

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Charles C. Potter

FILE NO.: UST 2014-1-02996

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. Facts

- (1) The property is located at 1304 Eddy Street, Assessor’s Plat 87, Lot 1 in the city of Providence, Rhode Island (the “Property”). The Property includes a gasoline service station (the “Facility”).
- (2) The Respondent owns the Property.
- (3) Underground storage tanks (“USTs” or “tanks”) are located on the Property, which tanks 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 in accordance with the DEM’s UST Regulations and is identified as UST Facility No. 02996.
- (5) The USTs are registered with the DEM as follows:

| UST ID No. | Capacity | Product Stored |
|------------|--------------|----------------|
| 007 | 5000 gallons | Gasoline |
| 008 | 5000 gallons | Gasoline |
| 009 | 5000 gallons | Diesel |

- (6) On or about 13 April 2012 the DEM received a letter from Dianne Potter. The letter stated the following:
 - (a) The Facility was closed as it was no longer making a profit;
 - (b) Quotes were obtained from several companies to remove the USTs; and
 - (c) The Potters do not have the financial means to close the USTs based on the quotes received.
- (7) On 30 December 2013 the DEM inspected the Facility. The inspection revealed the following:
 - (a) The power supply to the Veeder Root continuous monitoring system was shut down;
 - (b) The power supply to the product dispensers was shut down; and
 - (c) There was no indication that the UST system was in operation.

The DEM inspector spoke with the owner of the business at the Property at the time of the inspection. The owner stated that he does not sell fuel and only does car washing and detailing.

- (8) On 8 January 2014 the DEM issued an informal written notice to the Respondent and Dianne Potter by certified mail for the violations. The notice required specific actions to correct the violations.
- (9) On 21 January 2014 the DEM received a letter from Dianne Potter in response to the notice. Mrs. Potter stated that they do not have the financial means to comply with the notice and requested a hearing to discuss all options available to resolve the violations.
- (10) The UST system has been out of operation for a period of greater than 180 consecutive days without the approval of the DEM and the USTs are considered abandoned.
- (11) As of the date of this Notice of Violation (“NOV”), the Respondent has failed to remove the USTs in accordance with the DEM’s UST Regulations.

C. 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 13.02(A)** – prohibiting the abandonment of USTs.
- (2) **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.

D. 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 receipt of written notification from the DEM to conduct a site investigation of the Property**, retain a qualified consultant to perform the site investigation and submit a *Site Investigation Report* to the DEM within the time frame specified by the DEM 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 DEM to submit a Corrective Action Plan (“CAP”)**, retain a qualified consultant to submit a proposed CAP to the DEM 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 DEM.

E. 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:

Six Thousand and Seventy One Dollars (\$6,071)

- (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, 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 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.

F. 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 E 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 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 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 F 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:

Charles C. Potter
50 Ivan Avenue
Warwick, RI 02889

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST
 File No.: UST 2014-1-02996
 Respondent: Charles C. Potter

| 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 | |
| C (1) and C (2) – Abandonment of underground storage tanks | Type I (\$25,000 Max. Penalty)* | Minor | \$2,500 | 1 violation | \$2,500 |
| SUB-TOTAL | | | | | \$2,500 |

*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: | | |
| <ul style="list-style-type: none"> - THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED. | | |
| DESCRIPTION OF BENEFIT | CALCULATION | AMOUNT |
| Interest earned by delaying cost of tank closure | Delayed one time non-depreciable expenditure of \$25,000 (average cost to remove multiple USTs at a typical facility) | \$3,571 |
| SUB-TOTAL | | \$6,071 |

| 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= \$6,071

PENALTY MATRIX WORKSHEET

CITATION: Abandonment of underground storage tanks
 VIOLATION Nos.: C (1) and C (2)

| TYPE | | |
|--|---|--|
| <u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment. | TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment. | <u>TYPE III</u> <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.
- (B) **Environmental conditions:** The property is located in a developed area with numerous potential vapor receptors including residential structures, commercial structures and underground utilities. 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 Providence 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 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.
- (E) **Duration of the violation:** Full duration unknown – at least 31 months. The DEM received a letter from Dianne Potter dated 13 April 2012 stating that the facility was closed as it was no longer profitable.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

(continued)

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to permanently close the USTs and has taken no apparent steps to mitigate the non-compliance despite receiving an informal written notice from the DEM dated 8 January 2014, which required that he 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:** As the property owner, the Respondent had full control over the occurrence of the violation. Abandonment of USTs is expressly prohibited by 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 |
|--------------|-----------------|----------------------------------|

| 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 |