No. 2 Heating Oil
002	1963	3,000 gallons	No. 2 Heating Oil

- (6) UST Nos. 001 and 002 are single walled.
- (7) On 5 May 2021, DEM inspected the Facility. The inspection revealed the following:
- (a) The fill ports for UST Nos. 001 and 002 were not labeled to identify the product stored inside the tanks.
 - (b) Ownership of the Facility had been transferred on or about 5 January 2021 without prior written notification to DEM.
- (8) As of the date of the NOV, Respondent has not resolved the issues described in subsection C (7) above.
- (9) As of the date of the NOV, Respondent has not submitted written verification that UST Nos. 001 and 002 were tested for tightness by a DEM licensed tightness tester on or before 31 December 2021.

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 [effective 20 November 2018 to 4 January 2022]**
- (a) **Part 1.10(F)(4)(a)(1)** – requiring tightness testing of single-walled heating oil USTs (that were installed prior to 31 December 1970) by DEM-licensed tightness testers, before 31 December 2021, and every 5 years thereafter.
 - (b) **Part 1.10(P)** – 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.
 - (c) **Part 1.18(A)(1)** – requiring prior written notification to DEM whenever ownership of a regulated UST facility is transferred.

- (2) **UST Regulations [effective 4 January 2022 to Current]**
- (a) **Part 1.10(F)(4)(a)(1)** – requiring tightness testing of single-walled heating oil USTs (that were installed prior to 31 December 1970) by DEM-licensed tightness testers, before 31 December 2021, and every 5 years thereafter.
 - (b) **Part 1.10(P)** – 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.
 - (c) **Part 1.18(A)(1)** – requiring prior written notification to DEM whenever ownership of a regulated UST facility is transferred.

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 30 days of receipt of the NOV**:

- (1) Procure the services of a DEM-licensed tightness tester to test UST Nos. 001 and 002 for tightness in accordance with Part 1.10(F)(4)(a)(1) and Part 1.10(H) of the UST Regulations [effective 4 January 2022 to Current]. Original copies of the tightness test report shall be submitted to DEM’s Office of Land Revitalization and Sustainable Materials Management (“LRSMM”) in accordance with Part 1.10(H)(4) of the UST Regulations [effective 4 January 2022 to Current] and DEM’s Office of Compliance and Inspection (“OC&I”).
- (2) Label the fill ports for UST Nos. 001 and 002 in accordance with Part 1.10(P) of the UST Regulations [effective 4 January 2022 to Current] and American Petroleum Institute *API RP 1637*. Written or photographic verification of compliance shall be submitted to OC&I.
- (3) Submit a completed *Change or Update of Ownership of a UST or UST Facility* form to LRSMM in accordance with Part 1.18 of the UST Regulations [effective 4 January 2022 to Current]. A copy of the completed form shall be submitted to OC&I.

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:

\$2,250

- (2) The proposed administrative penalty is calculated pursuant to Rhode Island's *Rules and Regulations for Assessment of Administrative Penalties* [effective 4 January 2022 to Current] (the "Penalty Regulations") and must be paid to DEM within 30 days of your receipt of the NOV. Penalty payments shall be by one of two methods:
- (a) By certified check, cashier's check, or money order made payable to the **General Treasury – Water and Air Protection Program** and forwarded to:
- Administrator, DEM Office of Compliance and Inspection
235 Promenade Street, Suite 220
Providence, RI 02908-5767
- (b) By wire transfer in accordance with instructions provided by DEM.
- (3) Penalties assessed against Respondent 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, 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).

- (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 Rhode Island's Rules and Regulations for the Administrative Adjudication Division [effective 4 January 2022 to Current].
- (2) A copy of each request for hearing must also be forwarded to:
- Christina Hoefsmit, 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 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 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) Christina Hoefsmit of DEM's Office of Legal Services at (401) 222-6607 Ext. 2772023 or at christina.hoefsmit@dem.ri.gov. All other inquiries should be directed to Tracey Tyrrell of DEM's Office of Compliance and Inspection at (401) 222-1360, Ext 2777407 or at tracey.tyrrell@dem.ri.gov.

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:

RWR Real Estate Investment Group, LLC
c/o Ryan Russo, Resident Agent
18 Blue Ridge Road
Cranston, RI 02920

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST
 File No.: OCI-UST-21-8-02372
 Respondent: RWR Real Estate Investment Group, LLC

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)(a) and D (2)(a) – UST Tightness Testing	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,500	1 violation	\$1,500
D (1)(c) and D (2)(c) – Failure to Notify DEM of Change in Ownership	Type III <i>(\$6,250 Max. Penalty) *</i>	Minor	\$750	1 violation	\$750
SUB-TOTAL					\$2,250

*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.

A review of the record in this matter has revealed that Respondent has either enjoyed no identifiable benefit from the non-compliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.

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 = \$2,250

PENALTY MATRIX WORKSHEET

CITATION: UST Tightness Testing

VIOLATION NOs.: D (1)(a) and D(2)(a)

TYPE		
<p style="text-align: center;">___ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">X TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent failed to procure the services of a DEM-licensed tightness tester to test UST Nos. 001 and 002 at least once before 31 December 2021. Tank tightness testing is an important, required component of leak detection programs at UST facilities. Failure to comply reduces the likelihood of detecting releases from UST systems. (2) Environmental conditions: The Facility is in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water wells in the vicinity of the Facility. There are numerous residences in the vicinity. The Property is located within Greenwich Bay watershed and within 770 feet of Gorton Lake. (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 2 months – Respondent was required to perform at least 1 tightness test before 31 December 2021. (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 noncompliance:** Respondent failed to prevent the non-compliance by having the tanks tested for tightness on or before 31 December 2021. DEM warned Respondent about the impending deadline in the LNC; however, Respondent has yet to mitigate the non-compliance.
- (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 Respondent for the failure to comply with the UST Regulations. Respondent, as owner and operator 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:** The USTs are approximately 59 years old and constructed of bare steel. DEM is concerned about the integrity of these tanks.

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	\$1,250 to \$2,500 \$1,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to Notify DEM of Change in Ownership
 VIOLATION NOs.: D (1)(c) and D(2)(c)

TYPE		
<u> </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> X </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<u>FACTORS CONSIDERED:</u> Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.		
<ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent has failed to submit written notification to DEM for the property transfer that took place on 5 January 2021. UST facility owners and operators are required to submit written notification to DEM whenever there are changes in ownership of a UST facility or whenever there are changes in information provided on the UST registration application. This information is of importance to the regulatory program. (2) Environmental conditions: The Facility is in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water wells in the vicinity of the Facility. There are numerous residences in the vicinity. The Property is located within Greenwich Bay watershed and within 770 feet of Gorton Lake. (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 13 months – Respondent has been non-compliant with this requirement since 5 January 2021. (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 noncompliance:** Respondent failed to prevent the non-compliance by submitting a Change of Ownership form to DEM before the transfer took place. Respondent has yet to mitigate the non-compliance despite receiving the LNC, which required that it 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 Respondent for the failure to comply immediately with the UST Regulations. Respondent, as owner and operator 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:**

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	\$1,250 to \$2,500	\$250 to \$1,250 \$750