

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Imad Melhem
1015 Sandy Lane LLC**

FILE NO.: OCI-UST-21-12-00901

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 24 October 2016, 26 April 2021, 6 July 2021 and 18 October 2021, DEM issued written notices to one or both Respondents to advise them of the statutory deadline for the permanent closure of the underground storage tanks and product pipelines at the facility that is the subject of this *Notice of Violation* (“NOV”) and the actions required to keep the facility in compliance with the law and 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] (the “UST Regulations”). The 6 July 2021 notice was sent by certified mail and delivered to 1015 Sandy Lane LLC on 9 July 2021. The 18 October 2021 notice was sent by certified mail and delivered to Imad Melhem on 21 October 2021. As of the date of the NOV, Respondents have failed to comply with the notices.

C. Facts

- (1) The property is located at 1015 Sandy Lane, Assessor’s Plat 349, Lot 130 in Warwick, Rhode Island (the “Property”). The Property includes a convenience store and a motor fuel storage and dispensing system (the "Facility").
- (2) Imad Melhem owns the Property.
- (3) 1015 Sandy Lane LLC 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 UST Regulations.
- (5) The Facility is registered with DEM and is identified as UST Facility No. 00901.

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

UST ID No.	Date Installed	Capacity	Product Stored
002	1 October 1989	10,000 gallons	Gasoline
004	1 October 1989	10,000 gallons	Gasoline
006	1 October 1989	10,000 gallons	Gasoline

- (7) UST Nos. 002, 004 and 006 and their product pipelines are single-walled.
- (8) On or about 15 October 2021, DEM inspected the Facility and observed that UST Nos. 002, 004 and 006 were in operation.
- (9) On 3 November 2021, DEM inspected the Facility and observed that UST Nos. 002, 004 and 006 were no longer in operation.
- (10) As of the date of the NOV, DEM has not received a completed *Permanent Closure Application for Underground Storage Tanks* for the Facility from Respondents.

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) **R.I. Gen. Laws §46-12-3(21)** – requiring that single-walled USTs and product pipelines installed between 8 May 1985 and 20 July 1992 no longer remain in use after 32 years from the date of installation.
- (2) **UST Regulations, Part 1.10(D)(1)(b)** – requiring owners/operators of single-walled USTs and product pipelines installed between 8 May 1985 and 20 July 1992 to permanently close the USTs and product pipelines within 32 years of the date of installation.

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**, procure the services of a qualified contractor to evacuate the contents of UST Nos. 002, 004 and 006 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 port for each tank shall be locked. Written verification of compliance shall be submitted to DEM’s Office of Compliance and Inspection (“OC&I”).

- (2) **Within 45 days of receipt of the NOV**, submit a completed *Permanent Closure Application for Underground Storage Tanks* to DEM's Office of Land Revitalization and Sustainable Materials Management ("LRSMM") and, **with LRSMM's consent and approval, complete the permanent closure of UST Nos. 002, 004 and 006** in accordance with Part 1.15 of the UST Regulations.
- (3) **Within 30 days of the removal of the USTs**, complete and submit to LRSMM a *Closure Assessment Report* (prepared by a qualified environmental consultant) in accordance with Part 1.15(D)(1) of the UST Regulations, the *UST Closure Assessment Guidelines*, May 2019, and Part 2.13 of Rhode Island's *Oil Pollution Control Regulations* (250-RICR-140-25-2) [effective 2 May 2018 to Current] (the "OPC Regulations").
- (4) **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.
- (5) If, after review of the *Closure Assessment Report*, LRSMM determines that a site investigation is required, complete the site investigation, and submit a *Site Investigation Report* ("SIR") to LRSMM in accordance with Part 1.14(H) of the UST Regulations and within the time frame specified by LRSMM.
- (6) If, after review of the SIR, LRSMM determines that a *Corrective Action Plan* ("CAP") is required, submit a proposed CAP in accordance with Part 1.14(I) of the UST Regulations within the time frame specified by LRSMM. LRSMM will review the proposed CAP and issue further instruction on how to proceed. The CAP shall 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:

\$19,042

- (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)* [effective 19 March 2021 to Current] (the "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); **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 Rhode Island's *Rules and Regulations for the Administrative Adjudication Division (250-RICR-10-00-1)* [effective 27 November 2014 to Current]
- (2) A copy of each request for hearing must also be forwarded to:
- Joseph 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 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) Joseph LoBianco of DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey Tyrrell of DEM's Office of Compliance and Inspection at (401) 222-1360, Ext. 2777407.

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
Office of Compliance and Inspection

Date: _____

CERTIFICATION

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

Imad Melhem
2672 West Shore Road
Warwick, RI 02886

Imad Melhem
110 Main Avenue
Warwick, RI 02886

1015 Sandy Lane LLC
c/o Saed Mahmoud, Resident Agent
1015 Sandy Lane
Warwick, RI 02886

0288

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: UST
 File No.: OCI-UST-21-12-00901
 Respondents: Imad Melhem and 1015 Sandy Lane 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	
D (1) & (2) – Single-Walled USTs and Product Pipelines	Type I <i>(\$25,000 Max. Penalty) *</i>	Moderate	\$6,250	3 UST systems	\$18,750
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:		
<ul style="list-style-type: none"> - THERE IS NO IDENTIFIABLE BENEFIT FROM NON-COMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED. 		
DESCRIPTION OF BENEFIT	CALCULATION	AMOUNT
Failing to permanently close the UST systems before the regulatory deadline. The economic benefit of non-compliance was determined by using an EPA computer model titled <i>BEN</i> that performs a detailed economic analysis. The dates, dollar amounts and values used in this analysis are listed in this table.	<ul style="list-style-type: none"> ▪ Profit Status ▪ Filing Status ▪ Initial Capital Investment ▪ One-time Non-depreciable Expense ▪ First Month of Non-compliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	For profit, other than a C Corp. \$25,000 October 2021 1 March 2022 1 February 2022 6.6%
SUB-TOTAL		\$292

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 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 = \$19,042

PENALTY MATRIX WORKSHEET

CITATION: Single-Walled USTs and Product Pipelines
 VIOLATION NOs.: D (1) & (2)

TYPE		
<u> X </u> TYPE I DIRECTLY related to protecting health, safety, welfare or environment.	<u> </u> TYPE II INDIRECTLY related to protecting health, safety, welfare or environment.	<u> </u> TYPE III INCIDENTAL to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
FACTORS CONSIDERED:		
Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.		
<p>(1) The extent to which the act or failure to act was out of compliance: Respondents failed to permanently close the UST systems and continued to operate the USTs beyond the deadline in violation of the R.I. Gen. Laws and the UST Regulations. The operation of single-walled USTs after they reach 32 years of age is prohibited. Single-walled USTs and pipelines present a threat to the environment and public health and safety as there is no secondary containment to prevent releases of petroleum products and hazardous materials directly to the subsurface. Failure to comply increases the likelihood of a release of the regulated substance to the environment and the resultant threats to groundwater resources and public health and safety.</p> <p>(2) Environmental conditions: The Facility is located in a densely developed area with numerous potential vapor receptors including commercial structures, residential structures and underground utilities. The Facility is in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells proximate to the Facility. The UST system is installed within 1,000 feet of regulated freshwater wetland and within the Greenwich Bay watershed.</p> <p>(3) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(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.</p> <p>(5) Duration of the violation: The deadline to comply was 1 October 2021. The full duration of the violation for operating past the deadline is unknown – but it is at least 14 days. DEM inspected the Facility on 15 October 2021, and it was in operation. DEM inspected the Facility on 3 November 2021, and it was not in operation. The full duration of the violation for failing to permanently close the Facility is ongoing – as of the date of the NOV, it is approximately 60 days.</p> <p>(6) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		
(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 take reasonable and appropriate steps to prevent the noncompliance. Respondents ceased operation of the Facility to mitigate one cause of the noncompliance; however, Respondents have failed to take any steps to mitigate the remaining noncompliance involving the permanent closure of the Facility 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 comply with the R. I. Gen. Laws and 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.

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