

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: EDGEWOOD SERVICES INC

FILE NO.: UST 2016-55-00653

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 11 October 2016, the DEM issued a Notice of Intent to Enforce (“NIE”) to Respondent for the violations that are the subject of this Notice of Violation (“NOV”). The NIE required specific actions to correct the violations. On 25 October 2016, Respondent submitted documents to the DEM in response to the NIE; however, as of the date of the NOV, Respondent has failed to fully comply with the NIE.

C. Facts

- (1) The property is located at 873 Cranston Street, Assessor’s Plat 7, Lot 121 in the city of Cranston (the “Property”). The Property includes a convenience store and a motor fuel storage and dispensing system (the “Facility”).
- (2) Respondent owns the Property.
- (3) Respondent 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 which 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 and is identified as UST Facility No. 00653.

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

UST ID No.	Date Installed	Capacity	Product Stored
005	14 December 1999	8,000 gallons	Gasoline
006	14 December 1999	4,000 gallons	Gasoline

(7) On 6 October 2016, the DEM inspected the Facility. The inspection revealed the following:

- (a) The spill containment basins for the USTs and the tank top sump for UST No. 006 were holding liquids;
- (b) Written verification that the Facility attendant on duty at the time of inspection had been trained as at least a Class C UST operator was not available. A list of all of the Class C UST operators that had been assigned to the Facility was not available. The Facility was being operated without at least one Class C UST operator on duty;
- (c) The *Facility Operator's Monthly Inspection Checklists* on file at the Facility for the time period of August 2014 through September 2016 were incomplete and the signature of the Class A/B UST facility operator who allegedly performed the inspections, Mr. Wassim Khiami, was either missing or illegible.

(8) As of the date of issuance of the NOV, Respondent has failed to demonstrate compliance with the findings described in Section C(7) above.

D. Violation

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

- (1) **DEM's UST Regulations, Rules 8.16 (A)(1) and (D)** - requiring that spill containment basins and sumps be kept free of liquids and debris at all times.
- (2) **DEM's UST Regulations, Rule 8.22(A)** - requiring UST facility owners/operators to have trained Class C operators assigned to the facility.
- (3) **DEM's UST Regulations, Rule 8.22(A)(7)** - requiring UST facility owners/operators to maintain a list of all of the trained Class C operators that have been assigned to the facility.
- (4) **DEM's UST Regulations, Rule 8.22(D)(1)** - requiring UST facility owners/operators to have at least one trained Class C operator on duty at the facility during all operating hours.

- (5) **DEM's UST Regulations, Rule 8.22(F)** - requiring the registered Class A/B UST facility operator to perform monthly on-site UST facility inspections and to document those inspections completely 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 60 days of receipt of the NOV**:

- (1) Evacuate and clean the spill containment basins for the USTs and the tank top sump for UST No. 006 in accordance with Rules 8.16 (A)(1) and (D) of the DEM's UST Regulations. All wastes removed from these basins and sumps shall be managed and disposed of in accordance with Rule 5.3 of the DEM's *Rules and Regulations for Hazardous Waste Management*. Written or photographic verification of compliance shall be submitted to the DEM's Office of Compliance and Inspection ("OC&I").
- (2) The registered Class A/B UST facility operator, Mr. Wassim Khiami, shall train all appropriate Facility employees and attendants as (at least) Class C UST operators and compile a written training log (copy enclosed) for the Class C UST operators that have been trained and assigned to the Facility, as per Rules 8.22 (A) and (D) of the DEM's UST Regulations. A copy of the completed training log shall be submitted to the OC&I. The Facility shall henceforth be operated only with at least one trained Class C UST operator on duty during all hours of operation, as per Rule 8.22 of the DEM's UST Regulations.
- (3) The registered Class A/B UST Facility operator, Mr. Wassim Khiami, shall henceforth perform the Class A/B UST Facility monthly inspections in accordance with Rules 8.22(F) and 8.15(E) of the DEM's UST Regulations and fully document the results of those inspections on the requisite form. Mr. Khiami shall perform a current inspection and Respondent shall submit a copy of the signed and completed *Facility Operator's Monthly Inspection Checklist* to document full compliance with these Rules.

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:

\$4,000

- (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 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 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 the 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 the 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, Esquire
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 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 the 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 (vi) and 42-17.6-4(b) and (c).
- (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) An original signed copy of the 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) The 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 Notice of Violation was forwarded to:

EDGEWOOD SERVICES INC
c/o Rifaat Samrout, Registered Agent
1647 Broad Street
Cranston, RI 02905

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY	
Program:	OFFICE OF COMPLIANCE AND INSPECTION, UST COMPLIANCE
File No.:	UST 2016-55-00653
Respondent:	EDGEWOOD SERVICES 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 (2), (3) & (4) – Failure to Assign Class C Operators to Facility	Type II (\$12,500 Max. Penalty)*	Moderate	\$2,500	1 violation	\$2,500
D(5) - Failure to Properly Document Class A/B Operator Monthly Inspections	Type II (\$12,500 Max. Penalty)*	Minor	\$1,500	1 violation	\$1,500
SUB-TOTAL					\$4,000

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

ECONOMIC BENEFIT FROM NON-COMPLIANCE
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 NON-COMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED.
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.

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 = \$4,000

PENALTY MATRIX WORKSHEET

CITATION: Failure to Assign Class C Operators to Facility
 VIOLATION NOS.: D (2), (3) & (4)

TYPE

 TYPE I
DIRECTLY related to protecting health, safety, welfare or environment.

 X **TYPE II**
INDIRECTLY related to protecting health, safety, welfare or environment.

 TYPE III
INCIDENTAL 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:** Respondent failed to assign trained Class C UST facility operators to the Facility. The requirement to have trained, competent UST facility operators assigned to regulated UST facilities is of significant importance to the regulatory program. Failure to comply would presumably reduce the likelihood of preventing and detecting releases from the UST systems.
- (B) **Environmental conditions:** The Facility is located in a densely developed area with numerous potential vapor receptors including residential structures, commercial structures and underground utilities. The Facility is located in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. There are no known drinking water supply wells proximate to the Facility. The Facility is located within the Pawtuxet River 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 is capable of causing significant soil and groundwater contamination if released to the environment.
- (E) **Duration of the violation:** Approximately 2½ years - August 2014 to the present.
- (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:** Respondent failed to prevent the non-compliance by assigning trained Class C operators to the Facility and maintaining compliance. Respondent has yet to mitigate the non-compliance despite receiving the NIE from the DEM, which required that it 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 the DEM for this same violation at the Facility in an informal written notice issued on 3 October 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 Respondent for the failure to comply immediately with all of the requirements set forth in Rules 8.22 (A) and (D) of the DEM's UST Regulations. As owner and operator of the Facility, Respondent had full control over the occurrence of the violation.
- (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
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250 \$2,500	\$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 Properly Document Class A/B Operator Monthly Inspections
VIOLATION NO.:	D (5)

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.

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 Class A/B operator monthly inspection checklists on file at the Facility at the time of inspection were incomplete and the signature of the person performing the inspection was either missing or illegible. These inspections are expressly required by the DEM's UST Regulations and are of significant importance to the regulatory program. Failure to comply would presumably reduce the likelihood of preventing or detecting releases from the USTs.
- (B) **Environmental conditions:** The Facility is located in a densely developed area with numerous potential vapor receptors including residential structures, commercial structures and underground utilities. The Facility is located in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. There are no known drinking water supply wells proximate to the Facility. The Facility is located within the Pawtuxet River 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 is capable of causing significant soil and groundwater contamination if released to the environment.
- (E) **Duration of the violation:** Approximately 2 ½ years - August 2014 to the present.
- (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:** Respondent failed to prevent the non-compliance by ensuring that the registered and ICC-certified Class A/B operator was performing the inspections in accordance with the DEM's UST Regulations and fully attesting to and documenting the results of those inspections in accordance with the requisite checklist. Respondent has yet to mitigate the non-compliance despite receiving the NIE from the DEM, which required that it 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:** 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:** Negligence is attributable to Respondent for the failure to comply immediately with the requirements set forth in Rules 8.22(F) of the DEM's UST Regulations. As owner and operator of the Facility, Respondent had full control over the occurrence of the violation. The Class A/B operator monthly 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 \$1,500	\$250 to \$1,250