

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: WESTLAKES, LLC
Point Judith Road Food and Fuel, Inc.**

FILE NO.: OCI-UST-23-2-00505

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 22 October 2021, RIDEM issued a letter to the resident agent for WESTLAKES, LLC by regular mail for the alleged violation that is the subject of this Notice of Violation (“NOV”). The letter required specific actions to correct the alleged violation. Respondents failed to respond to or comply with the letter. On 27 October 2022, RIDEM issued a *Notice of Intent to Enforce* (“NIE”) to Respondents by certified mail for the alleged violation. The NIE required specific actions to correct the alleged violation. The NIE was delivered to Respondents on 31 October 2022. As of the date of the NOV, Respondents have failed to respond to or comply with the NIE.

C. FACTS

- (1) The property is located at 707 Point Judith Road, Assessor's Plat Y4, Lot 4 in Narragansett, Rhode Island (“Property”). The Property includes a motor fuel filling station and a convenience store ("Facility").
- (2) WESTLAKES, LLC owns the Property.
- (3) Point Judith Road Food and Fuel, 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. 00505.
- (6) The USTs are registered with RIDEM as follows:

UST ID No.	Date Installed	Capacity	Product Stored
009	12 May 2004	12,000 gallons	Gasoline
010	12 May 2004	8,000 gallons	Gasoline
011	12 May 2004	8,000 gallons	Diesel

- (7) On 14 October 2021, RIDEM received a *Standardized Hydrostatic Tightness Testing Form* for the Facility, which was submitted by Nextest on behalf of Respondents. Nextest reported that all the dispenser sumps for UST Nos. 009, 010 and 011 had failed tightness tests (visual assessments) performed on 6 October 2021.
- (8) On 22 October 2021, RIDEM inspected the Facility. The inspection revealed that the dispenser sumps had yet to be repaired or replaced in accordance with the UST Rules.
- (9) On 6 December 2022, RIDEM inspected the Facility and observed that the dispenser sumps had yet to be repaired and that the Facility was fully operational.
- (10) On 16 March 2023, RIDEM inspected the Facility and observed that the dispenser sumps had yet to be repaired or replaced and that the Facility was fully operational. Customers were observed dispensing fuel into their vehicles at the time of inspection.

D. VIOLATION

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

- (1) **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. 009, 010 and 011 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. 009, 010 and 011 shall be kept out of service until** the deficient 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 repairs or tank system modifications require prior written notification to and approval by RIDEM's Office of Land Revitalization and Sustainable Materials Management. If the UST systems are not repaired or modified within one year, permanently close the UST systems in full compliance with Part 1.15 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:

\$6,250

- (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, 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 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 Town of Narragansett, 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. 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:

WESTLAKES, LLC
c/o Paul J. Carr, Jr., Resident Agent
707 Point Judith Road
Narragansett, RI 02882

Point Judith Road Food and Fuel, Inc.
c/o Shaban Asghar, Registered Agent
707 Point Judith Road
Narragansett, RI 02882

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: UST
 File No.: OCI-UST-23-2-00505
 Respondents: WESTLAKES, LLC and Point Judith Road Food and Fuel, 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) – Operating the UST systems with deficient dispenser sumps	Type II <i>(\$12,500 Max. Penalty) *</i>	Major	\$6,250	1 violation	\$6,250
SUB-TOTAL					\$6,250

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

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 NON-COMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED.
<p>A review of the record in this matter has revealed that Respondents have either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.</p>

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 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.</p>

TOTAL PENALTY PROPOSED UNDER PENALTY RULES = \$6,250

PENALTY MATRIX WORKSHEET

CITATION: Operating the UST systems with deficient dispenser sumps
 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;">X 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 VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Rules.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents failed to take UST Nos. 009, 010 and 011 out of service and have continued to operate these UST systems after the dispenser sumps had failed hydrostatic tightness testing on 6 October 2021. Operation of UST systems with deficient 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 Facility is in a developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. The UST system 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 proximate to the Facility. The Facility is within Point Judith Pond/Frontal Block Island Sound watershed. The USTs are within 60 feet of a regulated coastal wetland associated with Point Judith Pond. (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: 18 months. Respondents were required to repair or replace the sumps, or take the UST systems out of service, on or before 6 November 2021. (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 noncompliance:** Respondents failed to prevent the non-compliance by repairing or replacing the sumps or taking the UST systems out of service before 6 November 2021. Respondents failed to mitigate the non-compliance despite receiving written notices from RIDEM, 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 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 an associated tank top or dispenser sump fails a tightness test. 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	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