

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: 21 PEACE STREET, LLC

FILE NO.: OCI-UST-23-51-LS 28171A-ST

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 party (“Respondent”) has violated certain statutes and/or administrative regulations under RIDEM's jurisdiction.

B. ADMINISTRATIVE HISTORY

On 11 January 2023, RIDEM issued a *Notice of Intent to Enforce* (“NIE”) by certified mail to Respondent for the alleged violations that are the subject of this *Notice of Violation* (“NOV”). The NIE required specific actions to correct the alleged violations. The NIE was delivered on 14 January 2023. As of the date of the NOV, Respondent has failed to comply with the NIE.

C. FACTS

- (1) The property is located at 21 Peace Street, Assessor’s Plat 44, Lot 259 in Providence, Rhode Island (“Property”). The Property includes a hospital building and campus (“Facility”).
- (2) Respondent owns the Property, taking title on 28 December 2016. St. Joseph Health Services of Rhode Island (“SJHS”) formerly owned the Property.
- (3) Underground storage tanks (“USTs” or “tanks”) were located on the Property, which tanks were used for storage of petroleum products, and which are 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”).
- (4) The Facility is registered with RIDEM and is identified as UST Facility No. 03178.

- (5) The USTs were registered with RIDEM as follows:

UST ID No.	Date Installed	Date Removed	Capacity	Product Stored
001	Unknown	2 November 1998	5,000 gallons	Diesel Fuel
002	Unknown	22 October 1998	25,000 gallons	No. 6 Heating Oil
003	4 June 1999	17 November 2021	20,000 gallons	No. 6 Heating Oil No. 2 Heating Oil

- (6) On 22 October 1998, UST No. 002 was removed from the ground and permanently closed. RIDEM’s inspector observed that the tank had a hole, the top was rusted and soils under the tank were heavily contaminated.
- (7) On 4 January 1999, RIDEM received a *UST Closure Assessment Report* dated 2 December 1998 (an amended report was received on 20 September 1999), which was prepared by Hydro Environmental Technologies, Inc. (“HET”) on behalf of SJHS. HET reported the following:
- (a) UST No. 002 was highly corroded.
 - (b) Many holes between one half inch to one inch were observed on the top and end walls of the tank.
 - (c) Oil-stained soil was observed beneath the tank from the mid-point to the west end and below the pipe chase.
 - (d) Ten soil samples were collected from the tank grave and laboratory analysis of the soil samples revealed that nine of the samples had concentrations of total petroleum hydrocarbons (“TPH”) that exceeded the *Method One GB TPH Soil Leachability Criteria* set forth in Rhode Island’s *Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases (250-RICR-140-30-1)* (“SR Rules”).
 - (e) A site investigation in accordance with the UST Rules was recommended.
- (8) On 20 April 2000, RIDEM received a *Site Investigation Report* (“2000 SIR”) for the Property, which was prepared by Hoffman Engineering, Inc. (“HEI”) on behalf of SJHS. HEI reported the following:
- (a) Approximately 500 tons of petroleum contaminated soil was removed from the tank grave area in 1998, however, due to the proximity of the building foundation, utility lines and hospital equipment, the remainder of the contaminated soil could not be removed.
 - (b) Three groundwater monitoring wells were installed in the area where the USTs were located. Soils collected from the borings during well installation exhibited gross contamination in the two of the borings and some contamination in the other. Laboratory analysis of soil samples from the borings confirmed the contamination.

- (c) Gauging of the monitoring wells revealed free-phase petroleum in two of the wells at thicknesses ranging from 4 to 12 inches. Groundwater was encountered at approximately 20 feet below grade.
- (9) On 21 March 2001, RIDEM received an *Expanded Site Investigation Report* for the Property, which was prepared by HEI on behalf of SJHS. HEI reported the following:
- (a) Two new downgradient groundwater monitoring wells showed little impact from the petroleum release.
 - (b) Two new four-inch recovery wells were installed in the source area to facilitate product recovery.
 - (c) Up to 24 inches of free-phase petroleum was encountered in wells in the vicinity of the former tank grave.
 - (d) Semi-annual groundwater monitoring should be performed to verify the extent of the contaminant plume.
 - (e) Product recovery should be performed bi-monthly until the product thickness is reduced to one inch or less.
- (10) HEI performed groundwater monitoring and free product gauging and recovery from 2001 through 2010 and submitted periodic reports to RIDEM.
- (11) By letter dated 7 July 2010, RIDEM notified SJHS that the ongoing remedial activities had proven ineffective and that more effective methods would need to be implemented. DEM required SJHS to submit a proposed corrective action plan within 60 days.
- (12) On 25 October 2010, RIDEM received a *Corrective Action Plan* (“2010 CAP”), which was prepared by HEI on behalf of SJHS. HEI proposed the installation of automatic skimmers in the two existing recovery wells to enhance the ongoing product recovery efforts.
- (13) By letter dated 8 March 2011, RIDEM notified SJHS that the 2010 CAP was approved.
- (14) HEI implemented the 2010 CAP, continued groundwater monitoring and free product gauging and recovery, and submitted periodic reports to RIDEM through September 2020.
- (15) On 17 November 2021, UST No. 003 was removed from the ground and permanently closed. RIDEM’s inspector reported that the tank bottom was heavily corroded, that the tank’s sacrificial anodes were completely spent and that evidence of a new release from this UST was detected.

- (16) On 21 January 2022, RIDEM received an *Underground Storage Tank Closure Report* dated 21 January 2022 (for UST No. 003), which was prepared by Sage Environmental, Inc. (“SEI”) on behalf of Respondent. SEI reported that:
 - (a) The tank was in poor condition.
 - (b) A hole was observed in a corroded area at the bottom of the tank.
 - (c) Laboratory analysis of soil samples collected from the tank grave did not reveal concentrations of TPH that exceeded the *Method One GB TPH Soil Leachability Criteria* set forth in the SR Rules.
 - (d) A new CAP should be developed to address the residual petroleum contamination that remained in place from the historic releases.
- (17) On 10 February 2022, RIDEM received a *Site Investigation Work Plan* for the Property, which was prepared by SEI on behalf of Respondent.
- (18) By letter dated 10 March 2022, RIDEM approved the *Site Investigation Work Plan*. Respondent was notified to retain the services of a qualified environmental consultant to develop a new CAP.
- (19) On 31 May 2022, RIDEM received a *Site Investigation Report* dated 31 May 2022 (“2022 SIR”) for the Property, which was prepared by SEI on behalf of Respondent. SEI reported that the installation of additional groundwater monitoring wells and laboratory analysis of soil and groundwater samples revealed that the contaminant plume appeared to be limited to the source area in and around the former tank grave for UST Nos. 002 and 003. SEI advised that further contaminated soil excavation in the source area would be the most effective remedy for the existing petroleum contamination.
- (20) By letter dated 30 January 2023, SEI, in response to the NIE and on behalf of Respondent, requested a 60-day extension for submittal of a proposed CAP scope-of-work. SEI also advised that, upon DEM’s approval of the CAP scope-of-work, the remedial excavation would be completed within 60 days.
- (21) As of the date of the NOV, RIDEM has not received the proposed CAP scope-of-work and the required corrective actions have not been implemented.

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 1.14(B)(1)** – requiring owners/operators to report, investigate and clean up any overfills, spills, leaks, or releases in accordance with Part 1.14 of the UST Rules and any other applicable provisions of local, state, and federal statutes, rules, and regulations.

- (2) **UST Rules, Part 1.14(I)(2)** – authorizing the Director to require owners/operators to develop corrective action plans to address contaminated soils, contaminated groundwater, or other related environmental and public health impacts.
- (3) **UST Rules, Part 1.14(I)(3)** – requiring parties performing corrective action to submit a proposed scope-of-work to DEM within 30 days, which must be approved prior to commencing any work on the subject site.

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 30 days of receipt of the NOV**, submit to RIDEM’s Office of Land Revitalization and Sustainable Materials Management (“OLR&SMM”) a proposed CAP, which shall include a proposed scope-of-work detailing the previously recommended soil excavation and sampling plan.
- (2) **Within 60 days of receipt of RIDEM’s written approval of the CAP**, implement the CAP and complete the remedial soil excavation in full compliance with the approval and Part 1.14 of the UST Rules.
- (3) **Within 30 days of completion of the remedial soil excavation**, submit a written soil excavation report for OLR&SMM’s review.
- (4) Notify OLR&SMM at least 48 hours prior to any excavation, well installation, or repair or replacement of equipment at the Property so that a representative of OLR&SMM may be present.
- (5) Submit periodic status reports as required for all investigatory, sampling, and remedial activities that take place at the Property.
- (6) Continue the site investigation, operation of all remediation procedures specified in the CAP and submission of any required status reports until OLR&SMM determines that the soils and/or groundwater located on and around the Property have been adequately assessed and that the corrective actions were effective and adequate. OLR&SMM may require a period of monitoring to ensure that standards have been met. Continue submission of any required status reports until such time that OLR&SMM issues written approval for termination of remedial activities at the Property.

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 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 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 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:
- Maria I. Rice, 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 Providence, 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) Maria Rice of RIDEM's Office of Legal Services at (401) 537-4189 or at maria.rice@dem.ri.gov. All other inquiries should be directed to Tracey Tyrrell of RIDEM's Office of Compliance and Inspection at (401) 537-4480 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: _____
Christina Hoefsmid, Deputy 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:

21 PEACE STREET, LLC
c/o Joseph R. Paolino, Jr., Resident Agent
100 Westminster Street, Suite 1700
Providence, RI 02903

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Programs: UST and LUST
 File No.: OCI-UST-23-51-LS 28171A-ST
 Respondent: 21 PEACE STREET, 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), D (2) and D (3) – Failure to take corrective action to address the release of petroleum	Type I <i>(\$25,000 Max. Penalty) *</i>	Major	\$12,500	1 violation	\$12,500
<i>SUB-TOTAL</i>					\$12,500

*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 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>

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 = \$12,500

PENALTY MATRIX WORKSHEET

CITATION: Failure to take corrective action to address the release of petroleum
 VIOLATION NOs.: D (1), D (2) and D (3)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.	<u> </u> 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:** Respondent has failed to submit a CAP scope of work proposal for RIDEM’s review and implement corrective actions required by RIDEM to address the subsurface petroleum contamination that exists on the Property. Failure to comply will likely result in adverse impacts to public health and safety and the environment. The site investigations have revealed that the petroleum contamination appears to remain within the footprint of the Property and that off-site impacts have, thus far, been minimal.
- (2) **Environmental conditions:** The Property is in a densely developed area with numerous potential vapor receptors, including commercial structures, residential structures, and underground utilities. The Property is in a GB groundwater classification zone, which are groundwater resources considered to be unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells in the vicinity. The Property is in an environmental justice area. The Property is in Pawtuxet River watershed.
- (3) **Amount of the pollutant:** SEI reported in the 2022 SIR that soil samples obtained from 6 soil borings on the Property had concentrations of TPH that were above the *Method One GB TPH Soil Leachability Criteria* in the SR Rules. The contaminant concentrations exceeded the TPH remedial objective by up to 15 times. SEI also reported that non-aqueous phase liquid was present in 6 of the 17 groundwater monitoring wells that had been installed on and around the Property to investigate the release.
- (4) **Toxicity or nature of the pollutant:** Number 2 and Number 6 heating oils can cause significant soil and groundwater contamination if released to the environment. Subsurface heavy oil contamination is very persistent unless proactive source removal measures are implemented. Certain petroleum constituents are potentially harmful to human health and safety and the environment.
- (5) **Duration of the violation:** Approximately 9 months – the NIE required submittal of the CAP scope of work proposal within 30 days.
- (6) **Areal extent of the violation:** SEI reported that the estimated area of subsurface soil impacts is approximately 11,815 square feet.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent the non-compliance by submitting a proposed CAP scope of work. Respondent has made no attempt to mitigate the non-compliance, despite receiving the NIE from RIDEM, which required that it do so.
- (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:** Respondent, as owner of the Property, had full control over the occurrence of the violation. The UST Rules expressly require that UST owners/operators investigate and clean up any leaks, spills, or releases from the USTs in accordance with the UST Rules.
- (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	<u> </u> MODERATE	<u> </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 \$12,500	\$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