

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Frederick J. Mutter
Viola T. Mutter
Mutter Motors, Inc.**

**FILE NO.: WP 12-15
X-ref. UIC 001450**

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 parties (“Respondents”) have violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Administrative History

The DEM issued an informal written notice to Frederick and Viola Mutter on June 18, 2009 for the violations. The notice required the Mutters to take certain actions to correct the violations. Thus far, the Mutters have failed to fully comply with the notice.

C. Facts

- (1) The subject property is located at 505 Broad Street, Assessor's Plat 7, Lot 439 in the town of Cumberland, Rhode Island (the “Property”).
- (2) Frederick J. Mutter and Viola T. Mutter own the Property.
- (3) The Property includes an automobile sales and repair business (the “Facility”).
- (4) Mutter Motors, Inc. operates the Facility.
- (5) The Property includes a former floor drain that discharged fluids from the Facility into a former cesspool on the Property (the “Underground Injection Control System or UIC”).
- (6) On June 10, 2010, the DEM received an application that was signed by Jeffrey Mutter on behalf of Mutter Motors, Inc. to permanently close the UIC.
- (7) On June 22, 2011, the DEM received a report submitted by Beta Group, Inc. on behalf of the Respondents that included the laboratory analytical results of soil samples taken during closure of the UIC (the “Analytical Results”). The Analytical Results revealed the following:

- (a) Total Petroleum Hydrocarbon (“TPH”) at sample locations S-2 and S-4 at concentrations of 3,400 milligrams per kilogram (“mg/kg”) and 40,000 mg/kg, respectively.
- (b) Total Lead at sample locations S-2 and S-4 at concentrations of 2,300 mg/kg and 12,000 mg/kg, respectively.
- (8) The Analytical Results for TPH and Total Lead exceed the industrial/commercial direct exposure criteria established in the DEM’s Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases (the “Site Remediation Regulations”).
- (9) The Respondents did not have approval from DEM to discharge fluids to the UIC.
- (10) Thus far, the Respondents have failed to complete the closure of the UIC.

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 Underground Injection Control Program Rules and Regulations Rule 6.03** – prohibiting the disposal of fluid through subsurface disposal without an approval issued by DEM.

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 30 days of receipt of this Notice of Violation (“NOV”)**, submit a proposal to the DEM’s Office of Compliance and Inspection to remediate the soil to attain compliance with the industrial/commercial direct exposure criteria established in the DEM’s Site Remediation Regulations (the “Remediation Proposal”). The Remediation Proposal must include a schedule to complete the work.
- (2) The Remediation Proposal shall be subject to DEM review and approval. Upon review, the DEM shall provide written notification to the Respondents either granting formal approval or stating the deficiencies therein. Within fourteen (14) days (unless a longer time is specified) of receiving a notification of deficiencies, the Respondents shall submit to the DEM a modified proposal and/or any additional information necessary to correct the deficiencies.
- (3) Upon receipt of DEM approval of the Remediation Proposal, complete all work in accordance with the approved schedule.

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:

Two Thousand Five Hundred Dollars (\$2,500.00)

- (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 DEM within twenty (20) days of your receipt of the NOV. Payment shall be in the form of a certified check, cashiers 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 Respondents 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 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
Office of Administrative Adjudication
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 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, 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 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 Cumberland 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 46-12-9(c).
 - (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 me at (401) 222-1360 ext. 7400.

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:

Frederick J. Mutter
62 Meadowcrest Drive
Cumberland, RI 02864

Viola T. Mutter
62 Meadowcrest Drive
Cumberland, RI 02864

Mutter Motors, Inc.
c/o Frederick Mutter, Jr., Registered Agent
505 Broad Street
Cumberland, RI 02864

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution

File No.: WP 12-15 X-ref UIC 001450

Respondents: Frederick Mutter, Viola Mutter, and Mutter Motors 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(1) – Discharge of fluids to UIC without DEM approval	Type I (\$25,000 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500.00
SUB-TOTAL					\$2,500.00

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

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$2,500.00

PENALTY MATRIX WORKSHEET

CITATION: *Discharge of fluids to UIC without DEM approval*
 VIOLATION NO.: D(1)

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>____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:** The Respondents discharged fluids to a UIC without DEM approval and failed to properly close the UIC. Elimination of unapproved UIC's is a major objective of the program.
- (B) **Environmental conditions:** The facility is a motor vehicle repair and sales business located in a mixed residential/commercial area. The soil on the property in the area of the UIC was determined to contain lead and TPH.
- (C) **Amount of the pollutant:** Not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** Lead is a toxic heavy metal that may cause harm to humans when inhaled and/or ingested. Certain petroleum constituents are potentially harmful to human health and safety and the environment.
- (E) **Duration of the violation:** Unknown. DEM first documented the violation on June 3, 2009.
- (F) **Areal extent of the violation:** 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 Respondents did not take any action to prevent the violation. The Respondents have taken some action to mitigate the violation by removal of the UIC and approximately 30 cubic yards of contaminated soil. The Respondents have not completely mitigated the non-compliance as contaminated soil remains on the property.
- (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 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:** The violation is willful. The Respondents are aware of the actions necessary to correct the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** 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 \$2,500	\$1,250 to \$2,500	\$250 to \$1,250