

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Wickbay Properties, Inc.

FILE NO.: UST 2010-00473

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

On 28 May 2010 and 16 August 2010, DEM issued informal written notices to the Respondent for the violations. The notices required that specific actions be taken to correct the violations. On 14 April 2011 a DEM inspector met with the Respondent's agents at the facility and discussed the actions necessary to correct the violations. The Respondent has failed to correct the violations.

C. Facts

- (1) The subject property is located at 65 Reynolds Street in the town of North Kingstown, Rhode Island, Assessor's Plat 91, Lot 142 (the “Property”).
- (2) The Property includes a marina and three underground storage tanks (“USTs”) collectively (the “Facility”), which USTs are used for storage of petroleum products.
- (3) Respondent owns the Property.
- (4) Respondent operates the Facility.
- (5) The Facility is subject to DEM's Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials, as amended (the “UST Regulations”).
- (6) The Facility is registered with DEM in accordance with Section 6.00 of the UST Regulations and is identified as UST Facility No. 00473.
- (7) The USTs are registered with DEM as follows:

UST ID No.	Date Installed	Capacity	Product Stored
004	12 August 1988	6,000 gallons	Diesel Fuel
005	11 August 1988	6,000 gallons	Gasoline
008	1980	1,000 gallons	No. 2 Fuel Oil

- (8) DEM inspected the Facility on 22 April 2010 and 14 April 2011. The inspections revealed that the Respondent failed to compile and maintain inventory control records for UST Nos. 004 and 005 that were consistent with the requirements of Rules 8.08(B)(3) and 11.03 of the UST Regulations.
- (9) On 8 June 2011, DEM received copies of Respondent's inventory control records for the month of April 2011. DEM's review of the records revealed that Respondent was still not complying with the inventory control record-keeping requirements set forth in Rules 8.08(B)(3) and 11.03 of the UST Regulations.
- (10) As of the date of this Notice of Violation ("NOV"), the Respondent has failed to comply with DEM's 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) **DEM's UST Regulations, Rules 8.08(B)(3) and 11.03** – requiring the owner/operator to compile and maintain inventory control records for USTs.

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 **within sixty (60) days of receipt of this NOV** submit to the DEM - Office of Compliance and Inspection written verification that you are now in compliance with the inventory control requirements for UST Nos. 004 and 005, as set forth in Rules 8.08(B)(3), 11.02(B)(5) and 11.03 of the UST Regulations.

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:

Six Thousand Two Hundred and Fifty Dollars (\$6,250.00)

- (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 check 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 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
One Capitol Hill, Second 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
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 town of North Kingstown, 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 Joseph J. LoBianco (or if you are represented by an attorney, please have your attorney contact) at the DEM - Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey D'Amadio 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:

Wickbay Properties, Inc.
c/o John D. Brewer, Jr., Registered Agent
12 Reynolds Street
North Kingstown, RI 02852

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST

File No.: UST 2010 – 00473

Respondent: Wickbay Properties, 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) – Failure to compile and maintain compliant inventory control records	Type II (\$ 12,500 Max. Penalty)*	Major	\$6,250	1 violation	\$6,250.00
SUB-TOTAL					\$6,250.00

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

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$6,250.00

PENALTY MATRIX WORKSHEET

CITATION: Failure to compile and maintain compliant inventory control records
 VIOLATION NO.: D (1)

TYPE		
<u> </u> 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.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p>FACTORS CONSIDERED:</p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondent failed to compile inventory control records for UST Nos. 004 and 005, consistent with the requirements of Rules 8.08(B)(3) and 11.03 of the UST Regulations. Inventory control is an important and required component of leak detection programs at UST facilities. Failure to perform inventory control would presumably reduce the likelihood of detecting a release from a UST system.</p> <p>(B) Environmental conditions: The facility is located in a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. The USTs are located within 100 feet of Wickford Cove.</p> <p>(C) Amount of the pollutant: Not relevant.</p> <p>(D) 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 are capable of causing 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.</p> <p>(E) Duration of the violation: Respondent has been non-compliant for at least four years.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent the non-compliance by compiling and maintaining inventory control records for UST Nos. 004 and 005. Respondent failed to mitigate the non-compliance despite receiving written notices and verbal direction from DEM requiring that it 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:** The Respondent was previously cited for violations of the UST Regulations in a Notice of Violation issued in 2003 and a Letter of Non-Compliance issued on 26 December 2006.
- (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:** Negligence is attributable to Respondent for its failure to comply with the requirements set forth in Regulation Nos. 8.08(B)(3) and 11.03 of the UST Regulations. The inventory control requirements are clearly established in the UST Regulations. Respondent, as owner and operator of the facility, had complete control over the occurrence of the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

<u> X </u> MAJOR	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 \$6,250	\$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	\$250 to \$1,250