

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Thurbers Avenue Realty, Inc.

FILE NOs.: UST 2013-117-18573

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. Administrative History

On 25 September 2012 and 10 December 2012, the DEM issued an informal written notice to the owner/operator by regular mail for the violation involving the failure to certify that the facility has trained operators. The notices described the specific actions required to correct the violation. On 22 October 2013, the DEM issued an informal written notice to the Respondent by certified mail for the violation. The notice described the specific actions required to correct the violation. The notice was delivered on 14 November 2013. On 15 November 2013 the DEM spoke with Richard Fuller, the Respondent’s president. The DEM informed Mr. Fuller of the actions he needed to take to comply with the notice. The Respondent has failed to comply with the notice.

C. Facts

- (1) The property is located at 1025 Eddy Street, Assessor’s Plat 54, Lot 921 in the city of Providence, Rhode Island (the “Property”). The Property includes a convenience store, a motor fuel filling station and underground storage tanks (the “Facility”).
- (2) The Respondent owns 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. 18573.

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

UST ID No.	Capacity	Product Stored
001	15000 gallons	Gasoline
002	15000 gallons	Gasoline
003	10000 gallons	Diesel

- (6) On 1 November 2012 the DEM received a Class A UST operator certificate for Christopher Fuller. The certificate did not include any information as to the UST facility Mr. Fuller was assigned.
- (7) On 15 November 2013 the Respondent's president, Richard Fuller, informed the DEM in a telephone conversation that his son, Christopher Fuller, is the certified Class A UST facility operator assigned to the Facility.
- (8) As of the date of this Notice of Violation ("NOV"), the Respondent has failed to submit a completed *Certified UST Facility Operators Registration Form* to the DEM.

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 8.22** – requiring all regulated UST facility owners/operators to submit a *Certified UST Facility Operators Registration Form* to the DEM to verify that trained and certified UST facility operators were assigned to the facility by 1 August 2012 and on duty at the facility during all operating hours.

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 within **60 days of receipt of this NOV**:

- (1) Assign at least one trained and certified Class A UST facility operator and at least one trained and certified Class B UST facility operator to the Facility in accordance with Rule 8.22 of the DEM's UST Regulations. Written verification of compliance shall be submitted to the DEM's Office of Compliance and Inspection ("OC&I") at 235 Promenade Street, Suite 220, Providence, RI 02908-5767.
- (2) Train all Facility employees as (at least) Class C UST facility operators and compile a written list of Class C UST facility operators that have been trained and assigned to the Facility, as per Rules 8.22 (A) and (D) of the DEM's UST

Regulations. Written verification of compliance shall be submitted to the OC&I.

- (3) Complete a *Certified UST Facility Operators Registration Form* in accordance with Rule 8.22(A)(4) of the DEM's UST Regulations and submit the form to the DEM – Office of Waste Management at 235 Promenade Street, Suite 380, Providence, RI 02908-5767 along with copies of the Class A and Class B UST facility operators' examination certificates. Copies of the form and certificates shall also be submitted to the 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:

Two Thousand Five Hundred Dollars (\$2,500.00)

- (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, 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 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.

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 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
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's *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 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) 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 extension 2302. 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 G 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:

Thurbers Avenue Realty, Inc.
c/o Richard E. Fuller, Registered Agent
1025 Eddy Street
P.O. Box 9197
Providence, RI 02940-9197

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST

File No.: UST 2013-117-18573

Respondent: Thurbers Avenue Realty, 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) – Failure to assign trained and certified Class B and Class C UST facility operators to the facility and submit a form certifying the Class A, B and C UST facility operators assigned to the facility to the DEM	Type II (\$12,500 Max. Penalty)*	Moderate	\$2,500	1 violation	\$2,500.00
SUB-TOTAL					\$2,500.00

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

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 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 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 = \$2,500.00

PENALTY MATRIX WORKSHEET

CITATION: Failure to assign trained and certified Class B and Class C UST facility operators to the facility and submit a form certifying the Class A, B and C UST facility operators assigned to the facility to the DEM

VIOLATION NO.: D (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		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p>FACTORS CONSIDERED:</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 assign trained and/or certified UST facility operators to the facility and submit a completed <i>Certified UST Facility Operators Registration Form</i> to the DEM. Rule 8.22 of the DEM's UST Regulations requires all regulated UST facilities to have trained and certified UST facility operators assigned to their facilities. This requirement is of significant importance to the regulatory program. Non-compliance with this rule precludes the environmental and public safety safeguards and assurances obtained by properly training and certifying the facility operators.</p> <p>(B) Environmental conditions: Considered, but not utilized for this calculation.</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 public health hazard (due to the potential inhalation of benzene) and a public safety hazard (due to the potential for explosion). Gasoline is capable of causing significant soil and groundwater contamination if released to the environment.</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>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent's president, Richard Fuller, informed the DEM that his son, Christopher Fuller, is the certified Class A operator assigned to the Facility; however, the Respondent has failed to assign certified and/or trained Class B and Class C UST facility operators to the facility on or before 1 August 2012. The Respondent has made no apparent attempt to mitigate the violation despite receiving multiple written notices from the DEM requiring that it do so.
- (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:** Considered, but not utilized for this calculation.
- (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:** The Respondent had full control over the occurrence of the violation. The DEM issued multiple written notices to the Respondent of the requirement to comply with Rule 8.22 of the DEM's UST Regulations by 1 August 2012. The requirement to assign certified and trained UST facility operators to regulated UST facilities is clearly established in the DEM's UST Regulations.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The DEM took into consideration Mr. Fuller's verbal statement that his son Christopher Fuller is the certified Class A operator assigned to the Facility. The standard penalty for this violation is \$5,000.00.

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 \$2,500	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250