

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF COMPLIANCE & INSPECTION

IN RE: ETEMAN, LLC

FILE NO.: UST 2014-124-00307

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 26 November 2014, the DEM issued a Letter of Non-Compliance (“LNC”) to the Respondent by certified mail for violations of the DEM’s *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the “UST Regulations”). The LNC required specific actions to correct the violations. On 2 December 2014, the LNC was delivered to the Respondent. The Respondent has failed to respond to or comply with the LNC.

C. Facts

- (1) The property is located at 2360 Kingstown Road, Assessor’s Plat 32-1, Lot 26, in the town of South Kingstown (the “Property”). The Property includes a convenience store and a motor fuel filling station (the “Facility”).
- (2) The Respondent owns the Property.
- (3) The Respondent operates the Facility.
- (4) Underground storage tanks (“USTs” or “tanks”) are installed on the Property, which tanks are used for storage of petroleum products and which are subject to the DEM’s UST Regulations.
- (5) The Facility is registered with the DEM and is identified as UST Facility No. 00307.

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

UST ID No.	Date Installed	Capacity	Product Stored
005	30 June 1987	4000 gallons	Gasoline
006	28 June 1987	4000 gallons	Gasoline
007	26 June 1987	6000 gallons	Gasoline
008	29 June 1987	6000 gallons	Diesel

(7) On 25 November 2014, the DEM inspected the Facility. The inspection revealed the following:

- (a) The spill containment basins for the USTs were holding liquids.
- (b) A list of all the Class C UST facility operators assigned to the Facility was not available at the time of inspection. Upon information and belief, there were no trained Class C UST facility operators on duty at the time of inspection.
- (c) Written verification that the designated Class A/B UST facility operator (Mr. Ozcan Eteman) had conducted on-site UST Facility inspections during each of the months of August 2012 through October 2014 was not available.
- (d) An inventory report obtained from the *Veeder Root TLS 350* automatic tank gauging system (“ATG”) indicated that UST No. 005 was holding 1.41 inches of water at the time of inspection.

(8) As of the date of this Notice of Violation (“NOV”), the Respondent has failed to comply with the DEM's UST Regulations for the issues described in Section C(7) above.

D. Violation

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

- (1) **DEM's UST Regulations, Rule 8.16(A)(1)** – requiring that spill containment basins be kept free of liquids and solid debris.
- (2) **DEM's UST Regulations, Rule 8.22(A)** – requiring all regulated UST facility owners/operators to have trained and certified Class A, B and C UST facility operators assigned to their facility and on duty at the facility during all operating hours.
- (3) **DEM's UST Regulations, Rule 8.22(A)(7)** – requiring UST owners/operators to maintain a list of all of the Class C UST facility operators assigned to their facility.

- (4) **DEM's UST Regulations, Rules 8.22(F) and 8.15(E)** – requiring the registered Class A or Class B UST facility operator to conduct monthly on-site UST facility inspections and record the results of those inspections on the requisite form.
- (5) **DEM's UST Regulations, Rule 11.03(G)** – requiring the removal of water from the bottom of regulated USTs when the gauged water level exceeds 1 inch in height.

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, as necessary, in accordance with Rule 8.16(A)(1) of the DEM's UST Regulations. 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*. Written or photographic verification of compliance shall be submitted to the DEM's Office of Compliance and Inspection ("OC&I").
- (2) Train and assign at least one Class C UST facility operator to the Facility and submit to the OC&I a list of all of the Class C UST facility operators that have been trained and assigned to the Facility in accordance with Rules 8.22 (A) and (D) of the DEM's UST Regulations. Respondent shall henceforth operate the Facility with at least one trained Class C UST facility operator on duty during all operating hours, as per Rule 8.22 of the DEM's UST Regulations.
- (3) Submit to the OC&I written verification that the registered Class A/B UST facility operator (Mr. Ozcan Eteman) is now performing monthly on-site UST facility inspections (requisite form enclosed) in accordance with Rule 8.22(F) of the DEM's UST Regulations.
- (4) The water at the bottom of UST No. 005 shall be evacuated by a qualified person in accordance with Rule 11.03(G) of the DEM's UST Regulations. All liquids shall be managed and disposed of or recycled in accordance with Rule 5.8 of the DEM's *Rules and Regulations for Hazardous Waste Management*.

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:

Four Thousand Five Hundred Dollars (\$4,500)

- (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, 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 the 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 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 for Environmental Matters*.

(2) A copy of each request for hearing must also be forwarded to:

Christina Hoefsmit, Esq.
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 South Kingstown, 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) Christina Hoefsmit 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:

ETEMAN, LLC
c/o David A. DiPalma, Esq., Registered Agent
138 Warren Avenue
East Providence, RI 02914

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY	
Program:	OFFICE OF COMPLIANCE AND INSPECTION, UST COMPLIANCE
File No.:	UST 2014-124-00307
Respondent:	EEMAN, 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(2) and (3) – Failure to train and assign Class C UST facility operators to the facility and have a trained operator on duty at all times	Type II (\$12,500 Max. Penalty)*	Minor	\$1,500	1 violation	\$1,500
D(4) – Failure to perform monthly inspections of the facility	Type II (\$12,500 Max. Penalty)*	Minor	\$1,500	2 Years	\$3,000
SUB-TOTAL					\$4,500

*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 the Respondent has either enjoyed no significant 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 = \$4,500

PENALTY MATRIX WORKSHEET

CITATION:	Failure to train and assign Class C UST facility operators to the facility and have a trained operator on duty at all times
VIOLATION NOS.:	D (2) and (3)

TYPE		
____ TYPE I DIRECTLY related to protecting health, safety, welfare or environment.	<u> X </u> 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:** The Respondent failed to assign trained Class C UST facility operators to the facility. At the time of the 25 November 2014 inspection, the UST facility operator on duty was unable to demonstrate that any Class C UST facility operators had been trained and assigned to the facility. Rule 8.22 of the DEM's UST Regulations requires all owners to have at least one Class C UST facility operator assigned to their facilities and to compile and maintain on-site a list of the Class C operators. Rule 8.22 prohibits the operation of regulated UST facilities in the absence of trained and/or certified UST facility operators.
- (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. The facility is located in a developed area with potential vapor receptors including commercial structures, residential structures and underground utilities. The facility is located within the Saugatucket River watershed and within 50 feet of a freshwater wetland.
- (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.
- (E) **Duration of the violation:** 27 months – August 2012 through November 2014.
- (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:** The Respondent failed to assign at least one Class C UST facility operator to the facility on or before 1 August 2012. The Respondent has yet to mitigate the non-compliance despite receiving an informal written notice 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 the Respondent for the failure to comply immediately with the requirements set forth in Rule 8.22 of the DEM's UST Regulations. As owner and operator of the facility, the Respondent had full control over the occurrence of the violation. 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	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

PENALTY MATRIX WORKSHEET

CITATION: Failure to perform monthly inspections of the facility
 VIOLATION NO.: D (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:** The Respondent failed to have the registered Class A/B UST facility operator conduct monthly on-site UST facility inspections in accordance with the DEM's UST Regulations. The monthly inspections are of significant importance to the regulatory program. Failure to perform these inspections would presumably reduce the likelihood of preventing or detecting a leak or release from the UST systems.
- (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. The facility is located in a developed area with potential vapor receptors including commercial structures, residential structures and underground utilities. The facility is located within the Saugatucket River watershed and within 50 feet of a freshwater wetland.
- (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.
- (E) **Duration of the violation:** 27 months – August 2012 through October 2014.
- (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 non-compliance:** The Respondent failed to have the registered Class A/B UST facility operator perform monthly inspections of the facility beginning in August 2012. The Respondent has yet to mitigate the non-compliance despite receiving the informal written notice 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 the Respondent for the failure to comply immediately with the requirements set forth in Rule 8.22(F) of the DEM's UST Regulations. As owner and operator of the facility, the Respondent had full control over the occurrence of the violation. The monthly 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 \$1,500	\$250 to \$1,250