

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Dyerville Realty, LLC

FILE NO.: UST 2016-18-02967

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 the DEM's jurisdiction.

B. Administrative History

On 16 November 2001, the DEM issued a Notice of Violation (the “2001 NOV”) to the former owners of the property that is the subject of this Notice of Violation (the “2016 NOV”). The 2001 NOV ordered specific actions to correct the violations that are the subject the 2016 NOV. The former owners failed to comply with the 2001 NOV. On 18 September 2013, the DEM filed a complaint in Superior Court to enforce the 2001 NOV. Prior to judgment being entered by the Court, Respondent acquired the property. On 25 April 2016, the DEM issued a Notice of Intent to Enforce (“NIE”) to Respondent. The NIE required Respondent to take the same actions ordered in the 2001 NOV. On 1 June 2016, Respondent’s attorney met with the DEM to discuss the NIE. As of the date of the 2016 NOV, Respondent has failed to respond to or comply with the NIE.

C. Facts

- (1) The property is located at 60 Dyerville Avenue, Assessor’s Plat 13, Lot 181, in the town of Johnston (the “Property”). The Property included a motor fuel storage and dispensing system facility (the “Former Facility”).
- (2) Respondent owns the Property, taking title on 26 December 2013.
- (3) Underground storage tanks (“USTs” or “tanks”) were located on the Property, which tanks were used for storage of petroleum products and which are subject to the DEM’s *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the “UST Regulations”).
- (4) The Facility is registered with the DEM and is identified as UST Facility No. 02967.

- (5) The USTs are registered with the DEM for the Facility as follows:

UST ID No.	Date Removed	Capacity	Product Stored
001	22 September 1998	2,000 gallons	Diesel
002	22 September 1998	2,000 gallons	Diesel

- (6) On 22 September 1998, the USTs were removed from the ground. The underground product pipelines (the "Pipelines") associated with these tanks were not removed during the tank closure and have remained in place and maintained in an abandoned state since 22 September 1998.
- (7) As of the date of issuance of the 2016 NOV, Respondent has failed to remove the Pipelines in accordance with the DEM's UST Regulations.

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 13.02(A)** – prohibiting the abandonment of USTs or UST systems.
- (2) **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 the 2016 NOV**, submit a completed *Permanent Closure Application for Underground Storage Tanks* (copy enclosed) to the DEM – Office of Waste Management ("OWM") and, with OWM's approval, complete the removal of the Pipelines and any other remaining appurtenances associated with the USTs in accordance with Section 13.00 of the DEM's UST Regulations.
- (2) **Within 30 days of the removal of the Pipelines**, submit to the OWM a *Closure Assessment Report* that has been 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*, October 1998, and Section 13 of the DEM's *Oil Pollution Control Regulations*.
- (3) **Within 30 days of the removal of the Pipelines**, remove and properly dispose of any contaminated soil encountered during the Pipelines closure and, within 10 days of the soil disposal, submit documentation of disposal to the OWM in accordance

with Section 13 of the DEM's *Oil Pollution Control Regulations*.

- (4) Based on the information in the *Closure Assessment Report*, the OWM may require that a site investigation be performed by an environmental consultant and that a *Site Investigation Report* ("SIR") be submitted in accordance with Rules 12.08, 12.09, and 12.10 of the DEM's UST Regulations and within a time frame specified by the OWM. In the event that the OWM requires a SIR, the Respondent shall complete the SIR within the time frame specified. Based on the information in the SIR, the OWM may require submittal of a *Corrective Action Plan* ("CAP") within a time frame specified by the OWM and in accordance with Rules 12.12 through 12.18 of the DEM's UST Regulations. The Respondent shall implement the CAP in accordance with an approval issued by the OWM.

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:

\$6,250

- (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 the 2016 NOV. Payment shall be in the form of a certified check, cashier's 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 Respondent in the 2016 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 the 2016 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'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 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, 4TH 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 for Environmental Matters*.
- (2) A copy of each request for hearing must also be forwarded to:

Tricia Quest, Esq.
DEM - Office of Legal Services
235 Promenade Street, 4TH 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 the DEM's Administrative Adjudication Division as to each violation alleged in the 2016 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 the 2016 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 2016NOV 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 2016 NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) An original signed copy of the 2016 NOV is being forwarded to the town of Johnston, 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 2016 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) Tricia Quest at the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey Tyrrell of the DEM's 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

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

Dated: _____

CERTIFICATION

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

Dyerville Realty, LLC
c/o Michael J. Lepizzera, Jr., Esq., Registered Agent
117 Metro Center Boulevard
Warwick, RI 02886

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY	
Program:	OFFICE OF COMPLIANCE AND INSPECTION, UST
File No.:	UST 2016-18-02967
Respondent:	Dyerville Realty, LLC

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) and (2) – Abandonment of Product Pipelines Associated with USTs	Type I <i>(\$25,000 Max. Penalty)*</i>	Minor	\$6,250	1 violation	\$6,250
SUB-TOTAL					\$6,250

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

ECONOMIC BENEFIT FROM NON-COMPLIANCE
<p>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:</p> <ul style="list-style-type: none"> - THERE IS NO IDENTIFIABLE BENEFIT FROM NON-COMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED.
<p>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.</p>

COST RECOVERY
<p>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.</p>
<p>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.</p>

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$6,250

PENALTY MATRIX WORKSHEET	
CITATION:	Abandonment of Product Pipelines Associated with USTs
VIOLATION NOS.:	D (1) and (2)

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

FACTORS CONSIDERED:

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

- (A) **The extent to which the act or failure to act was out of compliance:** The product pipelines from the former USTs have been removed from service and abandoned. Abandoned piping presents a threat to the environment if the piping is not evacuated of its contents or if persons attempt to re-use the piping after an extended period of abandonment. Prohibiting the abandonment of USTs is of significant importance to the regulatory program. Failing to properly close USTs bypasses the environmental safeguards and assessments accomplished through the permanent closure process.
- (B) **Environmental conditions:** The Property is located in an industrial/commercial zone and within a GB groundwater classification zone, which are groundwater resources presumed 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 within 1,700 feet of the Woonasquatucket River and within its watershed.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** Diesel fuel is capable of causing significant soil and groundwater contamination if released to the environment.
- (E) **Duration of the violation:** Approximately 18 years - the product pipelines have been abandoned since at least 22 September 1998. In assessing the penalty, the DEM only considered the duration of the violation since the DEM issued a Notice of Intent to Enforce (NIE) to Respondent, which was 25 April 2016 (approximately 8 months).
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.
- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to mitigate the non-compliance despite receiving the NIE from the DEM, which required that it do so.

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- (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:** Considered, but not utilized for this calculation.
- (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 owner of the Property, Respondent had full control over the occurrence of the violation. Abandonment of USTs is expressly prohibited by the DEM's UST Regulations. The DEM provided Respondent with written notification of the violations.
- (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 \$6,250	\$1,250 to \$2,500	\$250 to \$1,250