

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Urban Arms Condominium Association

FILE NO.: OCI-UST-17-26

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 May 2017, DEM issued a Notice of Intent to Enforce (“NIE”) to Respondent for the violations that are the subject of this Notice of Violation (“NOV”). The NIE required specific actions to correct the violations. On 30 May 2017, the NIE was delivered to Respondent. Respondent failed to fully comply with the NIE. On 25 May 2018, DEM issued an Expedited Citation Notice (“ECN”) to Respondent. The ECN required specific actions to correct the violations. On 31 May 2018, the ECN was delivered to Respondent. As of the date of the NOV, Respondent has failed to respond to or comply with the ECN.

C. Facts

- (1) The property is located at 45 Urban Avenue and 53 Urban Avenue, Assessor's Plat 2, Lot 274 in the Town of North Providence, Rhode Island (the “Properties”). The Properties includes two 6-unit residential condominium buildings (the "Facility").
- (2) Respondent owns the Property.
- (3) Respondent operates the Facility.
- (4) On 18 May 2017, the DEM inspected the Properties and observed the following:
 - (a) A fill pipe, a vent pipe and a tank bung protruding from the ground on the south side of the west building at 53 Urban Avenue. These pipes serve an underground storage tank (“UST” or “tank”) that is utilized for storage of No. 2 heating oil;
 - (b) The fill pipes were not surrounded by an impervious surface capable of containing spills of at least three gallons;

- (c) The fill pipes were not labeled to identify the product stored inside the USTs; and
- (d) The USTs were not registered with the DEM.
- (5) The USTs are subject to the DEM’s *Rules and Regulations for Underground Storage Facilities Utilized for Petroleum Products and Hazardous Materials* (the “UST Regulations”).
- (6) On 16 October 2017, Respondent submitted to the DEM completed *Underground Storage Tank Registration Applications* for the USTs.
- (7) The USTs are now registered with DEM as follows:

UST 04783 – 45 Urban Avenue			
UST No.	Date Installed	Capacity	Product Stored
001	Unknown	550 gallons	No. 2 Heating Oil
UST 04784 – 53 Urban Avenue			
UST No.	Date Installed	Capacity	Product Stored
001	Unknown	550 gallons	No. 2 Heating Oil

- (8) On 18 May 2018, DEM inspected the Properties and observed that the fill pipes for the USTs were neither surrounded by impervious surfaces nor labeled to identify the product stored.
- (9) As of the date of the NOV, Respondent has failed to comply with the DEM’s UST Regulations for the noncompliance described in Section C (8) above.

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 6.02** – prohibiting the operation of an underground storage tank facility unless the tank or tanks are registered with DEM.
- (2) **DEM’s UST Regulations, Rule 8.16(A)(2)(a)** – requiring that aboveground fill pipes be surrounded by an impervious surface capable of containing spills of three gallons or more.
- (3) **DEM’s UST Regulations, Rule 8.18** – 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.

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 this NOV**, install an impervious surface around the fill pipe of each UST in accordance with Rule 8.16(A)(2)(a) of the UST Regulations. The impervious surfaces shall be capable of containing spills of at least three gallons. Written or photographic verification of compliance shall be submitted to the DEM's Office of Compliance and Inspection ("OC&I").

In lieu of installing an impervious surface, procure the services of a qualified person to install spill containment basins around the fill pipes in accordance with Rules 8.16(A)(1) and 9.13(A) of the UST Regulations. Modifications will have to be made to the fill pipes to allow for the tops of the spill containment basins to be finished at grade. Written and/or photographic verification of compliance shall be submitted to the OC&I.

- (2) **Within 30 days of receipt of this NOV**, the fill port for each UST shall be labeled or otherwise permanently marked to identify the product stored inside the UST in accordance with Rule 8.18 of the UST Regulations and *API RP 1637*. Written and/or photographic verification of compliance shall 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:

\$6,703

- (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 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'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 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
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); **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 DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for 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, 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 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 (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 Town of North 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 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, Chief
Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

Urban Arms Condominium Association
c/o John Morgan, Registered Agent
181 Knight Street
Warwick, RI 02886

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST
 File No.: OCI-UST-17-26
 Respondent: Urban Arms Condominium Association

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) – Operating unregistered USTs	Type I <i>(\$ 25,000 Max. Penalty) *</i>	Minor	\$2,500	One	\$2,500
D (2) – Failure to install impervious surfaces or spill containment basins around USTs	Type II <i>(\$ 12,500 Max. Penalty) *</i>	Minor	\$1,250	Two USTs	\$2,500
<i>SUB-TOTAL</i>					\$5,000

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

ADMINISTRATIVE PENALTY SUMMARY (continued)

ECONOMIC BENEFIT FROM NONCOMPLIANCE			
<p>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:</p> <ul style="list-style-type: none"> - THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED. 			
DESCRIPTION OF BENEFIT	CALCULATION		AMOUNT
Avoidance of UST registration fees. The economic benefit of noncompliance 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 ▪ Annually recurring costs ▪ First Month of Noncompliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	<p>Not for profit</p> <p>\$150</p> <p>November 2008</p> <p>16 October 2017</p> <p>1 December 2017</p> <p>5.2%</p>	\$1,703
<i>SUB-TOTAL</i>			\$1,703

COST RECOVERY
<p>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.</p>
<p>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.</p>

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$6,703

PENALTY MATRIX WORKSHEET

CITATION: Operating unregistered USTs
 VIOLATION NO.: D (1)

TYPE		
X TYPE I DIRECTLY related to protecting health, safety, welfare or environment.	_____TYPE II INDIRECTLY related to protecting health, safety, welfare or environment.	_____TYPE III 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 DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i>		
(1) The extent to which the act or failure to act was out of compliance: Respondent failed to register the USTs with DEM as required by the UST Regulations. The operation of unregistered USTs is prohibited by the UST Regulations. Failure to comply prevents DEM from assuring that the USTs meet the minimal requirements set forth in the UST Regulations and prevents DEM from collecting annual registration fees necessary to implement the regulatory program. Registration of regulated USTs is of primary importance to the regulatory program. Respondent did not register the USTs with DEM until DEM issued the NIE in 2017.		
(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. Upon information and belief, there are no drinking water supply wells proximate to the Facility. The Facility is located within the Moshassuck River watershed.		
(3) Amount of the pollutant: Considered, but not utilized for this calculation.		
(4) Toxicity or nature of the pollutant: No. 2 heating oil is capable of causing 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 32 years – the USTs were required to have been registered with DEM by 9 April 1985. On 16 October 2017, Respondent registered the USTs with DEM. The penalty is being assessed for the non-compliance that occurred for the last 10 years.		
(6) Areal extent of the violation: Considered, but not utilized for this calculation.		
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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 noncompliance by registering the USTs with DEM in 1985. Respondent mitigated the non-compliance by submitting UST registration forms and paying the annual registration fee in 2017.
- (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 requirements set forth in the DEM's UST Regulations. As owner and operator of the USTs, Respondent had complete control over the occurrence of the violation.
- (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 \$2,500	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to install impervious surfaces or spill containment basins around USTs
 VIOLATION NO.: D (2)

TYPE		
____ 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.	____ 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.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10.A.1.b of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></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 install impervious surfaces around the fill pipes of the USTs that would be capable of containing spills of at least three gallons. Failure to comply increases the likelihood of a release of petroleum product to the land and/or waters of the State. Preventing releases of petroleum product to environment is of primary importance to the regulatory program. (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. Upon information and belief, there are no drinking water supply wells proximate to the Facility. The Facility is located within the Moshassuck River watershed. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: No. 2 heating oil is capable of causing 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 25 years – the USTs were required to have been equipped with spill containment no later than 1 January 1993. The penalty is being assessed for the non-compliance that has occurred for the last 10 years. (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 noncompliance by installing spill containment for the USTs by 1 January 1993. Respondent failed to mitigate the non-compliance despite receiving the NIE and the ECN 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 Respondent for the failure to comply immediately with the requirements set forth in the DEM's UST Regulations. As owner and operator of the USTs, Respondent had complete 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	\$1,250 to \$2,500 \$1,250	\$250 to \$1,250