

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Elie Abdilmasih

FILE NO.: OCI-UST-23-57-03036

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. ADIMINISTRATIVE HISTORY

On 2 January 2024, 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 5 January 2024. By letter dated 12 January 2024, Respondent advised RIDEM that he was soliciting bids to comply with the NIE, but he was having difficulty getting contractors to respond. On 16 January 2024, RIDEM sent Respondent a list of known contractors via electronic mail. As of the date of the NOV, Respondent has failed to comply with the NIE.

C. FACTS

- (1) The property is located at 1400 Diamond Hill Road, Assessor’s Plat 16, Lot 570 in the Town of Cumberland, Rhode Island (“Property”). The Property includes an automobile service station and a petroleum product storage and dispensing system (“Facility”).
- (2) Respondent owns the Property, taking title on 8 September 2022.
- (3) RIDEM did not receive a completed *Change or Update in Ownership of a UST or UST Facility* form from Respondent after he took title to the Property.
- (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 Rhode Island’s *Rules and Regulations for Underground Storage Facilities Used for Regulated Substances and Hazardous Materials* (250-RICR-140-25-1) (“UST Regulations”).
- (5) The Facility is registered with RIDEM and is identified as UST Facility No. 03036.

- (6) The USTs registered with RIDEM are as follows:

UST ID No.	Date Installed	Capacity	Product Stored
004	5 August 1991	12,000 gallons	Low-grade Gasoline
005	5 August 1991	10,000 gallons	High-grade Gasoline
006	5 August 1991	6,000 gallons	Diesel Fuel
007	24 October 1991	1,000 gallons	No. 2 Heating Oil

- (7) UST Nos. 004, 005 and 006 and their product pipelines are single-walled.
- (8) The previous owner of the Facility had been granted a temporary closure approval for UST Nos. 004, 005, 006 and 007 by RIDEM, which expired on 28 October 2022.
- (9) RIDEM did not receive a temporary closure application from Respondent. Respondent has therefore maintained the USTs in an abandoned state since 28 October 2022. At this time, RIDEM does not consider the tanks to be eligible for temporary closure approval as they have been in the ground for more than 32 years.
- (10) On 31 October 2023, RIDEM inspected the Facility. The inspection revealed that UST Nos. 004, 005, 006 and 007 were still in the ground and not in use.
- (11) As of the date of the NOV, RIDEM has not received an application from Respondent to permanently close UST Nos. 004, 005, 006 and 007.

D. VIOLATION

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

- (1) **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.
- (2) **UST Regulations, Parts 1.15(B)(1 and 3)** – prohibiting the abandonment of USTs and prohibiting the removal from service or temporary closure of USTs without the approval of RIDEM.
- (3) **UST Regulations, Part 1.18** – requiring owners/operators to submit written notification to RIDEM whenever there is a transfer of ownership of a UST or UST facility.

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 a completed *Change or Update in Ownership of a UST or UST Facility* form to RIDEM's Office of Land Revitalization and Sustainable Materials Management (“OLR&SMM”).
- (2) **Within 60 days of receipt of the NOV**, submit a completed *Permanent Closure Application for USTs* to OLR&SMM and, **with OLR&SMM’s consent and approval, complete the permanent closure of UST Nos. 004, 005, 006 and 007** in accordance with Part 1.15 of the UST Regulations.
- (3) **Within 30 days of the removal of UST Nos. 004, 005, 006 and 007**, Respondent’s qualified environmental consultant shall complete and submit to OLR&SMM a *Closure Assessment Report* in accordance with Part 1.15(D)(10) of the UST Regulations, RIDEM’s *Guidelines for Closure of Underground Storage Tank Systems*, February 2022, and Part 2.13 of Rhode Island’s *Oil Pollution Control Regulations* (250-RICR-140-25-2) (“OPC Regulations”).
- (4) **Within 30 days of the removal of UST Nos. 004, 005, 006 and 007**, remove and properly dispose of any contaminated soil encountered during the tank closure and, within 10 days of the soil’s disposal, submit written verification of compliant disposal to OLR&SMM, in accordance with Part 2.13 of the OPC Regulations.
- (5) If, after review of the *Closure Assessment Report*, OLR&SMM determines that a site investigation is required, Respondent’s environmental consultant shall complete the site investigation and submit a *Site Investigation Report* (“SIR”) to OLR&SMM in accordance with Part 1.14(H) of the UST Regulations within the time frame specified by OLR&SMM.
- (6) If, after review of the SIR, OLR&SMM determines that a *Corrective Action Plan* (“CAP”) is required, Respondent’s environmental consultant shall submit a proposed CAP in accordance with Part 1.10(I) of the UST Regulations within the time frame specified by OLR&SMM. OLR&SMM 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 RIDEM.

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 against the respondent:

\$23,937

- (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 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 A 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:

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 Town of Cumberland, 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 Hoefsmit, Deputy Administrator
Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

Elie Abdilmasih
57 Beaver Street
Franklin, MA 02038

by Certified Mail.

ADMINISTRATIVE PENALTY SUMMARY (continued)



ADMINISTRATIVE PENALTY SUMMARY

Program: UST
 File No.: OCI-UST-23-57-03036
 Respondent: Elie Abdilmasih

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) and (2) – Single-Walled USTs and Product Pipelines and Abandonment of USTs	Type II <i>(\$12,500 Max. Penalty) *</i>	Major	\$7,500	3 violations	\$22,500
SUB-TOTAL					\$22,500

*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.		
DESCRIPTION OF BENEFIT	CALCULATION	AMOUNT
Failing to permanently close the USTs upon taking ownership. 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. \$25,750 November 2022 1 September 2024 15 July 2024 7.4%
SUB-TOTAL		\$1,437

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 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.

TOTAL PENALTY PROPOSED UNDER PENALTY RULES = \$23,937

PENALTY MATRIX WORKSHEET

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

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;">X 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><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Rules.</p> <p>(1) The extent to which the act or failure to act was out of compliance: Respondent failed to permanently close single-walled UST Nos. 004, 005 and 006 and their single-walled product pipelines by the regulatory deadline of 5 August 2023. The previous owner had put the tanks into a compliant temporary closure and Respondent has not operated the UST systems since taking title to the Property on 8 September 2022. Respondent did not apply for temporary closure approval and has maintained the UST systems in an abandoned state since taking title to the Property. RIDEM is unable to approve a temporary closure application at this time due to the single-walled deadline. 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 in a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. The Facility is in a GAA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment and which are in groundwater reservoirs and portions of their recharge areas, wellhead protection areas for community water supply wells and in groundwater dependent areas. The Property abuts and partly lies within the wellhead protection area for a community water supply well. The Property lies within a groundwater recharge area for a community water supply well. The Facility is in Blackstone River watershed. The Facility is within 175 feet of freshwater wetlands.</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 and diesel fuel can cause significant soil and groundwater contamination if released to the environment. Benzene, a component of gasoline, is a known human carcinogen. Certain other petroleum constituents are potentially harmful to human health and safety and the environment.</p>		
(continued)		

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- (5) **Duration of the violation:** Approximately 1½ years – Respondent has been in violation of the single-walled deadline since 5 August 2023 and has maintained the USTs in an abandoned state since 8 September 2022.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.
- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** Respondent failed to take reasonable and appropriate steps to prevent the non-compliance by permanently closing UST Nos. 004, 005 and 006 before 5 August 2023. Respondent has yet to take any apparent steps to mitigate the noncompliance despite receiving the informal written notice from RIDEM, which required that he 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:** Negligence is attributable to Respondent for the failure to immediately comply with the requirements set forth in the UST Regulations. RIDEM notified Respondent of the alleged violations and provided opportunities for Respondent to rectify them. Respondent, as owner and operator 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 \$7,500	\$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