

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: COLBEA ENTERPRISES, L.L.C.  
J ENTERPRISES, INC.**

**FILE NO.: UST 2017-27-00789**

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

On 5 May 2017, the DEM issued a Letter of Non-Compliance (“LNC”) to Respondents for the violation that is the subject of this Notice of Violation (“NOV”). The LNC required Respondents to take specific actions to correct the violation. On 10 May 2017, the LNC was delivered to Respondents. As of the date of the NOV, Respondents have failed to correct the violation as required in the LNC.

C. Facts

- (1) The property is located at 1020 Narragansett Boulevard, Assessor’s Plat 87, Lot 1064, in the city of Providence (the “Property”). The Property includes a convenience store and a motor fuel storage and dispensing system (the “Facility”).
- (2) COLBEA ENTERPRISES, L.L.C. owns the Property.
- (3) J. ENTERPRISES, INC. operates the Facility.
- (4) Underground storage tanks (“USTs” or “tanks”) are located on the Property, which tanks are 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”).
- (5) The Facility is registered with the DEM and is identified as UST Facility No. 00789.

(6) The USTs are registered with the DEM for the Facility as follows:

UST ID No.	Date Installed	Capacity	Product Stored
002	14 June 1990	12,000 gallons	Gasoline
004	13 June 1990	12,000 gallons	Gasoline
006	13 June 1990	12,000 gallons	Gasoline

(7) On 3 May 2017, the DEM inspected the Facility. The inspection revealed that written verification that the secondary product pipelines for the USTs (the “Pipelines”) were tested for tightness by a DEM-licensed tightness tester during 2010, 2012, 2014 and 2016 was not available. Tightness test reports for the Pipelines for these years have not been received by the DEM.

(8) As of the date of the NOV, Respondents have failed to comply with the DEM’s UST Regulations for the issue described in Section C(7) above.

D. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that Respondents have violated the following regulation:

(1) **DEM’s UST Regulations, Rule 8.09(A)(2)(a)** - requiring tightness testing of secondary product pipelines at 20 years of age and every two years thereafter.

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 **by 22 December 2017** permanently close the Pipelines and install new double-walled product pipelines in full compliance with Sections 9.00 and 10.00 of the DEM’s UST Regulations. Prior written notification to and approval by the Director of the DEM is required.

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:

**\$1,750**

(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 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 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 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 Director determines that reasonable efforts have been made to comply promptly with the 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's 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 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  
One Capitol Hill, 2<sup>ND</sup> 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 Part 1.7(B) of the DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters*.
- (2) A copy of each request for hearing must also be forwarded to:

Christina A. Hoefsmit, Esq.  
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 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 with regard to 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) An original signed copy of the 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) 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) Christina A. Hoefsmit at the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey Tyrrell at 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 G above.

FOR THE DIRECTOR

By: \_\_\_\_\_  
David E. Chopy, Chief  
Office of Compliance and Inspection

Dated: \_\_\_\_\_

CERTIFICATION

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

COLBEA ENTERPRISES, L.L.C.  
c/o Adler Pollock & Sheehan P.C., Registered Agent  
One Citizens Plaza, 8<sup>TH</sup> Floor  
Providence, RI 02903

J ENTERPRISES, INC.  
c/o Leonard M. Cordeiro, Registered Agent  
35 Highland Avenue  
East Providence, RI 02914

by Certified Mail.

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<b>ADMINISTRATIVE PENALTY SUMMARY</b>	
Program:	OFFICE OF COMPLIANCE AND INSPECTION, UST COMPLIANCE
File No.:	UST 2017-27-00789
Respondents:	COLBEA ENTERPRISES, L.L.C. and J ENTERPRISES, INC.

<b>GRAVITY OF VIOLATION</b>					
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 Test Pipelines	Type II (\$12,500 Max. Penalty)*	Minor	\$1,750	1 violation	\$1,750
<b>SUB-TOTAL</b>					<b>\$1,750</b>

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

<b>ECONOMIC BENEFIT FROM NONCOMPLIANCE</b>
<p>COSTS OF COMPLIANCE, EQUIPMENT, O&amp;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:</p> <ul style="list-style-type: none"> <li>- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR</li> <li>- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.</li> </ul>
<p>A review of the record in this matter has revealed that Respondent have either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.</p>

<b>COST RECOVERY</b>
<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 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.</p>

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$1,750**

**PENALTY MATRIX WORKSHEET**

CITATION:	Failure To Test Pipelines
VIOLATION NO.:	D (1)

**TYPE**

       **TYPE I**  
DIRECTLY related to protecting health, safety, welfare or environment.

  **X**   **TYPE II**  
INDIRECTLY related to protecting health, safety, welfare or environment.

       **TYPE III**  
INCIDENTAL 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:** Respondents failed to retain a DEM-licensed tightness tester to test the secondary product pipelines for the USTs. Biennial tightness testing of the secondary product pipelines is of significant importance to the regulatory program. This test, which is required after the pipelines reach 20 years of age, verifies whether the secondary product pipelines are capable of containing releases from the pressurized primary pipelines. Failure to comply could allow a compromised or faulty pipeline to remain in use and result in a release of petroleum product to the environment.
- (B) **Environmental conditions:** The Facility borders an environmental justice area and is located in a densely developed area with numerous potential vapor receptors including residential structures, commercial structures and underground utilities. The Facility is located in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. The Facility is located within 1,300 feet of the Providence River and within its 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 potential public health hazard (due to potential inhalation of benzene) and a potential public safety hazard (due to the potential for explosion). Gasoline is capable of causing significant soil and groundwater contamination if released to the environment.
- (E) **Duration of the violation:** Approximately 7 years - 14 June 2010 to the present. The penalty is only being assessed for the non-compliance since 31 December 2016.
- (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:** Respondents failed to prevent the non-compliance by having the secondary product pipelines tested for tightness during 2010, 2012, 2014 and 2016. Respondents have been utilizing electronic line leak detectors to perform monthly 0.1 gallon-per-hour leak tests for the primary product pipelines in an effort to mitigate the non-compliance. Respondents failed, however, to fully mitigate the non-compliance despite receiving the LNC from the DEM, which required that they 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:** Negligence is attributable to Respondents for the failure to comply with the requirements set forth in Rule 8.09(A)(2) of the DEM's UST Regulations. As owners and operators of the Facility, Respondents had full control over the occurrence of the violation. The secondary product pipeline tightness testing requirements are clearly established in 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.

<b>MAJOR</b>	<b>MODERATE</b>	<u>  <b>X</b>  </u> <b>MINOR</b>
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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	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	<b>MODERATE</b>	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250	\$1,250 to \$2,500 <b>\$1,750</b>	\$250 to \$1,250