

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Women & Infants Hospital of Rhode Island

FILE NO.: UST 2010-02875

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 DEM's jurisdiction.

B. Administrative History

DEM issued informal notices to the Respondent on 1 September 2010, 20 September 2010 and 7 October 2010 for the violations and spoke with representatives for the Respondent on 4 October 2010 and 15 November 2010. The Respondent has failed to fully comply with the notices.

C. Facts

- (1) The subject property is located at 101 Dudley Street in the city of Providence, Rhode Island (the “Property”).
- (2) The Property includes a hospital and an underground storage tank (“UST” or “tank”) that is used for storage of petroleum product (the “Facility”).
- (3) Respondent owns the Property.
- (4) Respondent operates the Facility.
- (5) The Facility is subject to DEM’s Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials, as amended (the “UST Regulations”).
- (6) The Facility is registered with DEM in accordance with Section 6.00 of the UST Regulations and is identified as UST Facility No. 02875.

- (7) The UST is registered with DEM as follows:

UST ID No.	Date Installed	Capacity	Product Stored
002	9 December 1998	2,000 gallons	Diesel Fuel

- (8) On 22 January 2010, DEM issued a letter to all registered UST owners/operators that required the owners/operators to inspect their facility and complete and submit to DEM a Compliance Certification Checklist, a Certification Statement form and any necessary Return to Compliance Plans (the “Compliance Certification Forms”).
- (9) On 29 July 2010, DEM inspected the Facility (the “July inspection”).
- (10) On 20 September 2010 DEM issued a Notice of Intent to Enforce (“NIE”) to the Respondent. The NIE required the Respondent to inspect the Facility and complete and submit the Compliance Certification Forms to DEM on or before 24 October 2010.
- (11) On 4 October 2010 DEM approved a request by the Respondent to extend the deadline to submit the Compliance Certification Forms to 1 November 2010.
- (12) On 5 October 2010 the Respondent submitted a report to DEM in response to the 29 July 2010 inspection (the “October report”).
- (13) The findings of the July inspection and the October report revealed the following:
 - (a) The *Veeder Root TLS 300C* continuous monitoring system (“CMS”) was not certified/tested by a qualified person during each of the years 2007, 2008 and 2009.
 - (b) The UST was operated from 9 December 1998 through at least 29 July 2010 without overfill protection.
- (14) As of the date of this Notice of Violation (“NOV”), the Respondent has not submitted the Compliance Certification Forms to DEM or addressed all the issues of noncompliance described in Section C (13) of the NOV.

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) **UST Regulations, Rule 8.03** – requiring UST owners/operators to inspect their facility and complete and submit the Compliance Certification Forms within the time frame specified by the DEM.

- (2) **UST Regulations, Rule 8.15 (F)** – requiring the owner/operator to retain a qualified person annually to inspect, calibrate, and test UST continuous monitoring systems.
- (3) **UST Regulations, Rules 8.16(B) and 9.13(C)** – requiring that USTs be equipped with overfill protection.

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

- (1) Submit the Compliance Certification Forms to DEM in accordance with Rule 8.03 of the UST Regulations.
- (2) Submit written verification that the UST has been equipped with overfill protection in accordance with Rules 8.16(B), 9.13(C) and 10.00 of the UST Regulations and the applicable National Codes of Practice set forth in Appendix B of the UST Regulations.

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:

Thirteen Thousand and Sixty-Nine Dollars (\$13,069.00)

- (2) The proposed administrative penalty is calculated pursuant to the DEM Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the Director within twenty days of your receipt of this NOV. Payment shall be in the form of a check 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 Director 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 DEM's Administrative Adjudication Division, at the following address, within twenty 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, 3RD Floor
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 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, 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 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) 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 D'Amadio 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:

Women & Infants Hospital of Rhode Island
c/o Dorothea Calvano, Registered Agent
101 Dudley Street
Providence, RI 02905

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST
 File No.: UST 2010 – 02875
 Respondent: Women & Infants Hospital of Rhode Island

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 submit ERP Compliance Certification Forms	Type II (\$ <u>12,500</u> Max. Penalty)*	Moderate	\$3,000	1 violation	\$3,000.00
D (2) – Failure to annually certify/test CMS	Type II (\$ <u>12,500</u> Max. Penalty)*	Moderate	\$3,000	1 violation	\$3,000.00
D (3) – Operation of UST without overfill protection	Type II (\$ <u>12,500</u> Max. Penalty)*	Major	\$6,250	1 violation	\$6,250.00
SUB-TOTAL					\$12,250.00

*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 ARE IN COMPLIANCE. 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>	<i>AMOUNT</i>
Annual testing of the CMS	One CMS X 3 years = 3 missing tests @ \$273.00 per test	\$ 819.00
<i>SUB-TOTAL</i>		\$ 819.00

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$13,069.00

PENALTY MATRIX WORKSHEET

CITATION: Failure to submit ERP Compliance Certification Forms
 VIOLATION NO.: D (1)

TYPE		
<p style="text-align: center;">___ 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;">___ 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: Respondent failed to submit completed Compliance Certification Forms to DEM. The UST Regulations require all UST owners/operators to certify their compliance with the UST Regulations by completing and submitting the Compliance Certification Forms within the time frame specified by DEM.</p> <p>(B) Environmental conditions: Not relevant.</p> <p>(C) Amount of the pollutant: Not relevant.</p> <p>(D) Toxicity or nature of the pollutant: Diesel fuel 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.</p> <p>(E) Duration of the violation: The Compliance Certification Forms were due on or before 1 November 2010.</p> <p>(F) Areal extent of the violation: Not relevant.</p> <p style="text-align: right;">(continued)</p>		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent the non-compliance by submitting completed Compliance Certification Forms to DEM. Respondent has made no apparent attempt to mitigate the violation despite receiving an informal notice from DEM dated 20 September 2010.
- (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:** Not relevant.
- (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:** Respondent had full control over the occurrence of the violation. DEM issued a letter to the UST owners/operators on 22 January 2010 requiring the owners/operators to comply with the ERP compliance certification rule and directing the owners/operators to the DEM website to obtain the necessary forms and workbooks. DEM issued an informal notice to the Respondent on 20 September 2010 requiring the Respondent to submit completed Compliance Certification Forms to DEM on or before 1 November 2010.

Any other factor(s) that may be relevant in determining the amount of a penalty: Not relevant.

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 annually certify/test CMS

VIOLATION NO.: D (2)

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 procure the services of a qualified person to certify/test the CMS during each of the years 2007, 2008 and 2009. Continuous monitoring systems are important, required components of release detection programs at UST facilities. Annual certification/testing is required to ensure effective operation. Failure to test and maintain a CMS in accordance with the UST Regulations would presumably reduce the likelihood of detecting a release from a UST system.
- (B) **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 in the vicinity. The Facility is located in the Providence River watershed.
- (C) **Amount of the pollutant:** Not relevant.
- (D) **Toxicity or nature of the pollutant:** Diesel fuel 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.
- (E) **Duration of the violation:** 3 years.
- (F) **Areal extent of the violation:** Not relevant.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent the non-compliance by procuring the services of a qualified person to certify/test the CMS during each of the years 2007, 2008 and 2009. Respondent mitigated the noncompliance by having the CMS certified/tested on 20 August 2010.
- (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:** Respondent was previously cited by DEM for violations of this rule in a Letter of Non-Compliance that was issued on 16 August 2006.
- (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:** Respondent, as owner and operator of the Facility, had full control over the occurrence of the violations. The UST Regulations set forth specific requirements for the testing of continuous monitoring systems.

Any other factor(s) that may be relevant in determining the amount of a penalty: Not relevant.

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: Operation of UST without overfill protection

VIOLATION NO.: D (3)

TYPE		
<p>____ TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>X</u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>____ TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<p>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</p>		
<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: Respondent failed to install overfill protection when UST was installed in December 1998. Overfill protection for regulated USTs is mandated by both the Code of Federal Regulations and the UST Regulations. Overfill protection is designed to prevent releases of petroleum products and hazardous materials caused by the overfilling of USTs. Failure to install this equipment would presumably increase the likelihood of a release of petroleum product or hazardous material. Overfilling has been shown to have been a frequent cause of releases at UST facilities.</p> <p>(B) 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 in the vicinity. The facility is located in the Providence River watershed.</p> <p>(C) Amount of the pollutant: Not relevant.</p> <p>(D) Toxicity or nature of the pollutant: Diesel fuel 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.</p> <p>(E) Duration of the violation: 12 years. The UST was required to be equipped with overfill protection when it was installed in December 1998. The penalty has been assessed for the non-compliance occurring since July 2005.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent the non-compliance by installing an appropriate overflow protection device. Respondent has yet to mitigate the non-compliance despite receiving a letter from DEM dated 7 October 2010, which notified them of the non-compliance and required that remedial action be completed within 30 days.
- (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:** Not relevant.
- (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 Respondent for the failure to comply immediately with the requirements set forth in Regulation Nos. 8.16(B) and 9.13(C). Respondent, as owner and operator of the facility, had complete control over the occurrence of the violation. The requirements for overflow protection are clearly established in the UST Regulations.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

<u> X </u> MAJOR	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 \$6,250	\$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	\$250 to \$1,250