

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Rhode Island Convention Center Authority      FILE NO.: UST 2015-27-03413**

**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 DEM's jurisdiction.

B.    Administrative History

On 30 June 2015, the DEM issued a Letter of Noncompliance ("LNC") to the Respondent by certified mail for the violations cited in this Notice of Violation ("NOV"). The LNC required specific actions to correct the violations. On 3 July 2015, the LNC was delivered to the Respondent. The Respondent has failed to comply with the LNC.

C.    Facts

- (1) The property is located at the corner of West Exchange Street and Sabin Street in the city of Providence, Rhode Island (the "Property"). The Property includes 1 underground storage tank ("UST") used for the storage of a petroleum product (the "Facility").
- (2) The Respondent owns the Property.
- (3) The Respondent operates the Facility.
- (4) The Facility is registered with the DEM and is identified as UST Facility No. 03413.
- (5) The UST is registered with the DEM as follows:

UST ID No.	Date Installed	Capacity	Product Stored
001	20 July 1993	4000 gallons	Diesel Fuel

- (6) The UST has double walled product pipelines.
- (7) On 18 June 2015, the DEM inspected the Facility. The inspection revealed the following:
- (a) Written verification that the outer walls of the product supply and return pipelines for the UST had been tested for tightness by a DEM-licensed tightness tester during the year 2013 was not available;
  - (b) Written verification that during the year 2013 the continuous monitoring system (“CMS”) had been tested at least once per month by the owner/operator and at least once by a qualified person was not available;
  - (c) The spill containment basin was holding fuel at the time of inspection;
  - (d) A list of all of the Class C UST facility operators that have been trained and assigned to the Facility was not available at the time of inspection;
  - (e) Upon information and belief, the UST system is routinely operated without having at least one trained Class C UST facility operator present during all operating hours without the written approval of the DEM;
  - (f) A sign was not posted near the UST that provides the names and telephone numbers of the owner/operator and the local emergency responders and instructions to call the numbers in the event of a spill or other emergency involving the UST; and
  - (g) Written verification that the registered Class A/B UST facility operator (Mr. Kevin Flynn) had conducted monthly on-site UST facility inspections during each of the months of May 2013 through May 2015 and documented the results of those inspections on the requisite form was not available.
- (8) As of the date of the NOV, the Respondent has failed to comply with the DEM’s *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the "UST Regulations") for the issues described in paragraph C (7) above.

#### D. Violation

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

- (1) **DEM’s UST Regulations, Rule 8.09(A)(2)** - requiring interstitial space tightness testing for double-walled product pipelines.

- (2) **DEM's UST Regulations, Rule 8.15(E)** - requiring that leak monitoring devices be tested by the owner/operator at least once per month.
- (3) **DEM's UST Regulations, Rule 8.15(F)** - requiring that leak monitoring devices be inspected and tested by a qualified person at least once per year.
- (4) **DEM's UST Regulations, Rule 8.16(A)(1)** - pertaining to the maintenance of spill containment basins.
- (5) **DEM's UST Regulations, Rule 8.22(A)** - requiring UST owners/operators to have Class A, B and C UST facility operators and to maintain a list of all of the Class C UST facility operators assigned to their facilities.
- (6) **DEM's UST Regulations, Rule 8.22(E)** - requiring UST owners/operators to obtain DEM's approval to operate their UST facilities without having at least one Class C UST facility operator present during all operating hours and requiring that a sign be posted near the USTs.
- (7) **DEM's UST Regulations, Rule 8.22(F)** - requiring the registered Class A or Class B UST facility operator to conduct monthly on-site UST facility inspections and record the results of 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 30 days of receipt of the NOV**:

- (1) If available, submit to the DEM's Office of Compliance and Inspection ("OC&I") a copy of an outer wall tightness test report for the product supply and return pipelines for the UST for the year 2013. If the outer walls of the product supply and return pipelines have not been tested for tightness within the last 2 years, procure the services of a DEM-licensed tightness tester to perform such testing in accordance with Rules 8.09(A)(2) and 8.10 of the DEM's UST Regulations. Original copies of the secondary pipeline tightness test report shall be submitted to the DEM's Office of Waste Management ("OWM") in accordance with Rule 8.10(D) of the DEM's UST Regulations and to the OC&I.

If it is not possible to perform tightness testing of the outer walls of the product supply and return pipelines for the UST (due to the method of construction), then **either** replace the product pipelines in full compliance with Sections 9.00 and 10.00 of the DEM's UST Regulations **or** seek a variance approval from the OWM to manage the product pipelines for the UST as single-walled pipelines in accordance with Rule 8.09(B) of the DEM's UST Regulations. Periodic tightness testing of the primary pipelines will be required as part of the variance approval and the pipelines

- will be subject to the mandatory deadline for permanent closure of single-walled pipelines, which is set forth in Rule 8.04 of the DEM's UST Regulations. Written verification that you have sought and obtained a variance approval from the OWM shall be submitted to the OC&I along with a copy of a tightness test report for the primary product supply and return pipelines.
- (2) If available, submit a copy of the tank monitor certification/test report for the year 2013.
  - (3) Evacuate and clean the spill containment basin in accordance with Rule 8.16(A)(1) of the DEM's UST Regulations. All wastes removed from this basin shall be managed and disposed of in accordance with Rule 5.8 of the DEM's *Rules and Regulations for Hazardous Waste Management*. Written or photographic verification of compliance shall be submitted to the OC&I.
  - (4) Submit to the OC&I a list of all of the Class C UST facility operators that have been trained and assigned to the Facility in accordance with Rule 8.22(A) of the DEM's UST Regulations. If there are no Class C UST facility operators presently assigned to the Facility, assign at least 1 trained Class C UST facility operator to the Facility in accordance with Rule 8.22(A) of the DEM's UST Regulations and submit to the OC&I a list of all of the Class C UST facility operators that have been trained and assigned.
  - (5) Submit a written request to the OWM to obtain approval to operate the Facility without having at least one Class C UST facility operator present during all operating hours, as per Rule 8.22(E) of the DEM's UST Regulations. A copy of the request letter shall be submitted to the OC&I.
  - (6) Post a sign near the UST that displays both the names and telephone numbers of the owner/operator and the local emergency responders and instructions to call these numbers in the event of a spill or other emergency involving the UST system, as per Rule 8.22(E) of the DEM's UST Regulations. Written or photographic verification of compliance shall be submitted to the OC&I.
  - (7) If available, submit representative samples of the Class A/B UST facility operator's monthly inspection checklists for the time period of May 2013 through May 2015. If such records are not available, the registered Class A/B UST facility operator shall henceforth conduct monthly on-site UST facility inspections and document the results of those inspections on the requisite form in accordance with Rules 8.22(F) and 11.02(B)(4) of the DEM's UST Regulations. Written verification of compliance shall be submitted 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:

**\$8,250**

- (2) The proposed administrative penalty is calculated pursuant to the DEM's *Rules and Regulations for Assessment of Administrative Penalties*, as amended, and must be paid to the DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a certified check, cashier's check or money order made payable to the "General Treasury - Water & Air Protection Program Account" and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against the Respondent in this NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if the DEM determines that reasonable efforts have been made to comply promptly with this 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 O above. All requests for hearing MUST:
- (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);
- (b) Be **RECEIVED** by the DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

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

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b);  
**AND**

(d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Rule 7.00(b) of the DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters*.

(2) A copy of each request for hearing must also be forwarded to:

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 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 (v) and 42-17.6-4(b) and (c).

(5) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.

(6) 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 at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey Tyrrell of the DEM 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, Chief  
DEM Office of Compliance and Inspection

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

CERTIFICATION

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

Rhode Island Convention Center Authority  
c/o James P. McCarvill, Executive Director  
One LaSalle Square - DDC  
Providence, RI 02903

by Certified Mail.

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<b>ADMINISTRATIVE PENALTY SUMMARY</b>	
Program:	OFFICE OF COMPLIANCE AND INSPECTION, UST
File No.:	UST 2015-27-03413
Respondent:	Rhode Island Convention Center Authority

<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 Perform Tightness Testing	Type II (\$12,500 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500
D(3) – Failure to Test CMS by a Qualified Person	Type II (\$12,500 Max. Penalty)*	Minor	\$1,250	1 violation	\$1,250
D(5) – Failure to Assign Class C Operator	Type II (\$12,500 Max. Penalty)*	Minor	\$1,500	1 violation	\$1,500
D(6) – Failure to Obtain Approval to Operate an Unmanned Facility and Post Required Signage	Type II (\$12,500 Max. Penalty)*	Minor	\$1,500	1 violation	\$1,500
D (2) and D (7) – Failure to have Class A or Class B Operator Perform Monthly Inspections	Type II (\$12,500 Max. Penalty)*	Minor	\$1,500	1 violation	\$1,500
<b>SUB-TOTAL</b>					<b>\$8,250</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 ARE IN COMPLIANCE. 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 the Respondent has 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>



**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 = \$8,250**

**PENALTY MATRIX WORKSHEET**

CITATION: Failure to Perform Tightness Testing

VIOLATION NO.: D | (1)

**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 Section 10(a)(2) of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondent failed to procure the services of a DEM-licensed tightness tester to perform tightness testing of the interstitial spaces of the product supply and return pipelines. Product pipeline interstitial space tightness testing is expressly required by the DEM's UST Regulations and is of significance to the regulatory program. Failure to comply would presumably reduce the likelihood of detecting and/or preventing leaks from the UST system.
- (B) **Environmental conditions:** The facility is located 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 wells proximate to the facility. The facility is located within 900 feet of the Woonasquatucket River and within the Providence River 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:** 1 year - the Respondent failed to perform the testing in 2013.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** The Respondent failed to prevent the non-compliance by procuring the services of a DEM-licensed tightness tester to perform the required testing.
- (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 testing requirements set forth in the DEM's UST Regulations. As owner and operator of the facility, the Respondent had full control over the occurrence of the violation. The DEM's UST Regulations expressly require biennial testing for product pipelines that have been in use for 20 years or more.
- (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>	<b>MODERATE</b>	<b><u>  X  </u> 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
	MODERATE	\$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>\$2,500</b>	\$250 to \$1,250

**PENALTY MATRIX WORKSHEET**

CITATION: Failure to Test CMS by a Qualified Person

VIOLATION NO.: D (3)

**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 Section 10 (a) (2) of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondent failed to procure the services of a qualified person to certify/test the CMS. Failure to comply with this rule would presumably reduce the likelihood of detecting and/or preventing releases from a UST system.
- (B) **Environmental conditions:** The facility is located 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 wells proximate to the facility. The facility is located within 900 feet of the Woonasquatucket River and within the Providence River 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:** 1 year - the Respondent failed to have the testing performed in 2013.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to prevent the non-compliance by having the CMS certified/tested during the year 2013. The Respondent did have the CMS certified/tested during the year 2014.
- (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 the Respondent for the failure to comply with the requirements set forth in Rule 8.15(F) of the DEM's UST Regulations. As owner and operator of the facility, the Respondent had full control over the occurrence of the violation. The annual tank monitor certification/testing requirements are clearly established in the DEM's 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>	<b>MODERATE</b>	<u>  <b>X</b>  </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 Assign Class C Operator
VIOLATION NO.:	D (5)

<b>TYPE</b>		
<u>      </u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>  <b>X</b>  </u> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE III</b> <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.

**DEVIATION FROM THE STANDARD**  
 THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

**FACTORS CONSIDERED:**

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

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondent failed to assign at least one Class C UST facility operator to the facility and failed to present a list of all of the Class C UST facility operators that had been trained and assigned to the facility. The DEM's UST Regulations expressly require that all UST facilities have at least one Class C UST facility operator.
- (B) **Environmental conditions:** The facility is located 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 wells proximate to the facility. The facility is located within 900 feet of the Woonasquatucket River and within the Providence River 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:** 3 years. The Respondent should have assigned at least one trained Class C UST facility operator to the facility no later than 1 August 2012.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to prevent the non-compliance by assigning at least one trained Class C UST facility operator to the facility on or before 1 August 2012. The Respondent has yet to mitigate the non-compliance despite receiving a Letter of Noncompliance 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 the Respondent for the failure to comply with the requirements set forth in Rule 8.22(A) of the DEM's UST Regulations. As owner and operator of the facility, the Respondent had full control over the occurrence of the violation. The operator training requirements are clearly established in the DEM's 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>	<b>MODERATE</b>	<u>  <b>X</b>  </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>\$1,500</b>	\$250 to \$1,250

**PENALTY MATRIX WORKSHEET**

CITATION:	Failure to Obtain Approval to Operate an Unmanned Facility and Post Required Signage	
VIOLATION NO.:	D	(6)

<b>TYPE</b>		
<u>      </u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>  <b>X</b>  </u> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE III</b> <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.

**DEVIATION FROM THE STANDARD**  
 THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

**FACTORS CONSIDERED:**

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

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondent failed to notify the DEM and obtain approval to operate the facility without having at least one trained Class C UST facility operator present during all hours of operation. USTs that supply fuel for emergency stand-by generators are typically operated without personnel in the immediate vicinity of the tank field. The DEM's UST Regulations require prior DEM approval to operate unmanned facilities and that signage be posted near the UST with telephone numbers and emergency instructions. The operator training rules were promulgated to ensure that trained, qualified persons would be assigned to operate USTs and respond to emergency situations.
- (B) **Environmental conditions:** The facility is located 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 wells proximate to the facility. The facility is located within 900 feet of the Woonasquatucket River and within the Providence River 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:** 3 years. The Respondent should have notified the DEM and obtained approval to operate an unmanned facility on or before 1 August 2012.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to prevent the non-compliance by obtaining the DEM's approval to operate an unmanned facility on or before 1 August 2012. The Respondent has yet to mitigate the non-compliance despite receiving a Letter of Noncompliance 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 the Respondent for the failure to comply with the requirements set forth in Rule 8.22(E) of the DEM's UST Regulations. As owner and operator of the facility, the Respondent had full control over the occurrence of the violation. The operator training requirements are clearly established in the DEM's 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>	<b>MODERATE</b>	<u>  <b>X</b>  </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>\$1,500</b>	\$250 to \$1,250

**PENALTY MATRIX WORKSHEET**

CITATION: Failure to have Class A or Class B Operator Perform Monthly Inspections

VIOLATION NOS.: D (2) and (7)

**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 Section 10 (a) (2) of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondent failed to have the registered, certified Class A or Class B UST facility operator conduct monthly on-site UST facility inspections in accordance with DEM's UST Regulations. These monthly inspections are of significance to the regulatory program. Failure to perform these inspections and tests would presumably reduce the likelihood of preventing or detecting a leak or release from the UST system.
- (B) **Environmental conditions:** The facility is located 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 wells proximate to the facility. The facility is located within 900 feet of the Woonasquatucket River and within the Providence River 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:** About 3 years - August 2012 through June 2015.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

(continued)

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to prevent the non-compliance by having the registered Class A/B UST facility operator perform monthly inspections of the facility. The Respondent failed to mitigate the non-compliance despite receiving a Letter of Noncompliance 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 the Respondent for the failure to comply with the requirements set forth in Rules 8.22(F) and 8.15(E) of the DEM's UST Regulations. As owner and operator of the facility, the Respondent had full control over the occurrence of the violation. The monthly facility inspection requirements are clearly established in the DEM's 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>	<b>MODERATE</b>	<u>  <b>X</b>  </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
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	<b>MINOR</b>	\$2,500 to \$6,250	\$1,250 to \$2,500 <b>\$1,500</b>	\$250 to \$1,250