

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: D & P Holdings, LLC
VALLY AUTO SERVICE, INC.**

FILE NO.: UST 2015-23-01327

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. Administrative History

On 2 June 2015, the DEM issued a Notice of Intent to Enforce ("NIE") to the Respondents by certified mail regarding the violations that are the subject of this Notice of Violation ("NOV"). The NIE required that the Respondents take specific actions to address the violations. On 8 June 2015, the NIE was delivered to the Respondents. As of the date of the NOV, the Respondents have failed to fully comply with the NIE.

C. Facts

- (1) The property is located at 517 Warren Avenue, Assessor's Map 307, Block 9, Parcel 1 in the city of East Providence, Rhode Island (the "Property"). The Property includes a former gasoline filling station and underground storage tanks ("USTs") that were used to store petroleum products (the "Facility").
- (2) D & P Holdings, LLC owns the Property.
- (3) VALLY AUTO SERVICE, INC. ("Vally Auto") operated the Facility.
- (4) The USTs 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 No. 01327.

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

UST ID No.	Capacity	Product Stored
002	8000 gallons	Gasoline
004	8000 gallons	Gasoline
006	8000 gallons	Diesel
007	500 gallons	Heating Oil

- (7) On 9 October 2013, 5 June 2014, and 6 August 2014, the DEM received written notification from Patricio Pinto, the President of Vally Auto, that the Facility was no longer in operation. Mr. Pinto stated that the reason is that he isn't making a profit.
- (8) On 16 March 2015, the DEM inspected the Facility. The inspection revealed that the Facility appeared to be abandoned.
- (9) On 11 June 2015, the DEM received written notification from Mr. Pinto that the Facility was no longer in operation. Mr. Pinto included with his notification the following information:
- (a) The USTs and lines were last tested for tightness in 2013; and
 - (b) On 15 March 2015 the USTs were pumped of all petroleum products to less than 1 inch of product.
- (10) As of the date of the NOV, the Respondents have not complied with the DEM's UST Regulations requiring permanent closure of abandoned tanks.

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, Rule 13.02(A)** – prohibiting the abandonment of USTs.
- (2) **DEM's UST Regulations, Rule 13.05** – requiring the permanent closure of any USTs that have been removed from service for more than 180 days or are abandoned.

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:

- (1) **Within 90 days of receipt of the NOV**, submit a permanent closure application to the DEM – Office of Waste Management ("OWM") UST Management Program at 235 Promenade Street, Suite 380, Providence, RI 02908-5767 and, with the OWM's consent and approval, complete the removal of the USTs in full compliance with Section 13.00 of the DEM's UST Regulations and Section 13.00 of the DEM's *Oil Pollution Control Regulations* (the "OPC Regulations").
- (2) **Within 30 days of the removal of the USTs**, submit to the OWM a *Closure Assessment Report* prepared by a qualified environmental consultant, in accordance with Section 13.11 of the DEM's UST Regulations, the DEM's *UST Closure Assessment Guidelines* and Section 13.00 of the DEM's OPC Regulations.
- (3) **Within 30 days of the removal of the USTs**, remove and properly dispose of any contaminated soil excavated during the tank closure and, within 10 days of the soil disposal, submit documentation of disposal to the OWM, in accordance with Section 13 of the DEM's OPC Regulations.
- (4) **Within 60 days of receipt of written notification from the DEM to conduct a site investigation of the Property**, retain a qualified consultant to perform the site investigation and submit a *Site Investigation Report* to the OWM within the time frame specified by the DEM in accordance with Rules 12.08, 12.09 and 12.10 of the DEM's UST Regulations.
- (5) **Within 60 days of receipt of written notification from the DEM to submit a Corrective Action Plan ("CAP")**, retain a qualified consultant to submit a proposed CAP to the DEM in accordance with Rules 12.12 through 12.18 of the DEM's UST Regulations. The CAP shall be implemented in accordance with an order of approval issued by the DEM.

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:

\$9,299

- (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 the 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.

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 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, 2ND 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'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:

Tricia Quest, 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 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 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 (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 East 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) Tricia Quest 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 G above.

FOR THE DIRECTOR

By: _____
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:

D & P Holdings, LLC
c/o Patricio Pinto, Registered Agent
517 Warren Avenue
East Providence, RI 02914

VALLY AUTO SERVICE, INC.
c/o Dilma Santos Pinto, Registered Agent
517 Warren Avenue
East Providence, RI 02914

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY	
Program:	OFFICE OF COMPLIANCE AND INSPECTION, UST
File No.:	UST 2014-23-01327
Respondents:	D & P Holdings, LLC and VALLY AUTO SERVICE, 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) and (2) – Abandonment of USTs	Type I (\$25,000 Max. Penalty)*	Moderate	\$7,500	1 violation	\$7,500
SUB-TOTAL					\$7,500

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

ECONOMIC BENEFIT FROM NONCOMPLIANCE			
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:			
- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR			
- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.			
DESCRIPTION OF BENEFIT	CALCULATION		AMOUNT
Economic benefit of noncompliance identified by the DEM for failing to permanently close the facility. The expense associated with the cost of permanently closing the facility was based on the average cost to remove multiple USTs at a facility. The economic benefit gained by the instances of noncompliance was calculated by utilizing an EPA computer model entitled "BEN" that performs a detailed economic analysis. The dates, dollar amounts and values used in this analysis are as listed in this table.	Profit Status	C-Corporation	\$1,799
	Filing Status	C-Corporation	
	Initial Capital Investment	\$0	
	One Time Non Depreciable Expense	\$25,000	
	First Month of Noncompliance	1 May 2014	
	Compliance Date	1 January 2016	
	Penalty Due Date	1 January 2016	
	Useful Life of Pollution Control Equipment	N/A	
	Annual Inflation Rate	PCI	
	Discount Compound Rate	7.5%	
SUB-TOTAL			\$1,799

ADMINISTRATIVE PENALTY SUMMARY *(continued)*

COST RECOVERY

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.

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 = \$9,299

PENALTY MATRIX WORKSHEET

CITATION: Abandonment of USTs

VIOLATION Nos.: D (1) and (2)

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:** The Respondents removed the USTs from service and abandoned them. Abandoned USTs present a threat to the environment if persons attempt to re-use them after an extended period of abandonment. Abandonment of UST systems is strictly prohibited by the DEM's UST Regulations.
- (B) **Environmental conditions:** The property is located in a densely developed area with numerous potential vapor receptors including residential structures, commercial structures and underground utilities. The property is located in a GB groundwater classification zone, which are groundwater resources designated to be unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells proximate to the property. The property is located in the Providence River 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 public health hazard (due to the potential inhalation of benzene vapors) and a potential public safety hazard (due to the potential for explosion). Petroleum products are capable of causing significant soil and groundwater contamination if released to the environment.
- (E) **Duration of the violation:** Full duration unknown - at least 1 ½ years. The Respondents have maintained the USTs in an abandoned state since at least May 2014.
- (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 non-compliance:** The Respondents failed to prevent the non-compliance by permanently closing the USTs within 180 days of the date that they were removed from service. The Respondents stated that the USTs were placed into a compliant temporary closure, however, the Respondents failed to obtain DEM's approval for temporary closure of the USTs. The Respondents have taken no further action to mitigate the non-compliance.
- (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 Respondents were previously cited by the DEM for violations of the DEM's UST Regulations in a Notice of Intent to Enforce dated 15 April 2014, a Notice of Violation dated 20 February 2014 and a Notice of Delivery Prohibition dated 20 March 2013.
- (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:** The Respondents had full control over the occurrence of the violation. Abandonment of USTs is expressly prohibited by the DEM's UST Regulations. The DEM provided the Respondents with written notification of the violation on multiple occasions.
- (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 \$7,500	\$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