

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: The University of Rhode Island
Rhode Island Department of Administration**

FILE NO.: OCI-UST-18-37-01277

AMENDED 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 the DEM's jurisdiction.

B. Facts

- (1) The property is located at 60 Tootell Road in the Town of South Kingstown, Rhode Island (the “Property”). The Property includes a garage and a motor fuel filling station (the "Facility").
- (2) The University of Rhode Island (“URI”) owns the Property.
- (3) The Department of Administration (“DOA”) operates the Facility.
- (4) Underground storage tanks (“USTs” or “tanks”) are located on the Property, which tanks are used for storage of petroleum products or hazardous materials and which are subject to the Rhode Island Code of Regulations titled *Rules and Regulations for Underground Storage Facilities Used for Regulated Substances and Hazardous Materials (250-RICR-140-25-1)* (the “UST Regulations”).
- (5) The Facility is registered with the DEM and is identified as UST Facility No. 01277.
- (6) The USTs are registered with the DEM as follows:

UST ID No.	Date Installed	Capacity	Product Stored
004	October 1992	12,000 gallons	Gasoline
005	October 1992	12,000 gallons	Diesel

- (7) The product pipelines (the “Piping”) for the USTs are double-walled; however, as presently configured, it is not possible to test the Piping for tightness.

- (8) On 14 March 2014, the DEM received a letter from the DOA. The letter stated that the DOA intended to remove the Piping in fiscal year 2015.
- (9) On 22 April 2014, the DEM issued a letter to the DOA requiring permanent closure of the Piping by the end of fiscal year 2015.
- (10) On 28 November 2017, the DEM notified the DOA that the Piping must be removed by 22 December 2017.
- (11) On 27 February 2018, the DEM inspected the Facility. The inspection revealed that the Piping was still in place and in operation.
- (12) On 10 December 2018, the DEM received electronic correspondence from the DOA regarding the status of the work to remove the piping. The correspondence stated that the DOA was working with Respondent.
- (13) On 24 January 2019, the DEM received electronic correspondence from Respondent. The correspondence stated that the current schedule is 1 July 2019 to submit the plans for the work to the DOA for bid.

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) **UST Regulations, Rule 8.09(A)(2) (recently amended to Part 1.10(G)(2)(b)1)** – requiring owners/operators of double-walled product pipelines to perform a test for tightness on the interstitial space after 20 years of installation and every 2 years thereafter.

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) **IMMEDIATELY upon receipt of the NOV**, remove the USTs from service and cease and desist from dispensing fuel from the USTs.
- (2) **Within 7 days of receipt of the NOV**, procure the services of a qualified contractor to evacuate the contents of the USTs and the Piping. The tanks shall be evacuated to 1 inch or less of liquid at the bottom of the tanks and the fill port for each tank shall be locked. Written verification of compliance shall be submitted to the DEM's Office of Compliance and Inspection ("OC&I").

- (3) **Within 45 days of receipt of the NOV**, submit a completed *Permanent Closure Application for USTs* to the DEM's Office of Waste Management (“OWM”) and, **with OWM’s consent and approval, complete the permanent closure of the Piping** in accordance with Part 1.15 of the UST Regulations.
- (4) **Within 30 days of the removal of the Piping**, complete and submit to the OWM a *Closure Assessment Report* (the “Closure Assessment”) in accordance with Part 1.15(D)(10) of the UST Regulations, the *UST Closure Assessment Guidelines*, October 1998, and Part 2.13 of the Rhode Island Code of Regulations titled *Oil Pollution Control Regulations (250-RICR-140-25-2)* (the “OPC Regulations”).
- (5) **Within 30 days of the removal of the Piping**, remove and properly dispose of any contaminated soil encountered during the closure and within 10 days of the soil disposal, submit documentation of disposal to the OWM, in accordance with Part 2.13 of the OPC Regulations.
- (6) If, after review of the Closure Assessment, the DEM determines that a Site Investigation (the “SI”) is required, complete the SI and submit a Site Investigation Report (the “SIR”) to the DEM in accordance with Part 1.14(H) of the UST Regulations within the time frame specified by the DEM.
- (7) If, after review of the SIR, the DEM determines that a Corrective Action Plan (the “CAP”) is required, complete a CAP in accordance with Part 1.14(H) of the UST Regulations within the time frame specified by the DEM. The CAP must be implemented in accordance with any 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:

\$1,918

- (2) The proposed administrative penalty is calculated pursuant to the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* and must be paid to the DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a check made payable to the “General Treasury - Water & Air Protection Program Account,” and shall be forwarded to the DEM’s Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against Respondents 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.

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 the 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, Suite 350
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 Part 1.7(B) of the Rhode Island Code of Regulations titled *Rules and Regulations for the Administrative Adjudication Division (250-RICR-10-00-1)*.

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

Tricia Quest, 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 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 regarding 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) 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) Tricia Quest of 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 F above.

FOR THE DIRECTOR

By: _____
David E. Chopy, Administrator
Office of Compliance and Inspection

Dated: _____

CERTIFICATION

I hereby certify that on the _____ day of _____
the within Notice of Violation was forwarded to:

The University of Rhode Island
c/o Jerome Sideo, Director, Facilities Operations
Sherman Building
60 Tootel Road
Kingston, RI 02881

Rhode Island Department of Administration
c/o Marco Schiappa, Assistant Director Capital Projects
One Capitol Hill
DCAMM
Providence, RI 02908

Hall 35 Campus Avenue, Kingston, R.I. 02881

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST

File No.: OCI-UST-18-37-01277

Respondents: The University of Rhode Island and Rhode Island Department of Administration

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) – Piping Testing	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,500	2 pipelines with two missed tests each	\$1,500
<i>SUB-TOTAL</i>					\$1,500

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

ADMINISTRATIVE PENALTY SUMMARY (continued)

ECONOMIC BENEFIT FROM NON-COMPLIANCE		
<small>COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT COMPLY. 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.</small>		
<i>DESCRIPTION OF BENEFIT</i>	<i>CALCULATION</i>	<i>AMOUNT</i>
Failing to test the Piping for tightness. The economic benefit of non-compliance was determined by using an EPA computer model titled <i>BEN</i> that performs a detailed economic analysis. The dates, dollar amounts and values used in this analysis are listed in this table.	<ul style="list-style-type: none"> ▪ Profit Status ▪ Filing Status ▪ Initial Capital Investment ▪ One-time Non-depreciable Expense ▪ First Month of Noncompliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	Not for profit \$406 December 2017 15 May 2019 1 May 2019 4.1%
<i>SUB-TOTAL</i>		\$418

COST RECOVERY
<small>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.</small>
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 = \$1,918

PENALTY MATRIX WORKSHEET

CITATION: Piping Testing
 VIOLATION NO.: C (1)

TYPE		
_____ TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> X </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	_____ 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 Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)*.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents failed to have the Piping tested for tightness by a DEM-licensed tightness tester. Failure to comply reduces the likelihood of detecting or preventing releases of the regulated substance to the environment and the resultant threats to groundwater resources and public health and safety.
- (2) **Environmental conditions:** The Facility is located in a developed area with potential vapor receptors including institutional structures and underground utilities. The Facility is located in a GAA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment, and which are located in wellhead protection areas for community water supply wells, groundwater reservoirs and portions of their recharge areas and groundwater dependent areas. The Facility is located in the wellhead protection area for a community water supply well, in a groundwater recharge area, in a sole source aquifer and within 330 feet of a groundwater reservoir. The USTs are installed within 460 feet of a freshwater stream that is a tributary of White Horn Brook. The Facility is located in the Chipuxet River – Pawcatuck River watershed.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **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 can cause significant soil and groundwater contamination if released to the environment. Certain petroleum constituents are potentially harmful to human health and safety and the environment. Benzene, a component of gasoline, is a known carcinogen.
- (5) **Duration of the violation:** Approximately 6 ½ years – the tests should have been completed in October 2012 and every 2 years thereafter. The DEM is only assessing a penalty for the time beginning after 22 December 2017 when the DEM required the Piping to be permanently closed.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.

(continued)

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** Respondents failed to take reasonable and appropriate steps to prevent and/or mitigate the non-compliance by permanently closing the Piping. The DEM issued DOA a written notice on 28 November 2017 informing the DOA of the required actions to comply with the law and the UST Regulations. On 24 January 2019, the DEM received electronic correspondence from URI's agent regarding the status of the work to remove the Piping. The correspondence stated that the schedule to submit the project to the DOA for advertising for bid is 1 July 2019.
- (8) **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.
- (9) **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 Respondents for its failure to comply with the requirements set forth in the UST Regulations. Respondents, as owner and operator of the Facility, had full control over the occurrence of the violation.
- (10) **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