

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Souad Tashian Trust Agreement 2004

FILE NO.: UST 2016-57-00850

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 27 April 2016 and 14 June 2016, the DEM issued a Letter of Noncompliance (“LNC”) and Notice of Intent to Enforce (“NIE”) respectively to Respondent for the violations that are the subject of this Notice of Violation (“NOV”). The LNC and NIE required specific actions to correct the violations. The NIE was delivered to Respondent on 18 June 2016. As of the date of the NOV, Respondent has failed to respond to or comply with the NIE.

C. Facts

- (1) The property is located at 3333 South County Trail, Assessor’s Plat 18, Lot 40, in the town of East Greenwich (the “Property”). The Property includes a service station, a convenience store and a motor fuel storage and dispensing system (the “Facility”).
- (2) Respondent owns the Property.
- (3) Underground storage tanks (“USTs” or “tanks”) are located on the Property, which tanks are/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. 00850.

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

UST ID No.	Capacity	Product Stored
006	5,000 gallons	Gasoline
007	2,000 gallons	Gasoline
008	5,000 gallons	Gasoline
009	4,000 gallons	Gasoline
010	6,000 gallons	Diesel

(6) On 21 October 2015, the DEM received a report of a gasoline spill at the Facility. The DEM determined that the USTs had been overfilled during a delivery, which resulted in the release of approximately 50 gallons of gasoline to the concrete tank mat and asphalt pavement on the Property. The gasoline was recovered by an emergency response contractor with a vacuum truck and absorbent material.

(7) On 25 April 2016, the DEM inspected the Facility. The inspection revealed that the Facility was closed and out of service.

(8) Respondent has neither sought nor obtained the permission of the DEM to put the USTs into temporary closure in accordance with the DEM's UST Regulations.

(9) As of the date of the NOV, the USTs remain in place in an abandoned state.

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 12.08(B)** – requiring a site investigation as a result of a release of petroleum.
- (2) **DEM's UST Regulations, Rule 13.02(A)** – prohibiting the abandonment of USTs.
- (3) **DEM's UST Regulations, Rule 13.02(C)** – prohibiting the removal from service or temporary closure of USTs without the approval of the DEM.
- (4) **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 NOV**, submit a permanent closure application to the DEM – Office of Waste Management ("OWM") at 235 Promenade Street, Suite 380, Providence, RI 02908-5767 and complete the removal of the USTs in full compliance with Section 13.00 of the DEM's UST Regulations and Section 13.00 of the DEM's *Oil Pollution Control Regulations* (the "OPC Regulations").
- (2) **Within 30 days of the removal of the USTs**, submit to the OWM a *Closure Assessment Report* 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* and Section 13.00 of the DEM's OPC Regulations.
- (3) **Within 30 days of the removal of the USTs**, remove and properly dispose of any contaminated soil excavated during the tank 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 OPC Regulations.
- (4) **Within 60 days of the completion of the UST permanent closure project**, retain the services of a qualified environmental consultant to perform a site investigation and submit a *Site Investigation Report* to the OWM in accordance with Rules 12.08, 12.09 and 12.10 of the DEM's UST Regulations.
- (5) **Within 60 days of receipt of written notification from the OWM to submit a Corrective Action Plan ("CAP")**, retain a qualified consultant to submit a proposed CAP to the OWM in accordance with Rules 12.12 through 12.18 of the DEM's UST Regulations. The CAP shall be implemented in accordance with an order of 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:

\$6,900

- (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 DEM 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 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:

Joseph J. LoBianco, 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 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 town of East Greenwich, 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) Joseph J. LoBianco 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:

Souad Tashian Trust Agreement 2004
c/o Anoush N. Taraksian, Trustee
100 Midvale Avenue
Cranston, RI 02920-6204

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY	
Program:	OFFICE OF COMPLIANCE AND INSPECTION, UST
File No.:	UST 2016-57-00850
Respondent:	Souad Tashian Trust Agreement 2004

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) and (4) – Abandonment of USTs	Type I (\$25,000 Max. Penalty)*	Moderate	\$6,250	1 violation	\$6,250
SUB-TOTAL					\$6,250

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

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.			
DESCRIPTION OF BENEFIT	CALCULATION		AMOUNT
Economic benefit of noncompliance identified by the DEM for failing to permanently close the facility. The cost of permanently closing the facility was based on the average cost to remove multiple USTs at a facility. The economic benefit gained by the instances of noncompliance was calculated by utilizing an EPA computer model entitled "BEN", which performs a detailed economic analysis. The dates, dollar amounts and values used in this analysis are as listed in this table.	Profit Status	For profit other than a C-Corporation	\$650
	Filing Status	For profit other than a C-Corporation	
	Initial Capital Investment	\$0	
	One Time Non Depreciable Expense	\$25,000	
	First Date of Noncompliance	25 April 2016	
	Compliance Date	1 March 2017	
	Penalty Due Date	1 February 2017	
	Useful Life of Pollution Control Equipment	N/A	
	Annual Inflation Rate	PCI	
	Discount Compound Rate	7.2%	
SUB-TOTAL			\$650

ADMINISTRATIVE PENALTY SUMMARY *(continued)*

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 = \$6,900

PENALTY MATRIX WORKSHEET	
CITATION:	Abandonment of USTs
VIOLATION Nos.:	D (2), (3) and (4)

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:** USTs have been removed from service and abandoned. Abandoned USTs present a threat to the environment if they are not evacuated of their contents or if persons attempt to re-use them after an extended period of abandonment. Prohibiting the abandonment of underground storage tanks is of primary importance to the regulatory program. Failure to comply could result in the release of hazardous materials to the groundwater and pollution of public drinking water supplies.
- (B) **Environmental conditions:** The Facility is located in a developed area with potential vapor receptors including commercial structures and underground utilities. The USTs are installed within a GAA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment and which are located in groundwater reservoirs and portions of their recharge areas, wellhead protection areas for community water supply wells and in groundwater dependent areas. The Facility is located within a groundwater recharge area for a community water supply well, within 600 feet of a groundwater reservoir, within 1,200 feet of a wellhead protection area for a non-community water supply well and within a sole source aquifer. The Facility is located within the Hunt River watershed and within 150 feet of freshwater wetlands associated with the River.
- (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 public health hazard (due to the potential inhalation of benzene vapors) and a potential public safety hazard (due to the potential for explosion). Petroleum products are capable of causing significant soil and groundwater contamination if released to the environment. Benzene, a component of gasoline, is a known carcinogen.
- (E) **Duration of the violation:** Approximately 6 months - the USTs have not been in service since at least 25 April 2016.
- (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 prevent the non-compliance by permanently closing the USTs within 180 days of the date that they were removed from service. Respondent has yet to mitigate the non-compliance despite receiving the informal notices from the DEM, which required that it do so.

(continued)

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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 Facility, 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 on two occasions.
- (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 \$6,250	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250