

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: KTY ENTERPRISES, INC.
 Supreme Enterprises Inc.**

FILE NO.: OCI-UST-19-54-00921

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 DEM's jurisdiction.

B. Administrative History

On 30 October 2018 and 2 August 2019, DEM notified Respondents by certified mail 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”). The notice issued on 30 October 2018 was delivered to KTY ENTERPRISES, INC. and Supreme Enterprises Inc. on 3 November 2018 and 5 November 2018, respectively. The notice issued on 2 August 2019 was delivered to KTY ENTERPRISES, INC. and Supreme Enterprise Inc. on 8 August 2019 and 10 August 2019, respectively. Respondents have failed to comply with the remedial requirements set forth by DEM in the notices.

C. Facts

- (1) The subject property is located at 944 Chalkstone Avenue (a/k/a 168 River Avenue), Assessor's Plat 65, Lot 946, in the City of Providence, Rhode Island (the “Property”). The Property includes a convenience store and underground storage tanks (“USTs” or “tanks”) that are used for storage of petroleum products and are subject to the UST Regulations (the "Facility").
- (2) Respondent KTY ENTERPRISES, INC. owns the Property.
- (3) Respondent Supreme Enterprises Inc. operates the Facility.
- (4) The Facility is registered with DEM and is identified as UST Facility No. 00921.

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

| UST ID No. | Date Installed | Capacity | Product Stored |
|------------|-----------------|----------------|----------------|
| 005 | 1987 | 550 gallons | Fuel Oil |
| 007 | 23 October 1987 | 12,000 gallons | Gasoline |
| 008 | 22 October 1987 | 12,000 gallons | Gasoline |
| 009 | 22 October 1987 | 12,000 gallons | Gasoline |

- (6) The product pipelines for UST Nos. 007, 008 and 009 are single-walled.
- (7) On 19 November 2019, DEM inspected the Facility. The inspection revealed that UST Nos. 007, 008 and 009 were still in use.
- (8) As of the date of the NOV, DEM has not received a completed *Permanent Closure Application for Underground Storage Tanks* from Respondents.

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, Subsection 10(D)(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) **IMMEDIATELY upon receipt of the NOV**, remove UST Nos. 007, 008 and 009 from service and cease and desist from dispensing fuel from the USTs.
- (2) **Within 7 days of receipt of the NOV**, procure the services of a qualified contractor to evacuate the contents of UST Nos. 007, 008 and 009 and their product pipelines. The tanks shall be evacuated to 1 inch or less of liquid at the bottom of the tanks and the fill port for each tank shall be locked. Written verification of compliance shall be submitted to DEM's Office of Compliance and Inspection ("OC&I").

- (3) **Within 45 days of receipt of the NOV**, submit a completed *Permanent Closure Application for Underground Storage Tanks* to DEM's Office of Land Revitalization and Sustainable Materials Management ("LRSMM") and, **with LRSMM's consent and approval, complete the permanent closure of the product pipelines for UST Nos. 007, 008 and 009** in accordance with Part 1.15 of the UST Regulations.
- (4) **Within 30 days of the removal of the product pipelines**, complete and submit to LRSMM a *Closure Assessment Report* (prepared by a qualified environmental consultant) in accordance with Part 1.15(D)(1) of the UST Regulations, the *UST Closure Assessment Guidelines*, October 1998, and Part 2.13 of the Rhode Island Code of Regulations titled *Oil Pollution Control Regulations (250-RICR-140-25-2)* (the "OPC Regulations").
- (5) **Within 30 days of the removal of the product pipelines**, remove and properly dispose of any contaminated soil encountered during the closure and, within 10 days of the soil disposal, submit documentation of disposal to LRSMM, in accordance with Part 2.13 of the OPC Regulations.
- (6) If, after review of the *Closure Assessment Report*, the LRSMM determines that a site investigation is required, complete the site investigation and submit a *Site Investigation Report* ("SIR") to LRSMM in accordance with Part 1.14(H) of the UST Regulations and within the time frame specified by LRSMM.
- (7) If, after review of the SIR, OLRSM determines that a *Corrective Action Plan* ("CAP") is required, submit a proposed CAP in accordance with Part 1.14(I) of the UST Regulations within the time frame specified by LRSMM. LRSMM will review the proposed CAP and issue further instruction on how to proceed. The CAP shall be implemented in accordance with an *Order of Approval* issued by LRSMM.

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:

\$20,266

- (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 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" and shall be forwarded to DEM's 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 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, 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 1.7(B) 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:

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

Dated: _____

CERTIFICATION

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

KTY ENTERPRISES, INC.
c/o Knar O. Bagdasarova, Registered Agent
160 Pleasant View Avenue
Smithfield, RI 02917

Supreme Enterprises Inc.
c/o Tariq Mehmood, Registered Agent
168 River Avenue
Providence, RI 02908

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST
 File No.: OCI-UST-19-54-00921
 Respondents: KTY ENTERPRISES, INC. and Supreme Enterprises Inc.

| 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 D (2) – Use of Single-Walled Product Pipelines | Type I <i>(\$25,000 Max. Penalty) *</i> | Moderate | \$6,250 | 3 UST systems | \$18,750 |
| SUB-TOTAL | | | | | \$18,750 |

*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. | | | |
| 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. \$50,000 October 2019 15 July 2020 1 July 2020 8.1% | |
| SUB-TOTAL | | | \$1,516 |

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 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 = \$20,266

PENALTY MATRIX WORKSHEET

CITATION: Use of Single-Walled Product Pipelines
 VIOLATION NOs.: D (1) and D (2)

| TYPE | | |
|--|--|--|
| <u> X </u> TYPE I | ___ TYPE II | ___ TYPE III |
| DIRECTLY related to protecting health, safety, welfare or environment. | INDIRECTLY related to protecting health, safety, welfare or environment. | 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 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties* (250-RICR-130-00-1)

- (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 continue 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 densely developed area with numerous potential vapor receptors including residential structures, commercial structures and underground utilities. The Facility is located 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 supply wells in the vicinity. The USTs are installed within 440 feet of a groundwater reservoir. The USTs are installed within 1,000 feet of freshwater wetlands. The USTs are installed within 2,100 feet of the Woonasquatucket River and within its 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:** 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 may 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 9 months – Respondents were required to remove the product pipelines before 23 October 2019.
- (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 before 23 October 2019. Respondents have yet to mitigate the non-compliance despite receiving the informal written notices from DEM, which required that they 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 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 | <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 \$6,250 | \$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 |