

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: METROPOLITAN OIL CO., INC.

FILE NO.: UST 2017-43-00105

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. Facts

- (1) The property is located at 1086 Main Street, Assessor’s Plat 17, Lot 41 in the town of West Warwick (the “Property”). The Property includes an office, a garage and a petroleum product storage and dispensing system (the “Facility”).
- (2) Respondent owns the Property.
- (3) Respondent operated the Facility.
- (4) Underground storage tanks (“USTs” or “tanks”) are located on the Property, which tanks are/were used for storage of petroleum products and which are subject to the DEM’s *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the “UST Regulations”).
- (5) The Facility is registered with the DEM and is identified as UST Facility No. 00105.
- (6) The USTs are registered with the DEM as follows:

UST ID No.	Capacity	Product Stored
005	10,000 gallons	Heating Oil
006	10,000 gallons	Heating Oil
007	10,000 gallons	Heating Oil
010	8,000 gallons	Gasoline
011	8,000 gallons	Gasoline
012	8,000 gallons	Gasoline
013	2,000 gallons	Diesel
014	2,000 gallons	Kerosene

- (7) On 28 July 2014, Respondent submitted an *Underground Storage Tank Temporary Closure Application* to the DEM for USTs 010, 011 and 012.
- (8) On 8 August 2014, the DEM issued a letter to Respondent approving the temporary closure of USTs 010, 011 and 012. The letter stated that the approval expired on 16 January 2015.
- (9) On 13 April 2017, DEM inspected the Facility. The inspection and a review of the DEM files revealed that Respondent failed to:
 - (a) Pay UST registration fees and late fees;
 - (b) Procure the services of a qualified cathodic protection tester to survey the impressed current cathodic protection system for USTs 005, 006 and 007 during each of the years 2014, 2015 and 2016;
 - (c) Inspect the impressed current cathodic protection system for USTs 005, 006 and 007 at least once every 60 days during the time period of July 2015 through April 2017;
 - (d) Utilize the *Veeder Root TLS 300* continuous monitoring system (“CMS”) to perform monthly 0.2 gallon per hour leak tests for USTs 010, 011, 012, 013 and 014 during the time period of July 2015 through April 2017;
 - (e) Maintain monthly inventory reconciliation and leak check records for all the USTs for the time period of July 2015 through April 2017;
 - (f) Have USTs 005, 006, 007, 013 and 014 tested for tightness by a DEM-licensed tightness tester during the year 2016;
 - (g) Have USTs 010, 011 and 012 tested for tightness by a DEM-licensed tightness tester during each of the years 2015 and 2016;
 - (h) Have the product pipelines for UST Nos. 013 and 014 tested for tightness by a DEM-licensed tightness tester during the year 2016;
 - (i) Have the line leak detectors for USTs 010, 011, 012, 013 and 014 tested by a qualified person during the year 2016;
 - (j) Have the dispenser shear valves for USTs 010, 011, 012, 013 and 014 tested during the year 2016;
 - (k) Maintain the spill containment basins for the USTs and the tank top sumps for USTs 010, 011 and 012 free of liquids; and
 - (l) Have the registered Class A or B UST facility operator perform monthly

inspections of the Facility during the time period of July 2015 through April 2017.

The Facility was closed at the time of inspection and it appeared the USTs were no longer in active operation.

- (10) On 19 May 2017, the DEM issued a Notice of Intent to Enforce (“NIE”) to Respondent requiring that the USTs be returned to compliance with the DEM’s UST Regulations within 30 days.
- (11) On 14 June 2017, the DEM received a letter from Respondent’s registered agent. The letter stated that:
 - (a) The Property is being foreclosed by Bank Rhode Island;
 - (b) The Respondent’s Registered Agent’s understanding was that Bank Rhode Island has retained an environmental consultant to assess the Property; and
 - (c) Respondent has abandoned the Property and relinquished possession.
- (12) As of the date of the NOV, Respondent has not made a request to the DEM to extend the temporary closure of USTs 010, 011 and 012 and these USTs have been in an abandoned state since 16 January 2015.
- (13) As of the date of the NOV, USTs 005, 006, 007, 013 and 014 have been out of service since at least 13 April 2017 and Respondent has failed to submit a temporary closure application to the DEM.

C. Violation

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

- (1) **DEM’s UST Regulations, Rule 13.02(A)** – prohibiting the abandonment of USTs.
- (2) **DEM’s UST Regulations, Rule 13.05** – requiring the permanent closure of any USTs that have been removed from service for more than 180 days or are abandoned.

D. 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 10 days of receipt of the NOV**, remit payment of all UST registration fees and late fees for the Facility that have been assessed by the DEM in accordance with Rules 6.10, 6.12 and 6.13 of the DEM’s UST Regulations.

- (2) **Within 90 days of receipt of the NOV**, submit a completed *Permanent Closure Application for Underground Storage Tanks* to the DEM – Office of Waste Management ("OWM") at 235 Promenade Street, Suite 380, Providence, RI 02908-5767 and, with the OWM's consent and approval, complete the removal of the USTs in full compliance with Section 13.00 of the DEM's UST Regulations and Section 13.00 of the DEM's *Oil Pollution Control Regulations* (the "OPC Regulations").
- (3) **Within 30 days of the removal of the USTs**, submit to the OWM a *Closure Assessment Report* prepared by a qualified environmental consultant, in accordance with Section 13.11 of the DEM's UST Regulations, the DEM's *UST Closure Assessment Guidelines* and Section 13.00 of the DEM's OPC Regulations.
- (4) **Within 30 days of the removal of the USTs**, remove and properly dispose of any contaminated soil excavated during the tank closure and, within 10 days of the soil disposal, submit documentation of disposal to the OWM, in accordance with Section 13.00 of the DEM's OPC Regulations.
- (5) Based on the information and findings presented in the *Closure Assessment Report*, the DEM may require that a site investigation be performed by an environmental consultant and that a *Site Investigation Report* ("SIR") be submitted in accordance with Rules 12.08, 12.09, and 12.10 of the DEM's UST Regulations and within a time frame specified by the DEM. In the event that the DEM requires a site investigation, Respondent shall complete the investigation. Based on the information presented in the SIR, the DEM may require submittal of a *Corrective Action Plan* ("CAP") within a time frame specified by the DEM and in accordance with Rules 12.12 through 12.18 of the DEM's UST Regulations. The CAP shall be implemented in accordance with an *Order of Approval* issued by the DEM.

E. 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:

\$36,110

- (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 DEM determines that reasonable efforts have been made to comply promptly with the NOV.

F. 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 E 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 this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
One Capitol Hill, 2ND Floor
Providence, RI 02903

- (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:

Christina A. Hoefsmit, Esq.
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 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 with regard to 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 West Warwick, 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) Christina A. Hoefsmit at 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 F 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 NOV was forwarded to:

METROPOLITAN OIL CO., INC.
c/o Biagio L. Longo, Esq., Registered Agent
328 Cowesett Avenue, Suite One
West Warwick, RI 02893

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY	
Program:	OFFICE OF COMPLIANCE AND INSPECTION, UST
File No.:	UST 2017-43-00105
Respondent:	METROPOLITAN OIL CO., INC.

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	
C (1) and C (2) – Abandonment of USTs	Type I (\$25,000 Max. Penalty)*	Minor	\$4,375	8 violations (1 per UST)	\$35,000
SUB-TOTAL					\$35,000

*Maximum Penalties represent the maximum penalty amounts per day, per violation.

ECONOMIC BENEFIT FROM NONCOMPLIANCE		
COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT ARE IN COMPLIANCE. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:		
- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR		
- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.		
DESCRIPTION OF BENEFIT	CALCULATION	AMOUNT
Economic benefit of noncompliance identified by the DEM for failing to permanently close the facility. The cost of permanently closing the facility was based on the average cost to remove multiple USTs at a facility. The economic benefit gained by the instances of noncompliance was calculated by utilizing an EPA computer model entitled "BEN", which performs a detailed economic analysis. The dates, dollar amounts and values used in this analysis are as listed in this table.	Profit Status	C Corporation
	Filing Status	C Corporation
	Initial Capital Investment	\$0
	One Time Non Depreciable Expense	\$50,000
	First Date of Noncompliance	13 April 2017
	Compliance Date	1 February 2018
	Penalty Due Date	1 November 2017
	Useful Life of Pollution Control Equipment	N/A
	Annual Inflation Rate	PCI
	Discount Compound Rate	7.0%
SUB-TOTAL		\$1,110

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 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 = \$36,110

PENALTY MATRIX WORKSHEET	
CITATION:	Abandonment of USTs
VIOLATION NOS.:	D (1) and (2)

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 PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:
Taken from Section 10 (a) (2) of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

(A) **The extent to which the act or failure to act was out of compliance:** USTs have been removed from service and abandoned. Abandoned USTs present a threat to the environment if they are not evacuated of their contents or if persons attempt to re-use them after an extended period of abandonment. Prohibiting the abandonment of underground storage tanks is of primary importance to the regulatory program. Failure to comply could result in the release of hazardous materials to the land and waters of the State.

(B) **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 USTs are installed within a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. The UST system is installed within 140 feet of a GA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment. The Facility is located within 700 feet of the Pawtuxet River and within its watershed.

(C) **Amount of the pollutant:** Considered, but not utilized for this calculation.

(D) **Toxicity or nature of the pollutant:** The volatile nature of gasoline presents both a public health hazard (due to the potential inhalation of benzene vapors) and a potential public safety hazard (due to the potential for explosion). Petroleum products are capable of causing significant soil and groundwater contamination if released to the environment.

(E) **Duration of the violation:** For USTs 010, 011 and 012 – 2 ½ years (since 16 January 2015). For USTs 005, 006, 007, 013 and 014 – full duration unknown – at least 4 months (since at least 17 April 2017).

(F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

(G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent the non-compliance for USTs 010, 011 and 012 by permanently closing the USTs before 16 January 2015. Respondent failed to prevent the non-compliance for USTs 005, 006, 007, 013 and 014 when they removed the USTs from service without receiving a temporary closure approval from the DEM. Respondent has yet to mitigate the non-compliance despite receiving the NIE from the DEM, which required that it do so.

(continued)

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- (H) **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:** Respondent was cited by the DEM in Notices of Violation dated 26 April 1995 and 30 June 2005 and a Notice of Intent to Enforce dated 25 September 2013 for violations of the DEM's UST Regulations. Many of the violations observed in the inspection on 13 April 2017 were cited in these prior notices.
- (I) **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:** As the owner and operator of the Facility, Respondent had full control over the occurrence of the violation. Abandonment of USTs is expressly prohibited by the DEM's UST Regulations. DEM provided Respondent with written notification of the violations and afforded Respondent opportunities to correct the non-compliance without the assessment of monetary penalties.
- (J) **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 \$4,375	\$1,250 to \$2,500	\$250 to \$1,250