

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Town of Cumberland**

**FILE NO.: UST 2010-02969**

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. Facts

- (1) The subject property is located at 37 Blackstone Street in the town of Cumberland, Rhode Island (the “Property”).
- (2) The Property includes a public works garage and an underground storage tank (“UST” or “tank”) used for storage of petroleum product (the “Facility”).
- (3) Respondent owns the Property.
- (4) Respondent operates the Facility.
- (5) The Facility is subject to DEM’s Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials, as amended (the “UST Regulations”).
- (6) The Facility is registered with DEM in accordance with Section 6.00 of the UST Regulations and is identified as UST Facility No. 02969.
- (7) The UST is registered with DEM as follows:

UST ID No.	Date Installed	Capacity	Product Stored
002	11 December 1995	10,000 gallons	Gasoline

- (8) On 16 January 2009, the Respondent submitted to DEM monthly inventory records for the Facility for the following months: June-August 2005; September November 2006; January, February, and December 2007; and March-May 2008 (collectively, the “inventory records”).

- (9) DEM's review of the inventory records revealed that a discrepancy of one percent of the total gallons pumped on a monthly basis plus one hundred thirty gallons occurred for the following months: July-August 2005; September-November 2006; December 2007; and March-April 2008 (the "inventory discrepancies").
- (10) The Respondent failed to report the inventory discrepancies to DEM.
- (11) On 18 March 2009, 12 June 2009, and 29 December 2009 DEM issued written notices to the Respondent requiring an investigation of the inventory discrepancies, including performing tightness tests on the primary tank, product pipeline, and the interstitial space of the tank.
- (12) On 10 January 2011, DEM received a copy of a tightness testing report from Respondent, which documented the results of a tightness test that was performed on the primary tank and the product pipeline on 15 October 2010. The report stated that the tank and pipeline met the criteria for passing.
- (13) On 22 January 2010, DEM issued a letter to all registered UST owners/operators that required the owners/operators to inspect their facility and complete and submit to DEM a Compliance Certification Checklist, a Certification Statement form and any necessary Return to Compliance Plans (the "Compliance Certification Forms").
- (14) On 20 September 2010 DEM issued a written notice to the Respondent for failing to submit the Compliance Certification Forms (the "Compliance Certification Notice"). The Compliance Certification Notice required the Respondent to inspect the Facility and complete and submit the Compliance Certification Forms to DEM on or before 7 October 2010.
- (15) As of the date of this Notice of Violation ("NOV"), the Respondent has not complied with the Investigation Notices or the Compliance Certification Notice.

C. Violation

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

- (1) **UST Regulations, Rule 8.03** – requiring UST owners/operators to inspect their facility and complete and submit the Compliance Certification Forms within the time frame specified by the DEM.
- (2) **UST Regulations, Rules 11.03 (H) and 12.04(A)(1)** – requiring the owner/operator to report inventory discrepancies to DEM.
- (3) **UST Regulations, Rule 12.03** – requiring the owner/operator to promptly investigate all suspected leaks or releases when required by DEM.

D. 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** commence a review of the inventory compilation and tabulation methods to ensure that the daily and monthly variances are being calculated correctly (the “inventory review”) and make any adjustments necessary to ensure full compliance with Rules 8.08(A)(2) and 11.03 of the UST Regulations.
- (2) **Within thirty (30) days of receipt of the NOV**, submit a written report to DEM detailing any problems discovered as a result of the inventory review and any corrective actions taken to ensure compliance.
- (3) **Within thirty (30) days of receipt of the NOV**, submit the Compliance Certification Forms to DEM in accordance with Rule 8.03 of the UST Regulations.
- (4) **Within sixty (60) days of receipt of the NOV**, investigate the inventory discrepancies in accordance with Rule 12.03 of the UST Regulations and submit a written report of the findings to DEM (the “investigation report”). The investigation report must include the results of a tightness test of the interstitial space of the tank performed by a licensed tightness tester in accordance with Rules 8.08 and 8.10 of the UST Regulations and copies of the monthly inventory records for the last twelve months.
- (5) **Within sixty (60) days of submission of the investigation report to DEM**, repair or replace the product dispensers in accordance with Rules 8.02(A) and 10.00 of the UST Regulations if the investigation report reveals that the dispenser totalizers are malfunctioning and submit documents to DEM certifying that the equipment is accurately reporting inventory.

E. 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:

**Nine Thousand Two Hundred and Fifty Dollars (\$9,250.00)**

- (2) The proposed administrative penalty is calculated pursuant to the DEM Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the Director within twenty (20) days of your receipt of this NOV. Payment shall be in the form of a check 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 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.

F. 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 E 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 twenty 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  
235 Promenade Street, 3<sup>RD</sup> Floor  
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); **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, 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 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) 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 D'Amadio 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 F 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:

The Honorable Daniel J. McKee, Mayor  
Town of Cumberland  
45 Broad Street  
Cumberland, RI 02864

by Certified Mail.

\_\_\_\_\_



## **ADMINISTRATIVE PENALTY SUMMARY**

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST  
 File No.: UST 2010 – 02969  
 Respondent: Town of Cumberland

<b>GRAVITY OF VIOLATION</b>					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
C (1) – Failure to submit ERP Compliance Certification Forms	Type II (\$ <u>12,500</u> Max. Penalty)*	Moderate	\$3,000	1 violation	\$3,000.00
C (2) and (3) – Failure to fully investigate and report a suspected leak or release	Type I (\$ <u>25,000</u> Max. Penalty)*	Minor	\$6,250	1 violation	\$6,250.00
<b><i>SUB-TOTAL</i></b>					<b>\$9,250.00</b>

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

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$9,250.00**

***PENALTY MATRIX WORKSHEET***

CITATION: Failure to submit ERP Compliance Certification Forms

VIOLATION NO.: C (1)

TYPE		
<p>____ TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>X</u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>____ TYPE III <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><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent failed to submit completed Compliance Certification Forms to DEM. The UST Regulations require all UST owners/operators to certify their compliance with the UST Regulations by completing and submitting the Compliance Certification Forms within the time frame specified by DEM.</p> <p>(B) <b>Environmental conditions:</b> Not relevant.</p> <p>(C) <b>Amount of the pollutant:</b> Not relevant.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> 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 is capable of causing significant soil and groundwater contamination if released to the environment.</p> <p>(E) <b>Duration of the violation:</b> The Compliance Certification Forms were due on or before 7 October 2010.</p> <p>(F) <b>Areal extent of the violation:</b> Not relevant.</p> <p style="text-align: right;">(continued)</p>		

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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 submitting completed Compliance Certification Forms to DEM. Respondent has made no apparent attempt to mitigate the violation despite receiving an informal notice from DEM dated 20 September 2010.
- (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:** Not relevant.
- (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:** Respondent had full control over the occurrence of the violation. DEM issued a letter to the UST owners/operators on 22 January 2010 requiring the owners/operators to comply with the ERP compliance certification rule and directing the owners/operators to the DEM website to obtain the necessary forms and workbooks. DEM issued an informal notice to the Respondent on 20 September 2010 requiring the Respondent to submit completed Compliance Certification Forms to DEM on or before 7 October 2010.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

<b>MAJOR</b>	<u>  <b>X</b>  </u> <b>MODERATE</b>	<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	MAJOR	\$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 <b>\$3,000</b>	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

**PENALTY MATRIX WORKSHEET**

CITATION: *Failure to fully investigate and report a suspected leak or release*  
 VIOLATION NOS.: C (2) and (3)

<b>TYPE</b>		
<p style="text-align: center;"><b>X</b> <b>TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ <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 PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b>FACTORS CONSIDERED:</b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent failed to investigate and report inventory discrepancies. The UST regulations require owners/operators to immediately investigate and report all suspected releases from their UST systems. Failure to do so could allow a leaking tank to remain in use for extended periods, which could result in a catastrophic release of petroleum product to the land and/or waters of the State.</p> <p>(B) <b>Environmental conditions:</b> The facility is located in a developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. The facility is located 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 located in the Blackstone River watershed.</p> <p>(C) <b>Amount of the pollutant:</b> Unknown. DEM has not yet been able to determine whether an actual release of gasoline has occurred at the facility.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> 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.</p> <p>(E) <b>Duration of the violation:</b> About 5 ½ years. DEM's review of the inventory control records revealed that the inventory discrepancies were first documented in July 2005.</p> <p>(F) <b>Areal extent of the violation:</b> Not relevant.</p>		
(continued)		

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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 investigating and reporting the inventory discrepancies. Respondent failed to mitigate the non-compliance as directed by DEM despite receiving three written notices from DEM on 18 March 2009, 12 June 2009, and 29 December 2009, which required that they do so. Respondent did have the primary tank and the product pipeline tested for tightness on 15 October 2010, however, they failed to comply with the other required actions set forth in the 29 December 2009 notice.
- (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:** Not relevant.
- (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 Respondent for the failure to comply immediately with the requirements set forth in UST Regulation Nos. 12.03 and 12.04(A)(1). Respondent, as owner and operator of the facility, had complete control over the occurrence of the violation. The requirements for reporting and investigation are clearly established in the UST Regulations.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

<b>MAJOR</b>	<b>MODERATE</b>	<u>  <b>X</b>  </u> <b>MINOR</b>
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 25,000		<b>TYPE I</b>	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 <b>\$6,250</b>	\$1,250 to \$2,500	\$250 to \$1,250