

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: XPO LAND HOLDINGS, LLC
XPO Logistics Freight, Inc.**

FILE NO.: OCI-UST-20-24-18926

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. Facts

- (1) The subject property is located at 15 Southern Industrial Drive, Assessor’s Plat 36/3, Lot 126 in the City of Cranston, Rhode Island (the "Property"). The Property includes a motor fuel storage and dispensing system and a warehouse/office building (the “Facility”).
- (2) Respondent XPO LAND HOLDINGS, LLC owns the Property.
- (3) Respondent XPO Logistics Freight, Inc. operates the Facility.
- (4) Underground storage tanks (“USTs”) are located on the Property, which tanks are used for storage of petroleum products 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 DEM and is identified as UST Facility No. 18926.
- (6) Part 1.10(C) of the UST Regulations titled “Facility Compliance – Environmental Results Program” or “ERP” requires that UST owners/operators conduct inspections and complete a *Compliance Certification Checklist and Forms Booklet for Underground Storage Tank Facilities* and any necessary *Return to Compliance Plans* (“Compliance Certification Forms”) and submit the completed Compliance Certification Forms to DEM within the time frame specified by DEM.

- (7) On or about 11 March 2019, DEM sent written notification to all registered UST owners/operators to remind them of the requirement to comply with the ERP. UST owners/operators were required to complete and submit the latest round of Compliance Certification Forms to DEM on or before 30 June 2019.
- (8) On or about 10 July 2019, DEM sent a second written notice to all non-compliant registered UST owners/operators to remind them of the requirement to comply with the ERP. The non-compliant UST owners/operators were provided a second opportunity to complete and submit the required Compliance Certification Forms to DEM on or before 31 July 2019.
- (9) On 11 February 2020, DEM issued a *Notice of Intent to Enforce* (“NIE”) by certified mail to Respondents. The NIE required Respondents to inspect the Facility and complete and submit the Compliance Certification Forms to DEM within 15 days of receipt of the NIE. The NIE was delivered to Respondents on 18 February 2020.
- (10) On 9 March 2020, DEM received Compliance Certification Forms for the Facility, which were prepared by Tanknology, Inc. on behalf of Respondents. DEM’s review of the forms revealed that they were not completed in their entirety, that they were not signed by the inspector and that they were not certified by representatives of the owner and operator.
- (11) On 22 April 2020, DEM sent electronic correspondence to Mr. Jeff Sexten of XPO Logistics Freight, Inc. to notify him that the Compliance Certification Forms were deficient. Mr. Sexten was also notified that Respondents were required to submit fully-completed Compliance Certification Forms to DEM.
- (12) As of the date of this *Notice of Violation* (“NOV”), Respondents have not submitted properly completed Compliance Certification Forms to DEM.

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, Part 1.10(C)(1)(c)** – requiring UST owners/operators to inspect their facility and complete and submit the Compliance Certification Forms within the time frame specified by DEM.

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, **within 30 days of receipt of the NOV**, submit fully-completed Compliance Certification Forms to DEM in accordance with Part 1.10(C)(1)(c) of the UST Regulations.

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:

\$3,000

- (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 DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a certified check, cashier's check, or money order made payable to the "General Treasury - Water & Air Protection Program" and shall be forwarded to 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 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 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 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, Room 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:
- 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 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) Joseph J. LoBianco of DEM's Office of Legal Services at (401) 222-6607, Ext 2302. All other inquiries should be directed to Tracey Tyrrell of 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:

XPO LAND HOLDINGS, LLC
c/o Registered Agent Solutions, Inc., Resident Agent
222 Jefferson Boulevard, Suite 200
Warwick, RI 02888

XPO Logistics Freight, Inc.
c/o Registered Agent Solutions, Inc., Registered Agent
222 Jefferson Boulevard, Suite 200
Warwick, RI 02888

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST
 File No.: OCI-UST-20-24-18926
 Respondents: XPO LAND HOLDINGS, LLC and XPO Logistics Freight, 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	
C (1) – ERP	Type II <i>(\$12,500 Max. Penalty) *</i>	Moderate	\$3,000	1 violation	\$3,000
SUB-TOTAL					\$3,000

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

ECONOMIC BENEFIT FROM NON-COMPLIANCE
<p>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:</p> <ul style="list-style-type: none"> - THERE IS NO IDENTIFIABLE BENEFIT FROM NON-COMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED.
<p>A review of the record in this matter has revealed that Respondents have either enjoyed no identifiable benefit from the non-compliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.</p>

COST RECOVERY
<p>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.</p>
<p>A review of the record in this matter has revealed that 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.</p>

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$3,000

PENALTY MATRIX WORKSHEET

CITATION: ERP
 VIOLATION NO.: C (1)

TYPE		
<p style="text-align: center;">___ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">X TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents failed to submit completed Compliance Certification Forms to DEM. The UST Regulations require all UST owners/operators to certify their compliance with the UST Regulations by completing and submitting the Compliance Certification Forms within the time frame specified by DEM. (2) Environmental conditions: Considered, but not utilized for this calculation. (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 public health hazard (due to the potential inhalation of benzene) and a 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. (5) Duration of the violation: Approximately 1 year – the Compliance Certification Forms were due on or before 30 June 2019. (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 noncompliance:** Respondents failed to prevent the non-compliance by submitting completed Compliance Certification Forms to DEM. In response to the NIE, Respondents did submit Compliance Certification Forms to DEM, however, DEM review revealed that they were incomplete, not signed by the inspector and not certified by Respondents.
- (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:** Respondents, as owners and operators of the Property and/or Facility, had full control over the occurrence of the violation. DEM issued a letter to the UST owners/operators in March 2019 requiring the owners/operators to comply with the ERP compliance certification rule and directing the owners/operators to DEM’s website to obtain the necessary forms and workbooks. DEM issued the NIE to Respondents on 11 February 2020 requiring Respondents to submit completed Compliance Certification Forms to DEM within 15 days.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u> </u> MAJOR	<u> X </u> 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	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250 \$3,000	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250