

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Ibrahim Enterprises Corporation

FILE NO.: UST 2016-19-00445

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 22 April 2016, the DEM issued a Notice of Intent to Enforce (the “NIE”) to the Respondent for the violations that are the subject of this Notice of Violation (the “NOV”). The NIE required that the Respondent take specific actions to correct the violations. On 26 April 2016, the NIE was delivered to the Respondent. As of the date of the NOV, the violations have not been fully corrected.

C. Facts

- (1) The property is located at 33 Jefferson Boulevard, Assessor’s Plat 284, Lot 291 in the city of Warwick (the Property”). The Property includes a service station and a motor fuel storage and dispensing system (the “Facility”).
- (2) The Respondent owns the Property, taking title on or about 12 September 2014. Badawi Sleiman is the corporation President.
- (3) The Respondent operates the Facility. Mr. Sleiman has operated the Facility since at least 9 January 2007.
- (4) Underground storage tanks (“USTs” or “tanks”) are located on the Property, which tanks are used for storage of petroleum products and which are subject to the DEM’s *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the “UST Regulations”).
- (5) The Facility is registered with the DEM and is identified as UST Facility No. 00445.

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

UST ID No.	Date Installed	Capacity	Product Stored
002	9 January 1990	10,000 gallons	Diesel
004	10 January 1990	8,000 gallons	Gasoline
006	10 January 1990	6,000 gallons	Gasoline
008	11 January 1990	6,000 gallons	Gasoline

(7) On 20 March 2013, the DEM issued a variance approval (the "Variance Approval") to the former Facility owner, which required that the product pipelines for the USTs be managed as single-walled pipelines due to the inability to test the secondary pipelines for tightness. Annual tightness testing of the primary product pipelines was required as part of the Variance Approval.

(8) On 20 April 2016, the DEM inspected the Facility. The inspection revealed the following:

- (a) The product inventory was not being reconciled on a monthly basis to check for discrepancies of 1% or more of the flow-through plus 130 gallons;
- (b) No documents were available to show that the primary product pipelines for UST Nos. 004, 006 and 008 were tested for tightness by a DEM-licensed tightness tester during the year 2015;
- (c) No documents were available to show that the primary product pipeline for UST No. 002 had been tested for tightness by a DEM-licensed tightness tester during each of the years 2014 and 2015. Tightness test reports for these product pipelines for the referenced years have not been received by the DEM;
- (d) No documents were available to show that the line leak detectors for UST Nos. 004, 006 and 008 had been tested by a qualified person during the year 2015;
- (e) No documents were available to show that the line leak detector for UST No. 002 had been tested by a qualified person during each of the years 2014 and 2015;
- (f) No documents were available to show that the shear valves for UST Nos. 002, 004, 006 and 008 had been tested by a qualified person during the year 2015;
- (g) The *Veeder Root TLS 350R* continuous monitoring system ("CMS") was displaying "fuel alarms" for the leak sensors deployed in the tank top sumps for UST Nos. 002, 004 and 006 and a "high liquid" alarm for the leak sensor deployed in the interstitial space of UST No. 006. The oldest of the alarms had been in effect since 6 October 2015 and the alarms were not investigated or reported to the DEM;

- (h) The CMS console was completely hidden behind a refrigerator and a piece of fabric and could not be readily seen or heard by the Facility operators;
 - (i) No records were available to show that the CMS had been certified/tested by a qualified person during the year 2015;
 - (j) The lamp for the high level overfill alarm enunciator was malfunctioning;
 - (k) The tank top sumps for UST Nos. 002, 004 and 006 were holding liquids;
 - (l) No list was available of all the trained Class C UST facility operators assigned to the Facility;
 - (m) 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;
 - (n) No records were available to show that either of the registered Class A/B UST facility operators, Edgar Amador and Joseph McCormick, had performed monthly on-site Facility inspections during the time period of April 2014 through March 2016; and
 - (o) Upon information and belief, Mr. Amador and Mr. McCormick were no longer acting as the designated Class A and B UST facility operators for the Facility and there were no *International Code Council* (“ICC”) certified Class A and Class B UST facility operators assigned to the Facility.
- (9) On 9 June 2016, the DEM received a report from Hazard’s Testing, LLC that was submitted on behalf of the Respondent. The report stated that the line leak detectors, shear valves and CMS for the USTs were functioning properly.
- (10) As of the date of the NOV, the Respondent has failed to demonstrate full compliance with the findings described in Section B (8) above.

D. Violation

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

- (1) **DEM's UST Regulations, Rules 8.08(A)(2) and 11.03** - requiring monthly inventory reconciliation and leak check calculations for USTs.
- (2) **DEM's UST Regulations, Rule 8.09(B)(1)** - requiring tightness testing of the primary product pipelines on an annual basis.

- (3) **DEM's UST Regulations, Rule 8.11** - requiring annual testing of line leak detectors by qualified persons.
- (4) **DEM's UST Regulations, Rule 8.12** - requiring annual testing of dispenser shear valves.
- (5) **DEM's UST Regulations, Rules 8.15(C) and 12.03** - requiring immediate investigation and reporting of release detection signals and prohibiting the concealment of CMS consoles.
- (6) **DEM's UST Regulations, Rule 8.15(E)** - requiring monthly inspection of UST continuous monitoring systems by the owner/operator or Class A/B UST facility operator.
- (7) **DEM's UST Regulations, Rule 8.15(F)** - requiring that UST continuous monitoring systems be inspected and tested by qualified persons on an annual basis.
- (8) **DEM's UST Regulations, Rule 8.02(A)** - requiring maintenance of overfill protection for USTs.
- (9) **DEM's UST Regulations, Rule 8.16(D)** - requiring that tank top sumps be kept free of liquids and debris at all times.
- (10) **DEM's UST Regulations, Rule 8.22(A)** - requiring UST facility owners/operators to have ICC-certified Class A and B UST facility operators and trained Class C UST facility operators assigned to the facility.
- (11) **DEM's UST Regulations, Rule 8.22(A)(7)** - requiring UST facility owners/operators to maintain lists of all of the trained Class C UST facility operators that have been assigned to the facility.
- (12) **DEM's UST Regulations, Rule 8.22(D)(1)** - requiring UST facility owners/operators to have at least one trained Class C UST facility operator on duty at their facility during all operating hours.
- (13) **DEM's UST Regulations, Rule 8.22(F)** - requiring the registered 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) Adjust the product inventory record-keeping practices to ensure full compliance with Rules 8.08(A)(2) and 11.03 of the DEM's UST Regulations and submit copies of the adjusted monthly inventory reconciliation and leak check records for the USTs (for at least 3 months) to the DEM's Office and Inspection ("OC&I").
- (2) If available, submit to the OC&I written verification that the primary product pipelines for UST Nos. 004, 006 and 008 were tested for tightness by a DEM-licensed tightness tester during the year 2015 and that the product pipeline for UST No. 002 was tested for tightness during each of the years 2014 and 2015. If the primary product pipelines for the USTs have not been tested for tightness within the last year, procure the services of a DEM-licensed tightness tester to perform such testing in accordance with Rules 8.09(B)(1) and 8.10 of the DEM's UST Regulations and the Variance Approval. Submit original copies of the product pipeline tightness test reports 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.
- (3) Investigate the "fuel alarms" for the leak sensors deployed in the tank top sumps for UST Nos. 002, 004 and 006 and the "high liquid" alarm for the leak sensor deployed in the interstitial space of UST No. 006 in accordance with Rules 8.15(C) and 12.03 of the DEM's UST Regulations and submit a written report to the OC&I detailing the outcome of the investigation and any remedial actions taken.
- (4) Remove the refrigerator and any other obstructions blocking the Facility operators' view of the CMS console to ensure compliance with Rule 8.15(C) of the DEM's UST Regulations **OR** relocate the CMS console to a more location that ensures compliance with the rule. Submit written and/or photographic verification of compliance to the OC&I.
- (5) Repair or replace the lamp for the high-level overfill alarm enunciator in accordance with Rules 8.02(A) and 8.16(B) of the DEM's UST Regulations. Submit written verification of compliance to the OC&I.
- (6) Evacuate and clean the tank top sumps for UST Nos. 002, 004 and 006 in accordance with Rule 8.16(D) of the DEM's UST Regulations. All wastes removed from these sumps shall be managed and disposed of in accordance with Rule 5.3 of the DEM's *Rules and Regulations for Hazardous Waste Management*. Submit written or photographic verification of compliance to the OC&I.

- (7) If Mr. Amador and Mr. McCormick are no longer acting as Class A and B UST facility operators for the Facility, assign at least 1 trained and ICC-certified Class A UST facility operator and at least 1 trained and ICC-certified Class B UST facility operator to the Facility in accordance with Rule 8.22 of the DEM's UST Regulations. Submit written verification of compliance to the OC&I.
- (8) 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 Rules 8.22 (A) and (D) of the DEM's UST Regulations. Submit a copy of the completed training log to the OC&I. The Facility shall henceforth be operated only with at least 1 trained Class C UST facility operator on duty during all hours of operation, as per Rule 8.22 of the DEM's UST Regulations.
- (9) Submit an updated and completed *Certified UST Facility Operators Registration Form* and copies of the Class A and Class B UST facility operators' examination certificates to the OWM's UST Management Program in accordance with Rule 8.22(A)(4) of the DEM's UST Regulations and to the OC&I.
- (10) If available, submit copies of the completed *Class A/B UST Facility Operators Monthly Inspection Checklists* for the time period of April 2014 through March 2016 to the OC&I. If such records are not available, the newly assigned and registered Class A/B UST facility operator(s) shall henceforth perform these inspections in accordance with Rules 8.22(F) and 8.15(E) of the DEM's 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:

\$16,951

- (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 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
One Capitol Hill, 2ND 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 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 Warwick, 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 at 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, 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:

Ibrahim Enterprises Corporation
c/o Badawi Sleiman, Registered Agent
33 Jefferson Boulevard
Warwick, RI 02888

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY	
Program:	OFFICE OF COMPLIANCE AND INSPECTION, UST COMPLIANCE
File No.:	UST 2016-19-00445
Respondent:	Ibrahim Enterprises Corporation

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION NO. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D(1) – Failure to Compile Inventory Records	Type II (\$12,500 Max. Penalty)*	Moderate	\$2,500	1 violation	\$2,500
D(2) – Failure to Test Product Pipelines	Type II (\$12,500 Max. Penalty)*	Minor	\$1,750	1 violation	\$1,750
D (3), (4) and (7) – Failure to Test Line Leak Detectors, Shear Valves and CMS	Type II (\$12,500 Max. Penalty)*	Minor	\$1,500	1 violation	\$1,500
D (5) – Failure to Respond to Alarms	Type II (\$12,500 Max. Penalty)*	Moderate	\$2,500	1 violation	\$2,500
D (10), (11) and (12) - Failure to Assign and Operate with Class A, B and C Operators	Type II (\$12,500 Max. Penalty)*	Moderate	\$5,000	1 violation	\$5,000
D (6) and (13) - Failure to have a Class A or B Operator Perform Inspections	Type II (\$12,500 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500
SUB-TOTAL					\$15,750

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

ADMINISTRATIVE PENALTY SUMMARY (continued)

ECONOMIC BENEFIT FROM NONCOMPLIANCE		
COSTS OF COMPLIANCE, EQUIPMENT, O&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: - THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.		
DESCRIPTION OF BENEFIT	CALCULATION	AMOUNT
Failure to test product pipelines, line leak detectors and CMS. The economic benefit of noncompliance was determined by using an EPA computer model entitled "BEN" that performs a detailed economic analysis. The dates and dollar amounts used in this analysis are listed in this table.	2014 Tests 1 product pipeline test @ \$203 per test = \$203 1 line leak detector test @ \$96 per test = \$96 2015 Tests 4 line leak detectors @ \$96 per test = \$384 4 product pipelines @ \$203 per test = \$812 1 CMS @ \$273 per test = \$273	\$1,201
SUB-TOTAL		\$1,201

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 = \$16,951

PENALTY MATRIX WORKSHEET	
CITATION:	Failure to Compile Inventory Records
VIOLATION NO.:	D (1)

TYPE		
<u> </u> 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.	<u> </u> 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 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 compile inventory reconciliation and leak check records for the USTs in accordance with the DEM's UST Regulations during the time period of April 2014 through April 2016. The inventory control leak detection method is expressly required by the regulations and is of significant importance to the regulatory program. Failure to comply would presumably reduce the likelihood of detecting leaks from the USTs.
- (B) **Environmental conditions:** The facility is located in a densely developed area with numerous potential vapor receptors including commercial structures and underground utilities. The facility is located 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 300 feet of freshwater wetlands and in the Pawtuxet River watershed.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **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 are capable of causing significant soil and groundwater contamination if released to the environment.
- (E) **Duration of the violation:** Full duration unknown - at least 2 years (April 2014 to April 2016).
- (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 compiling and maintaining fully-compliant inventory control records. The DEM has no knowledge of what steps, if any, the Respondent has taken to mitigate the noncompliance, despite receiving the NIE 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 inventory control 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 regulations expressly require monthly inventory reconciliation and leak checks for USTs.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	<u> X </u> MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250 \$2,500	\$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 Test Product Pipelines
 VIOLATION NO.: D (2)

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 test the product pipelines for the USTs in 2015 and failed to test the product pipeline for UST No. 002 in 2014. Annual tightness testing of the primary product pipelines was required by the DEM in the variance approval letter dated 20 March 2013 and is of significant importance to the regulatory program. This test verifies whether the primary product pipelines, which are operated under pressure, are tight. Failure to comply could allow a compromised or faulty pipeline to remain in use and result in a release of petroleum product to the environment.
- (B) **Environmental conditions:** The facility is located in a densely developed area with numerous potential vapor receptors including commercial structures and underground utilities. 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 supply wells proximate to the facility. The facility is located within 300 feet of a freshwater wetland and in the Pawtuxet River watershed.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **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 are capable of causing significant soil and groundwater contamination if released to the environment.
- (E) **Duration of the violation:** 1 to 2 years (testing is required each year)
- (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 testing the product pipelines. The DEM has no knowledge of what steps, if any, the Respondent has taken to mitigate the noncompliance, despite receiving the NIE 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 the DEM's UST Regulations and the DEM's variance approval. As owner and operator of the facility, the Respondent had full control over the occurrence of the violation. The product pipeline tightness testing requirements are clearly established in the regulations and variance approval letter.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	MODERATE	<u> X </u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500 \$1,750	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION:	Failure to Test Line Leak Detectors, Shear Valves and CMS
VIOLATION NOS.:	D (3), (4) and (7)

TYPE		
<u> </u> 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.	<u> </u> 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 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 test the line leak detectors, shear valves and tank monitor for the USTs in accordance with the DEM's UST Regulation in 2015 and failed to test the line leak detector for UST No. 002 in 2014. Periodic inspection and testing of this leak detection/prevention equipment is of significant importance to the regulatory program. These tests verify whether the devices are functioning in accordance with the manufacturer's specifications. Failure to comply would presumably reduce the likelihood of detecting and preventing releases from the USTs.
- (B) **Environmental conditions:** The facility is located in a densely developed area with numerous potential vapor receptors including commercial structures and underground utilities. 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 supply wells proximate to the facility. The facility is located within 300 feet of a freshwater wetland and in the Pawtuxet River watershed.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **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 are capable of causing significant soil and groundwater contamination if released to the environment.
- (E) **Duration of the violation:** 1 to 2 years (testing is required each year)
- (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 testing the leak detection equipment in accordance with the DEM's UST Regulations. The Respondent tested the line leak detectors, shear valves and CMS on 9 May 2016 to mitigate the non-compliance and reported that the equipment met the criteria for passing.
- (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 the DEM's UST Regulations. As owner and operator of the facility, the Respondent had full control over the occurrence of the violations. The leak detection/prevention equipment testing requirements are clearly established in the regulations.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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

PENALTY MATRIX WORKSHEET

CITATION:	Failure to Respond to Alarms	
VIOLATION NO.:	D	(5)

TYPE		
<u> </u> 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.	<u> </u> 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 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 leak sensors deployed in the tank top sumps for UST Nos. 002, 004 and 006 and the interstitial space of UST No. 006 were in "alarm" mode at the time of inspection. The Respondent failed to investigate and report the alarms in accordance with the DEM's UST Regulations and take the necessary actions to rectify the causes of the alarms. Immediate response to and investigation of alarm signals is expressly required by the regulations and is of significant importance to the regulatory program. Failure to comply would presumably reduce the likelihood of detecting or preventing releases from the USTs.
- (B) **Environmental conditions:** The facility is located in a densely developed area with numerous potential vapor receptors including commercial structures and underground utilities. 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 supply wells proximate to the facility. The facility is located within 300 feet of a freshwater wetland and in the Pawtuxet River watershed.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **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 are capable of causing significant soil and groundwater contamination if released to the environment.
- (E) **Duration of the violation:** Full duration unknown - at least 6 ½ months (6 October 2015 to 20 April 2016).
- (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 immediately investigating the release detection signals and take the necessary actions to rectify the causes of the alarms. The DEM has no knowledge of what steps, if any, the Respondent has taken to mitigate the noncompliance, despite receiving the NIE 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 immediately with the DEM's UST Regulations. As owner and operator of the facility, the Respondent had full control over the occurrence of the violations. The regulations expressly require immediate investigation of release detection signals.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	<u> X </u> MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250 \$2,500	\$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 Assign and Operate with Class A, B and C Operators
VIOLATION NOS.:	D (10), (11) and (12)

TYPE		
<u> </u> 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.	<u> </u> 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 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 has failed to assign and operate with Class A, B and C operators. The registered Class A and B UST facility operators (Edgar Amador and Joseph McCormick) ceased acting in those roles on or about 12 September 2014 and the facility has been operated by the Respondent without certified Class A and B UST facility operators since that time. At the time of inspection, the facility operator was unable to present written verification that he had been trained as at least a Class C UST facility operator. The Respondent failed to provide to the DEM 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 all owners/operators of regulated UST facilities to have trained and certified Class A, B and 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.
- (B) **Environmental conditions:** The facility is located in a densely developed area with numerous potential vapor receptors including commercial structures and underground utilities. 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 supply wells proximate to the facility. The facility is located within 300 feet of a freshwater wetland and in the Pawtuxet River watershed.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **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 are capable of causing significant soil and groundwater contamination if released to the environment.
- (E) **Duration of the violation:** Full duration unknown - at least 1 ½ years (about 12 September 2014 to 20 April 2016)
- (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 ICC-certified Class A and B UST facility operators to the facility immediately after the previously registered operators ceased acting in those roles and by training all of its UST facility operators as at least Class C UST facility operators and compiling a list of all of the trained Class C UST facility operators that had been assigned to the facility. The DEM has no knowledge of what steps, if any, the Respondent has taken to mitigate the noncompliance, despite receiving the NIE 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 immediately with all of the 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 UST facility operator training requirements are clearly established in the regulations.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	<u> X </u> MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250 \$5,000	\$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 have a Class A or B Operator Perform Inspections
VIOLATION NOS.:	D (6) and (13)

TYPE		
<u> </u> 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.	<u> </u> 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 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 an ICC-certified Class A or B UST facility operator inspect the facility on a monthly basis and document the inspections on the requisite form in accordance with the DEM's UST Regulations. The only inspection reports on file at the facility were from the year 2013, which were performed by the former Class A/B UST facility operators. These inspections are expressly required by the regulations and are of significant importance to the regulatory program. Failure to comply would presumably reduce the likelihood of preventing or detecting releases from the USTs.
- (B) **Environmental conditions:** The facility is located in a densely developed area with numerous potential vapor receptors including commercial structures and underground utilities. 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 supply wells proximate to the facility. The facility is located within 300 feet of a freshwater wetland and in the Pawtuxet River watershed.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **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 are capable of causing significant soil and groundwater contamination if released to the environment.
- (E) **Duration of the violation:** Full duration unknown - at least 2 years (April 2014 to April 2016).
- (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 ICC-certified Class A and B UST facility operators to the facility and having them perform the monthly inspections required by DEM's UST Regulations. The DEM has no knowledge of what steps, if any, the Respondent has taken to mitigate the noncompliance, despite receiving the NIE 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 the DEM's UST Regulations. As owner and operator of the facility, the Respondent had full control over the occurrence of the violation. The Class A/B UST facility operator monthly inspection requirements are clearly established in the regulations.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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