

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Galpi Realty, Inc.
Coventry Petroleum, Inc.**

FILE NO.: UST 2013-48-00559

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 parties ("Respondents") have violated certain statutes and/or administrative regulations under the DEM's jurisdiction.

B. Administrative History

On 2 August 2013 and 2 January 2014, the DEM issued informal written notices to the Respondents for the violations. The notices required specific actions to address the violations. The Respondents have failed to fully comply with the notices.

C. Facts

- (1) The property is located at 2070 Nooseneck Hill Road, Assessor's Plat 10, Lot 36 in the town of Coventry, Rhode Island (the "Property"). The Property includes a convenience store, a service station and a motor fuel storage and dispensing system (the "Facility").
- (2) Galpi Realty, Inc. owns the Property.
- (3) Coventry Petroleum, 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 are subject to the DEM's *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the "UST Regulations").
- (5) The Facility is registered with the DEM in accordance with Section 6.00 of the DEM's UST Regulations and is identified as UST Facility No. 00559.

- (6) The USTs are registered with the DEM as follows:

UST ID No.	Date Installed	Capacity	Product Stored
002	18 October 1990	8,000 gallons	Gasoline
004	18 October 1990	8,000 gallons	Diesel
006	18 October 1990	8,000 gallons	Gasoline
008	18 October 1990	8,000 gallons	Gasoline

- (7) The USTs are each single walled tanks.
- (8) On 23 April 2013 the DEM issued a letter to Coventry Petroleum, Inc. The letter stated that the DEM reviewed a groundwater monitoring report for the Property and determined that no further action was required. The letter advised the Respondent to close the groundwater monitoring wells on the Property (the "Groundwater Monitoring Wells") in accordance with the DEM's UST Regulations.
- (9) On 11 July 2013 the DEM inspected the Facility. The inspection revealed the following:
- (a) Written verification that the Respondents had used the *Veeder Root TLS 350* continuous monitoring system ("CMS") to perform a valid 0.2-gallon per hour leak test for UST No. 002 within the last 30 days was not available.
 - (b) The spill containment basins for each of the USTs held liquids.
 - (c) The Groundwater Monitoring Wells located near the tank field were not labeled or secured against tampering.
 - (d) Written verification that a Class A or Class B UST Facility operator had conducted monthly UST Facility inspections during each of the months of August 2012 through June 2013 was not available.
 - (e) An "inventory report" obtained from the CMS at the time of inspection indicated that UST No. 004 was holding 1.55 inches of water.
- (10) As of the date of this Notice of Violation ("NOV"), the Respondents have failed to comply with the DEM's UST Regulations for the issues described above.

D. Violation

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

- (1) **DEM's UST Regulations, Rule 8.08(B)(2)** – requiring owners/operators to utilize automatic tank gauging systems to perform monthly 0.2-gallon per hour leak tests for single-walled USTs.
- (2) **DEM's UST Regulations, Rule 8.16(A)** – requiring that spill containment basins be kept clean and dry at all times.
- (3) **DEM's UST Regulations, Rule 8.19** – requiring that groundwater monitoring wells be equipped with labeled, tamper-resistant covers and that they be maintained to prevent the infiltration of pollutants.
- (4) **DEM's UST Regulations, Rule 8.19(E)** – requiring the abandonment of groundwater monitoring wells that are no longer used for their intended purpose.
- (5) **DEM's UST Regulations, Rules 8.22(F) and 11.02(B)(4)** – requiring that Class A or B UST facility operators conduct monthly on-site UST facility inspections and document the results of those inspections on the requisite form.
- (6) **DEM's UST Regulations, Rule 11.03(G)** – requiring the removal of water from USTs when the water level measurement exceeds one inch.

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 complete the following remedial actions **45 days of receipt of the NOV**:

- (1) Submit to the DEM-Office of Compliance and Inspection (“OC&I”) written verification that the CMS has been utilized to perform at least one valid 0.2-gallon per hour leak test for UST No. 002 within the last 30 days, in accordance with Rule 8.08(B)(2) of the DEM’s UST Regulations.
- (2) Evacuate and clean the spill containment basins for each of the USTs. All wastes removed from these basins shall be managed and disposed of in accordance with Rule 5.8 of the DEM’s *Rules and Regulations for Hazardous Waste Management* (the “Hazardous Waste Regulations”). Written or photographic verification of compliance shall be submitted to the OC&I.
- (3) Abandon the Groundwater Monitoring Wells in accordance with Section 8 of Appendix One of the DEM’s *Rules and Regulations for Groundwater Quality* and Rule 8.19(E) of the DEM’s UST Regulations.

- (4) Submit to the OC&I written verification that the designated Class A/B UST Facility operator, Mr. Gaby Boukarim, is now performing monthly on-site UST Facility inspections in accordance with Rule 8.22(F) of the DEM's UST Regulations.
- (5) Evacuate the water in UST No. 004 by a qualified person in accordance with Rule 11.03(G) of the DEM's UST Regulations and transported off-site for proper disposal or reclamation in compliance with the DEM's Hazardous Waste Regulations and all other applicable statutes and regulations. Written verification of compliance shall be submitted to the OC&I.

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:

Two Thousand Five Hundred Dollars (\$2,500.00)

- (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 30 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 Respondents 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 DEM 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 the 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's *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 the 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 town of Coventry, 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:

Galpi Realty, Inc.
c/o Charles F. Reilly, Esq., Registered Agent
681 Smith Street
Providence, RI 02908

Coventry Petroleum, Inc.
c/o Charles F. Reilly, Esq., Registered Agent
681 Smith Street
Providence, RI 02908

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST

File No.: UST 2013-48-00559

Respondents: Galpi Realty, Inc. and Coventry Petroleum, 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) – Failure to use the CMS to perform monthly 0.2-gallon per hour leak tests for a UST	Type II (\$ <u>12,500</u> Max. Penalty)*	Minor	\$1,250	1 violation	\$1,250.00
D (5) – Failure to have a Class A or Class B UST facility operator perform monthly inspections of the facility	Type II (\$ <u>12,500</u> Max. Penalty)*	Minor	\$1,250	1 violation	\$1,250.00
<i>SUB-TOTAL</i>					\$2,500.00

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

ADMINISTRATIVE PENALTY SUMMARY *(continued)*

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.

A review of the record in this matter has revealed that the 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 can not 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 the DEM 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 REGULATIONS = \$2,500.00

PENALTY MATRIX WORKSHEET

CITATION: Failure to compile and maintain inventory reconciliation records
 VIOLATION NO.: D (1)

TYPE		
<u> </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> X </u> 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.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: The Respondents failed to use the CMS to perform valid 0.2-gallon per hour leak tests for UST No. 002 on a monthly basis. Such leak tests are an important and required component of release detection programs at UST facilities with single-walled USTs. Failure to comply would presumably reduce the likelihood of detecting a release from a UST system. This leak detection requirement is of significant importance to the regulatory program.</p> <p>(B) Environmental conditions: The facility is located in a GAA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment, and which are located in groundwater reservoirs and portions of their recharge areas, wellhead protection areas for community water supply wells and groundwater dependent areas. The facility is located in a community water supply wellhead protection area for the Kent County Water Authority. The facility is located within 270 feet of freshwater wetlands. The facility is located within the Pawtuxet River watershed. The facility is located in a developed area with potential vapor receptors including commercial structures and underground utilities.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) 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 is capable of causing significant soil and groundwater contamination if released to the environment. Benzene, a component of gasoline, is a known carcinogen.</p> <p>(E) Duration of the violation: Full duration unknown. At least 11 months.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondents failed to prevent the non-compliance by using the CMS to perform valid 0.2 gallon per hour leak tests for UST No. 002 at least once per month. The Respondents failed to mitigate the non-compliance despite receiving an informal written notice dated 2 August 2013 and a second informal written notice dated 2 January 2014 from DEM, which required that they 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:** The Respondents were previously cited by the DEM for alleged violations of the DEM's UST Regulations in informal written notices dated 4 September 2007, 23 July 2008, 31 August 2010, and 7 November 2013.
- (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:** Negligence is attributable to the Respondents for the failure to comply immediately with the requirements set forth in the DEM's UST Regulations. As owners and operators of the facility, the Respondents had full control over the occurrence of the violation. The tank leak detection requirements are clearly established in the DEM's UST Regulations.
- (J) **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

PENALTY MATRIX WORKSHEET

CITATION: Failure to have a Class A or Class B UST facility operator perform monthly inspections of the Facility

VIOLATION NO.: D (5)

TYPE		
<p style="text-align: center;"><u> </u> 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;"><u> </u> TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: The Respondents failed to have a Class A or Class B UST facility operator conducted monthly UST facility inspections in accordance with the DEM's UST Regulations. These monthly inspections and tests are of significant importance to the regulatory program. Failure to perform these inspections and tests would presumably reduce the likelihood of detecting a leak or release from the UST systems.</p> <p>(B) Environmental conditions: The facility is located in a GAA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment, and which are located in groundwater reservoirs and portions of their recharge areas, wellhead protection areas for community water supply wells and groundwater dependent areas. The facility is located in a community water supply wellhead protection area for the Kent County Water Authority. The facility is located within 270 feet of freshwater wetlands. The facility is located within the Pawtuxet River watershed. The facility is located in a developed area with potential vapor receptors including commercial structures and underground utilities.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) 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 is capable of causing significant soil and groundwater contamination if released to the environment. Benzene, a component of gasoline, is a known carcinogen.</p> <p>(E) Duration of the violation: 20 months. 1 August 2012 to present.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondents failed to have a Class A or Class B UST facility operator conduct monthly on-site UST facility inspections. The Respondents failed to mitigate the non-compliance despite receiving an informal written notice dated 2 August 2013 and a second informal written notice dated 2 January 2014 from DEM, which required that they 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:** The Respondents were previously cited by the DEM for alleged violations of the DEM's UST Regulations in informal written notices dated 4 September 2007, 23 July 2008, 31 August 2010, and 7 November 2013.
- (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:** Negligence is attributable to the Respondents for the failure to comply immediately with the requirements set forth in Rule 8.22(F) of the DEM's UST Regulations. As owners and operators of the facility, the Respondents had full control over the occurrence of the violation. The facility inspection requirements are clearly established in the DEM's UST Regulations.
- (J) **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