

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: James Egan

FILE NO.: UST 2011-EGAN

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 DEM's jurisdiction.

B. Administrative History

DEM issued informal written notices to Respondent on 28 May 2009, 18 May 2010 and 4 November 2010 for the violations. Respondent has failed to comply with the notices.

C. Facts

- (1) The subject property is located at 150-152 Waterman Avenue in the city of East Providence, Rhode Island, Assessor's Map 205, Block 16, Parcel 3 (the “Property”).
- (2) Respondent owns the Property.
- (3) On 5 May 2009, DEM inspected the Property. The inspection revealed that oil was flowing from the fill pipe of an underground storage tank (“UST” or “tank”) onto the surface of the ground.
- (4) During the 5 May 2009 inspection, Respondent informed DEM that he had no knowledge of the tank and that he had never used the tank during the last thirty years. Respondent retained Safety Kleen to pump the tank, which resulted in the removal of approximately two hundred ninety nine gallons of liquid from the tank.
- (5) The UST is not registered with DEM.

- (6) As of the date of this Notice of Violation (“NOV”), Respondent has failed to submit to DEM a permanent closure application for the UST in accordance with the Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials (the “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) **UST Regulations, Rule 13.02(A)** – prohibiting the abandonment of a UST.
- (2) **UST Regulations, Rule 13.05** – requiring the permanent closure of a UST that has been removed from service for more than one hundred eighty days, is abandoned or for which there is confirmation of a release.

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 thirty (30) days of receipt of this NOV**, submit a permanent closure application to the DEM – Office of Waste Management and complete the removal of the UST in accordance with Section 13.00 of the UST Regulations.
- (2) **Within thirty (30) days of the removal of the UST**, complete a closure assessment and submit to DEM a closure assessment report in accordance with Section 13.11 of the UST Regulations, the UST Closure Assessment Guidelines and Section 13.00 of DEM’s Oil Pollution Control Regulations (1990).
- (3) **Within thirty (30) days of the removal of the UST**, Respondent shall remove and properly dispose of any contaminated soil encountered during the tank closure and within ten (10) days of the soil disposal, submit documentation of disposal to DEM, in accordance with Section 13 of the Rhode Island Oil Pollution Control Regulations (1990).
- (4) Based on the information in the closure assessment report, DEM may require a site investigation (“SI”) of the Property and the submission of a site investigation report (“SIR”) to DEM within a specified time frame in accordance with Rules 12.08, 12.09 and 12.10 of the UST Regulations. Based on the information in the SIR, DEM may require the submission of a corrective action plan (“CAP”) in accordance with Rules 12.12 through 12.18 of the UST Regulations. The CAP must be implemented in accordance with an order of approval issued by DEM.

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:

Five Thousand Dollars (\$5,000.00)

- (2) The proposed administrative penalty is calculated pursuant to the DEM Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the Director within twenty (20) days of your receipt of this NOV. Payment shall be in the form of a certified 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 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 twenty (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
235 Promenade Street, 3RD Floor
Providence, RI 02908-5767

- (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, 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 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 city of East Providence 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

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:

James Egan
3 Harman Avenue
Seekonk, MA 02771

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST

File No.: UST 2011-EGAN

Respondent: James Egan

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 an underground storage tank	Type I (\$25,000 Max. Penalty)*	Minor	\$5,000	1 violation	\$5,000.00
<i>SUB-TOTAL</i>					\$5,000.00

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

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$5,000.00

PENALTY MATRIX WORKSHEET

CITATION: Abandonment of an underground storage tank
 VIOLATION NO.: D (1) and (2)

TYPE		
<p><u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>

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:** Respondent abandoned an underground storage tank (UST) containing oil. Abandoned USTs present a threat to the environment if they are not evacuated of their contents or if persons attempt to re-use them.
- (B) **Environmental conditions:** The property is located in a GB groundwater classification zone, which are groundwater resources designated 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 in the Seekonk River watershed.
- (C) **Amount of the pollutant:** The tank contained approximately 299 gallons of a water and oil mixture.
- (D) **Toxicity or nature of the pollutant:** Petroleum products are capable of causing significant soil and groundwater contamination if released to the environment. Petroleum products are toxic to aquatic organisms.
- (E) **Duration of the violation:** Unknown. The penalty is being assessed for the 1½ years since DEM informed the Respondent of the violation.
- (F) **Areal extent of the violation:** Not relevant.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent has taken no apparent steps to mitigate the non-compliance despite being advised verbally and in writing by DEM on multiple occasions of the actions necessary.
- (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:** Not relevant.
- (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 property owner, Respondent had full control over the occurrence of the violation. Abandonment of USTs is expressly prohibited by the UST Regulations. DEM advised Respondent of the violation on 5 May 2009.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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 \$6,250	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250 \$5,000	\$1,250 to \$2,500	\$250 to \$1,250