

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: CHEBBO REALTY, LLC  
BMC PETROLEUM INC.**

**FILE NO.: OCI-UST-18-77-00701**

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

On 6 September 2018, the DEM issued a *Notice of Intent to Enforce* (“NIE”) to Respondents by certified mail for the violations that are the subject of this Notice of Violation (“NOV”). The NIE required specific actions to correct the violations. The NIE was delivered to Respondents on 12 September 2018. As of the date of the NOV, Respondents have failed to comply with the NIE.

C. Facts

- (1) The subject property is located at 905 Cranston Street, Assessor’s Plat 7/2, Lot 2943 in the City of Cranston, Rhode Island (the “Property”). The Property includes a service station and a motor fuel storage and dispensing system (the “Facility”).
- (2) Respondent CHEBBO REALTY, LLC owns the Property.
- (3) Respondent BMC PETROLEUM INC. operates the Facility.
- (4) Underground storage tanks (“USTs” or “tanks”) are installed 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”).
- (5) The Facility is registered with the DEM and is identified as UST Facility No. 00701.

(6) The USTs are registered with the DEM for the Facility as follows:

UST ID No.	Date Installed	Capacity	Product Stored
009	20 March 1998	8,000 gallons	Gasoline
010	20 March 1998	8,000 gallons	Gasoline
011	20 March 1998	4,000 gallons	Gasoline
012	20 March 1998	4,000 gallons	Diesel Fuel

(7) On 30 August 2018, DEM inspected the Facility. The inspection and a review of DEM's files revealed the following:

- (a) Respondents failed to pay UST registration and late fees assessed by DEM.
- (b) The leak sensors deployed in the tank top sumps for UST Nos. 009, 010 and 012 were not secured in an upright position and located at least one inch below the lowest penetration fitting or entry boot.
- (c) The *Veeder Root TLS 350* continuous monitoring system ("CMS") was displaying a "fuel alarm" for the leak sensor deployed in the tank top sump for UST No. 009. Upon information and belief, Respondents had not investigated the fuel alarm in accordance with the UST Regulations.
- (d) The tank top sumps for UST Nos. 009, 010 and 012 and the dispenser sumps were holding liquids at the time of inspection.
- (e) A training log for all of the Class C UST facility operators that had been trained and assigned to the Facility was not available. No records were available to show that any of the Facility attendants on duty had been trained as at least Class C UST facility operators. Upon information and belief, the Facility was being operated without at least one trained Class C UST facility operator on duty.
- (f) No records were available to show that a registered, ICC-certified Class A/B UST facility operator had performed monthly on-site Facility inspections since November 2016.

(8) As of the date of the NOV, Respondents have failed to submit written verification that the issues set forth in subsection C(7) above have been rectified in accordance with the UST Regulations.

D. Violation

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

- (1) **UST Regulations, Rules 6.10, 6.12 and 6.13 [recently amended to Part 1.7(J), Part 1.7(L) and Part 1.7(M)]** – requiring UST owners/operators to pay annual registration fees and late fees assessed by DEM.
- (2) **UST Regulations, Rule 8.02(A) [recently amended to Part 1.10(B)]** – requiring that UST systems be installed, operated and maintained in accordance with the national codes of practice set forth in the UST Regulations.
- (3) **UST Regulations, Rule 8.15(A) [recently amended to Part 1.10(M)(1)]** – requiring that leak monitoring devices be installed, operated and maintained in accordance with the manufacturer’s instructions.
- (4) **UST Regulations, Rules 8.15(C) and 12.03(A) [recently amended to Part 1.10(M)(3) and Part 1.14(C)(1)(a)]** – pertaining to investigation of release detection signals.
- (5) **UST Regulations, Rule 8.16(D) [recently amended to Part 1.10(N)(3)]** – pertaining to maintenance of tank top and dispenser sumps.
- (6) **UST Regulations, Rule 8.22(A) [recently amended to Part 1.10(U)(2) and Part 1.10(U)(4)(a)]** – requiring UST facility owners/operators to have trained Class C UST facility operators assigned to the facility.
- (7) **UST Regulations, Rule 8.22(A)(7) [recently amended to Part 1.10(U)(3)(e)]** – requiring UST facility owners/operators to maintain training logs for all the Class C UST facility operators that have been assigned to the facility.
- (8) **UST Regulations, Rule 8.22(D) [recently amended to Part 1.10(U)(4)(c) and Part 1.10(U)(7)(a)]** – prohibiting the operation of UST facilities without at least one Class C UST facility operator on duty always.
- (9) **UST Regulations, Rule 8.22(F) [recently amended to Part 1.10(U)(5)(k), Part 1.10(U)(6)(g) and Part 1.10(U)(9)]** – requiring the registered, certified Class A or B UST facility operator to perform monthly on-site UST facility inspections and to document those inspections on the requisite form.

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 **within 60 days of receipt of the NOV**:

- (1) Contact Ms. Leslie Gerundio of the DEM – Office of Waste Management (401-222-2797, extension 7524) for instructions on how to complete payment of all registration and late fees currently owed to DEM. Remit said payment to DEM in accordance with Part 1.7(L) of the UST Regulations. Written verification of compliance shall be submitted to the DEM – Office of Compliance and Inspection (“OC&I”).
- (2) Investigate the “fuel alarm” for the leak sensor deployed in the tank top sump for UST No. 010 in accordance with Part 1.10(M)(3) and Part 1.14(C)(1)(a) of the UST Regulations and submit a written report to the OC&I detailing the outcome of the investigation and any remedial actions taken to rectify the any problems that may be identified.
- (3) Evacuate and clean the tank top and dispenser sumps in accordance with Part 1.10(N)(3) of the UST Regulations. All wastes removed from these sumps shall be managed and disposed of in full compliance with Part 1.7.3 of the Rhode Island Code of Regulations titled *Rules and Regulations for Hazardous Waste Management (250-RICR-140-10-1)*. Written and/or photographic verification of compliance shall be submitted to the OC&I.
- (4) Re-mount and re-secure the leak sensors deployed in the tank top sumps for UST Nos. 009, 010 and 012 in accordance with the manufacturer’s instructions so that they are perpendicular to the sump floor and their low points are set at least one inch below the lowest sump sidewall penetration, as per Part 1.10(B) and Part 1.10(M)(1) of the UST Regulations. Written or photographic verification of compliance shall be submitted to the OC&I.
- (5) The registered Class A/B UST facility operator (Mr. Bassam Chebbo) shall train all appropriate Facility employees and attendants as (at least) Class C UST facility operators and compile a written training log for the Class C UST facility operators that have been trained and assigned to the Facility, as per Part 1.10(U)(2), Part 1.10(U)(3)(e), Part 1.10(U)(4)(a) and Part 1.10(U)(7) of the UST Regulations. Submit a copy of the completed training log to the OC&I. The Facility shall henceforth be operated only with at least one trained Class C UST facility operator on duty during all hours of operation, as per Part 1.10(U)(4)(c) and Part 1.10(U)(7)(a) of the UST Regulations.

- (6) The registered ICC-certified Class A/B UST facility operator (Mr. Bassam Chebbo) shall henceforth perform the monthly UST facility inspections in accordance with Part 1.10(U)(5)(k), Part 1.10(U)(6)(g) and Part 1.10(U)(9) of the UST Regulations and document the results of those inspections on the requisite form. Submit written verification of a return to compliance to the OC&I.

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:

**\$10,653**

- (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 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 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 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 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) 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 G above.

FOR THE DIRECTOR

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

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

CERTIFICATION

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

CHEBBO REALTY, LLC  
c/o Bassam Chebbo, Registered Agent  
905 Cranston Street  
Cranston, RI 02920-7843

BMC PETROLEUM INC.  
c/o Bassam Chebbo, Registered Agent  
905 Cranston Street  
Cranston, RI 02920-7843

by Certified Mail.

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<b>ADMINISTRATIVE PENALTY SUMMARY</b>	
Program:	OFFICE OF COMPLIANCE AND INSPECTION, UST
File No.:	OCI-UST-18-77-00701
Respondents:	CHEBBO REALTY, LLC and BMC PETROLEUM INC.

<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) – Failure to pay UST registration and late fees assessed by DEM	Type II <i>(\$12,500 Max. Penalty)*</i>	Minor	\$1,250	1 violation	\$1,250
D (2), (3) and (5) – Failure to install and operate the pipeline leak sensors and maintain the sumps	Type II <i>(\$12,500 Max. Penalty)*</i>	Minor	\$1,750	1 violation	\$1,750
D (4) – Failure to investigate a release detection signal	Type II <i>(\$12,500 Max. Penalty)*</i>	Moderate	\$2,500	1 violation	\$2,500
D (6), (7) and (8) – Failure to assign and operate with trained Class C UST facility operators	Type II <i>(\$12,500 Max. Penalty)*</i>	Moderate	\$2,500	1 violation	\$2,500
D (9) – Failure to have an ICC-certified Class A or B UST facility operator perform monthly inspections	Type II <i>(\$12,500 Max. Penalty)*</i>	Minor	\$1,750	1 violation	\$1,750
<b>SUB-TOTAL</b>					<b>\$9,750</b>

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



## **ADMINISTRATIVE PENALTY SUMMARY (continued)**

<b>ECONOMIC BENEFIT FROM NON-COMPLIANCE</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.		
<i>DESCRIPTION OF BENEFIT</i>	<i>CALCULATION</i>	<i>AMOUNT</i>
Failing to pay the annual UST registration fees assessed by DEM. 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"> <li>▪ Profit Status</li> <li>▪ Filing Status</li> <li>▪ Initial Capital Investment</li> <li>▪ One-time Non-depreciable Expense</li> <li>▪ Annually Recurring Costs</li> <li>▪ First Month of Non-Compliance</li> <li>▪ Compliance Date</li> <li>▪ Penalty Due Date</li> <li>▪ Useful Life of Pollution Control</li> <li>▪ Equipment Annual Inflation Rate</li> <li>▪ Discount Compound Rate</li> </ul>	C Corp.    \$300 January 2015 1 April 2019 1 March 2019       7.2%
<b><i>SUB-TOTAL</i></b>		<b>\$903</b>

<b>COST RECOVERY</b>
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 = \$10,653**

## PENALTY MATRIX WORKSHEET

CITATION:	Failure to pay UST registration and late fees assessed by DEM
VIOLATION NO.:	D (1)

TYPE		
<p style="text-align: center;">___ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ <b>X</b> 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 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 pay UST registration fees and late fees assessed by DEM in accordance with the UST Regulations. Revenue generated by these fees is utilized by the State to fund DEM's environmental protection programs. Failure to comply reduces revenue to the State and provides the violators with an economic advantage over those who comply.
- (2) **The 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 50 feet of an Environmental Justice Area and within 35 feet of a groundwater reservoir. The Facility is located within about 1,000 feet of Tongue Pond and in the Pawtuxet River watershed.
- (3) **The amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **The 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 and diesel fuel can cause significant soil and groundwater contamination if released to the environment.
- (5) **The duration of the violation:** 4 years – Respondents have not paid the registration and late fees for 2015, 2016, 2017 and 2018.
- (6) **The areal extent of the violation:** Considered, but not utilized for this calculation.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** Respondents failed to prevent the noncompliance by paying the registration fees to DEM by the payment due dates. Respondents have yet to mitigate the noncompliance, 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. As owners and operators of the Facility, Respondents had full control over the occurrence of the violation. The UST Regulations expressly require UST owners/operators to pay registration fees assessed by DEM.
- (10) **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>	<b>MODERATE</b>	<u>  X  </u> <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	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	<b>MODERATE</b>	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250	\$1,250 to \$2,500 <b>\$1,250</b>	\$250 to \$1,250

## PENALTY MATRIX WORKSHEET

CITATION:	Failure to install and operate the pipeline leak sensors and maintain the sumps
VIOLATION NOs.:	D (2), (3) and (5)

TYPE		
<p style="text-align: center;">___ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ <b>X</b> ___ 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 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 install and operate the product pipeline leak sensors in accordance with the UST Regulations. The DEM inspectors observed that the sensors were improperly mounted and/or secured inside the tank top sumps. Failure to comply would presumably reduce the likelihood of detecting and preventing releases of the regulated substances to the environment and increase threats to public health and safety.
  
- (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 50 feet of an Environmental Justice Area and within 35 feet of a groundwater reservoir. The Facility is located within about 1,000 feet of Tongue Pond and in the Pawtuxet 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 and diesel fuel can cause significant soil and groundwater contamination if released to the environment.
  
- (5) **Duration of the violation:** Unknown.
  
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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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 noncompliance by properly installing and operating the product pipeline leak sensors. Respondents have yet to mitigate the noncompliance 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. As owners and operators of the Facility, Respondents had full control over the occurrence of the violations. The requirements for proper installation and operation of leak detection equipment and maintenance of sumps are clearly established in the 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.

<b>MAJOR</b>	<b>MODERATE</b>	<u>  X  </u> <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	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	<b>MODERATE</b>	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250	\$1,250 to \$2,500 <b>\$1,750</b>	\$250 to \$1,250

PENALTY MATRIX WORKSHEET		
CITATION:	Failure to investigate a release detection signal	
VIOLATION NO.:	D	(4)

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 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 fuel alarm for the leak sensor deployed in the tank top sump for UST No. 010. The UST Regulations require that such release detection signals be immediately investigated by the owner/operator to determine the cause and that owners/operators rectify any problems revealed by the investigation. Failure to comply reduces the likelihood of preventing and detecting releases of the regulated substance and eliminating the resultant threats to public health and safety and the environment.
- (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 50 feet of an Environmental Justice Area and within 35 feet of a groundwater reservoir. The Facility is located within about 1,000 feet of Tongue Pond and in the Pawtuxet 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.
- (5) **Duration of the violation:** Unknown.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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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 noncompliance by immediately investigating the fuel alarm signal. Respondents have yet to mitigate the noncompliance 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 immediately with the requirements set forth in the UST Regulations. As owners and operators of the Facility, Respondents had full control over the occurrence of the violations. The requirements for the investigation of release detection signals are clearly established in the 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.

<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	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	<b>MODERATE</b>	\$6,250 to \$12,500	\$2,500 to \$6,250 <b>\$2,500</b>	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET		
CITATION:	Failure to assign and operate with trained Class C UST facility operators	
VIOLATION NOS.:	D	(6), (7) and (8)

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 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 assign and operate with Class C UST facility operators. At the time of inspection, the Facility operator was unable to present written verification that the operator had been trained as at least a Class C UST facility operator. Respondents failed to provide to DEM a list of all the Class C UST facility operators that had been trained and assigned to the Facility. The UST Regulations expressly require all owners/operators of regulated UST facilities to have trained Class C UST facility operators assigned to their facilities and prohibit the operation of UST facilities without at least one trained Class C UST facility operator on duty during all operating hours. The operator training requirements are significant to the regulatory program. Failure to comply would presumably reduce the likelihood of preventing and detecting releases from the UST systems.
- (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 50 feet of an Environmental Justice Area and within 35 feet of a groundwater reservoir. The Facility is located within about 1,000 feet of Tongue Pond and in the Pawtuxet 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 and diesel fuel can cause significant soil and groundwater contamination if released to the environment.
- (5) **Duration of the violation:** Full duration unknown – may have been for approximately 2½ years (since November 2016).
- (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 noncompliance:** Respondents failed to prevent the noncompliance by assigning trained Class C UST facility operators to the Facility and compiling a written training log in accordance with the UST Regulations. Respondents have made no apparent attempt to mitigate the noncompliance 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. As owners and operators of the Facility, Respondents had full control over the occurrence of the violations. The UST facility operator training requirements are clearly established in the 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.

<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	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	<b>MODERATE</b>	\$6,250 to \$12,500	\$2,500 to \$6,250 <b>\$2,500</b>	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

## PENALTY MATRIX WORKSHEET

CITATION:	Failure to have an ICC-certified Class A or B UST facility operator perform monthly inspections
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VIOLATION NO.:	D (9)
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### TYPE

\_\_\_ TYPE I

DIRECTLY related to protecting health, safety, welfare or environment.

\_\_\_ **X** \_\_\_ 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 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 have a registered, ICC-certified Class A or B UST facility operator inspect the Facility monthly and document the results of those inspections on the requisite form in accordance with the UST Regulations. These inspections are expressly required by the UST Regulations and are significant to the regulatory program. Failure to comply would presumably reduce the likelihood of preventing or detecting releases from the USTs.
- (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 50 feet of an Environmental Justice Area and within 35 feet of a groundwater reservoir. The Facility is located within about 1,000 feet of Tongue Pond and in the Pawtuxet 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 and diesel fuel can cause significant soil and groundwater contamination if released to the environment.
- (5) **Duration of the violation:** Full duration unknown – may have been for approximately 2½ years (since November 2016).
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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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 noncompliance by ensuring that a registered, ICC-certified Class A or B UST facility operator was performing the monthly inspections required by the UST Regulations. Respondents have yet 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. As owners and operators of the Facility, Respondents had full control over the occurrence of the violation. The Class A/B UST facility operator monthly inspection requirements are clearly established in the 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.

<b>MAJOR</b>	<b>MODERATE</b>	<u>  X  </u> <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	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	<b>MODERATE</b>	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250	\$1,250 to \$2,500 <b>\$1,750</b>	\$250 to \$1,250