

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Saed Mahmoud

FILE NO.: OCI-UST-23-56-01261

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 party (“Respondent”) has violated certain statutes and/or administrative regulations under RIDEM's jurisdiction.

B. ADMINISTRATIVE HISTORY

On 7 November 2022, RIDEM issued a *Notice of Intent to Enforce* (“NIE”) by certified mail to Respondent for the alleged violations that are the subject of this *Notice of Violation* (“NOV”). The NIE required specific actions to correct the alleged violations. The NIE was delivered on 12 November 2022. As of the date of the NOV, Respondent has failed to comply with the NIE.

C. FACTS

- (1) The property is located at 3344 West Shore Road, Assessor’s Plat 364, Lot 17 in Warwick, Rhode Island (“Property”). The Property includes a motor fuel storage and dispensing system and a convenience store (“Facility”).
- (2) 3344 W.Shore Rd, LLC owns the Property.
- (3) The *Certificate of Organization/Registration* for 3344 W.Shore Rd, LLC was revoked by the Rhode Island Secretary of State on 11 October 2022. Saed Mahmoud is the last known resident agent of the company.
- (4) Upon information and belief, Seeno mini mart inc is or was an operator of the Facility, however, the *Certificate of Organization/Registration* for Seeno mini mart inc was revoked by the Rhode Island Secretary of State on 12 September 2023. Saed Mahmoud is the last known president of the company.
- (5) 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 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. 01261.
- (7) The USTs are registered with RIDEM as follows:

UST ID No.	Date Installed	Capacity	Product Stored
006	6 September 2006	8,000 gallons	Gasoline
007	6 September 2006	12,000 gallons	Gasoline

- (8) On 18 October 2021, RIDEM received a *Hydrostatic Tightness Testing Form* for the Facility, which was submitted by Nextest. Nextest reported that the tank top sumps for UST Nos. 006 and 007 failed tightness tests performed at the Facility on 7 October 2021.
- (9) On 8 November 2021, Respondent applied to RIDEM for a variance to continue to operate UST Nos. 006 and 007. In the application Respondent stated that parts were on order to repair the sumps.
- (10) By letter dated 9 November 2021, RIDEM notified Respondent that his request for a variance was approved and expires on 9 February 2022.
- (11) On 2 March 2023, RIDEM received an *Application for the Repair or Modification of a UST System*, which was signed by Bob Assaf (“Assaf”) of Comm Tank, Inc. as the contractor and Dan Ahmed as the owner. The application proposed repairs to the tank top sumps for UST Nos. 006 and 007.
- (12) On 30 March 2023, RIDEM sent electronic communication to Assaf that they had utilized an improper application form and that they were required to submit a *Sump and Under Dispenser Containment Repair Application* for the proposed repairs.
- (13) On 14 July 2023 and 10 August 2023, RIDEM inspected the Facility and observed that the UST systems were in operation and gasoline was being dispensed into customers’ vehicles.
- (14) As of the date of the NOV, Respondent has not submitted a completed *Sump and Under Dispenser Containment Repair Application* to RIDEM to repair or modify the tank top sumps for UST Nos. 006 and 007 at the Facility.

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(N)(3)(d)** – prohibiting the operation of product pipelines with defective sumps until the sumps are repaired or replaced with prior written notification to and approval by RIDEM.

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 the product pipelines for UST Nos. 006 and 007 from service and cease and desist from dispensing fuel from the UST systems.
- (2) **Keep the product pipelines for UST Nos. 006 and 007 out of service until RIDEM is satisfied that the deficient tank top 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. 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 tanks 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:

\$9,375

- (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 Respondent 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:

Maria I. Rice, Esquire
RIDEM - Office of Legal Services
235 Promenade Street, Suite 425
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 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) Maria Rice of RIDEM's Office of Legal Services at (401) 537-4189 or at maria.rice@dem.ri.gov. All other inquiries should be directed to Tracey Tyrrell of RIDEM's Office of Compliance and Inspection at (401) 537-4480 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: _____
Christina Hoefsmit, Deputy 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:

Saed Mahmoud
3344 West Shore Road
Warwick, RI 02886

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: UST
File No.: OCI-UST-23-56-01261
Respondent: Saed Mahmoud

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 product pipelines with deficient containment sumps	Type II <i>(\$12,500 Max. Penalty) *</i>	Major	\$9,375	1 violation	\$9,375
SUB-TOTAL					\$9,375

*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: <ul style="list-style-type: none"> - 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 Respondent has 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 = \$9,375

PENALTY MATRIX WORKSHEET

CITATION: Operating the UST product pipelines with deficient containment 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: Respondent has continued to operate the product pipelines for UST Nos. 006 and 007 with deficient containment sumps and has neither sought nor obtained RIDEM’s approval to repair or replace the deficient tank top sumps in accordance with the UST Rules. The tank top sumps are designed to contain gasoline leakage from the pressurized product pipelines in the event of a leak and prevent releases to the environment. Operating product pipelines with deficient containment sumps presents a threat to public health and safety and the environment. (2) Environmental conditions: The Facility is in a densely developed area with numerous potential vapor receptors, including commercial structures, residential structures and underground utilities. The USTs are in a GB groundwater classification zone; however, they are installed within 100 feet of a GA groundwater classification zone, which is groundwater suitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells in the vicinity. The Facility is above a groundwater reservoir, within 900 feet of regulated freshwater wetlands (tributary to Brush Neck Cove) and within Greenwich Bay 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 public health hazard (due to the potential inhalation of benzene) and a 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: Approximately 2 years – Respondent has been operating the UST product pipelines in violation of the UST Rules since 9 February 2022. (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:** Respondent failed to prevent the non-compliance by removing the product pipelines for UST Nos. 006 and 007 from service on or before 9 February 2022, until the sumps could be repaired or replaced with prior written notification to and approval by RIDEM. Respondent has made no apparent attempt to mitigate the non-compliance, despite receiving the NIE from RIDEM, which required that he do so. Respondent submitted a tightness test report dated 9 February 2022, which reported that the tank top sumps met the criteria for passing, however, Respondent has neither sought nor obtained the approval of RIDEM to repair the sumps in accordance with the UST Rules.
- (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:** Respondent, as owner and operator of the Facility, had full control over the occurrence of the violation. The UST Rules prohibit the operation of UST product pipelines with deficient sumps and under dispenser containment until the sumps can be repaired or replaced with prior written notification to and approval by RIDEM.
- (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	<u> </u> MODERATE	<u> </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 \$9,375	\$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