

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Joseph Pakuris

FILE NO.: OCI-UST-22-18-02566

**THE KITCHEN AND COUNTERTOP
CENTER OF NEW ENGLAND, LLC**

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 Rhode Island Department of Environmental Management (“Director” of “RIDEM”) has reasonable grounds to believe that the above-named parties (“Respondents”) have violated certain statutes and/or administrative regulations under RIDEM's jurisdiction.

B. ADMINISTRATIVE HISTORY

On 9 February 2022, RIDEM issued a *Notice of Intent to Enforce* (“NIE”) to Respondents by certified mail for the alleged violations that are the subject of this *Notice of Violation* (“NOV”). The NIE required specific actions to correct the violations. The NIE was delivered to Joseph Pakuris (“Pakuris”) and THE KITCHEN AND COUNTERTOP CENTER OF NEW ENGLAND, LLC (“KCC”) on 12 February 2022 and 14 February 2022, respectively. As of the date of the NOV, Respondents have failed to respond to or comply with the NIE.

C. FACTS

- (1) The property is at 125 Esten Avenue, Assessor’s Plat 57, Lot 515, in Pawtucket, Rhode Island (“Property”). The Property includes an industrial/commercial building (“Facility”).
- (2) 125 ESTEN REALTY LLC owns the Property.
- (3) On 14 February 2022, the Rhode Island Secretary of State revoked the Certificate of Organization/Registration for 125 ESTEN REALTY LLC. Pakuris is the last known president of 125 ESTEN REALTY LLC.
- (4) KCC operates the Facility.

- (5) An underground storage tank (“UST” or “tank”) is installed on the Property, which tank is used for storage of petroleum product, and which is subject to Rhode Island’s *Rules and Regulations for Underground Storage Facilities Used for Regulated Substances and Hazardous Materials* (250-RICR-140-25-1) (“UST Rules”).
- (6) The Facility is registered with RIDEM and is identified as UST Facility No. 02566.
- (7) The UST is registered with RIDEM for the Facility as follows:

UST ID No.	Date Installed	Capacity	Product Stored
001	1962	1,000 gallons	No. 6 Heating Oil

- (8) Based on the year of installation and tank material, RIDEM has reasonable grounds to believe that the UST is single walled, and Respondents have not provided any information indicating otherwise.
- (9) The UST Rules were revised in 2018 and a requirement was added to perform tightness testing of single-walled USTs utilized for storage of heating oil that is consumed on-site. Owners/operators of such heating oil tanks, which were installed prior to 1970, were required to have a test performed before 31 December 2021
- (10) As of the date of the NOV, Respondents have failed to submit written verification that the UST was tested for tightness by a RIDEM-licensed tightness tester before 31 December 2021.

D. VIOLATION

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following regulations:

- (1) **UST Rules, Part 1.10(F)(4)(a)(1)** – requiring that single walled heating oil USTs installed before 31 December 1970 be tested for tightness by a RIDEM-licensed tightness tester at least once before 31 December 2021.

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 the NOV**, procure the services of a RIDEM-licensed tightness tester to test the UST for tightness in accordance with Part 1.10(F)(4)(a)(1) and Part 1.10(H) of the UST Rules. Copies of the tightness test report shall be submitted to RIDEM's Office of Land Revitalization and Sustainable Materials Management (“OLR&SMM”) in accordance with Part 1.10(H)(4) of the UST Rules and RIDEM’s Office of Compliance and Inspection (“OC&I”).

- (2) **If the UST fails the tightness test or the test is inconclusive**, immediately notify OLR&SMM in accordance with Part 1.10(H)(5) of the UST Rules and submit a copy of the tightness test report and a release characterization report to OLR&SMM within 7 days, in accordance with Part 1.10(H)(6), Part 1.14(D)(4) and Part 1.14(G) of the UST Rules.
- (3) In lieu of performing a tightness test of the UST or if the UST fails the test, permanently close the UST in accordance with each of the following requirements:
- (a) **Within 7 days of receipt of the NOV or, immediately, if the UST fails the tightness test**, procure the services of a qualified contractor to evacuate the contents of the UST and the product pipelines. The UST shall be evacuated to 1 inch or less of liquid at the bottom of the tank and the fill port shall be locked. Written verification of compliance shall be submitted to OC&I.
 - (b) **Within 45 days of receipt of the NOV**, submit a completed *Permanent Closure Application for USTs* to OLR&SMM and, with OLR&SMM's consent and approval, complete the permanent closure of the UST in accordance with Part 1.15 of the UST Rules.
 - (c) **Within 30 days of the removal of the UST**, remove and properly dispose of any contaminated soil encountered during the tank closure and, within 10 days of the soil disposal, submit documentation of disposal to OLR&SMM in accordance with Part 2.13 of Rhode Island's *Oil Pollution Control Regulations (250-RICR-140-25-2)*.
 - (d) OLR&SMM will assess the tank system and the tank grave at the time of the closure inspection and may require the performance of a closure assessment and/or a site investigation by a qualified environmental consultant in accordance with Part 1.14 and Part 1.15 of the UST Rules. Respondent shall fully comply with any such requirements set forth by OLR&SMM at the time of the tank closure.

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:

\$1,532

- (2) The proposed administrative penalty is calculated pursuant to Rhode Island's *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* ("Penalty Rules") and must be paid to RIDEM within 30 days of your receipt of the NOV. Penalty payments shall be by one of two methods:

- (a) By certified check, cashier's check, or money order made payable to the **General Treasury – Water and Air Protection Program** and forwarded to:

Administrator, RIDEM Office of Compliance and Inspection
235 Promenade Street, Suite 220
Providence, RI 02908-5767

- (b) By wire transfer in accordance with instructions provided by RIDEM.
- (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 RIDEM 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 RIDEM'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 RIDEM'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
RIDEM - 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).
- (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 Rhode Island's *Rules and Regulations for the Administrative Adjudication Division* (250-RICR-10-00-1).

- (2) A copy of each request for hearing must also be forwarded to:

Jenna Giguere, Esquire
RIDEM - 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 RIDEM'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 City of Pawtucket, 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, then you may contact (or if you are represented by an attorney, please have your attorney contact) Jenna Giguere of RIDEM's Office of Legal Services at (401) 222-6607 ext. 2772306 or at jenna.giguere@dem.ri.gov. All other inquiries should be directed to Tracey Tyrrell of RIDEM's Office of Compliance and Inspection at (401) 222-1360, ext. 2777407 or at tracey.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
RIDEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

Joseph Pakuris
125 Esten Avenue
Pawtucket, RI 02860

THE KITCHEN AND COUNTERTOP CENTER OF
NEW ENGLAND, LLC
c/o Daniel K. Flaherty, Esq., Resident Agent
33 College Hill Road, Suite 20D
Warwick, RI 02886

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: UST
 File No.: OCI-UST-22-18-02566
 Respondents: Joseph Pakuris and THE KITCHEN AND COUNTERTOP CENTER OF NEW ENGLAND, LLC

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION NOS. & CITATIONS	APPLICATION OF MATRIX		PENALTY CALCULATIONS		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D (1) – Failure to have the UST tested for tightness	Type II (\$12,500 Max. Penalty) *	Minor	\$1,250	1 violation	\$1,250
SUB-TOTAL					\$1,250

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

ECONOMIC BENEFIT FROM NON-COMPLIANCE		
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
Failing to test the UST for tightness before 31 December 2021. 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"> ▪ Profit Status ▪ Filing Status ▪ Initial Capital Investment ▪ One-time Non-depreciable Expense ▪ First Month of Non-compliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	For Profit, other than a C Corp. \$422 December 2021 15 February 2023 31 January 2023 7.4%
SUB-TOTAL		\$282

ADMINISTRATIVE PENALTY SUMMARY (continued)

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 RIDEM 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 RULES = \$1,532

PENALTY MATRIX WORKSHEET

CITATION: Failure to have the UST tested for tightness
 VIOLATION NO.: D (1)

TYPE		
___ TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	X 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 VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

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

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents failed to procure the services of a RIDEM-licensed tightness tester to test the UST for tightness before 31 December 2021. In 2018, RIDEM implemented a requirement for tightness testing of regulated heating oil USTs. The single-walled, bare steel tank has been in the ground for approximately 60 years. Failure to comply could allow a leaking tank to remain in use and increase the likelihood of adverse impacts to public health and safety and the environment. RIDEM has not received any tightness test reports for the tank since it was registered in 1987.
- (2) **Environmental conditions:** The Facility is in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. The Property is above a groundwater reservoir. Upon information and belief, there are no drinking water supply wells near the Property. The Property is within 45 feet of Moshassuck River and within its watershed. The Property is within an environmental justice area.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** No. 6 heating oil may 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:** Approximately 11 months – Respondents have been in violation since 31 December 2021.
- (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 UST tested for tightness before 31 December 2021. Respondents have yet to mitigate the non-compliance despite receiving the NIE from RIDEM, which required that it do so.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by RIDEM, or any law which RIDEM 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 the failure to comply with the UST Rules. 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.

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