

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: K BROTHERS, LLC and
CCO, LLC**

FILE NO.: OCI-UST-18-28-00292

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 the DEM's jurisdiction.

B. Administrative History

On 23 September 2016, 31 March 2017 and 21 November 2017, the DEM notified Respondents of the requirement to remove by 22 December 2017 the underground storage tank piping at the facility that is the subject of this Notice of Violation (“NOV”). The notice that was issued on 21 November 2017 was sent by certified mail and delivered to Respondents on 25 November 2017. Respondents failed to comply with the notices.

C. Facts

- (1) The property is located at 948 Eddie Dowling Highway, Assessor's Plat 17, Lot 103 in the Town of North Smithfield, Rhode Island (the “Property”). The Property includes a motor fuel filling station and underground storage tanks (“USTs” or “tanks”) that are used for storage of petroleum products (the “Facility”) and are subject to the DEM’s *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the “UST Regulations).
- (2) Respondent K BROTHERS, LLC owns the Property.
- (3) Respondent CCO, LLC operates the Facility
- (4) The Facility is registered with the DEM and is identified as UST Facility No. 00292.

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

UST ID No.	Date Installed	Capacity	Product Stored
010	1 May 1994	12,000 gallons	Gasoline
011	1 May 1994	8,000 gallons	Gasoline
012	1 May 1994	6,000 gallons	Diesel

- (6) The product pipelines for the USTs (the “Piping”) are double-walled, however, as presently configured, it is not possible to test the Piping for tightness.
- (7) By letter dated 23 March 2016, CCO, LLC requested a variance approval from DEM to allow operation of the Piping until 22 December 2017, at which time the Piping would be permanently closed.
- (8) On 21 April 2016, the DEM approved a variance (the “Variance Approval”) from Rule 8.09(A)(2) of the DEM’s UST Regulations to allow operation of the Piping until 22 December 2017, at which time the Piping would be permanently closed.
- (9) On 21 December 2017, Respondents submitted a permanent closure application to DEM for the USTs and Piping, which was approved by DEM (the “Closure Approval”).
- (10) The Variance Approval expired on 22 December 2017.
- (11) On 21 February 2018, the DEM inspected the Facility. The inspection revealed that the UST systems were still in place but out of service.
- (12) A test of the Piping for tightness of the interstitial space was due by 1 May 2018.
- (13) As of the date of the NOV, no date has been scheduled for the permanent closure of the USTs and Piping.
- (14) As of the date of the NOV, the DEM has not received a test of the Piping for tightness of the interstitial space.

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 8.09(A)(2)** – requiring owners/operators of double-walled product pipelines to perform a test for tightness on the interstitial space after 20 years of installation and every 2 years thereafter.

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 7 days of receipt of the NOV**, procure the services of a qualified contractor to evacuate the contents of the USTs and the Piping. 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 the DEM's Office of Compliance and Inspection ("OC&I").
- (2) **Within 45 days of receipt of the NOV, complete the permanent closure of the USTs and Piping** in accordance with the Closure Approval and Rule 13.00 of the DEM's UST Regulations.
- (3) **Within 30 days of the removal of the USTs and Piping**, complete and submit to the OWM a *Closure Assessment Report* in accordance with Rule 13.11 of the DEM's UST Regulations, the *UST Closure Assessment Guidelines*, October 1998, and Section 13.00 of the DEM's *Oil Pollution Control Regulations* (the "OPC Regulations").
- (4) **Within 30 days of the removal of the USTs and Piping**, 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 the OWM, in accordance with Section 13 of the DEM's OPC Regulations.
- (5) If, after review of the *Closure Assessment Report*, the OWM determines that a site investigation is required, complete the site investigation and submit a *Site Investigation Report* ("SIR") to the OWM in accordance with Rules 12.08, 12.09, and 12.10 of the DEM's UST Regulations within the time frame specified by the OWM.
- (6) If, after review of the SIR, the OWM determines that a *Corrective Action Plan* ("CAP") is required, submit a proposed CAP in accordance with Rules 12.12 through 12.18 of the DEM's UST Regulations within the time frame specified by the OWM. The OWM 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 the DEM.

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:

\$2,104

- (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 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 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 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 the 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 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 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 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:
- Tricia Quest, 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 regarding any violation set forth herein, then the 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 Smithfield, 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) Tricia Quest 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:

K BROTHERS, LLC
c/o Tariq Mahmud, Registered Agent
151 Broadway, Suite 230
Providence, RI 02903

CCO, LLC
c/o Tariq Mahmud, Registered Agent
151 Broadway, Suite 230
Providence, RI 02903

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST
 File No.: OCI-UST-18-28-00292
 Respondents: K BROTHERS, LLC and CCO, 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) – Piping Testing	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,750	3 USTs with one missed test each	\$1,750
<i>SUB-TOTAL</i>					\$1,750

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

ADMINISTRATIVE PENALTY SUMMARY (continued)

ECONOMIC BENEFIT FROM NON-COMPLIANCE			
<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. 			
<i>DESCRIPTION OF BENEFIT</i>	<i>CALCULATION</i>		AMOUNT
Failing to test the Piping for tightness. The economic benefit of non-compliance was determined by using an EPA computer model titled <i>BEV</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 	For profit, other than a C Corp. \$609 May 2018 15 October 2018 1 October 2018 7.3%	\$354
<i>SUB-TOTAL</i>			\$354

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 = \$2,104

PENALTY MATRIX WORKSHEET

CITATION: Piping Testing
 VIOLATION NOS.: D (1)

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.

FACTORS CONSIDERED:

Taken from Part 1.10A.1.b of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents failed to have the Piping tested for tightness by a DEM-licensed tightness tester. Failure to comply reduces the likelihood of detecting or preventing releases 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 developed area with potential vapor receptors including commercial structures and underground utilities. The Facility is located in a GAA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment, and which are located in wellhead protection areas for community water supply wells, groundwater reservoirs and portions of their recharge areas and groundwater dependent areas. The Facility is located in the wellhead protection area for a community water supply well and in the wellhead protection areas for several non-community water supply wells that serve businesses in the area. The Facility is located in the surface water protection area for Woonsocket Reservoir No. 3. The USTs are installed adjacent to regulated freshwater wetlands. The Facility is located in the Blackstone River watershed.
- (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 and diesel fuel 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. Benzene, a component of gasoline, is a known carcinogen.
- (5) **Duration of the violation:** 3 months – testing was required to have been performed before 1 May 2018 after the variance expired on 22 December 2017.
- (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 and/or mitigate the non-compliance by permanently closing the Piping. The DEM issued Respondents written notices on 23 September 2016, 31 March 2017 and 21 November 2017 informing them of the required actions to comply with the law and the DEM's UST Regulations.
- (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 Rule 8.09(A)(2) of the DEM's 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	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 \$1,750	\$250 to \$1,250