

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Ghassan Nayfeh dba Cranston 717 LLC  
Cranston 717 LLC  
Webster 717 LLC**

**FILE NO.: OCI-UST-17-9-LS775**

**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 parties (“Respondents”) have violated certain statutes and/or administrative regulations under DEM's jurisdiction.

**B. Administrative History**

The City of Cranston, Rhode Island tax assessor’s database identifies Cranston 717 LLC as the owner of the property that is the subject of this Notice of Violation (“NOV”). On 16 May 2019, DEM issued a *Notice of Intent to Enforce* (“NIE”) to Cranston 717 LLC for the violations that are the subject of the NOV. The NIE required Cranston 717 LLC to take specific actions to correct the violations. On 21 May 2019, the NIE was delivered. On 22 July 2019, the *Certificate of Organization/Registration* for Cranston 717 LLC was revoked by the Rhode Island Secretary of State. On 29 July 2019, Ghassan Nayfeh submitted a document to DEM stating that he owns the property. As of the date of the NOV, Respondents have failed to fully comply with the remedial requirements set forth by DEM in the NIE.

**C. Facts**

- (1) The subject property is located at 717 Park Avenue in the City of Cranston, Rhode Island, otherwise identified as Cranston Tax Assessor’s Plat 6, Lot 2162 (the “Property”). The Property includes a convenience store and a gasoline storage and dispensing system (the “Facility”).
- (2) Cranston 717 LLC owns the Property. Cranston 717 LLC acquired the Property on 26 April 2017.
- (3) On 22 July 2019, the *Certificate of Organization/Registration* for Cranston 717 LLC was revoked by the Rhode Island Secretary of State.
- (4) On 29 July 2019, Ghassan Nayfeh submitted a document to DEM that stated he owns the Property.

- (5) Webster 717 LLC operates of the Facility.
- (6) 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 regulations titled *Rules and Regulations for Underground Storage Facilities Used for Regulated Substances and Hazardous Materials* (the “UST Regulations”).
- (7) The Facility is registered with DEM and is identified as UST Facility No. 03016.
- (8) The USTs are registered with DEM for the Facility as follows:

UST ID No.	Date Installed	Capacity	Product Stored
007	15 December 1998	12,000 gallons	Gasoline
008	15 December 1998	5,000 gallons	Gasoline
009	15 December 1998	3,000 gallons	Gasoline

- (9) In November 1998, a release of petroleum product was discovered on the Property during and after the permanent closure of USTs that had previously been installed on the Property.
- (10) On 4 December 2001, DEM issued an *Order of Approval* for a *Corrective Action Plan* (“CAP”) for the Property, which had been prepared by SAGE Environmental, Inc. (“SAGE”) on behalf of a prior owner. The CAP included the operation of a soil vapor extraction system, quarterly groundwater monitoring and the submission of quarterly site status reports to DEM.
- (11) On 14 June 2018, DEM’s Office of Land Reclamation and Sustainable Materials Management (formerly the Office of Waste Management) (“LRSMM”) received a *Site Status Report* for the Property, which was prepared by SAGE on behalf of Webster 717 LLC. SAGE reported the following:
  - (a) Laboratory analysis of a groundwater sample obtained from GMW No. 2 revealed the presence of benzene, ethylbenzene and toluene at concentrations that exceeded the *Method 1 GB Groundwater Objectives* (“GBGO”) set forth in Section 8.03(B)(ii) of the *Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases* [effective 9 November 2011 to 8 January 2019];
  - (b) Laboratory analysis of a groundwater sample obtained from GMW No. 4 revealed the presence of toluene at a concentration that exceeded the GBGO;
  - (c) Laboratory analysis of groundwater samples obtained from the other 6 groundwater monitoring wells installed on and around the Property did not reveal any concentrations of volatile organic compounds above the GBGO;

- (d) A considerable reduction in concentrations of benzene, ethylbenzene and toluene was observed when compared to the concentrations detected during the 2013 sampling event;
  - (e) Continued quarterly groundwater monitoring was necessary to further validate the reducing trends in concentrations of benzene, ethylbenzene and toluene. The current data indicated that the contaminant plume was stable and shrinking; and
  - (f) Further evaluation of groundwater data and potential remedial actions was necessary.
- (12) As of the date of the NOV, Respondents have not submitted any additional Site Status Reports to DEM.
- (13) As of the date of the NOV, Respondents have failed to fully comply with the investigatory and remedial requirements set forth by DEM in the *Order of Approval* or the NIE.
- (14) As of the date of the NOV, upon information and belief, Respondents have not implemented any of the investigatory or remedial actions recommended by SAGE to address the existing groundwater contamination on the Property.

D. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you are in violation of the following regulations:

- (1) ***Oil Pollution Control Regulations [effective 31 December 2001 to 2 May 2018], Section 12(e)*** – requiring compliance with actions required by DEM pertaining to an oil release.
- (2) ***Oil Pollution Control Regulations (250-RICR-140-25-2) [effective 2 May 2018 to Current], Part 2.12(E)*** – requiring compliance with actions required by DEM pertaining to an oil release.
- (3) ***Groundwater Quality Rules [effective 26 July 2010 to 9 January 2019], Rule 8.1*** – requiring that groundwater be maintained at a quality consistent with its classification.
- (4) ***Groundwater Quality Rules (250-RICR-150-05-3) [effective 9 January 2019 to Current], Part 3.8(A)*** – requiring that groundwater be maintained at a quality consistent with its classification.

(5) **UST Regulations [effective 26 April 2011 to 20 November 2018]**

- (a) **Rule 12.02 and Rule 12.03** – requiring UST owners/operators to investigate and clean up any spills, leaks or releases in accordance with the UST Regulations and any other applicable local, state and federal statutes, rules and regulations.
- (b) **Rule 12.14(B)** – requiring owners/operators to implement Corrective Action Plans in accordance with the provisions of the Order of Approval and any conditions established by DEM therein.

(6) **UST Regulations (250-RICR-140-25-1) [effective 20 November 2018 to Current]**

- (a) **Part 1.14(B) and Part 1.14(C)** – requiring UST owners/operators to investigate and clean up any spills, leaks or releases in accordance with the UST Regulations and any other applicable local, state and federal statutes, rules and regulations.
- (b) **Part 1.14(I)(6)** – requiring owners/operators to implement Corrective Action Plans in accordance with the provisions of the Order of Approval and any conditions established by DEM therein.

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 7 days of receipt of the NOV**, submit to DEM’s Office of Compliance and Inspection (“OC&I”) written verification that you have procured the services of a qualified environmental consultant to investigate and develop remedial options for the soil and groundwater contamination on and off the Property in accordance with Part 1.14(B) and Part 1.14(C) of the UST Regulations.
- (2) **Within 30 days of receipt of the NOV**, a qualified environmental consultant shall obtain groundwater samples from all existing GMWs (both on and off site) and submit those samples to a certified laboratory for analysis via *EPA Method 8260 plus MTBE*.
- (3) **Within 45 days of receipt of the NOV**, submit a groundwater monitoring report prepared by a qualified environmental consultant to LRSMM’s Leaking Underground Storage Tank Program’s Project Manager, Mr. Raymond Taylor (“project manager”) that includes the results from the sampling performed in subsection E (2) above. All groundwater monitoring reports shall be prepared and submitted to DEM in accordance with DEM’s *Guidelines for the Submission of Groundwater Monitoring Reports* and include a DEM *Groundwater Monitoring Report Cover Sheet*. Copies of both documents are attached for your reference.

- (4) Continue obtaining samples from all GMWs on and off the Property on a quarterly basis until you receive further instruction from the project manager. All groundwater samples shall be analyzed at a certified laboratory via *EPA Method 8260 plus MTBE*. All the groundwater monitoring reports shall be submitted to the project manager **within 45 days of each sampling event**.
- (5) DEM will review the site's status on a continual basis and may require the performance of a site investigation in accordance with Part 1.14(H) of the UST Regulations. If a site investigation is required, Respondents shall submit a *Site Investigation Report* prepared by their qualified environmental consultant in accordance with Part 1.14(H)(7) and Part 1.14(H)(8) of the UST Regulations and in accordance with a schedule established by DEM.
- (6) Respondents shall develop a *Corrective Action Plan* ("CAP") proposal, which shall be prepared by a qualified environmental consultant in accordance with Part 1.14(I)(3) and Part 1.14(I)(4) of the UST Regulations and submitted in accordance with a schedule to be established by DEM.
- (7) The CAP shall be implemented by Respondents in accordance with a schedule and an *Order of Approval* issued by DEM.
- (8) Notify LRSMM's Leaking Underground Storage Tank Program at least 48 hours prior to any excavation, well installation, repair or replacement of equipment at the Facility so that a representative of DEM may be present.
- (9) Submit quarterly status reports of all investigatory, sampling, and remedial activities that take place at the Facility.
- (10) Continue operation of all remediation procedures specified in the CAP and continue submission of required status reports until DEM determines that the soils and/or groundwater located on and around the Facility have been adequately treated. DEM may require a period of monitoring to ensure that standards have been met. Continue submission of required quarterly status reports until such time that DEM issues written approval for termination of remedial activities at the Facility.

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 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 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" and shall be forwarded to DEM's Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against 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 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 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 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 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:

Christina Hoefsmit, 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 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 Cranston, 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) Christina Hoefsmit of DEM's Office of Legal Services at (401) 222-6607 or at [christina.hoefsmit@dem.ri.gov](mailto:christina.hoefsmit@dem.ri.gov). All other inquiries should be directed to Tracey Tyrrell of 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, Administrator  
DEM Office of Compliance and Inspection

Date: \_\_\_\_\_

CERTIFICATION

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

Ghassan Nayfeh dba Cranston 717 LLC  
421 South Main Street  
Webster, MA 01570

Cranston 717 LLC  
421 South Main Street  
Webster, MA 01570

Webster 717 LLC  
c/o John S. Ciolli, Registered Agent  
381 Atwells Avenue  
Providence, RI 02909

by Certified Mail.

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<b>ADMINISTRATIVE PENALTY SUMMARY</b>	
Program:	OFFICE OF COMPLIANCE AND INSPECTION, LUST
File No.:	OCI-UST-17-9-LS775
Respondents:	Ghassan Nayfeh dba Cranston 717 LLC, Cranston 717 LLC and Webster 717 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	
D (1), (2), (3), (4), (5) and (6) – Failure to investigate the release and take appropriate remedial actions	Type I <i>(\$25,000 Max. Penalty) *</i>	Major	\$12,500	1 violation	\$12,500
<b>SUB-TOTAL</b>					<b>\$12,500</b>

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

<b>ECONOMIC BENEFIT FROM NON-COMPLIANCE</b>
<p>COSTS OF COMPLIANCE, EQUIPMENT, O&amp;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"> <li>- THERE IS NO IDENTIFIABLE BENEFIT FROM NON-COMPLIANCE; OR</li> <li>- THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED.</li> </ul>
<p>A review of the record in this matter has revealed that Respondents have 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>

<b>COST RECOVERY</b>
<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 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.</p>

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$12,500**

## PENALTY MATRIX WORKSHEET

CITATION:	Failure to investigate the release and take appropriate remedial actions
VIOLATION NOs.:	D (1), (2), (3), (4), (5) and (6)

TYPE		
<p style="text-align: center;"><u>  X  </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ 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.

**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)*

- (1)     **The extent to which the act or failure to act was out of compliance:** Respondents failed to investigate the release of petroleum products and implement appropriate remedial actions in accordance with the UST Regulations and the *Oil Pollution Control Regulations*. Failure to comply could result in adverse impacts to abutting and surrounding properties and/or to drinking water supplies. Investigation and remediation of petroleum and hazardous material releases is of prime importance to the regulatory program.
- (2)     **Environmental conditions:** The Facility is in a densely developed area with numerous potential vapor receptors including commercial structures, residential structures and underground utilities. The Facility is in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells proximate to the Facility. The Facility is located within the Pawtuxet River watershed.
- (3)     **Amount of the pollutant:** Unknown due to Respondents' failure to fully investigate the release. Concentrations of benzene, ethylbenzene and toluene above the GBGOs were found in 2 GMWs during the May 2018 sampling event.
- (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. Certain petroleum constituents are known human carcinogens.
- (5)     **Duration of the violation:** Approximately 3½ years – Respondents have been non-compliant since taking title to the Property on 20 April 2017 and becoming operator of the Facility.
- (6)     **Areal extent of the violation:** Unknown due to Respondents' failure to investigate the release in accordance with the UST Regulations and the *Oil Pollution Control Regulations*.

(continued)

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the non-compliance by immediately procuring the services of a qualified environmental consultant to investigate the release and develop a CAP. Other than hiring SAGE to perform one site status investigation in May 2018, Respondents have made no apparent attempt to mitigate the non-compliance despite receiving the NIE from DEM, which required that they do so.
- (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 Respondents for the failure to comply with the UST Regulations, the *Oil Pollution Control Regulations* and the *Groundwater Quality Rules*. As owner of the Property and operator of the Facility, Respondents had full control over the occurrence of the violations. The release investigation and corrective action requirements are clearly established in the UST Regulations and *Oil Pollution Control 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>  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	<b>MAJOR</b>	\$12,500 to \$25,000 <b>\$12,500</b>	\$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