

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Edgar Almeida

FILE NO.: UST 2012-03818

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

B. Administrative History

DEM issued informal written notices to the Respondent or his agents on 11 February 2008, 19 May 2008 and 8 September 2011 for the violations. The Respondent has failed to comply with the notices.

C. Facts

- (1) The subject property is located at 397 Dyer Avenue in the city of Cranston, Assessor’s Plat 8, Lot 2647 (the “Property”).
- (2) New Property Solutions, LLC owns the Property.
- (3) The Rhode Island Secretary of State’s corporations database lists New Property Solutions, LLC as an inactive corporation, having its principal place of business at 41 Harrison Street in the city of Pawtucket, Rhode Island. The date of the Revocation Certificate was June 15, 2009. The Respondent was the sole member of the corporation.
- (4) Three underground storage tanks (“USTs” or “tanks”) are installed on the Property, which tanks are/were used for storage of petroleum products and which are subject to the DEM’s *Rules and Regulations for Underground Storage Facilities Used for Storage of Petroleum Products and Hazardous Materials* (the “UST Regulations”).
- (5) The USTs are registered with DEM in accordance with Section 6.00 of the UST Regulations as UST Facility No. 03818.
- (6) The USTs are registered with DEM as follows:

UST ID No.	Capacity	Product Stored
006	10,000 gallons	Regular Gasoline
007	7,000 gallons	Premium Gasoline
008	3,000 gallons	Diesel Fuel

- (7) Respondent removed the USTs from service in or about September 2007.
- (8) Respondent has failed to pay the UST registration fees assessed by DEM for 2009, 2010 and 2011.
- (9) On 25 January 2012, DEM inspected the Property. The hoses and nozzles were removed from the product dispensers and the USTs were not in use.
- (10) As of the date of this Notice of Violation (“NOV”), the Respondent has failed to pay the UST registration fees or permanently close the USTs.

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) **DEM’s UST Regulations, Rule 6.10** – requiring the owner/operator to pay annual UST registration fees to DEM.
- (2) **DEM’s UST Regulations, Rule 13.02(A)** – prohibiting the abandonment of USTs.
- (3) **DEM’s UST Regulations, Rule 13.05** – requiring the permanent closure of any USTs that have been removed from service for more than 180 days or are abandoned.

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 90 days of receipt of this NOV**, submit a permanent closure application to the DEM – Office of Waste Management and complete the removal of USTs in full compliance with Section 13.00 of the DEM’s UST Regulations and Section 13.00 of the DEM’s *Oil Pollution Control Regulations* (the “OPC Regulations”).
- (2) **Within 30 days of the removal of the USTs**, submit to the DEM-Office of Waste Management a *Closure Assessment Report* prepared by a qualified environmental consultant, in accordance with Section 13.11 of the DEM’s UST Regulations, the DEM’s *UST Closure Assessment Guidelines* and Section 13.00 of the DEM’s OPC Regulations.

- (3) **Within 30 days of the removal of the USTs**, remove and properly dispose of any contaminated soil excavated during the tank closure and, within 10 days of the soil disposal, submit documentation of disposal to the DEM-Office of Waste Management, in accordance with Section 13 of the DEM's OPC Regulations.
- (4) **Within 60 days of receipt of written notification from the DEM to conduct a site investigation ("SI") of the Property**, retain a qualified consultant to perform the SI and submit a *Site Investigation Report* ("SIR") to the DEM within the time frame specified by the DEM in accordance with Rules 12.08, 12.09 and 12.10 of the DEM's UST Regulations.
- (5) **Within 60 days of receipt of written notification from the DEM to submit a corrective action plan ("CAP")**, retain a qualified consultant to submit a proposed CAP to the DEM in accordance with Rules 12.12 through 12.18 of the DEM's UST Regulations. The CAP must be implemented in accordance with an order of approval issued by the DEM.

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:

Twelve Thousand Seven Hundred and Seventy-Eight Dollars (\$12,778.00)

- (2) The proposed administrative penalty is calculated pursuant to the DEM's Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the DEM within 20 days of your receipt of this NOV. Payment shall be in the form of a certified check, cashiers check or money order made payable to the "General Treasury - Water & Air Protection Program Account" and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against the Respondent in this 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 the Director determines that reasonable efforts have been made to comply promptly with this 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 the DEM 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 this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
One Capitol Hill, 2ND Floor
Providence, RI 02903
 - (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 Rule 7.00(b) of the DEM Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters.
- (2) A copy of each request for hearing must also be forwarded to:

Joseph J. LoBianco, Esquire
DEM - 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 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 with regard to 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 (v) and 42-17.6-4(b) and (c).

- (5) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) An original signed copy of this NOV is being forwarded to the city of Cranston, 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) This 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 at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey Tyrrell of the DEM Office of Compliance and Inspection at (401) 222-1360 ext. 7407.

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

David E. Chopy, Chief
DEM Office of Compliance and Inspection

Date: _____

CERTIFICATION

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

Edgar Almeida
41 Harrison Street
Pawtucket, RI 02860

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST

File No.: UST 2011-03818

Respondent: Edgar Almeida

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 (2) and (3) – Abandonment of underground storage tanks	Type I (\$25,000 Max. Penalty)*	Moderate	\$7,500	1 violation	\$7,500.00
SUB-TOTAL					\$7,500.00

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

ECONOMIC BENEFIT FROM NONCOMPLIANCE		
COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT ARE IN COMPLIANCE. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:		
- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR		
- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.		
DESCRIPTION OF BENEFIT	CALCULATION	AMOUNT
Interest earned by delaying cost of tank closure	Delayed One Time Non-Depreciable Expenditure of \$29,333.00 (average cost to remove USTs at a typical facility) EPA BEN Model = \$4,618.00	\$4,618 .00
UST Registration Fees and Late Fees	Registration Fees = 2 USTs X 3 years @ \$75.00 per tank/per year = \$450.00 Late Fees = 2 USTs X 3 years @ \$35.00 per tank/per year = \$210.00	\$660.00
SUB-TOTAL		\$5,278.00

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$12,778.00

PENALTY MATRIX WORKSHEET

CITATION: Abandonment of underground storage tanks
 VIOLATION NOS.: D (2) and (3)

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

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

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** USTs have been removed from service and abandoned. Abandoned USTs present a threat to the environment if they are not evacuated of their contents or if persons attempt to re-use them after an extended period of abandonment.
- (B) **Environmental conditions:** The property is located in a GB groundwater classification zone, which are groundwater resources designated to be unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells proximate to the property. The property is located in the Pocasset River watershed. The USTs are installed approximately 100 feet from the river's edge. The property is located in a densely developed area with numerous potential vapor receptors including residential structures, commercial structures and underground utilities.
- (C) **Amount of the pollutant:** Not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** The volatile nature of gasoline presents both a public health hazard (due to the potential inhalation of benzene vapors) and a potential public safety hazard (due to the potential for explosion). Petroleum products are capable of causing significant soil and groundwater contamination if released to the environment. Petroleum products are toxic to aquatic organisms.
- (E) **Duration of the violation:** Upon information and belief, Respondent has maintained the USTs in an abandoned state since approximately October 2007.
- (F) **Areal extent of the violation:** Not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent the non-compliance by permanently closing the USTs within 180 days of the date that they were removed from service. Respondent has taken no apparent steps to mitigate the non-compliance despite receiving multiple written notices from DEM, which required that he do so.
- (H) **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:** Respondent was previously cited by DEM for violations of the UST Regulations in a Notice of Violation issued on 11 February 2009 and a Notice of Intent to Enforce dated 28 September 2010.
- (I) **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:** As the property owner, Respondent had full control over the occurrence of the violation. Abandonment of USTs is expressly prohibited by the UST Regulations. DEM provided Respondent with written notification of the violation on 19 May 2008 and 8 September 2011.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not utilized for this calculation.

MAJOR	<u> X </u> 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	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500 \$7,500	\$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