

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Lucine Gyuleseryan

FILE NO.: UST 2013-41-00291

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 the DEM’s jurisdiction.

B. Facts

- (1) The property is located at 173 Danielson Pike, Assessor’s Plat 10, Lot 32 in the town of Foster, Rhode Island (the “Property”).
- (2) The Property includes a convenience store, a motor fuel filling station and underground storage tanks (“USTs” or “tanks”), which tanks are used for storage of petroleum products (the “Facility”).
- (3) The Respondent owns the Property and operates the Facility.
- (4) The Facility is subject to the DEM’s *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the “UST Regulations”).
- (5) The Facility is registered with the DEM in accordance with Section 6.00 of the DEM’s UST Regulations and is identified as UST Facility No. 00291.
- (6) The USTs are registered with the DEM as follows:

UST ID No.	Date Installed	Capacity	Substance Stored
007	20 April 1987	6,000 gallons	Gasoline
011	4 January 1995	4,000 gallons	Diesel
012	4 January 1995	4,000 gallons	Diesel
013	4 January 1995	8,000 gallons	Gasoline

- (7) On 13 June 2013, the DEM inspected the Facility. The inspection revealed the following:
- (a) Inventory control records, consistent with the requirements of the DEM's UST Regulations, for the USTs from November 2010 through June 2013 were not available;
 - (b) Written verification that the continuous monitoring system ("CMS") had been tested by the owner/operator on a monthly basis to ensure effective operation during calendar year 2013 was not available;
 - (c) The 3 groundwater monitoring wells located to the south of UST No. 007 (the "Groundwater Monitoring Wells") were missing road box lids. The wells were not labeled, secured against tampering or maintained to prevent pollutants from entering the wells; and
 - (d) Written verification that the designated Class A or Class B UST Facility operator (Paul Gyuleseryan) had conducted Facility inspections during each of the months of August 2012 through May 2013 was not available.
- (8) On 19 August 2013 the DEM received a letter from the Respondent in response to an informal written notice that the DEM issued to the Respondent for the issues identified in the 13 June 2013 inspection. The Respondent stated the following:
- (a) Monthly inventory records were being recorded in a disorganized manner. An organized system has been created to facilitate retrieval of these records;
 - (b) The CMS was not being tested because no one possessed the knowledge on how to conduct this test. The Respondent did some research and figured out how to conduct this test. The test results will be recorded with other monthly inspections;
 - (c) The Groundwater Monitoring Wells could not be repaired since parts are not readily accessible. The well covers will be replaced with new covers on 17 September 2013; and
 - (d) Monthly operator inspections are now being conducted and recorded into a binder to facilitate retrieval of these records.
- (9) On 4 October 2013 the DEM received a letter from the Respondent (the "October Letter") in response to a letter the DEM sent to the Respondent on 29 August 2013 requesting additional information. The Respondent stated that she is still trying to find someone to install new groundwater monitoring well covers.
- (10) The October Letter included a monthly operator inspection checklist form dated 1 October 2013. The form stated that the Respondent performed the inspection.

- (11) The Respondent is not the designated Class A or Class B UST Facility operator.
- (12) As of the date of this Notice of Violation (“NOV”), the Respondent has failed to comply with the DEM’s UST Regulations for the issues described above.

C. Violation

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

- (1) **DEM’s UST Regulations, Rules 8.08(A)(2), 8.08(B)(3) and 11.03** – requiring monthly inventory reconciliation and leak checks for UST systems.
- (2) **DEM’s UST Regulations, Rule 8.15(E)** – requiring monthly testing of a CMS by the owner/operator to ensure effective operation.
- (3) **DEM’s UST Regulations, Rule 8.19** – pertaining to the construction and maintenance of groundwater monitoring wells.
- (4) **DEM’s UST Regulations, Rule 8.22(F)** – requiring the registered Class A or Class B UST facility operator to conduct monthly on-site UST facility inspections and record the results of those inspections on the requisite form.

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 complete the following remedial actions within **45 days of receipt of the NOV**:

- (1) Submit to the DEM’s Office of Compliance and Inspection (“OC&I”) the Facility’s most recent monthly inventory reconciliation chart for the USTs to show that you are now complying with the inventory control requirements set forth in Rules 8.08(A)(2), 8.08(B)(3), 11.02(B)(5) and 11.03 of the DEM’s UST Regulations.
- (2) Repair or replace the road box lids for the Groundwater Monitoring Wells in accordance with Rule 8.19 of the DEM’s UST Regulations to ensure that the wells are covered, labeled, secured against tampering and capable of preventing the infiltration of surface water and pollutants.
- (3) Submit to the OC&I the Facility’s most recent monthly operator inspection checklist form completed by the designated Class A or Class B UST Facility operator (Paul Gyuleseryan) to show that you are now complying with the monthly on-site UST facility inspections in accordance with Rules 8.15(E) and 8.22(F) of the DEM’s UST Regulations.

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:

Four Thousand Five Hundred Dollars (\$4,500.00)

- (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 this NOV. Payment shall be in the form of a certified check, cashiers 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 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 Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters.
- (2) A copy of each request for hearing must also be forwarded to:
- Joseph J. LoBianco, 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 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 (v) 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 this NOV is being forwarded to the town of Foster, 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) Joseph J. LoBianco 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

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:

Lucine Gyuleseryan
180 Cardinal Road
Cranston, RI 02920

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST

File No.: UST 2013-41-00291

Respondent: Lucine Gyuleseryan

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) – Failure to compile and maintain inventory reconciliation records	Type II (\$ <u>12,500</u> Max. Penalty)*	Moderate	\$3,000	1 violation	\$3,000.00
C (2) and (4) – Failure to test the CMS on a monthly basis and maintain records of such and failure to have the Class A/B UST facility operator perform monthly inspections	Type II (\$ <u>12,500</u> Max. Penalty)*	Minor	\$1,500	1 violation	\$1,500.00
<i>SUB-TOTAL</i>					\$4,500.00

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

ADMINISTRATIVE PENALTY SUMMARY *(continued)*

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.

A review of the record in this matter has revealed that the Respondent has either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted can not 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 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= \$4,500.00

PENALTY MATRIX WORKSHEET

CITATION: Failure to compile and maintain inventory reconciliation records
 VIOLATION NO.: C (1)

TYPE		
<u> </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> X </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 *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** Respondent failed to compile and maintain inventory reconciliation records for the USTs. Inventory reconciliation is an important and required component of release detection programs at UST facilities. Failure to comply would presumably reduce the likelihood of detecting a release from a UST system. This leak detection requirement is of significant importance to the regulatory program.
- (B) **Environmental conditions:** The facility is located in a GA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment. The facility is located in a transient, non-community water supply wellhead protection area. Commercial and residential properties in the vicinity rely on private drinking water wells. The facility is located within 850 feet of a surface water protection area for the Scituate Reservoir and within 200 feet of freshwater stream wetlands. The facility is located within the Quaduck Brook 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 potential public health hazard (due to potential inhalation of benzene) and a potential public safety hazard (due to the potential for explosion). Gasoline is capable of causing significant soil and groundwater contamination if released to the environment. Benzene, a component of gasoline, is a known carcinogen.
- (E) **Duration of the violation:** 32 months. November 2010 through June 2013.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to compile and maintain inventory reconciliation records.
- (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 alleged violations of the DEM's UST Regulations in informal written notices dated 8 February 2007, 16 July 2008 and 27 August 2010. The 2007 notice cited a violation of the inventory reconciliation requirements.
- (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:** Negligence is attributable to the Respondent for the failure to comply immediately with the requirements set forth in the DEM's UST Regulations. As owner and operator of the facility, the Respondent had full control over the occurrence of the violation. The inventory reconciliation requirements are clearly established in the DEM's UST Regulations.
- (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
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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 \$3,000	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to test the CMS on a monthly basis to ensure effective operation and failure to have the Class A/B UST facility operator perform monthly inspections

VIOLATION NOS.: C (2) and (4)

TYPE		
<p style="text-align: center;"><u> </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> X </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 Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: The Respondent failed to test the CMS on a monthly basis to ensure effective operation and ensure that the Class A/B UST facility operator conducted monthly UST facility inspections in accordance with the DEM's UST Regulations. These monthly inspections and tests are of significant importance to the regulatory program. Failure to perform these inspections and tests would presumably reduce the likelihood of detecting a leak or release from the UST systems.</p> <p>(B) Environmental conditions: The facility is located in a GA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment. The facility is located in a transient, non-community water supply wellhead protection area. Commercial and residential properties in the vicinity rely on private drinking water wells. The facility is located within 850 feet of a surface water protection area for the Scituate Reservoir and within 200 feet of freshwater stream wetlands. The facility is located within the Quaduck Brook watershed.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) 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 is capable of causing significant soil and groundwater contamination if released to the environment. Benzene, a component of gasoline, is a known carcinogen.</p> <p>(E) Duration of the violation: 1 August 2012 to present.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to perform monthly inspection of the CMS and ensure that the Class A/B UST facility operator was conducting monthly on-site UST facility inspections.
- (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 alleged violations of the DEM's UST Regulations in informal written notices dated 8 February 2007, 16 July 2008 and 27 August 2010. The 2007 notice cited a violation of the inventory reconciliation requirements.
- (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:** Negligence is attributable to the Respondent for the failure to comply immediately with the requirements set forth in Rules 8.15(E) and 8.22(F) of the DEM's UST Regulations. As owner and operator of the facility, the Respondent had full control over the occurrence of the violations. The monthly CMS testing and facility inspection requirements are clearly established in the DEM's UST Regulations.
- (J) **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	\$1,250 to \$2,500 \$1,500	\$250 to \$1,250