

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: TA OPERATING LLC

FILE NO.: OCI-UST-17-18

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 849 Victory Highway in the town of West Greenwich (the “Property”).
- (2) Respondent owns the Property.
- (3) Underground storage tanks (“USTs” or “tanks”) are located on the Property, which tanks are used for storage of petroleum products.
- (4) On 26 September 2014, the DEM received a *Release Characterization Report and Piping Upgrade Completion Report* for the Property, which was prepared by SAGE Environmental, Inc. (“Sage”) on behalf of Respondent. The report stated the following:
 - (a) Approximately 44 cubic yards of diesel and gasoline fuel impacted soils were excavated and stockpiled on-site atop and covered by polyethylene sheeting (the “Contaminated Soil”);
 - (b) On 3 June 2014, Sage traveled to the Property to inspect the Contaminated Soil and found that the Contaminated Soil had been removed;
 - (c) Discussions with Respondent’s agents and representatives of contractors that worked on the Property revealed that some or all of the Contaminated Soil may have been used on the Property and that up to 2 tons of the Contaminated Soil may have been transported off of the Property; and
 - (d) The final disposition of the Contaminated Soil could not be determined.

- (5) On 11 October 2016, the DEM issued a Letter of Non-Compliance (“LNC”) to Respondent. The LNC required Respondent to provide documents showing that the Contaminated Soil was properly disposed.
- (6) By letter dated 14 October 2016, Respondent notified the DEM that it was unable to find any information to comply with the LNC.

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 *Oil Pollution Control Regulations* (the “OPC Regulations”), Section 13(d)** – requiring responsible parties to submit documentation to the DEM within 10 days of the removal of contaminated soil showing when and where the soil was disposed.

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 10 days of receipt of this Notice of Violation (“NOV”)**, submit to the DEM’s Office of Compliance and Inspection documentation of when the Contaminated Soil was removed from the Property and where the Contaminated Soil was disposed.

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:

\$6,250

- (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’s Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against Respondent 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.

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 0 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, 4TH 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:

Joseph J. LoBianco, 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 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) 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 at 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, Chief
Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

TA OPERATING LLC
c/o Corporation Service Company, Registered Agent
222 Jefferson Boulevard, Suite 200
Warwick, RI 02888

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY	
Program:	OFFICE OF COMPLIANCE AND INSPECTION - Oil Pollution Control
File No.:	OCI-UST-17-18
Respondent:	TA OPERATING LLC

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) – Failure To Provide Documents Of Proper Disposal Of Petroleum Contaminated Soil	Type I (\$25,000 Max. Penalty)*	Moderate	\$6,250	1 violation	\$6,250
SUB-TOTAL					\$6,250

*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 ARE IN COMPLIANCE. 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 Respondent has 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 = \$6,250

PENALTY MATRIX WORKSHEET

CITATION:	Failure To Provide Documents Of Proper Disposal Of Petroleum Contaminated Soil
VIOLATION NO:	C (1)

TYPE

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

 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:** Respondent failed to provide to the DEM documents showing when and where petroleum contaminated soil was disposed. Verifying the lawful disposal or recycling of petroleum-contaminated soil is of primary importance to the regulatory program, especially when there is a potential for impacts to drinking water supplies. Failure to comply could result in improper disposal or re-use of the soil, which could result in contamination of drinking water supplies or direct or indirect human exposure.
- (B) **Environmental conditions:** The Property is located in a GAA groundwater classification zone, which are groundwater resources considered to be suitable for drinking water use without treatment and which are located in groundwater reservoirs and portions of their recharge areas, wellhead protection areas for community water supply wells and in groundwater dependent areas. The Property is located in wellhead protection areas for a community water supply well and for four non-community water supply wells. The travel center and restaurant on the Property and other commercial and residential properties in the vicinity rely on private drinking water supply wells. The Property abuts a freshwater wetland to the south and lies within the Big River and Upper Wood River watersheds.
- (C) **Amount of the pollutant:** Approximately 44 cubic yards of petroleum contaminated soil was excavated from the Property.
- (D) **Toxicity or nature of the pollutant:** 18 of the soil samples had volatile organic compound concentrations that exceeded the 20 part per million ("ppm") criterion established by the DEM. The concentrations ranged from 21 ppm to as high as 349.6 ppm. Gasoline and diesel fuel are capable of causing significant adverse impacts to subsurface soils and groundwater if released to the environment. Benzene, a component of gasoline, is a known carcinogen.
- (E) **Duration of the violation:** Approximately 3¼ years - May 2014 to the present. The UST upgrade project was completed around March 2014 and the petroleum-contaminated soil was required to have been removed from the Property within 30 days of excavation. Documentation of disposal was required to have been submitted to the DEM within 10 days of disposal.
- (F) **Areal extent of the violation:** Unknown. At this time, the disposal site or sites are unknown. Sage reported that some or all of the petroleum contaminated soil may have been used on the Property.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** Respondent failed to prevent the non-compliance by submitting documentation of proper disposal to the DEM within 10 days of the date that the soil was removed from the Property. Respondent has failed to mitigate the non-compliance, despite receiving the LNC from the DEM, which required 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:** 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:** Respondent, as the owner of the Property, had complete control over the occurrence of the violation. Negligence is attributable to Respondent for the failure to comply immediately with the requirements set forth in the DEM's OPC 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	<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 \$6,250	\$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