

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Leon Petroleum, LLC  
WEST SHORE SERVICE CENTER, INC.**

**FILE NO.: UST 21-4-02987**

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 29 September 2020, DEM issued a *Letter of Non-Compliance* (“LNC”) to Leon Petroleum, LLC for the alleged violations that are the subject of this *Notice of Violation* (“NOV”). The LNC was delivered to Leon Petroleum, LLC on 3 October 2020. On 18 November 2020, DEM issued a *Notice of Intent to Enforce* (“NIE”) to Respondents for the alleged violations that are the subject of the NOV. On 23 November 2020, the NIE was delivered to Respondents. The LNC and the NIE required specific actions to correct the violations. As of the date of the NOV, Respondents have failed to correct the violations.

C. Facts

- (1) The property is located at 688 West Shore Road, Assessor’s Plat 317, Lot 254 and Lot 402 in Warwick, Rhode Island (the “Property”). The Property includes a service station and a motor fuel storage and dispensing system (the “Facility”).
- (2) Leon Petroleum, LLC owns the Property.
- (3) WEST SHORE SERVICE CENTER, INC. operates the Facility.
- (4) 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 *Rules and Regulations for Underground Storage Facilities Used for Regulated Substances and Hazardous Materials (250-RICR-140-25-1)* [effective 20 November 2018 to Current] (the “UST Regulations”).
- (5) The UST facility is registered with DEM and is identified as UST Facility No. 02987.

(6) The USTs are registered with DEM for the facility as follows:

UST ID No.	Date Installed	Capacity	Product Stored
006	1 December 1998	10,000 gallons	Gasoline
007	1 December 1998	8,000 gallons	Gasoline

(7) UST Nos. 006 and 007 and the product pipelines are double walled.

(8) On 7 August 2020, DEM inspected the Facility. The inspection and a review of DEM's files for the Facility revealed the following:

- (a) Written verification that the interstitial spaces of UST Nos. 006 and 007 had been tested for tightness by a DEM-licensed tightness tester during each of the years 2018 and 2020 was not available. Tank interstitial space tightness test reports for these USTs for the years 2018 and 2020 had not been received by DEM;
- (b) Written verification that the interstitial spaces of the product pipelines for UST Nos. 006 and 007 had been tested for tightness by a DEM-licensed tightness tester during each of the years 2018 and 2020 was not available. Tightness test reports for these product pipelines for the years 2018 and 2020 had not been received by DEM; and
- (c) The well casing for one of the tank field observation wells was not fitted with an expandable watertight cap.

(9) On or about 13 January 2021, DEM received a report showing that the interstitial spaces for UST Nos. 006 and 007 were tested for tightness by Compliance testing Services, Inc. and the tanks met the criteria for passing.

(10) As of the date of the NOV, Respondents have yet to submit written verification that the alleged violations set forth in subsections C(8)(b) and C(8)(c) above have been corrected.

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, Part 1.10(F)(1)(c)** – requiring interstitial space tightness testing for double walled USTs at 20 years of age and every 2 years thereafter.
- (2) **UST Regulations, Part 1.10(G)(2)(b)** – requiring interstitial space tightness testing for double-walled product pipelines at 20 years of age and 2 two years thereafter.

- (3) **UST Regulations, Part 1.10(Q)(1)(b)** – requiring that all tank field observation and groundwater monitoring wells be equipped with expandable watertight caps on the well casings.

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 60 days of receipt of the NOV**:

- (1) Procure the services of a DEM-licensed tightness tester to test the interstitial spaces of the product pipelines for UST Nos. 006 and 007 for tightness in accordance with Part 1.10(G)(2)(b) and Part 1.10(H) of the UST Regulations. Original copies of the tightness test report shall be submitted to DEM’s Office of Compliance and Inspection (“OC&I”) and DEM’s Office of Land Revitalization and Sustainable Materials Management in accordance with Part 1.10(H)(4) of the UST Regulations.
- (2) Fit the well casing for the southern tank field observation well with an expandable watertight cap, as per Part 1.10(Q)(1)(b) of the UST Regulations. Written or photographic verification of compliance shall be submitted to 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:

**\$3,758**

- (2) The proposed administrative penalty is calculated pursuant to the *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* [effective 31 December 2001 to Current] (the “Penalty Regulations”) 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, 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 *Rules and Regulations for the Administrative Adjudication Division (250-RICR-10-00-1)* [effective 27 November 2014 to Current].
- (2) A copy of each request for hearing must also be forwarded to:

Christina Hoefsmit, Esquire  
DEM - Office of Legal Services  
235 Promenade Street, 4<sup>TH</sup> 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 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 Warwick, 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) Christina Hoefsmit of DEM's Office of Legal Services at (401) 222-6607 or at [christina.hoefsmit@dem.ri.gov](mailto:christina.hoefsmit@dem.ri.gov). All other inquiries should be directed to Tracey Tyrrell of DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 77407 or at [tracy.tyrrell@dem.ri.gov](mailto:tracy.tyrrell@dem.ri.gov).

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:

Leon Petroleum, LLC  
c/o Mehtab Akhtar, Resident Agent  
7 Bradford Street, 2<sup>nd</sup> Floor  
Barrington, RI 02806

WEST SHORE SERVICE CENTER, INC.  
c/o Richard Demerchant, Registered Agent  
365 Eddy Street, 3<sup>rd</sup> Floor  
Providence, RI 02903

by Certified Mail.

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## ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST

File No.: OCI-UST-21-4-02987

Respondents: Leon Petroleum, LLC and WEST SHORE SERVICE CENTER, INC.

<b>GRAVITY OF VIOLATION</b>					
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) – Tank outer wall tightness testing	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,250	1 violation	\$1,250
D (2) – Pipeline outer wall tightness testing	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,500	1 violation	\$1,500
<b>SUB-TOTAL</b>					<b>\$2,750</b>

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

<b>ECONOMIC BENEFIT FROM NON-COMPLIANCE</b>			
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
Avoiding the cost of hiring a licensed tester to test the interstitial spaces of the tanks and pipelines for tightness in 2018. 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"> <li>▪ Profit Status</li> <li>▪ Filing Status</li> <li>▪ Initial Capital Investment</li> <li>▪ One-time Non-depreciable Expense</li> <li>▪ First Month of Non-compliance</li> <li>▪ Compliance Date</li> <li>▪ Penalty Due Date</li> <li>▪ Useful Life of Pollution Control</li> <li>▪ Equipment Annual Inflation Rate</li> <li>▪ Discount Compound Rate</li> </ul>	C Corp.  \$848  December 2018  1 August 2021  1 July 2021    7.8%	\$748

## ADMINISTRATIVE PENALTY SUMMARY (continued)

<p>Avoiding the cost of hiring a licensed tester to test the interstitial spaces of the pipelines for tightness in 2020. 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.</p>	<ul style="list-style-type: none"> <li>▪ Profit Status</li> <li>▪ Filing Status</li> <li>▪ Initial Capital Investment</li> <li>▪ One-time Non-depreciable Expense</li> <li>▪ First Month of Non-compliance</li> <li>▪ Compliance Date</li> <li>▪ Penalty Due Date</li> <li>▪ Useful Life of Pollution Control</li> <li>▪ Equipment Annual Inflation Rate</li> <li>▪ Discount Compound Rate</li> </ul>	<p>C Corp.</p> <p>\$340</p> <p>December 2020</p> <p>1 August 2021</p> <p>1 July 2021</p>  <p>7.6%</p>	<p>\$260</p>
	<b><i>SUB-TOTAL</i></b>		\$1,008

### 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 = \$3,758**



# PENALTY MATRIX WORKSHEET

CITATION: Tank outer wall tightness testing  
 VIOLATION NO.: D (1)

<b>TYPE</b>		
___ <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<b>X</b> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	___ <b>TYPE III</b> <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.

**DEVIATION FROM THE STANDARD**  
 THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

**FACTORS CONSIDERED:**

Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents failed to procure the services of a DEM-licensed tightness tester to test the outer walls of UST Nos. 006 and 007 for tightness. Tank outer wall tightness testing is an important, required component of leak detection programs at UST facilities. Such testing is required biennially when double-walled tanks reach 20 years of age.
- (2) **Environmental conditions:** The Facility is in a densely developed area with numerous potential vapor receptors including residential structures, commercial structures and underground utilities. The Facility is in a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells in the vicinity of the Facility. The USTs are installed within 1,000 feet of Providence River and the Property lies within its watershed. The Facility is located within 600 feet of regulated freshwater wetlands.
- (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 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.
- (5) **Duration of the violation:** Considered, but not utilized for this calculation.
- (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 non-compliance:** Respondents failed to prevent the non-compliance by having the tanks outer walls tested for tightness in or before December 2018. Respondents had the tanks tested on 29 December 2020 to mitigate the noncompliance and reported to DEM the tanks met the criteria for passing.
- (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 UST Regulations. As owners and operators of the Facility, Respondents 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.

<b>MAJOR</b>	<b>MODERATE</b>	<u>  <b>X</b>  </u> <b>MINOR</b>
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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	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	<b>MODERATE</b>	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250	\$1,250 to \$2,500 <b>\$1,250</b>	\$250 to \$1,250

# PENALTY MATRIX WORKSHEET

CITATION: Pipeline Tightness Testing

VIOLATION NO.: D (2)

<b>TYPE</b>		
<p style="text-align: center;">___ <b>TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><b>X</b> <b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ <b>TYPE III</b></p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> <li>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondents failed to procure the services of a DEM-licensed tightness tester to test the secondary product pipelines for tightness. Pipeline tightness testing is an important, required component of leak detection programs at UST facilities. Such testing is required biennially when the piping reaches 20 years of age. Upon information and belief, Respondents have never had the secondary piping tested for tightness. Failure to comply would presumably reduce the likelihood of preventing releases of petroleum product from the pipelines.</li> <li>(2) <b>Environmental conditions:</b> The Facility is in a densely developed area with numerous potential vapor receptors including residential structures, commercial structures and underground utilities. The Facility is in a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells in the vicinity of the Facility. The tanks are installed within 1,000 feet of Providence River and the Property lies within its watershed. The Facility is located within 600 feet of regulated freshwater wetlands.</li> <li>(3) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> 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 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.</li> <li>(5) <b>Duration of the violation:</b> Approximately 2½ years – Respondents have been non-compliant with this rule since December 2018.</li> <li>(6) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</li> </ol>		
(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 prevent the non-compliance by having the secondary pipelines tested for tightness during each of the years 2018 and 2020. Respondents have yet to mitigate the non-compliance despite receiving the LNC and NIE 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 UST Regulations. As owners and operators of the Facility, Respondents 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.

<b>MAJOR</b>	<b>MODERATE</b>	<u>  X  </u> <b>MINOR</b>
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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	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	<b>MODERATE</b>	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250	\$1,250 to \$2,500 <b>\$1,500</b>	\$250 to \$1,250