

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: 425 Richmond Associates, LLC**

**FILE NO.: OCI-UST-17-48-00395**

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 425 Richmond Street, Assessor’s Plat 21, Lot 318, in the City of Providence, Rhode Island (the “Property”). The Property includes a motor fuel storage and dispensing system and a motor vehicle service facility (the “Facility”).
- (2) On 16 June 2016, Respondent purchased the Property from BLACK DUCK REALTY, LLC (the “Former Owner”).
- (3) 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 the Rhode Island Code of Regulations titled *Rules and Regulations for Underground Storage Facilities Used for Regulated Substances and Hazardous Materials (250-RICR-140-25-1)* (the “UST Regulations”).
- (4) The Facility is registered with the DEM and is identified as UST Facility No. 00395.
- (5) The USTs are registered with the DEM for the Facility as follows:

UST ID No.	Date Installed	Capacity	Product Stored
005	11 October 1994	3,000 gallons	Heating Oil
006	11 October 1994	3,000 gallons	Diesel

- (6) On 30 August 2017, the DEM attempted to inspect the Facility. The building appeared to have been vacated, the dispenser for UST No. 006 had been boarded up and the Facility was in an abandoned state.

- (7) A subsequent review of the DEM's files for the Facility revealed the following:
- (a) The DEM has not received payment from Respondent for the registration fees and late fees for the USTs, which was \$590 as of 6 September 2018;
  - (b) The DEM has not received interstitial space tightness test reports for the USTs and the product pipeline for UST No. 006 for each of the years 2014 and 2016;
  - (c) The DEM has not received a completed *RI DEM Certified UST Operator Registration Form* from Respondent to verify that *International Code Council* certified Rhode Island Class A and Class B operators have been assigned to the Facility. Upon information and belief, the currently registered Class A/B operator, Christopher Swanson, is no longer acting as the Class A/B operator for the Facility;
  - (d) The DEM has not received a completed *Underground Storage Tank Temporary Closure Application* for the USTs from Respondent;
  - (e) The DEM has not issued an approval to Respondent to place the USTs into temporary closure; and
  - (f) The DEM has not received a completed *Transfer of Certificate of Registration* form for the Facility from Respondent. Respondent and the Former Owner failed to notify the DEM of the change in ownership of the Property and Facility.
- (8) On 6 September 2017, the DEM issued a Notice of Intent to Enforce ("NIE") to Respondent for the violations that are the subject of this Notice of Violation ("NOV"). The NIE required specific actions to correct the violations.
- (9) On 21 September 2017, the DEM received electronic correspondence from Proulx Environmental LLC in response to the NIE. The correspondence stated the following:
- (a) UST No. 006 would be pumped out, a lock will be placed on the fill cap and a Veeder Root print out will be provided to the DEM that documents the tank contents;
  - (b) A temporary closure application will be submitted to the DEM for UST No. 006;
  - (c) UST No. 005 will be used for the upcoming Fall/Winter;
  - (d) The USTs will be removed in the Spring; and
  - (e) Respondent will submit a transfer of ownership form for the Facility to the DEM.

- (10) As of the date of the NOV, Respondent has not complied with any of the items described in subsection B (9) above, and the USTs remain in place in an abandoned state.

C. Violation

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

- (1) **UST Regulations, Rule 13.02(A) [recently amended to Part 1.15(B)(1)]** – prohibiting the abandonment of USTs.
- (2) **UST Regulations, Rule 13.05 [recently amended to Part 1.15(D)(3)(a)]** – requiring the permanent closure of any USTs or product pipelines that have been 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 complete the following remedial actions:

- (1) **Within 60 days of receipt of the NOV**, submit a completed *Permanent Closure Application for Underground Storage Tanks* (copy enclosed) to the DEM – Office of Waste Management and, **with their consent and approval**, complete the permanent closure of the USTs in accordance with Part 1.15 of the UST Regulations. All past-due UST registration fees and late fees shall be paid to the DEM in full at the time of the application's submittal in accordance with Part 1.15(D)(5) of the UST Regulations.
- (2) **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 Part 1.15(D)(10) of the UST Regulations, the DEM's *UST Closure Assessment Guidelines*, October 1998, and Part 2.12 of the Rhode Island Code of Regulations titled *Oil Pollution Control Regulations (250-RICR-140-25-2)* (the "OPC Regulations").
- (3) **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 Part 2.13 of the OPC Regulations.
- (4) Based on the information 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 Part 1.14(H) of the UST Regulations and within a time frame specified by the DEM. If the DEM requires a SIR, Respondent shall complete the SIR in the time frame specified. Based on the information 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 Part

1.14(I) of the 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:

**\$6,626**

- (2) The proposed administrative penalty is calculated pursuant to the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* 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.

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 0 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 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, 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); **AND**
- (d) State clearly and concisely the specific issues which are in dispute, the facts in 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 Rhode Island Code of Regulations titled *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:
- Joseph J. LoBianco, Esquire  
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 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) This 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) Joseph J. LoBianco 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 F above.

FOR THE DIRECTOR

By: \_\_\_\_\_  
David E. Chopy, Administrator  
Office of Compliance and Inspection

Dated: \_\_\_\_\_

CERTIFICATION

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

425 Richmond Associates, LLC  
c/o Joseph R. Paolino, Jr., Registered Agent  
100 Westminster Street  
Providence, RI 02903

by Certified Mail.

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<b>ADMINISTRATIVE PENALTY SUMMARY</b>	
Program:	OFFICE OF COMPLIANCE AND INSPECTION, UST
File No.:	OCI-UST-17-48-00395
Respondent:	425 Richmond Associates, LLC

<b>GRAVITY OF VIOLATION</b>					
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 (2) – Abandonment of USTs	Type I <i>(\$25,000 Max. Penalty)*</i>	Moderate	\$6,250	1 violation	\$6,250
<b>SUB-TOTAL</b>					<b>\$6,250</b>

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

<b>ECONOMIC BENEFIT FROM NONCOMPLIANCE</b>		
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 NONCOMPLIANCE; OR		
- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.		
DESCRIPTION OF BENEFIT	CALCULATION	AMOUNT
The economic benefit of noncompliance by failing to permanently close the USTs. The economic benefit of noncompliance 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.	Profit Status For profit Filing Status Other than a C Corporation Initial Capital Investment \$0 One-Time Non-Depreciable Expense \$8,700 Annual Recurring Cost \$0 First Date of Non-compliance 16 December 2016 Compliance Date 31 December 2018 Penalty Due Date 1 December 2018 Useful Life of Pollution Control Equipment N/A Annual Inflation Rate PCI Discount Compound Rate 7.2%	
<b>SUB-TOTAL</b>		<b>\$376</b>

## **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 = \$6,626**



## PENALTY MATRIX WORKSHEET

CITATION: Abandonment of USTs

VIOLATION NOs.: C (1) and (2)

### TYPE

**X** **TYPE I**  
DIRECTLY related to protecting health, safety, welfare or environment.

**TYPE II**  
INDIRECTLY related to protecting health, safety, welfare or environment.

**TYPE III**  
INCIDENTAL 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 Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)*

- (A) **The extent to which the act or failure to act was out of compliance:** Respondent has maintained the USTs in an abandoned state since taking title to the Property on 16 June 2016. Abandonment of USTs is expressly prohibited by the UST Regulations.
- (B) **Environmental conditions:** The Facility is located in an industrial/commercial area and in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. There are no known drinking water supply wells proximate to the Facility. The Facility is located in an environmental justice area. The USTs are located within 1,000 feet of the Providence River and within its watershed.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** Diesel fuel is capable of causing significant soil and groundwater contamination if released to the environment.
- (E) **Duration of the violation:** Approximately 2 years – Respondent purchased the Property on 16 June 2016 and should have removed the tanks within 180 days.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

(continued)

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** Respondent failed to prevent the non-compliance by permanently closing or obtaining DEM's approval for temporary closure of the USTs within 180 days of taking title to the Property. Respondent has yet to mitigate the non-compliance despite receiving the NIE from the DEM, which required that it do so.
- (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:** Considered, but not utilized for this calculation.
- (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:** Negligence is attributable to Respondent for the failure to comply with the requirements set forth in the UST Regulations. As owner of the Facility, Respondent had full control over the occurrence of the violation. The UST abandonment prohibition is clearly established in the UST Regulations.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<b>MAJOR</b>	<u>  X  </u> <b>MODERATE</b>	<b>MINOR</b>
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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
	<b>MODERATE</b>	\$6,250 to \$12,500 <b>\$6,250</b>	\$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