

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Charles Street Realty, Inc.  
Kelly's Car Wash, Inc.**

**FILE NO.: OCI-UST-23-19-00616**

**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 1 December 2021, RIDEM issued a letter to Kelly's Car Wash, Inc. by regular mail for one of the alleged violations that is the subject of this *Notice of Violation* ("NOV"). The letter required specific actions to correct the alleged violation. Respondents failed to comply with the letter. On 28 July 2022, RIDEM issued a letter to Kelly's Car Wash, Inc. by regular mail as a reminder that the heating oil tank required testing before 31 December 2022. On 18 November 2022, RIDEM issued a *Notice of Intent to Enforce* ("NIE") to Kelly's Car Wash, Inc. by certified mail through its registered agent for the alleged violation. The NIE also identified Charles Street Realty. The registered agent for Kelly's Car Wash is the same registered agent for Charles Street Realty, Inc. and has the same mailing address as Kelly's Car Wash, Inc. The NIE required specific actions to correct the alleged violation. The NIE was delivered on 23 November 2022. As of the date of the NOV, Respondents have failed to respond to or comply with the NIE and failed to test the heating oil tank.

**C. FACTS**

- (1) The property is located at 200 Charles Street (aka 202 Charles Street), Assessor's Plat 2, Lot 26 in Providence, Rhode Island ("Property"). The Property includes a motor fuel storage and dispensing system, a service station, and a convenience store ("Facility").
- (2) Charles Street Realty, Inc. owns the Property.
- (3) Kelly's Car Wash, 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 Rhode Island’s *Rules and Regulations for Underground Storage Facilities Used for Regulated Substances and Hazardous Materials* (250-RICR-140-25-1) (“UST Rules”).
- (5) The Facility is registered with RIDEM and is identified as UST Facility No. 00616.
- (6) The USTs are registered with RIDEM as follows:

UST ID No.	Date Installed	Capacity	Product Stored
007	1973	1,000 gallons	Heating Oil
008	1 May 1994	12,000 gallons	Gasoline
009	1 May 1994	12,000 gallons	Gasoline
010	1 May 1994	6,000 gallons	Diesel

- (7) UST No. 007 is a single-walled, bare steel tank.
- (8) On 8 November 2021, RIDEM received a *Standardized Hydrostatic Tightness Testing Form* for the Facility, which was submitted by Compliance Testing Services, Inc. (“CTS”) on behalf of Respondents. CTS reported that the tank top sumps and dispenser sumps for UST Nos. 008, 009 and 010 had failed tightness tests performed on 11 October 2021.
- (9) On 21 March 2023, RIDEM inspected the Facility and observed that the UST systems were in operation. The Facility was open, and gasoline and diesel were being offered for sale. The inspector observed customers dispensing fuel into their vehicles.
- (10) On 18 November 2018, the UST Rules were amended to require that single-walled heating oil USTs installed between 1 January 1971 and 31 December 1980 be tested for tightness by a RIDEM-licensed tightness tester before 31 December 2022.
- (11) As of the date of the NOV, Respondents have not removed UST Nos. 008, 009, and 010 from service.
- (12) As of the date of the NOV, Respondents have failed to submit written verification that UST No. 007 was tested for tightness by a RIDEM-licensed tightness tester at least once before 31 December 2022.

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)(2)** – requiring that single-walled heating oil USTs installed between 1 January 1971 and 31 December 1980 be tested for tightness by a RIDEM-licensed tightness tester before 31 December 2022.
- (2) **UST Rules, Part 1.10(N)(3)(d)(1)** – requiring that UST systems be removed from service if an associated tank top or dispenser sump fails a tightness test.

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) **IMMEDIATELY remove UST Nos. 008, 009 and 010 from service and cease and desist from dispensing fuel from the UST systems.** Written verification of compliance shall be submitted to RIDEM’s Office of Compliance and Inspection (“OC&I”) within 7 days.
- (2) **UST Nos. 008, 009 and 010 shall be kept out of service until** the deficient tank top and dispenser sumps have been repaired or replaced in full compliance with Part 1.10(N)(3)(d), Part 1.11 and Part 1.12 of the UST Rules. Any and all repairs or tank system modifications require prior written notification to and approval by RIDEM’s Office of Land Revitalization and Sustainable Materials Management (“OLR&SMM”). If the UST systems are not repaired or modified within 1 year, permanently close the UST systems in full compliance with Part 1.15 of the UST Rules.
- (3) **Within 30 days of receipt of the NOV,** procure the services of a RIDEM-licensed tightness tester to test UST No. 007 for tightness in accordance with Part 1.10(F)(4)(a)(2) and Part 1.10(H) of the UST Rules. Original copies of the report shall be submitted to OC&I and OLR&SMM in accordance with Part 1.10(H)(4) of the UST Rules.

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:

**\$10,625**

- (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:

Joseph J. LoBianco, Esquire  
RIDEM - 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 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 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 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 RIDEM's Office of Legal Services at (401) 222-6607 ext. 2772302 or at [joseph.lobianco@dem.ri.gov](mailto:joseph.lobianco@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](mailto: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:

Charles Street Realty, Inc.  
c/o Michael E. Kelly, Registered Agent  
200 Charles Street  
Providence, RI 02904

Kelly's Car Wash, Inc.  
c/o Michael E. Kelly, Registered Agent  
200 Charles Street  
Providence, RI 02904

by Certified Mail.

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# ADMINISTRATIVE PENALTY SUMMARY

Program: UST  
 File No.: OCI-UST-23-19-00616  
 Respondents: Charles Street Realty, Inc. and Kelly's Car Wash, Inc.

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) – Tank tightness testing	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,250	1 violation	\$1,250
D (2) – Operating the USTs with deficient tank top and dispenser sumps	Type II <i>(\$12,500 Max. Penalty) *</i>	Major	\$9,375	1 violation	\$9,375
<b>SUB-TOTAL</b>					<b>\$10,625</b>

\*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.
A review of the record in this matter has revealed that Respondents have either enjoyed no identifiable benefit from the non-compliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.

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 = \$10,625**

# PENALTY MATRIX WORKSHEET

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

<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;"><u><b>X</b></u> <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 Rules.</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> RIDEM has not received written verification that Respondents procured the services of a RIDEM-licensed tightness tester to test UST No. 007 for tightness. Upon information and belief, the required tightness test was not performed. 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.</li> <li>(2) <b>Environmental conditions:</b> The UST system is in a GB groundwater classification zone, which are groundwater resources determined to be unsuitable for drinking water use without treatment. The Facility is above a groundwater reservoir. The UST is within 240 feet of Moshassuck River and the Facility lies within its watershed. The single-walled, bare steel tank has been in the ground for approximately 50 years.</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> No. 2 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.</li> <li>(5) <b>Duration of the violation:</b> On 18 November 2018, the UST Rules were amended to require tightness testing of regulated heating oil USTs. Respondents have been in violation of the rule since 31 December 2022.</li> <li>(6) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</li> </ol>		
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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.
- (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 their failure to comply with the UST Rules. As owners and operators of the Facility, Respondents had complete control over the occurrence of the violation. RIDEM sent a written notice to Kelly's Car Wash, Inc. on 28 July 2022 as a reminder of the tightness testing requirement.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** RIDEM has not received any tightness test reports for UST No. 007 since it was registered in 1985.

<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>\$1,250</b>	\$250 to \$1,250

# PENALTY MATRIX WORKSHEET

CITATION: Operating the USTs with deficient tank top and dispenser sumps  
 VIOLATION NO.: D (2)

<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 Rules.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents failed to take UST Nos. 008, 009 and 010 out of service and have continued to operate these UST systems after all of the tank top sumps and dispenser sumps had failed hydrostatic tightness testing that was performed on 11 October 2021. Operation of UST systems with deficient tank top and dispenser sumps is prohibited by the UST Rules (if the deficient sumps cannot be repaired or replaced within 30 days). These sumps are designed to contain releases if the pressurized product pipelines housed inside them develop leaks. Failure to comply reduces the likelihood of detecting or preventing releases of the regulated substances to the environment. Failure to comply increases the likelihood of adverse impacts to public health and safety and the environment.
- (2) **Environmental conditions:** The UST system is in a GB groundwater classification zone, which are groundwater resources determined to be unsuitable for drinking water use without treatment. The Facility is above a groundwater reservoir. The UST is within 240 feet of Moshassuck River and the Facility lies within its 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.
- (5) **Duration of the violation:** 17 months. Respondents were required to repair or replace the sumps, or take the UST systems out of service, on or before 11 November 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 noncompliance:** Respondents failed to prevent the non-compliance by repairing or replacing the sumps, or take the UST systems out of service, before 11 November 2021. Respondents failed to mitigate the non-compliance despite receiving written notices from RIDEM, which required them to 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 their failure to comply immediately with the sump tightness testing requirements set forth in the UST Rules. The UST Rules expressly require that UST systems be removed from service if any associated tank top or dispenser sumps fail a tightness test (RIDEM policy allows for the operation of such UST systems only if repairs can be completed within 30 days of the test failure). Respondents, as owners and operators of the Facility, 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.

<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	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500 <b>\$9,375</b>	\$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