

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Joseph S. Ruggiero, Sr.
LIGHTHOUSE MARINA, LLC**

FILE NO.: OCI-UST-22-9-00534

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 Rhode Island Department of Environmental Management (“Director” of “RIDEM”) has reasonable grounds to believe that the above-named parties (“Respondents”) have violated certain statutes and/or administrative regulations under RIDEM's jurisdiction.

B. ADMINISTRATIVE HISTORY

On 12 October 2016 and 19 January 2022, RIDEM issued informal written notices to Respondents regarding the regulatory deadline for the permanent closure of an underground storage tank at the facility that is the subject of this Notice of Violation (“NOV”). The notices explained the actions required to keep the facility in compliance. On 1 April 2022, RIDEM issued a final written notice to Respondents via Certified Mail, which was delivered to LIGHTHOUSE MARINA, LLC on 7 April 2022 and to Joseph S. Ruggiero, Sr. on 8 April 2022. As of the date of the NOV, Respondents have failed to comply with the notices.

C. FACTS

- (1) The property is located at 110 Shore Drive, Assessor's Plat 1, Lot 225 in Barrington, Rhode Island (“Property”). The Property includes a marina and a motor fuel storage and dispensing system (“Facility”).
- (2) Joseph S. Ruggiero, Sr. owns the Property.
- (3) LIGHTHOUSE MARINA, LLC operates the Facility.
- (4) One underground storage tank (“UST” or “tank”) is installed on the Property and is subject to Rhode Island’s *Rules and Regulations for Underground Storage Facilities Used for Regulated Substances and Hazardous Materials (250-RICR-140-25-1)* [20 November 2018 to Current] (“UST Regulations”).
- (5) The Facility is registered with RIDEM and is identified as UST Facility No. 00534.

(6) The UST is registered with RIDEM as follows:

UST ID No.	Date Installed	Capacity	Product Stored
002	18 April 1990	12,000 gallons	Gasoline

(7) UST No. 002 is single-walled with no secondary containment.

(8) On 13 April 2022, RIDEM received a *UST Temporary Closure Application* from Respondents for UST No. 002.

(9) By letter dated 14 April 2022, RIDEM notified Respondents that the temporary closure approval request was denied because they had failed to demonstrate full compliance with Part 1.15(C)(3)(a) of the UST Regulations.

(10) Upon information and belief, UST No. 002 was removed from service prior to 18 April 2022.

(11) As of the date of the NOV, UST No. 002 remains installed in the ground on the Property.

D. VIOLATION

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

(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.

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**, procure the services of a qualified contractor to evacuate the contents of UST No. 002 and the product pipeline. The tank shall be evacuated to 1 inch or less of liquid at the bottom of the tank and the fill port shall be locked. Written verification of compliance shall be submitted to RIDEM's Office of Compliance and Inspection ("OC&I").

(2) **Within 45 days of receipt of the NOV**, submit a completed *Permanent Closure Application for USTs* to RIDEM's Office of Land Revitalization and Sustainable Materials Management ("LRSMM") and, **with LRSMM's consent and approval, complete the permanent closure of UST No. 002** in accordance with Part 1.15 of the UST Regulations and RIDEM's *Guidelines for Closure of Underground Storage Tank Systems*, February 2022.

- (3) **Within 30 days of the removal of UST No. 002**, complete and submit to LRSMM a *Closure Assessment Report* (prepared by a qualified environmental consultant) in accordance with Part 1.15(D)(10) of the UST Regulations, RIDEM's *UST Closure Assessment Report Checklist*, February 2020, 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 No. 002**, remove and properly dispose of any contaminated soil encountered during the tank closure and within 10 days of the soil disposal, submit documentation of disposal to LRSMM, in accordance with Part 2.13 of the OPC Regulations.
- (5) If, after review of the *Closure Assessment Report*, LRSMM determines that a site investigation is required, have the consultant complete the site investigation and submit a *Site Investigation Report* ("SIR") to LRSMM in accordance with Part 1.14(H) of the UST Regulations within the time frame specified by LRSMM.
- (6) If, after review of the SIR, LRSMM determines that a *Corrective Action Plan* ("CAP") is required, have the consultant submit a proposed CAP in accordance with Part 1.10(I) of the UST Regulations within the time frame specified by LRSMM. LRSMM will review the proposed CAP and issue further instructions 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, jointly and severally, against each named respondent:

\$6,575

- (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 Regulations") 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 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 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 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 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:

Tricia Quest, Esquire
RIDEM - 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 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 this 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 Barrington, 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 RIDEM's Office of Legal Services at (401) 222-6607 or at tricia.quest@dem.ri.gov. All other inquiries should be directed to Tracey Tyrrell of RIDEM's Office of Compliance and Inspection at (401) 222-1360 ext. 2777407 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: _____
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:

Joseph S. Ruggiero, Sr.
115 Nayatt Road
Barrington, RI 02806

LIGHTHOUSE MARINA, LLC
c/o Martin P. Sleprow, Esq., Resident Agent
1481 Wampanoag Trail
East Providence, RI 02915

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: UST
 File No.: OCI-UST-22-9-00534
 Respondents: Joseph S. Ruggiero, Sr. and LIGHTHOUSE MARINA, LLC

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) – Maintaining a single-walled UST in the ground	Type II <i>(\$ 12,500 Max. Penalty) *</i>	Moderate	\$6,250	1 violation	\$6,250
SUB-TOTAL					\$6,250

*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 NONCOMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.			
DESCRIPTION OF BENEFIT	CALCULATION		AMOUNT
Failing to remove and permanently close the UST before 18 April 2022. 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 	Other than a C Corp. \$20,000 April 2022 11/15/22 11/1/22 6.6%	
SUB-TOTAL			\$325

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 REGULATIONS = \$6,575

PENALTY MATRIX WORKSHEET

CITATION: Maintaining a single-walled UST in the ground
 VIOLATION NO.: D (1)

TYPE		
____ TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>X</u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	____ 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 Part 1.10(A)(1)(b) of the Penalty Regulations.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents failed to permanently close UST No. 002 by the 18 April 2022 deadline and are maintaining it in the ground in violation of the UST Regulations. The maintenance of single-walled USTs and product pipelines after 32 years of usage is prohibited. 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. Upon information and belief, the tank was taken out of service prior to 18 April 2022. Respondents have not, however, submitted written verification that the tank has been evacuated to 1 inch or less of liquid at the bottom of the tank. The tank has not been tested for tightness since 1 November 2019, therefore, RIDEM does not have a current assessment of its integrity.
- (2) **Environmental conditions:** The Facility is in a developed area with potential vapor receptors including commercial and residential structures and underground utilities. The Facility is in a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells in the vicinity. The UST is installed within 140 feet of Bullock Cove. The Facility is in Providence River watershed.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (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 potentially harmful to human health and safety and the environment.
- (5) **Duration of the violation:** Approximately 3 months – Respondents have been in violation since 18 April 2022.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.

(continued)

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** Respondents failed to take reasonable and appropriate steps to prevent the non-compliance by permanently closing the UST before 18 April 2022. Respondents removed the UST from service, however, Respondents have yet to permanently close the UST despite receiving written notices from RIDEM, which required Respondents to 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. Respondents, as owners and operators of the Property and Facility, had full control over the occurrence of the violation.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	<u> X </u> 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	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250 \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250