

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Cowesett Sun Service LLC
Bayco Enterprises, Inc.**

FILE NO.: OCI-UST-21-2-00641

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 “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 10 November 2020, DEM issued a letter by regular mail to Cowesett Sun Service LLC (“Cowesett”) for some of the alleged violations that are the subject of this *Notice of Violation* (“NOV”). DEM did not receive a response to the letter. On 8 December 2020, DEM issued a *Notice of Intent to Enforce* (“NIE”) to Respondents by certified mail for some of the alleged violations. The NIE required specific actions to correct the alleged violations. On 12 December 2020 and 14 December 2020, the NIE was delivered to Bayco Enterprises, Inc. (“Bayco”) and Cowesett, respectively. On 26 August 2021, DEM issued a letter by regular mail to Cowesett for additional violations that are the subject of the NOV. As of the date of the NOV, Respondents have failed to respond to or comply with the NIE or the letters.

C. Facts

- (1) The property is located at 128 Cowesett Avenue, Assessor’s Plat 13, Lot 552, in West Warwick, Rhode Island (“Property”). The Property includes a service station and a motor fuel storage and dispensing system (“Facility”).
- (2) Cowesett owns the Property.
- (3) Bayco 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 subject to Rhode Island’s *Rules and Regulations for Underground Storage Facilities Used for Regulated Substances and Hazardous Materials (250-RICR-140-25-1)* [effective 20 November 2018 to Current] (“UST Regulations”).

- (5) The Facility is registered with DEM and is identified as UST Facility No. 00641.
- (6) The USTs are registered with DEM as follows:

UST ID No.	Date Installed	Capacity	Product Stored
006	1 November 1993	10,000 gallons	Gasoline
007	1 November 1993	10,000 gallons	Gasoline
008	1 November 1993	10,000 gallons	Gasoline

- (7) On 5 November 2020, DEM received electronic correspondence from Nextest, Inc. stating that on 31 October 2020, the single-walled tank top sumps for UST Nos. 007 and 008 were hydrostatically tested and both sumps failed the test.
- (8) UST Nos. 006 and 007 are physically connected.
- (9) On 3 December 2020 and 8 January 2021, DEM inspected the Facility. The inspections revealed that the USTs were in operation.
- (10) On 30 March 2021, DEM inspected the Facility. The inspection revealed the following:
- (a) An unknown white sealant type material had been applied to the tank top sump for UST No. 008.
 - (b) A new rubber test boot was installed on the pipeline for UST No. 006.
 - (c) An unknown red epoxy or resin type material had been applied to the outer walls of the tank top sump for UST No. 007.
- (11) Respondents failed to submit a written application to DEM for approval to repair or modify the tank top sumps and DEM did not issue an approval for any proposed repairs or modifications.
- (12) On 23 April 2021, DEM received a report from Nextest, Inc. stating that on 5 April 2021, the tank top sumps for UST Nos. 006, 007 and 008 were tested for tightness and met the criteria for passing.
- (13) On 27 August 2021, DEM received correspondence from Nextest, Inc. stating that on 18 August 2021, the single-walled sumps for dispenser Nos. 1-8 (“Dispenser Sumps”) were hydrostatically tested and all the sumps failed the test.
- (14) On 22 February 2022, DEM inspected the Facility. The inspection revealed that the USTs were in operation.

- (15) As of the date of the NOV, Respondents have not placed UST Nos. 006, 007 and 008 into temporary closure and continue to operate the tanks.
- (16) As of the date of the NOV, Respondents have not repaired or replaced the tank top sumps for UST Nos. 006, 007 and 008 in accordance with the UST Regulations.
- (17) As of the date of the NOV, Respondents have not repaired or replaced the Dispenser Sumps in accordance with the UST Regulations.

D. Violations

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**
 - (a) **Part 1.10(N)(3)(d)(1)** – requiring the immediate temporary closure of a UST after an associated tank top or dispenser sump that is single walled fails a tightness test and prohibiting the operation of a UST after a failed tank top or dispenser sump tightness test.
 - (b) **UST Regulations, Part 1.10(N)(3)(d)(3)** – prohibiting the repair of UST sumps without the prior approval of DEM.

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) **IMMEDIATELY upon receipt of the NOV**, remove UST Nos. 006, 007 and 008 from service and cease and desist from dispensing fuel from the UST systems.
- (2) **Within 7 days of receipt of the NOV**, procure the services of a qualified contractor to evacuate the contents of UST Nos. 006, 007 and 008 and their product pipelines. The tanks shall be evacuated to 1 inch or less of liquid at the bottom of the tanks and the fill ports shall be locked. In accordance with Part 1.15(C) of the UST Regulations, complete and submit an *Underground Storage Tank Temporary Closure Application* to DEM's Office of Land Revitalization and Sustainable Materials Management ("LRSMM"). Written verification of compliance shall be submitted to DEM's Office of Compliance and Inspection ("OCI").

- (3) **If LRSMM approves the temporary closure, then, within 1 year of receipt of the NOV**, procure the services of a licensed and qualified contractor to repair or replace the dispenser sumps and tank top sumps for UST Nos. 006, 007 and 008 in full compliance with Part 1.10(N)(3)(d) of the UST Regulations. Any modification to the existing sumps and pipelines or installation of new sumps shall only be completed with prior written notification to and approval by LRSMM, as per Part 1.12 of the UST Regulations. The sumps shall be tested for tightness by a DEM-licensed tightness tester and must pass such testing before the UST systems are returned to operation, as per Part 1.10(N)(3)(d)(4) of the UST Regulations.
- (4) **If LRSMM approves the temporary closure and UST Nos. 006, 007 and 008 are not returned to service within 1 year of receipt of the NOV (with new or modified tank top and dispenser sumps)**, submit a completed *Permanent Closure Application for USTs* to LRSMM and, with LRSMM's consent and approval, complete the permanent closure of UST Nos. 006, 007 and 008 in accordance with Part 1.15 of the UST Regulations within 45 days of approval.
- (5) **Within 30 days of the removal of the USTs**, Respondents' consultant shall complete and submit to LRSMM a *Closure Assessment Report* in accordance with Part 1.15(D)(10) of the UST Regulations, the *UST Closure Assessment Guidelines*, October 1998, and Part 2.13 of Rhode Island's *Oil Pollution Control Regulations* (250-RICR-140-25-2) [effective 2 May 2018 to Current] ("OPC Regulations").
- (6) **Within 30 days of the removal of the USTs**, remove and properly dispose of any contaminated soil encountered during the closure and within 10 days of the soil disposal, submit documentation of disposal to LRSMM, in accordance with Part 2.13 of the OPC Regulations.
- (7) If, after review of the *Closure Assessment Report*, LRSMM determines that a site investigation is required, Respondents' consultant shall perform a site investigation and submit a *Site Investigation Report* to LRSMM in accordance with Part 1.14(H) of the UST Regulations within the time frame specified by the LRSMM.
- (8) If, after review of the *Site Investigation Report*, LRSMM determines that corrective action is required, Respondents' consultant shall develop a proposed *Corrective Action Plan* ("CAP") in accordance with Part 1.14(I) of the UST Regulations within the time frame specified by LRSMM. The CAP shall only be implemented in accordance with an *Order of Approval* issued by LRSMM.

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:

\$18,750

- (2) The proposed administrative penalty is calculated pursuant to Rhode Island's *Rules and Regulations for Assessment of Administrative Penalties* ("Penalty Regulations") and must be paid to DEM 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, DEM Office of Compliance and Inspection
235 Promenade Street, Suite 220
Providence, RI 02908-5767

- (b) By wire transfer in accordance with instructions provided by DEM.

- (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.

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 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 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, 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*.
- (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) An original signed copy of the NOV is being forwarded to the Town of West 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) Joseph J. LoBianco of DEM's Office of Legal Services at (401) 222-6607 or at joseph.lobianco@dem.ri.gov. All other inquiries should be directed to Tracey Tyrrell of DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 2777407 or at 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
DEM Office of Compliance and Inspection

Date: _____

CERTIFICATION

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

Cowesett Sun Service LLC
c/o Michael Baylouny, Resident Agent
128 Cowesett Avenue
West Warwick, RI 02893

Bayco Enterprises, Inc.
c/o Michael Baylouny, Registered Agent
128 Cowesett Avenue
West Warwick, RI 02893

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: Underground Storage Tanks
 File No.: OCI-UST-21-2-00641
 Respondents: Cowesett Sun Service LLC and Bayco Enterprises, 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)(a) – Sump test failure requirements	Type II <i>(\$12,500 Max. Penalty) *</i>	Major	\$6,250	2 violations	\$12,500
D (1)(b) – Failure to obtain the prior approval of DEM for the tank top sump repairs	Type II <i>(\$12,500 Max. Penalty) *</i>	Major	\$6,250	1 violation	\$6,250
SUB-TOTAL					\$18,750

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

ECONOMIC BENEFIT FROM NON-COMPLIANCE

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:

- THERE IS NO IDENTIFIABLE BENEFIT FROM NON-COMPLIANCE, OR
- THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED.

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.

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 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 = \$18,750

PENALTY MATRIX WORKSHEET

CITATION: Sump test failure requirements

VIOLATION NOs.: D (1)(a)

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;"><u>X</u> 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 PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</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 place UST Nos. 006, 007 and 008 into a compliant temporary closure immediately after the tank top sumps and dispenser sumps associated with these tanks failed tightness tests. Respondents have continued to operate these USTs despite the test failures. These sumps are designed to contain releases if the pressurized product pipelines housed inside them develop leaks. Failure to comply reduces the likelihood of detecting or preventing releases of the regulated substance to the environment. Failure to comply increases the threat to groundwater resources and public health and safety. (2) Environmental conditions: The Facility is in a densely developed area with numerous potential vapor receptors including commercial structures, residential structures, and underground utilities. The Facility is in a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. Upon information and belief, there are no drinking water wells proximate to the Facility. The Facility is located within 450 of regulated freshwater wetlands. The USTs are installed within Greenwich Bay watershed. (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 potential public health hazard (due to potential inhalation of benzene) and a potential public safety hazard (due to the potential for explosion). Gasoline 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. (5) Duration of the violation: Approximately 18 months – Respondents have been in violation of this requirement since 31 October 2020. (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 non-compliance:** Respondents failed to prevent the non-compliance by removing UST Nos. 006, 007 and 008 from service immediately after the tank top sumps failed the tightness tests on 31 October 2020. Respondents continued to operate the USTs despite the failed tests and have yet to obtain DEM's approval for any repairs. Respondents also failed to prevent the non-compliance by removing UST Nos. 006, 007 and 008 after the dispenser sumps failed the tightness tests on 18 August 2021. Respondents have yet to take any steps to mitigate the non-compliance despite receiving written notices from DEM, which required that they do so.
- (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 Respondents for their failure to immediately comply with the requirements set forth in the UST Regulations. Respondents, as owners and operators of the Facility, had full control over the occurrence of the violations.
- (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> X 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	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500 \$6,250	\$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

PENALTY MATRIX WORKSHEET

CITATION: Failure to obtain DEM’s prior approval for the tank top sump repairs

VIOLATION NO.: D (1)(b)

TYPE		
<u> </u> TYPE I	<u> X </u> TYPE II	<u> </u> TYPE III
<u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.	<u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.	<u>INCIDENTAL</u> 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:** Respondents failed to obtain the approval of DEM before making repairs to the tank top sumps. After the tank top sumps failed tightness tests, DEM observed evidence that the sumps had been repaired using unknown epoxy type sealants. Tank owners are required to apply to and obtain approval of DEM before making repairs to any sumps. DEM requires prior review and approval to ensure that any proposed repairs meet the requirements of the equipment and material manufacturers, the applicable national codes of practice and the UST Regulations. These sumps are designed to contain releases if the pressurized product pipelines housed inside them develop leaks. Failure to comply reduces the likelihood of detecting or preventing releases of the regulated substance to the environment. Failure to comply increases the threat to groundwater resources and public health and safety.
- (2) **Environmental conditions:** The Facility is in a densely developed area with numerous potential vapor receptors including commercial structures, residential structures, and underground utilities. The Facility is in a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. Upon information and belief, there are no drinking water wells proximate to the Facility. The Facility is located within 450 of regulated freshwater wetlands. The USTs are installed within Greenwich Bay watershed.
- (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 potential public health hazard (due to potential inhalation of benzene) and a potential public safety hazard (due to the potential for explosion). Gasoline 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.
- (5) **Duration of the violation:** Considered, but not utilized for this calculation.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** Respondents failed to prevent the non-compliance by applying to and obtaining the approval of DEM before making any repairs to the tank top sumps. Respondents have yet to take any steps to mitigate the non-compliance despite receiving written notices from DEM, which required that they do so.
- (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 Respondents for their failure to immediately comply with the UST Regulations. Respondents, as owners and operators of the Facility, had full control over the occurrence of the violations.
- (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	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500 \$6,250	\$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