

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: DARC Realty, LLC  
DARC, Inc.**

**FILE NO.: UST 2013-65-00577**

**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 DEM's jurisdiction.

**B. Administrative History**

On 11 September 2013 DEM issued an informal written notice to the Respondents for the violations. The notice required specific actions to address the violations. The Respondents failed to fully comply with the notice.

**C. Facts**

- (1) The subject property is located at 400 Main Road, Assessor's Block 113, Parcel 497 in the town of Tiverton, Rhode Island (the “Property”).
- (2) The Property includes a service station, a car wash, a motor fuel filling station and three underground storage tanks (“UST” or “tanks”), which tanks are used for storage of petroleum products (the “Facility”).
- (3) DARC Realty, LLC owns the Property.
- (4) DARC, Inc. operates the Facility.
- (5) The Facility is subject to the DEM’s *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the “UST Regulations”).
- (6) The Facility is registered with DEM in accordance with Section 6.00 of the DEM’s UST Regulations and is identified as UST Facility No. 00577.
- (7) The USTs are registered with DEM as follows:

UST ID No.	Date Installed	Capacity	Substance Stored
005	8 April 2002	12,000 gallons	Gasoline
006	8 April 2002	4,000 gallons	Gasoline
007	8 April 2002	4,000 gallons	Diesel

- (8) On 10 September 2013 DEM inspected the Facility. The inspection revealed the following:
- (a) Inventory reconciliation records for the USTs for September 2010 through September 2013, consistent with the requirements of the DEM's UST Regulations, were not available.
  - (b) A list of all of the Class C UST facility operators assigned to the Facility was not available.
  - (c) Written verification that any of the UST facility operators on duty at the time of inspection had been trained as at least Class C UST facility operators was not available.
  - (d) Written verification that the designated Class A or Class B UST facility operator (Mr. Richard A. Cedrone) had conducted monthly UST facility inspections from August 2012 through August 2013 was not available.
- (9) 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, Rules 8.08(A)(2) and 11.03** – requiring the owner/operator to compile and maintain inventory control records for USTs.
- (2) **DEM's UST Regulations, Rules 8.22(A)(7) and 8.22(D)** – requiring the owner/operator to assign at least one Class C UST facility operator to their facility and to compile and maintain a list of all of the Class C UST facility operators that have been trained and assigned to their facility.
- (3) **DEM's UST Regulations, Rule 8.22(F)** – requiring designated Class A or Class B UST facility operators to conduct monthly UST facility inspections and document the results of those inspections on the requisite form.

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 **within 45 days of receipt of the NOV**:

- (1) Submit to the DEM – Office of Compliance and Inspection (“OC&I”) representative samples of your monthly inventory control records for the USTs for September 2010 through September 2013. If such records are not available, submit to the OC&I written verification that you are now in full compliance with the inventory control record-keeping requirements set forth in Rules 8.08(A)(2), 11.02(B)(5) and 11.03 of the DEM’s UST Regulations.
- (2) Submit to the OC&I a list of all of the trained Class C UST facility operators assigned to the Facility in accordance with Rule 8.22(A)(7) of the DEM’s UST Regulations. If the Facility does not have any trained Class C UST facility operators, train and assign at least one Class C UST facility operator to the Facility in accordance with Rule 8.22 of the DEM’s UST Regulations. Respondents shall operate the Facility with at least one Class C UST facility operator present during all operating hours, as per Rule 8.22(D) of the DEM’s UST Regulations. Written verification of compliance shall be submitted to the OC&I.
- (3) Submit to the OC&I copies of the designated Class A or Class B UST facility operator’s (Mr. Richard A. Cedrone) monthly UST facility inspection checklists for August 2012 through August 2013. If such records are not available, then the Class A or Class B UST facility operator shall begin conducting monthly UST facility inspections and documenting the results of those inspections on the requisite form in accordance with Rules 8.22(F) and 11.02(B)(4) of the DEM’s UST 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:

**Six Thousand Dollars (\$6,000.00)**

- (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 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, 2<sup>ND</sup> 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, 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) An original signed copy of this NOV is being forwarded to the town of Tiverton, 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

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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:

DARC Realty, LLC  
c/o Richard A. Cedrone, Registered Agent  
400 Main Road  
Tiverton, RI 02878

DARC, INC.  
c/o Richard A. Cedrone, Registered Agent  
400 Main Road  
Tiverton, RI 02878

by Certified Mail.

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## ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST COMPLIANCE

File No.: UST 2013-65-00577

Respondents: DARC Realty, LLC and DARC, Inc.

<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	
D (1) – Failure to compile and maintain inventory reconciliation records	Type II (\$ <u>12,500</u> Max. Penalty)*	Moderate	\$3,500	1 violation	\$3,500.00
D (2) and (3) – Failure to assign Class C UST facility operators to the facility, compile a list of Class C UST facility operators and have the Class A or Class B UST facility operator perform monthly inspections	Type II (\$ <u>12,500</u> Max. Penalty)*	Moderate	\$2,500	1 violation	\$2,500.00
<b><i>SUB-TOTAL</i></b>					<b>\$6,000.00</b>

\*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 = \$6,000.00**

**PENALTY MATRIX WORKSHEET**

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

<b>TYPE</b>		
<u>      </u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>  <b>X</b>  </u> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE III</b> <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:** Respondents failed to compile and maintain inventory reconciliation records for the USTs from September 2010 through September 2013. Inventory reconciliation is an important and required component of release detection programs at UST facilities. 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.
- (B) **Environmental conditions:** The facility is located in a GA groundwater classification zone, which are groundwater resources presumed to be 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 a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. The facility is located within 260 feet of a freshwater wetland and within the Mount Hope Bay watershed.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (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 and diesel fuel are capable of causing significant soil and groundwater contamination if released to the environment. Certain petroleum constituents are potentially harmful to human health and safety and the environment.
- (E) **Duration of the violation:** September 2010 through September 2013.
- (F) **Areal extent of the violation:** Considered, but 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:** Respondents failed to compile and maintain inventory reconciliation records in accordance with the DEM's UST Regulations. Respondents failed to mitigate the non-compliance despite receiving a Letter of Non-Compliance dated 11 September 2013 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:** Respondents were previously cited by DEM for alleged violations of the DEM's UST Regulations in a Letter of Non-Compliance dated 22 August 2007, a Notice of Intent to Enforce dated 11 September 2008, a Notice of Intent to Enforce dated 31 August 2010 and a Letter of Non-Compliance dated 11 September 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 Respondents for their failure to comply immediately with the requirements set forth in the DEM's UST Regulations. As owner and operator of the facility, Respondents had full control over the occurrence of the violation. The inventory reconciliation 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.

<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	<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 <b>\$3,500</b>	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

**PENALTY MATRIX WORKSHEET**

CITATION: Failure to assign Class C UST facility operators to the facility, compile a list of Class C UST facility operators and have the Class A or Class B UST facility operator perform monthly inspections

VIOLATION NOS.: D (2) and (3)

<b>TYPE</b>		
<p>____ <b>TYPE I</b>  <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u><b>X</b></u> <b>TYPE II</b>  <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>____ <b>TYPE III</b>  <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<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> Respondents failed to assign at least one trained Class C UST facility operator to the facility and compile a list of all of the trained Class C UST facility operators assigned to the facility. Respondents failed to ensure that the Class A or Class B UST facility operator conducted monthly UST facility inspections in accordance with the DEM's UST Regulations. The operator training requirements are of significant importance to the regulatory program.</p> <p>(B) <b>Environmental conditions:</b> The facility is located in a GA groundwater classification zone, which are groundwater resources presumed to be 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 a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. The facility is located within 260 feet of a freshwater wetland and within the Mount Hope Bay watershed.</p> <p>(C) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</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 and diesel fuel are capable of causing significant soil and groundwater contamination if released to the environment. Certain petroleum constituents are potentially harmful to human health and safety and the environment.</p> <p>(E) <b>Duration of the violation:</b> 1 August 2012 to present.</p> <p>(F) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to assign at least one trained Class C UST facility operator to the facility, compile a list of the trained Class C UST facility operators assigned to the facility and ensure that the Class A/B UST facility operator was conducting monthly UST facility inspections. Respondents have yet to mitigate the non-compliance despite receiving a Letter of Non-Compliance dated 11 September 2013 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:** Respondents were previously cited by DEM for alleged violations of the DEM's UST Regulations in a Letter of Non-Compliance dated 22 August 2007, a Notice of Intent to Enforce dated 11 September 2008, a Notice of Intent to Enforce dated 31 August 2010 and a Letter of Non-Compliance dated 11 September 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 Respondents for their failure to comply immediately with the requirements set forth in the DEM's UST Regulations. As owner and operator of the facility, Respondents had full control over the occurrence of the violations. The operator training 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	<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
	<b>MODERATE</b>	\$6,250 to \$12,500	\$2,500 to \$6,250 <b>\$2,500</b>	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250