

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: PATHANIA REALTY, LLC
 V & S FARM, INC.**

FILE NO.: OCI-UST-22-12-00758

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 Rhode Island Department of Environmental Management (“Director” of “RIDEM”) has reasonable grounds to believe that the above-named parties (“Respondents”) have violated certain statutes and/or administrative regulations under RIDEM's jurisdiction.

B. ADMINISTRATIVE HISTORY

On 18 August 2022, RIDEM issued a *Notice of Intent to Enforce* (“NIE”) to Respondents by certified mail for the alleged violations that are the subject of this *Notice of Violation* (“NOV”). The NIE was delivered on 22 August 2022. The NIE required specific actions to correct the violations. As of the date of the NOV, Respondents have failed to fully comply with the NIE.

C. FACTS

- (1) The property is located at 698 Broadway (also referred to as 694 Broadway), Assessor’s Plat 6, Lot 651, in Pawtucket, Rhode Island (“Property”). The Property includes a convenience store and a motor fuel storage and dispensing system (“Facility”).
- (2) PATHANIA REALTY, LLC (“PR”) owns the Property.
- (3) V & S FARM, INC. operates the Facility.
- (4) Underground storage tanks (“USTs” or “tanks”) are installed 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) (“UST Rules”).
- (5) The Facility is registered with RIDEM and is identified as UST Facility No. 00758.

(6) The USTs are registered with RIDEM for the Facility as follows:

UST ID No.	Date Installed	Capacity	Product Stored
005	17 August 2000	10,000 gallons	Gasoline
006	17 August 2000	8,000 gallons	Gasoline

- (7) On 9 October 2021, the dispenser sumps and the tank top sump for UST No. 006 (collectively, “Sumps”) were visually inspected for tightness by Compliance Testing Services, Inc. and each sump failed to meet the criteria for passing.
- (8) On 24 November 2021, Harshinder Pathania, a principal of PR, submitted a *UST Regulation Variance Application Form* to RIDEM seeking approval to continue operating UST No. 006 until the Sumps could be repaired or replaced.
- (9) By letter dated 29 November 2021, RIDEM approved the operation of UST No. 006 until 1 March 2022.
- (10) On 17 August 2022, RIDEM inspected the Facility. The inspection and a review of RIDEM’s files for the Facility revealed the following:
- (a) UST No. 006 was in operation, as evidenced by the observation of customers dispensing gasoline that was stored in the USTs.
 - (b) The spill containment basins for UST Nos. 005 and 006 were holding mixtures of fuel and water.
 - (c) Written verification that the formerly registered Class A/B Facility operator (Sunita Pathania) had performed monthly on-site Facility inspections during October 2019 through December 2021 and documented the results of those inspections on the requisite checklist, was not available. Full compliance with Part 1.10(U)(9) of the UST Rules could not be verified.
- (11) On 27 September 2022, RIDEM received an *Application for the Repair or Modification of a UST System* (“Application”) from Source North America Corporation (“Source”), which was submitted on behalf of Respondents. The Application included plans and specifications for the repair of the Sumps, the installation of new product pipelines and other proposed modifications of UST Nos. 005 and 006.
- (12) By letter dated 19 October 2022, RIDEM approved the Application. PR was advised that the approval was valid for 90 days.
- (13) As of the date of the NOV, the repair work approved in the Application has not commenced, and Respondents are continuing to operate the UST systems.

- (14) As of the date of the NOV, Respondents have yet to submit written verification that the Class A/B Facility operator's monthly inspections are now being performed by Vishal Pathania, who was assigned to the Facility by Respondents in August 2022 (after Sunita Pathania's certification expired).

D. VIOLATION

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

- (1) **UST Rules, Part 1.10(N)(1)(a)** – requiring that spill containment basins be kept free of water, product, liquid, or debris at all times.
- (2) **UST Rules, Part 1.10(N)(3)(d)(1)** – requiring that USTs be removed from service if an associated tank top or dispenser sump fails a tightness test, until the sumps are repaired or replaced in accordance with the UST Rules.
- (3) **UST Rules, Part 1.10(U)(5) and Part 1.10(U)(6)** – requiring Class A and B UST facility operators to inspect the facility monthly, ensure that the UST systems are compliantly operated and maintained and ensure that required records are compliantly maintained.
- (4) **UST Rules, Part 1.10(U)(9)** – requiring the registered, certified Class A or B UST facility operator to perform monthly on-site UST facility inspections and to document those inspections on the requisite form.

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 remove UST Nos. 005 and 006 from service and cease and desist from dispensing fuel from the UST systems.** Written verification of compliance shall be submitted to RIDEM's Office of Compliance and Inspection ("OC&I") within 7 days.
- (2) **UST Nos. 005 and 006 shall be kept out of service until the tank top sumps and dispenser sumps have been repaired or replaced** in accordance with the Application and in full compliance with Part 1.10(N)(3)(d), Part 1.11 and Part 1.12 of the UST Rules. If the UST systems are not repaired, modified, or replaced within 1 year, permanently close the UST system in full compliance with Part 1.15 of the UST Rules.
- (3) **IMMEDIATELY evacuate and clean the spill containment basins** for UST Nos. 005 and 006 in accordance with Part 1.10(N)(1)(a) of the UST Rules. All wastes removed from these basins shall be managed and recycled or disposed of in accordance with Part 1.7.3 of Rhode Island's *Rules and Regulations for Hazardous Waste Management* (250-RICR-140-10-1). Written or photographic verification of compliance shall be submitted to OC&I.

(4) **Within 30 days of receipt of the NOV:**

- (a) If available, submit to OC&I samples of the former Class A/B Facility operator's completed monthly inspection checklists for October 2019 through December 2021.
- (b) Submit written verification that the currently registered Class A/B Facility operator (Vishal Pathania) is performing monthly inspections of the Facility and documenting the inspections on the requisite checklist in accordance with Part 1.10(U)(9) of the UST Rules.

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:

\$7,500

- (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 Rules") 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 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 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, Room 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:

Jenna Giguere, Esquire
RIDEM - 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 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 Pawtucket, 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, then you may contact (or if you are represented by an attorney, please have your attorney contact) Jenna Giguere of RIDEM's Office of Legal Services at (401) 222-6607, extension 2772306 or at jenna.giguere@dem.ri.gov. All other inquiries should be directed to Tracey Tyrrell of RIDEM's Office of Compliance and Inspection at (401) 222-1360, extension 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
RIDEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

PATHANIA REALTY, LLC
c/o Robert A. Peretti, Esq., Resident Agent
1140 Reservoir Avenue, Suite 201
Cranston, RI 02920

V & S FARM, INC.
c/o Robert A. Peretti, Esq., Registered Agent
1140 Reservoir Avenue, Suite 201
Cranston, RI 02920

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: UST
 File No.: OCI-UST-22-12-00758
 Respondents: PATHANIA REALTY, LLC and V & S FARM, INC.

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION NOS. & CITATIONS	APPLICATION OF MATRIX		PENALTY CALCULATIONS		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D (2) – Operating the USTs with deficient tank top and dispenser sumps	Type II <i>(\$12,500 Max. Penalty) *</i>	Major	\$6,250	1 violation	\$6,250
D (3) and D (4) – Failure to have the registered Class A or B Facility operator perform monthly inspections	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,250	1 violation	\$1,250
SUB-TOTAL					\$7,500

*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 COMPLY. 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 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.</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 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 RULES = \$7,500

PENALTY MATRIX WORKSHEET

CITATION: Operating the USTs with deficient tank top and dispenser sumps
 VIOLATION NO.: D (2)

TYPE		
___ TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	X TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	___ TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.

DEVIATION FROM THE STANDARD
 THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Part 1.10(A)(1)(b) of the Penalty Rules.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents failed to place UST Nos. 006 into a compliant temporary closure when the variance expired on 1 March 2022 and have continued to operate the UST despite the test failures and the expiration of RIDEM’s variance approval. The 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 substances to the environment and 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 residential structures, commercial structures, and underground utilities. The Facility is in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. The Facility is in an environmental justice area. The Facility is within 1,200 feet of a groundwater reservoir. The Facility is within Ten Mile River 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 public health hazard (due to potential inhalation of benzene) and a public safety hazard (due to the potential for explosion). Gasoline may 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 9 months – Respondents have been in violation since 1 March 2022, when RIDEM’s variance approval expired.
- (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 repairing/replacing the Sumps or by removing UST No. 006 from service before 1 March 2022. Respondents obtained RIDEM's approval to complete the necessary repairs on 19 October 2022; however, upon information and belief the work has yet to commence.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM 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 the failure to immediately comply with the UST Rules. As owners and operators of the Facility, Respondents had complete control over the occurrence of the violation.
- (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

PENALTY MATRIX WORKSHEET

CITATION: Failure to have the registered, certified Class A or B Facility operator perform monthly inspections

VIOLATION NOs.: D (3) and D (4)

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 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 Rules.</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 have a registered, certified Class A or B Facility operator inspect the Facility monthly from October 2019 through December 2021 and document the results of those inspections on the requisite form in accordance with the UST Rules. Respondents have failed to present written verification of compliance to RIDEM. These inspections are expressly required by the UST Rules and are significant to the regulatory program. Failure to comply would presumably reduce the likelihood of preventing or detecting releases from the USTs. (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 GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. The Facility is in an environmental justice area. The Facility is within 1,200 feet of a groundwater reservoir. The Facility is within Ten Mile River 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 public health hazard (due to potential inhalation of benzene) and a public safety hazard (due to the potential for explosion). Gasoline may 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: Respondents have not verified compliance for a 2-year period. (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 having the registered, certified Class A or B Facility operator inspect the Facility monthly and document the results of those inspections on the requisite checklist. Respondents have verified compliance for January through July 2022; however, they have yet to verify that the newly registered Class A/B Facility operator (Vishal Pathania) has been inspecting the Facility monthly basis since August 2022.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM 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 the failure to comply with the UST Rules. As owners and operators of the Facility, Respondents had complete 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	MODERATE	<u> X </u> 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	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500 \$1,250	\$250 to \$1,250