

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

IN RE: 1836 REALTY CORP.

FILE NO.: LUST 2015-22-3528

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 party (“Respondent”) has violated certain statutes and/or administrative regulations under the DEM’s jurisdiction.

B. Administrative History

The DEM issued numerous informal notices to Respondent for the violations that are the subject of this Notice of Violation (“NOV”). On 7 May 2012 and 20 August 2012, the DEM issued letters to Respondent requiring an update of the activities at the property, including groundwater monitoring and corrective action. The DEM did not receive a response to the letters. On 29 October 2015, the DEM issued a Notice of Intent to Enforce (“NIE”) to Respondent. The NIE required specific actions to correct the violations. On 8 December 2015, the DEM received a letter from Respondent’s consultant in response to the NIE. The letter questioned the scope of the remedial action required by the DEM, requested a reduction in the number of wells to be sampled and requested additional time to develop a plan for sampling of the existing wells. On 13 January 2016, the DEM issued a letter by certified mail to Respondent. The letter stated that the requirements in the NIE remained in effect and would not be revised. On 26 April 2016, the DEM received a report from Respondent’s consultant in response to the NIE. The report did not comply with the NIE. On 1 September 2016, the DEM issued a certified letter to Respondent requiring additional groundwater sampling, which was delivered to Respondent on 6 September 2016. As of the date of the NOV, Respondent has failed to respond to or comply with the letter.

C. Facts

(1) The lots that are the subject of the NOV are as follows:

- (a) A lot located at 1836 Warwick Avenue, Assessor’s Plat 329, Lot 404 (“Lot 404”) in the City of Warwick (“Warwick”);
- (b) A lot located at 1850 Warwick Avenue, Assessor’s Plat 329, Lot 401 (“Lot 401”) in Warwick; and
- (c) A lot located on Rosemere Avenue that abuts Lot 404 and Lot 401, Assessor’s Plat

329, Lot 408 (“Lot 408”) in Warwick.

- (2) Lot 404 includes a motor fuel storage and dispensing system and underground storage tanks (“USTs” or “tanks”) used for storage of petroleum products (the “Facility”).
- (3) On 14 April 1994, Respondent acquired Lot 404.
- (4) On or about August 1997, a release of petroleum from the Facility entered the groundwater (the “Release”).
- (5) On 5 November 1997, Respondent registered the Facility with the DEM in accordance with the DEM’s *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the “UST Regulations”).
- (6) The Facility is identified as UST Facility No. 02986.
- (7) On 27 February 1998, Respondent acquired Lot 401 and Lot 408.
- (8) On 13 July 1998, Respondent submitted to the DEM plans and specifications describing a system for the remediation of the Release (the “Corrective Action Plan” or “CAP”).
- (9) The CAP stated that groundwater sampling will be performed quarterly and annually at specific groundwater wells.
- (10) On 29 July 1998, the DEM issued an Order of Approval (“OA”) to Respondent for the CAP.
- (11) On 12 April 2010, the DEM issued a letter (the “April Letter”) to Respondent modifying the OA. The letter required Respondent to perform quarterly groundwater monitoring of wells identified as MW-4, MW-7, MW-10, MW-11, MW-12, MW-13 and MW-14 (collectively, the “GMWs”) until 4 consecutive sampling rounds meet the DEM’s groundwater objectives for that well and that a CAP be prepared in accordance with the DEM’s UST Regulations and submitted to the DEM within 90 days for the DEM’s review and approval.
- (12) On 20 August 2010, in response to the April Letter, the DEM received a report prepared by Michael A. Del Rossi (“MDR”) on behalf of Respondent. The report included the results of groundwater sampling performed on 24 May 2010 for 5 of the GMWs, and a proposal to perform in-situ bioremediation as a corrective action (the “Proposed Approach”). The results showed exceedances of the DEM’s groundwater objectives in 4 of the GMWs.
- (13) On 18 July 2011, the DEM issued a letter (the “July Letter”) to Respondent. The letter stated that the DEM conceptually approved the Proposed Approach and required that Respondent submit it as a CAP in accordance with the DEM’s UST Regulations within 60 days of receipt of the letter.

- (14) On 26 April 2016, the DEM received a report from MDR on behalf of Respondent. The report included the results of groundwater sampling performed on 3 March 2016 for 5 of the GMWs. The results showed exceedances of the DEM's groundwater objectives in 4 of the GMWs.
- (15) As of the date of the NOV, Respondent has submitted only 2 groundwater monitoring reports since 12 April 2010, and the reports were deficient.
- (16) On 1 September 2016, the DEM issued a certified letter to Respondent (the "September Letter") requiring additional groundwater sampling, which was delivered to Respondent on 6 September 2016.
- (17) As of the date of the NOV, Respondent has not submitted a CAP as required by the July Letter.
- (18) As of the date of the NOV, Respondent has neither responded to nor complied with the September Letter.

D. Violation

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

- (1) **DEM's Oil Pollution Control Regulations, Rule 12(e)** – requiring an owner to investigate and clean up any releases in accordance with the DEM's directives.
- (2) **DEM's Oil Pollution Control Regulations, Rule 12(f)** – requiring an owner to provide updated information to the DEM regarding a release as it becomes available
- (3) **DEM's UST Regulations, Rules 12.02 and 12.03** – requiring an owner to investigate and clean up any spills, leaks or releases in accordance with the DEM's UST Regulations.
- (4) **DEM's UST Regulations, Rule 12.14(B)** – requiring an owner to implement a CAP in accordance with an OA.

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 complete the following remedial actions:

- (1) **Within 30 days of receipt of the NOV**, submit to the DEM a groundwater monitoring report that fully complies with the September Letter (the "Report"). Respondent shall provide at least 48 hours notice to Michael Cote ("Cote") of the DEM's Office of Waste Management prior to collecting groundwater samples, and the groundwater samples shall be collected in Cote's presence.

- (2) **Within 90 days of receipt of the NOV**, submit a CAP that fully complies with the DEM's UST Regulations (the "Revised CAP").
- (3) The Report and Revised CAP shall be subject to the DEM's review and approval. Upon review, the DEM shall provide written notification either granting formal approval or stating the deficiencies therein. Within 14 days (unless a longer time is specified) of receiving a notification of deficiencies in the Report or Revised CAP, submit to the DEM a modified proposal or additional information necessary to correct the deficiencies.
- (4) Commence work in accordance with the DEM's approval within 20 days of approval (unless otherwise expressly authorized by the DEM in writing to commence work later), and complete such work by the date specified by the DEM.
- (5) The investigation and remedial action shall continue in accordance with Rule 12.00 of the DEM's UST Regulations until the Release has been remediated to the satisfaction of the DEM.

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:

\$71,985

- (2) The proposed administrative penalty is calculated pursuant to the DEM's *Rules and Regulations for Assessment of Administrative Penalties*, as amended, and must be paid to the DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a certified check, cashier's check or money order made payable to the "General Treasury - Water & Air Protection Program Account" and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (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 the Director 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 the 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 the 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, 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); **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 the DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters*.

(2) A copy of each request for hearing must also be forwarded to:

Tricia Quest, Esquire
DEM - 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 the 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) Tricia Quest of the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey Tyrrell of the DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 7407.

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, Chief
DEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

1836 REALTY CORP.
c/o Christian C. Potter, Esq., Registered Agent
1850 Warwick Avenue
Warwick, RI 02889

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY	
Program:	OFFICE OF COMPLIANCE AND INSPECTION, LUST
File No.:	LUST 2015-22-3528
Respondent:	1836 REALTY CORP.

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) through D (4) – Investigation and Remediation of Groundwater Contamination	Type I (\$25,000 Max. Penalty) *	Major	\$25,000	1 violation	\$25,000
<i>SUB-TOTAL</i>					\$25,000

*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
Avoidance of costs associated with quarterly groundwater monitoring. 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 and dollar amounts used in this analysis are listed in this table.	DEM used a cost estimate of \$2,000 to perform the quarterly groundwater monitoring 2010 (2 quarters) = \$3,988 2011 = \$7,989 2012 = \$7,340 2013 = \$6,709 2014 = \$6,318 2015 = \$5,755 2016 (3 quarters) = \$3,900 2017 = \$4,986	\$46,985
<i>SUB-TOTAL</i>		\$46,985

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 the 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 = \$71,985

PENALTY MATRIX WORKSHEET	
CITATION:	Investigation and Remediation of Groundwater Contamination
VIOLATION NOS.:	D (1) through (4)

TYPE		
<u> X </u> TYPE I	_____ TYPE II	_____ 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 VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Part 1.10A.1.b of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent failed to fully investigate and remediate the release of petroleum products in accordance with the DEM's UST Regulations. The release investigation and remedial requirements set forth in Section 12.00 of the DEM's UST Regulations are of prime importance to the regulatory program. Failure to comply could result in contamination of private and public drinking water supplies with hazardous materials and other adverse impacts to public health and safety and the environment.
- (2) **Environmental conditions:** The lots that are the subject of the NOV are located in a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. The area is in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment; however, it is located within 160 feet of a GA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment. The area is in the Upper Narragansett Bay watershed and within 60 feet of freshwater wetlands associated with Lockwood Brook.
- (3) **Amount of the pollutant:** The 24 May 2010 groundwater monitoring revealed benzene in 4 wells at 4.5 milligrams per liter ("MG/L"), 8.72 MG/L, 2.72 MG/L and 7.46 MG/L; ethyl benzene in 3 wells at 1.79 MG/L, 2.25 MG/L and 2 MG/L and MTBE in 3 wells at 122 MG/L, 11.3 MG/L and 6.93 MG/L. The 3 March 2016 groundwater monitoring revealed benzene in 2 wells at 0.364 MG/L and 1.91 MG/L. The DEM's groundwater objective for GB water is 0.14 MG/L for benzene, 1.6 MG/L for ethylbenzene, 5 MG/L for MTBE and 1.7 MG/L for toluene.
- (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. Benzene is a known carcinogen.
- (5) **Duration of the violation:** Approximately 7 ½ years – 12 April 2010 to the present.
- (6) **Areal extent of the violation:** The investigations completed to date show petroleum contamination of soils and groundwater on 2 adjacent parcels (Plat 329, Lots 564 and 565) located to the east and west.

(continued)

(continued from the previous page)

- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to complete all required remedial actions to eliminate the sources of the contamination and to ensure that the groundwater meets the DEM’s groundwater objectives despite receiving numerous written notices from the DEM to do so. The notices required specific investigatory and remedial actions; however, Respondent has failed to demonstrate full compliance. Respondent proposed a bio-remediation approach that was conceptually approved by the DEM; however, Respondent never submitted the required CAP to the DEM.
- (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 Respondent for its failure to comply with the requirements set forth in Rules 12.02 and 12.03 of the DEM’s UST Regulations. As owner of the lots that are the subject of the NOV, Respondent had full control over the occurrence of the violation. The release investigation and remediation requirements are clearly established in the DEM’s UST Regulations.
- (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> MAJOR	MODERATE	MINOR
------------------------	-----------------	--------------

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 \$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	\$250 to \$1,250