

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Bruce H. Elwell  
dba Earle's Service Station, Inc.**

**FILE NO.: OCI-UST-20-32-LS1701**

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, (the "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 9 July 2019, DEM issued a Notice of Intent to Enforce ("NIE") to Respondent by certified mail for the alleged violations that are the subject of this Notice of Violation ("NOV"). The NIE required Respondent to take specific actions to correct the violations. On 16 July 2019, the NIE was delivered. On 4 September 2019, DEM met with Respondent to discuss the possibility of DEM performing some initial remedial actions to reduce the risk of further contamination and off-site contaminant migration. Respondent failed, however, to submit the financial documentation required to allow DEM to proceed with such an action. On 30 December 2019, DEM issued a second NIE to Respondent by certified mail. On 13 January 2020, the NIE was delivered. As of the date of the NOV, Respondent has failed to comply with the NIEs.

C. Facts

- (1) The subject property is located at 35 Meeting House Lane in the Town of Little Compton, Rhode Island, otherwise identified as Little Compton Tax Assessor's Plat 20, Lot 14 (the "Property"). The Property includes a convenience store and formerly included a gasoline storage and dispensing system (the "Facility").
- (2) Earle's Service Station, Inc. C/O Bruce Elwell owns the Property.
- (3) The *Certificate of Organization/Registration* for Earle's Service Station, Inc. was revoked by the Rhode Island Secretary of State on 2 November 2017. Respondent is the last known president and only member of the corporation.

- (4) Underground storage tanks (“USTs” or “tanks”) were located on the Property, which tanks were used for storage of petroleum products and were 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 DEM and is identified as UST Facility No. 02650.
- (6) The USTs are registered with DEM for the Facility as follows:

UST ID No.	Date Installed	Date Removed	Capacity	Product Stored
002	15 June 1987	19 November 2018	4,000 gallons	Gasoline
003	15 June 1987	19 November 2018	4,000 gallons	Gasoline

- (7) On 19 November 2018, UST Nos. 002 and 003 were removed from the ground and permanently closed. The tank removal project was overseen by Respondent’s consultant, Sage Environmental, Inc. (“SAGE”). During the tank closure, evidence of a release of petroleum product from the UST systems was detected. DEM’s inspector, who was present during the tank closure, reported that a strong gasoline odor was present in and around the excavation and that petroleum product was observed on the surface of the groundwater that was present in the excavation which required removal of product via onsite vacuum truck.
- (8) On or about 5 February 2019, DEM received a *Closure Assessment Report* for the Facility, which was prepared by SAGE. SAGE reported the following:
- (a) Strong petroleum odors were detected in and around the tank and pipeline excavations;
  - (b) Light, non-aqueous phase liquid (“LNAPL”) was observed atop the groundwater that was present in the excavations;
  - (c) LNAPL was pumped from the excavation and removed from the site via tanker truck;
  - (d) Photo-ionization detector screening of soil samples collected from above the tanks and within the excavation areas revealed elevated levels of total volatile organic vapors;
  - (e) Laboratory analysis of soil samples collected from the tank and pipeline excavations revealed the presence of benzene and naphthalene at concentrations that exceed the *Method One GA Leachability Criteria* set forth in Part 1.9.2(C)(3) of the Rhode Island Code of Regulations titled *Rules and Regulations for the Investigation and Remediation of Hazardous Material*

*Releases (250-RICR-140-30-1)* (the “Remediation Regulations”); and

- (f) Approximately 160.72 tons of petroleum-contaminated soil was excavated from the Property during the closure project and removed for proper disposal.
- (9) On 8 April 2019, DEM received a *Site Investigation Report* from SAGE, on behalf of Respondent. SAGE reported the following:
- (a) Laboratory analysis of soil samples collected from 4 soil boring locations on the Property revealed concentrations of benzene (in 3 of 4 locations), methyl tertiary-butyl ether (“MTBE”) (in 1 of 4 locations), ethylbenzene (in 1 of 4 locations), naphthalene (in 3 of 4 locations), toluene (in 1 of 4 locations) and total xylenes (in 1 of 4 locations) that exceeded the *Method One GA Leachability Criteria* set forth in Part 1.9.2(C)(3) of the Remediation Regulations;
  - (b) Laboratory analysis of soil samples collected from 4 soil boring locations on the Property revealed concentrations of benzene (in 2 of 4 locations), ethylbenzene (in 1 of 4 locations), toluene (in 1 of 4 locations) and total xylenes (in 1 of 4 locations) that exceeded the *Method One Residential Direct Exposure Criteria* set forth in Part 1.9.2(C)(2) of the Remediation Regulations;
  - (c) Laboratory analysis of soil samples collected from 4 soil boring locations on the Property revealed a concentration of benzene (in 1 of 4 locations) that exceeded the *Method One Industrial/Commercial Direct Exposure Criteria* set forth in Part 1.9.2(C)(2) of the Remediation Regulations;
  - (d) Laboratory analysis of groundwater samples obtained from 6 new and 4 existing groundwater monitoring wells installed on the Property revealed concentrations of benzene (in 8 wells), MTBE (in 4 wells), ethylbenzene (in 3 wells), naphthalene (in 5 wells), toluene (in 2 wells) and total xylenes (in 1 well) that exceeded the *Method One GA Groundwater Objectives* set forth in Part 1.9.3(F)(4) of the Remediation Regulations;
  - (e) Laboratory analysis of groundwater samples obtained from private drinking water wells located at 33, 35 and 39 Meeting House Lane did not reveal the presence of any chemicals listed above; and
  - (f) The distinct increase in BTEX (benzene, ethylbenzene, toluene and xylene) compounds encountered during the tank closure and subsequent site investigation (as opposed to concentrations detected during previous investigations) is indicative of a new release from the USTs and pipelines that were removed on 19 November 2018.

- (10) On 9 April 2019, DEM issued a letter to Respondent requiring it to conduct corrective action to remediate the property, beginning with a scope of work to be submitted to DEM within 30 days and full Corrective Action Plan (“CAP”) to be submitted within 90 days.
- (11) On 14 May 2019, DEM received a proposed scope of work from Respondent’s consultant, which it responded to on the same day. The proposed scope of work was found to be deficient because the method proposed would not result in reduction in soil and groundwater contaminant levels within a reasonable timeframe as required by the 9 April 2019 letter.
- (12) As of the date of the NOV, Respondent has not submitted an acceptable, proposed Corrective Action Plan (“CAP”) for the Property to DEM.

D. Violation

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

- (1) **Sections 46-12-5 (a) and (b) of the R.I. Gen. Laws** – prohibiting the placement or discharge of pollutants to the waters of the State or in a location where it is likely to enter the waters of the State except as in compliance with any rules and regulations or pursuant to the terms and conditions of a permit issued by DEM.
- (2) **Section 46-12.5.1-3 of the R.I. Gen. Laws** – prohibiting the discharge of oil to the waters or land of the State except by regulation or permit from DEM.
- (3) **Pat 2.6(A) of the Rhode Island Code of Regulations titled *Oil Pollution Control Regulations (250-RICR-140-25-2)* (the “OPC Regulations”)** – prohibiting the placement of oil or pollutants into the waters or land of the State or in a location where they are likely to enter the waters of the State.
- (4) **Pat 2.12(B) of the OPC Regulations** – pertaining to oil and waste release response requirements.
- (5) **Part 3.8(A) of the Rhode Island Code of Regulations titled *Groundwater Quality Rules (250-RICR-150-05-3)* (the “Groundwater Rules”)** – requiring that groundwater be maintained at a quality consistent with its classification.
- (6) **Part 3.8(B) of the Groundwater Rules** – prohibiting the discharge of pollutants to the groundwater without the approval of DEM.
- (7) **Part 3.8(C) of the Groundwater Rules** – prohibiting the operation or maintenance of a facility in a manner that may result in the discharge of pollutants to the groundwater without the approval of DEM.

- (8) **Part 1.14(B) and Part 1.14(C) of the UST Regulations** – requiring UST owners/operators to investigate and clean up any spills, leaks or releases in accordance with the UST Regulations and any other applicable local, state and federal statutes, rules and regulations.
- (9) **Pat 1.14(I)(3) of the UST Regulations** – requiring owners/operators to submit a proposal for corrective action within 30 days of being required to do so by DEM.

E. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), you are hereby ORDERED to complete the following remedial actions:

- (1) **Within 7 days of receipt of the NOV**, submit to DEM’s Office of Compliance and Inspection (“OC&I”) written verification that you have procured the services of a qualified environmental consultant to develop remedial options for the soil and groundwater contamination on and, if necessary, off the Property in accordance with Part 1.14(I) of the UST Regulations.
- (2) **Within 30 days of receipt of the NOV**, your qualified environmental consultant shall develop a CAP proposal in accordance with Part 1.14(I)(3) and Part 1.14(I)(4) of the UST Regulations (the “CAP Proposal”) and submit it to the DEM’s Office of Land Revitalization and Sustainable Materials Management (“OLRSMM”) for review and approval.
- (3) The CAP Proposal shall be subject to the OLRSM’s review and approval. Within 14 days (unless a longer time is specified) of receiving comments from the OLRSM, Respondent shall submit a revised CAP Proposal or other documents that fully satisfy the comments.
- (4) The CAP shall ultimately be developed and implemented by Respondent in accordance with a schedule and *Order of Approval* issued by the OLRSM and in full compliance with Part 1.14 of the UST Regulations.
- (5) Notify the OLRSM’s Leaking Underground Storage Tank Program at least 48 hours prior to any excavation, well installation, repair or replacement of equipment at the Facility so that a representative of DEM may be present.
- (6) Submit quarterly status reports of all investigatory, sampling and remedial activities that take place at the Facility.
- (7) Continue operation of all remediation procedures specified in the CAP and continue submission of required status reports until DEM determines that the soils and/or groundwater located on and around the Property have been adequately treated. DEM may require a period of monitoring to ensure that standards have been met. Continue submission of required quarterly status reports until such time that DEM issues written approval for termination of remedial activities at the Facility.

F. Penalty

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:

**\$25,000**

- (2) The proposed administrative penalty is calculated pursuant to the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* and must be paid to DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a certified check, cashier's check or money order made payable to the "General Treasury - Water & Air Protection Program" and shall be forwarded to DEM's Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against Respondent in the NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if the Director determines that reasonable efforts have been made to comply promptly with the NOV.

G. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before DEM's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through F above. All requests for hearing MUST:
- (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);
- (b) Be **RECEIVED** by DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of the NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk  
DEM - Administrative Adjudication Division  
235 Promenade Street, Room 350  
Providence, RI 02908-5767

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
- (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Part 1.7(B) of the Rhode Island Code of Regulations titled *Rules and Regulations for the Administrative Adjudication Division (250-RICR-10-00-1)*.
- (2) A copy of each request for hearing must also be forwarded to:
- Susan Forcier, Esquire  
DEM - Office of Legal Services  
235 Promenade Street, Suite 425  
Providence, RI 02908-5767
- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then the NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (vi) and 42-17.6-4(b) and (c).
- (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) An original signed copy of the NOV is being forwarded to the Town of Little Compton, 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) Susan Forcier of DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey Tyrrell of DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 7407.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section G above.

FOR THE DIRECTOR

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

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

CERTIFICATION

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

Bruce H. Elwell dba Earle’s Service Station, Inc.  
35 Meeting House Lane  
Little Compton, RI 02837

by Certified Mail.

\_\_\_\_\_





<b>ADMINISTRATIVE PENALTY SUMMARY</b>	
Program:	OFFICE OF COMPLIANCE AND INSPECTION, LUST COMPLIANCE
File No.:	OCI-UST-20-32-LS1701
Respondent:	Bruce H. Elwell dba Earle's Service Station, 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), (2), (3), (5), (6) and (7) – Release of oil and pollutants to the land and waters of the State	Type I <i>(\$25,000 Max. Penalty) *</i>	Major	\$12,500	1 violation	\$12,500
D (4), (8) and (9) – Failure to take required remedial actions in response to a release	Type I <i>(\$25,000 Max. Penalty) *</i>	Major	\$12,500	1 violation	\$12,500
<b><i>SUB-TOTAL</i></b>					<b>\$25,000</b>

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

<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 NON-COMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED.
A review of the record in this matter has revealed that 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.

<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 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 = \$25,000**

PENALTY MATRIX WORKSHEET		
CITATION:	Release of oil and pollutants to the land and waters of the State	
VIOLATION NOs.:	D	(1), (2), (3), (5), (6) and (7)

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

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

**FACTORS CONSIDERED:**

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

- (1) **The extent to which the act or failure to act was out of compliance:** Volatile organic compound (“VOC”) and semi-volatile organic compound (“SVOC”) contamination is present in soil and groundwater on the Property that exceed the *Method One GA Groundwater Objectives, GA Leachability Criteria, Residential Direct Exposure Criteria and Industrial/Commercial Direct Exposure Criteria* set forth in the Remediation Regulations. The detected analytes are typically associated with gasoline. LNAPL was observed atop groundwater in the tank and pipeline excavations during the UST closure project. The R. I. Gen. Laws, the OPC Regulations and the Groundwater Rules prohibit the release of pollutants and petroleum products to the waters of the State and require that groundwater be maintained consistent with its classification.
- (2) **Environmental conditions:** The Facility is in a developed area with potential vapor receptors comprised of commercial structures. The Facility is in a GA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment. The Facility is located within the non-community wellhead protection areas for one non-transient water supply well and one transient water supply well. The commercial properties surrounding the Facility rely on private drinking water wells. The Facility is surrounded by regulated freshwater wetlands and the USTs were installed within 140 feet of Dunderly Brook. The Facility is located within the Sakonnet Point-Frontal Rhode Island Sound watershed.
- (3) **Amount of the pollutant:** Laboratory analysis of soil and groundwater samples obtained from the Property revealed concentrations of VOCs and SVOCs at concentrations as high as 1,095 times (benzene) the *GA Leachability Criteria* and as high as 2,740 times (benzene) the *GA Groundwater Objectives* set forth in the Remediation Regulations. Altogether, excessive concentrations of at least one of six contaminants tested were detected in three of the four soil samples and in eight of the ten groundwater samples.
- (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. Benzene is a known human carcinogen. MTBE is a potential human carcinogen at high doses.
- (5) **Duration of the violation:** Full duration unknown – at least 1 1/2 years. The release was first detected during the tank removal project that began on 19 November 2018.
- (6) **Areal extent of the violation:** All of the contaminated soil and groundwater samples collected thus far have been taken from within the boundaries of the Property. Two drinking water samples collected from the abutting properties did not reveal the presence of any contaminants above the laboratory quantitation limits.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** Respondent had the USTs and their pipelines tested for tightness by a DEM-licensed tightness tester on 5 April 2018 and reported that they met the criteria for passing. At this time, it is not known whether Respondent was reconciling his gasoline inventory on a monthly basis or utilizing the automatic tank gauging system to perform monthly 0.2 gallon-per-hour leak tests (during the time period of September 2016 through November 2018). Respondent did have the UST systems, which are the presumed source of the release, removed from the ground and permanently closed.
- (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:** Respondent has previously been cited by DEM for violations of the UST Regulations, including release prevention and detection requirements, in Notices of Violation that were issued in 2009 and 2014.
- (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:** Respondent, as owner and operator of the Facility, had control over the occurrence of the violation. Respondent had the USTs and their product pipelines tested for tightness by a DEM-licensed tightness tester on 5 April 2018 and reported that they met the criteria for passing.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u>X</u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$12,500 to \$25,000 <b>\$12,500</b>	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET		
CITATION:	Failure to take required remedial actions in response to a release	
VIOLATION NOS.:	D	(4), (8) and (9)

TYPE		
<b>X</b> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	___ 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 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:** Respondent failed to submit an acceptable CAP to DEM. Corrective action has been required by DEM to address the petroleum contamination that was discovered during the UST closure project and subsequent site investigation. Failure to comply could result in adverse impacts to abutting and surrounding properties and/or to private drinking water supplies. Investigation and remediation of petroleum and hazardous material releases is of prime importance to the regulatory program.
- (2) **Environmental conditions:** The Facility is in a developed area with potential vapor receptors comprised of commercial structures. The Facility is in a GA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment. The Facility is located within the non-community wellhead protection areas for one non-transient water supply well and one transient water supply well. The commercial properties surrounding the Facility rely on private drinking water wells. The Facility is surrounded by regulated freshwater wetlands and the USTs were installed within 140 feet of Dundery Brook. The Facility is located within the Sakonnet Point-Frontal Rhode Island Sound watershed.
- (3) **Amount of the pollutant:** Laboratory analysis of soil and groundwater samples obtained from the Property revealed concentrations of VOCs and SVOCs at concentrations as high as 1,095 times (benzene) the *GA Leachability Criteria* and as high as 2,740 times (benzene) the *GA Groundwater Objectives* set forth in the Remediation Regulations. Altogether, excessive concentrations of at least one of six contaminants tested were detected in three of the four soil samples and in eight of the ten groundwater samples.
- (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. Benzene is a known human carcinogen. MTBE is a potential human carcinogen at high doses.
- (5) **Duration of the violation:** Approximately 2 years – Respondent was required to submit a proposed scope-of-work for the required CAP to DEM by 13 May 2019.
- (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 non-compliance:** Respondent failed to prevent the non-compliance by immediately procuring the services of a qualified environmental consultant to develop and submit an amended, proposed scope-of-work for a CAP to DEM. Respondent has made no apparent attempt to mitigate the non-compliance despite receiving the NIEs from DEM, which required that he 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:** Respondent has previously been cited for violations of the UST Regulations, including release prevention and detection requirements, in Notices of Violation that were issued by DEM in 2009 and 2014.
- (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 Respondent for the failure to comply immediately with the DEM's requirement to submit a proposed scope-of-work for a CAP to DEM. As owner and operator of the Facility, Respondent had full control over the occurrence of the violations. The corrective action requirements are clearly established in the UST Regulations and the OPC Regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u>  X  </u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$12,500 to \$25,000 <b>\$12,500</b>	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250