

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: CV Holdings, LLC**

**FILE NO.: OCI-UST 22-4-LUST35110**

**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 (“Director” of “RIDEM”) has reasonable grounds to believe that the above-named party (“Respondent”) has violated certain statutes and/or administrative regulations under RIDEM's jurisdiction.

**B. ADMINISTRATIVE HISTORY**

On 16 September 2021, RIDEM issued a *Notice of Intent to Enforce* (“NIE”) to Respondent for the alleged violations that are the subject of this *Notice of Violation* (“NOV”). The NIE required specific actions to correct the violations. On 20 September 2021, the NIE was delivered to Respondent. On 23 September 2021, RIDEM received electronic correspondence from Ryan Russo (“Russo”). Russo stated that prior to his purchase of the property he was provided a closure report form by the former property owner and the real estate agent and that he believed based on this report that all the issues were addressed. On 27 September 2021, RIDEM sent electronic correspondence to Russo that stated RIDEM approved the closure of the underground storage tanks on the property; however, the prior owner was required to investigate the existing subsurface petroleum contamination and perform any remedial actions required by RIDEM and that upon the transfer of the property, Respondent is now required to comply with those actions. As of the date of the NOV, Respondent has failed to comply with the NIE.

**C. FACTS**

- (1) The property is located at 1008 West Shore Road, Assessor’s Plat 333, Lot 284 in Warwick, Rhode Island (“Property”). The Property includes a commercial building and formerly included a motor fuel storage and dispensing system (“Facility”).
- (2) Respondent owns the Property, taking title on or about 25 August 2021.
- (3) Underground storage tanks (“USTs” or “tanks”) were installed on the Property, which tanks were used for storage of petroleum products and subject to Rhode Island’s *Rules and Regulations for Underground Storage Facilities Used for Regulated Substances and Hazardous Materials* (“UST Regulations”).
- (4) The Facility is registered with RIDEM and is identified as UST Facility No. 02150.

- (5) The USTs which were previously registered with RIDEM for the Facility as follows:

UST ID No.	Date Installed	Date Removed	Capacity	Product Stored
001	1965	15 September 1987	2,000 gallons	Gasoline
002	1965	15 September 1987	2,000 gallons	Gasoline
003	1965	17 September 1987	4,000 gallons	Gasoline
004	1965	17 September 1987	4,000 gallons	Gasoline
005	1965	15 September 1987	3,000 gallons	Gasoline
006	1965	17 September 1987	500 gallons	Used Oil
007	1965	15 September 1987	1,000 gallons	Diesel
008	1979	16 October 1987	2,000 gallons	Kerosene
009	October 1987	15 May 2013	4,000 gallons	Gasoline
010	October 1987	15 May 2013	4,000 gallons	Gasoline
011	October 1987	15 May 2013	2,000 gallons	Diesel
012	October 1987	14 May 2013	6,000 gallons	Gasoline
013	October 1987	14 May 2013	2,000 gallons	Kerosene
014	October 1987	14 May 2013	550 gallons	Gasoline

- (6) RIDEM was provided a Soil Excavation Report, dated 18 March 2014, prepared by Cardno ATC (“Cardno”) to document remedial activities they completed at the Facility on 30 May 2013 and 31 May 2013. Cardno reported, among other things, that:
- (a) 718.1 tons of petroleum contaminated soils were excavated from the Property and removed for disposal at a solid waste management facility.
  - (b) Laboratory analysis of 6 soil samples collected from the base and sidewalls of the excavation revealed concentrations of volatile organic compounds (“VOCs”) and total petroleum hydrocarbons (“TPH”) that exceeded the *Method One GA Soil Leachability Criteria* set forth in the State of Rhode Island’s *Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases* (“Remediation Regulations”).
  - (c) Laboratory analysis of 3 soil samples collected from beneath the former dispenser island revealed concentrations of benzene, toluene, ethylbenzene, xylenes, TPH and naphthalene that exceeded the *Method One GA Soil Leachability Criteria*.
  - (d) Petroleum impacted soil continues to extend an undetermined distance to or beneath West Shore Road, Stokes Street, the site building, and the adjacent property to the north of the site.
- (7) The Soil Excavation Report confirmed the Property’s classification by RIDEM as an active Leaking Underground Storage Tank (“LUST”) site, LUST Site No. 35110.

- (8) On 12 June 2021 and 22 July 2021, RIDEM inspected the Property. The inspection revealed that the commercial building was being renovated and the soil was being disturbed.
- (9) Respondent, as owner of the Property, is a responsible party pursuant to Part 1.5(A)(103) of the UST Regulations. Upon taking ownership of the Property, Respondent assumed responsibility and liability for investigation and remediation of the release that resulted in the LUST designation.
- (10) As of the date of the NOV, Respondent has not complied with the investigatory and remedial requirements set forth in the UST Regulations for owners of LUST sites.

#### D. VIOLATION

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

- (1) **UST Regulations (250-RICR-140-25-1) [effective 20 November 2018 to Current], Part 1.14(B)(1) and Part 1.14(H)(3)** – requiring owners/operators of UST facilities to investigate and clean up any spills, leaks, or releases in accordance with Part 1.14 of the UST Regulations and all other applicable local, state, or federal statutes or regulations.

#### 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 7 days of receipt of the NOV**, submit to RIDEM’s Office of Compliance and Inspection (“OCI”) written verification that you have retained the services of a qualified environmental consultant (“Consultant”) to perform a site investigation, submit a *Site Investigation Report* (“SIR”) and develop remedial options for the soil and groundwater contamination on and off the Property in accordance with Part 1.14 (B) and Part 1.14(H) of the UST Regulations.
- (2) **Within 30 days of receipt of the NOV**, have the Consultant purge and obtain groundwater samples from the site groundwater monitoring wells identified as MW-1, MW-2, MW-5, and MW-6 in RIDEM’s letter dated 29 May 2007, which required semi-annual groundwater monitoring to be performed. These samples shall be submitted to a certified laboratory for analysis via *EPA Method 8260C*. The Consultant shall prepare a groundwater monitoring report and submit it to RIDEM’s Office of Land Revitalization & Sustainable Materials Management (“LRSMM”) **within 45 days of receipt of the NOV**. All groundwater monitoring reports shall be prepared and submitted to LRSMM in accordance with RIDEM’s *Guidelines for the Submission of Groundwater Monitoring Reports* and include a *RIDEM Groundwater Monitoring Report Cover Sheet*. If the groundwater monitoring wells no longer exist or cannot be sampled, then new groundwater monitoring wells shall be installed. The Consultant shall submit a scope-of-work plan for all proposed groundwater monitoring well installation (if required),

development and monitoring to LRSMM **within 14 days of receipt of the NOV and prior to the commencement of any work.**

- (3) **Within 90 days of receipt of the NOV**, submit the SIR prepared by the Consultant in accordance with Part 1.14(H)(7) and Part 1.14 (8) of the UST Regulations.
- (4) After review of the SIR, LRSMM may require the development of a *Corrective Action Plan* (“CAP”), which shall be prepared by the Consultant in accordance with Part 1.14(I)(3) and Part 1.14(I)(4) of the UST Regulations and submitted in accordance with a schedule to be established by LRSMM.
- (5) The CAP shall be implemented by Respondent in accordance with a RIDEM-approved schedule and an *Order of Approval* issued by RIDEM.
- (6) Notify LRSMM at least 48 hours prior to any excavation, well installation, repair, or replacement of equipment at the Facility so that a representative of RIDEM may be present.
- (7) Submit quarterly status reports of all investigatory, sampling, and remedial activities that take place at the Facility.
- (8) Continue operation of all investigatory and remedial procedures specified in the SIR and the CAP and continue submission of required status reports until RIDEM determines that the soils and/or groundwater located on and around the Facility have been adequately treated. RIDEM may require a period of monitoring to ensure that standards have been met. Continue submission of required quarterly status reports until such time that RIDEM issues written approval for termination of remedial activities at the Facility.

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:

**\$12,500**

- (2) The proposed administrative penalty is calculated pursuant to Rhode Island’s *Rules and Regulations for Assessment of Administrative Penalties* (250-RICR-130-00-1) (“Penalty Regulations”) and must be paid to RIDEM within 30 days of your receipt of the NOV. Penalty payments shall be by one of two methods:
  - (a) By certified check, cashier’s check, or money order made payable to the **General Treasury – Water and Air Protection Program** and forwarded to:

Administrator, RIDEM Office of Compliance and Inspection  
235 Promenade Street, Suite 220  
Providence, RI 02908-5767

- (b) By wire transfer in accordance with instructions provided by RIDEM.
- (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.
- (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 RIDEM 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 RIDEM'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 RIDEM'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  
RIDEM - Administrative Adjudication Division  
235 Promenade Street, Suite 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).
- (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 Rhode Island's *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:

Christina Hoefsmit, Esquire  
RIDEM - 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 RIDEM'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) An original signed copy of the NOV is being forwarded to the City of Warwick, Rhode Island, 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 Hoefsmit of RIDEM's Office of Legal Services at (401) 222-6607 or at [christina.hoefsmit@dem.ri.gov](mailto:christina.hoefsmit@dem.ri.gov). All other inquiries should be directed to Tracey Tyrrell of RIDEM's Office of Compliance and Inspection at (401) 222-1360, ext. 2777407 or at [tracey.tyrrell@dem.ri.gov](mailto:tracey.tyrrell@dem.ri.gov).

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, Administrator  
RIDEM Office of Compliance and Inspection

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

CERTIFICATION

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

CV Holdings, LLC  
c/o Carmine J. Dellena, Resident Agent  
700 Main Street  
East Greenwich, RI 02818

by Certified Mail.

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<b>ADMINISTRATIVE PENALTY SUMMARY</b>	
Program:	LUST
File No.:	OCI-UST-22-4-LUST 35110
Respondent:	CV Holdings, LLC

<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 investigate a release in accordance with the UST Regulations	Type I <i>(\$25,000 Max. Penalty) *</i>	Major	\$12,500	1 violation	\$12,500
<b><i>SUB-TOTAL</i></b>					<b>\$12,500</b>

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

<b>ECONOMIC BENEFIT FROM NON-COMPLIANCE</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 COMPLY. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:</p> <ul style="list-style-type: none"> <li>- THERE IS NO IDENTIFIABLE BENEFIT FROM NON-COMPLIANCE, 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 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>

<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 RIDEM 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 = \$12,500**



# PENALTY MATRIX WORKSHEET

CITATION: Failure to investigate a release in accordance with the UST Regulations  
 VIOLATION NO.: D (1)

TYPE		
<b><u> X </u> TYPE I</b> 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 Part 1.10(A)(1)(b) of the Penalty Regulations.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent failed to procure the services of a qualified environmental consultant to perform required investigatory and remedial actions for the release of petroleum products in accordance with the UST Regulations. The release investigation and remedial action requirements set forth in Part 1.14 of the UST Regulations are of prime importance to the regulatory program. Failure to comply could result in contamination of private and public drinking water supplies with hazardous compounds and other adverse impacts to public health and safety and the environment.
- (2) **Environmental conditions:** The Facility is in a densely developed area with numerous potential vapor receptors including residential structures, commercial structures, and underground utilities. The Facility is in a GA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment. Upon information and belief, there are no public or private drinking water supply wells proximate to the Facility. The Property is located within 750 feet of Providence River. The Facility is in Old Mill Creek/Narragansett Bay watershed. Soil and groundwater contamination from petroleum compounds has been discovered on and around the Property.
- (3) **Amount of the pollutant:** Laboratory analysis of soil samples collected from the base and sidewalls of the excavation area revealed concentrations of benzene, toluene, ethylbenzene, xylenes, total petroleum hydrocarbon, and naphthalene that exceeded the *Method One GA Soil Leachability Criteria* in Rhode Island's *Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases*.
- (4) **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, diesel, kerosene and used oil can cause 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 is a known human carcinogen.
- (5) **Duration of the violation:** Approximately 7 months – Respondent was required to submit the SIR by 20 November 2021.
- (6) **Areal extent of the violation:** The excavation area encompassed about 2,040 square feet of the Property and the petroleum contamination extended in every direction beyond the excavation area.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent and/or mitigate the non-compliance by submitting the SIR to RIDEM within 60 days of receipt of the NIE.
- (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:** Negligence is attributable to Respondent for the failure to comply with the UST Regulations. As owner of the Property and as a responsible party, Respondent had full control over the occurrence of the violation. The requirements and procedures for the investigation and remediation of releases are clearly established in the UST Regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<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	<b>MAJOR</b>	\$12,500 to \$25,000 <b>\$12,500</b>	\$6,250 to \$12,500	\$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