

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: TMSA REALTY LLC
SHOP N GO, INC.**

FILE NO.: UST 18-33-00755

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Department of Environmental Management (the “Director” of “DEM”) has reasonable grounds to believe that the above-named parties (“Respondents”) have violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Administrative History

On 16 February 2018, DEM issued a Letter of Non-Compliance (“LNC”) to Respondents for some of the violations that are the subject of this Notice of Violation (“NOV”). The LNC required Respondents to take specific actions to correct the violations. On 22 February 2016, the LNC was delivered to Respondents. As of the date of the NOV, Respondents have failed to fully comply with the remedial requirements set forth by DEM in the LNC.

C. Facts

- (1) The property is located at 711 East Avenue, Assessor’s Plat 63, Lot 744 in the City of Pawtucket, Rhode Island (the Property”). The Property includes a convenience store and a motor fuel storage and dispensing system (the “Facility”).
- (2) TMSA REALTY LLC owns the Property.
- (3) SHOP N GO, INC. is registered with the Rhode Island Secretary of State to operate convenience stores. Shahzad Yaqoob and Munawar Ghumann are listed as the president and vice president, respectively, of the corporation. Mr. Yaqoob and Mr. Ghumann are the Class A and Class B operators of the Facility.
- (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 DEM and is identified as UST Facility No. 00755.

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

UST ID No.	Date Installed	Capacity	Product Stored
004	6 January 1998	12,000 gallons	Gasoline
005	6 January 1998	8,000 gallons	Gasoline

(7) On 15 February 2018, DEM inspected the Facility. The inspection revealed the following issues of non-compliance with the UST Regulations:

- (a) Written verification that the interstitial spaces of UST Nos. 004 and 005 had been tested for tightness by a DEM-licensed tightness tester during the year 2018 was not available;
- (b) Written verification that the interstitial spaces of the product pipelines for UST Nos. 004 and 005 had been tested for tightness by a DEM-licensed tightness tester during the year 2018 was not available;
- (c) The spill containment basin and the tank top sump for UST No. 004 were holding liquid mixtures at the time of inspection;
- (d) Groundwater monitoring wells that were installed in 1998 as part of a site investigation remain in place. Upon information and belief, these wells are no longer utilized for their intended purpose. The groundwater monitoring well located between the convenience store and the dispenser island had a damaged road box and it was not secured against tampering. The PVC well casing lacked an expandable watertight cap and it was packed with soil and debris. Groundwater evaluation reports for each of the years 2015, 2016 and 2017 were not available; and
- (e) The Class A and B UST facility operators were utilizing the obsolete *Operator's Monthly Inspection Checklist* to document the inspections and some of the completed checklists were not signed by the operator who performed the inspections.

(8) On 5 April 2018, DEM received a copy of a tightness test report for UST Nos. 004 and 005 and their product pipelines, which was prepared by NEXTEST to document the results of tests that they performed on 27 February 2018. NEXTEST reported the following:

- (a) The interstitial spaces of the tanks met the criteria for passing;
- (b) The secondary containment pipelines failed the test; and
- (c) The primary product pipelines met the criteria for passing.

- (9) DEM's review of the tightness test report and the DEM's files for the Facility revealed the following:
- (a) Respondents failed to submit a copy of the tightness test report to DEM within 15 days of the tests;
 - (b) Respondents failed to immediately report the failed tests to DEM;
 - (c) Respondents failed to submit a *Release Characterization Report* to DEM; and
 - (d) Respondents failed to repair the secondary containment pipes.
- (10) As of the date of the NOV, Respondents have failed to demonstrate that the alleged violations set forth in Parts B (7) and B (9) have been rectified in accordance with DEM's requirements.

D. Violation

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

- (1) **DEM's UST Regulations, Rule 8.08(A)(3)(d)** – requiring that tank interstitial space tightness test results be submitted to DEM within 15 days of the test date.
- (2) **DEM's UST Regulations, Rule 8.09(A)(2)(d)** – requiring that secondary containment pipeline tightness test results be submitted to DEM within 15 days of the test date.
- (3) **DEM's UST Regulations, Rule 8.09(A)(2)(e)** – requiring that failed secondary containment pipeline tightness tests be reported to DEM immediately.
- (4) **DEM's UST Regulations, Rule 8.09(A)(2)(f)** – requiring owners/operators to submit a Release Characterization Report to DEM within seven days of a failed secondary containment pipeline tightness test.
- (5) **DEM's UST Regulations, Rule 8.09(A)(2)(g)** – requiring that failed secondary containment pipelines be repaired within 30 days of the failed test.
- (6) **DEM's UST Regulations, Rules 8.16(A)(1) and (D)** – requiring that spill containment basins and tank top sumps be kept free of liquids and debris at all times.
- (7) **DEM's UST Regulations, Rule 8.19** – pertaining to permanent abandonment of groundwater monitoring wells that are no longer in use.
- (8) **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 properly 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:

- (1) **IMMEDIATELY upon receipt of the NOV**, take UST Nos. 004 and 005 and their product pipelines out of service in accordance with Rule 13.03 of the UST Regulations. The UST systems shall remain out of service until the secondary containment pipelines have been repaired in full compliance with the UST Regulations.
- (2) Within seven days of receipt of the NOV, submit a Release Characterization Report to DEM in accordance with Rule 8.09(A)(2)(f) of the UST Regulations.
- (3) Within sixty days of receipt of the NOV,
 - (a) In accordance with Section 10.00 of the UST Regulations, procure the services of a qualified contractor to repair the secondary containment pipelines for UST Nos. 004 and 005. The contractor shall prepare and submit an *Application for Repair or Replacement of Product Piping* to the DEM's Office of Waste Management ("OWM"), along with all other required documentation. Prior written notification to and approval by the OWM is required for all piping repairs or modifications;
 - (b) Evacuate and clean the spill containment basin and tank top sump for UST No. 004 in accordance with Rules 8.16 (A)(1) and (D) of the UST Regulations. All wastes removed from these basins and sumps shall be managed and disposed of or recycled in full compliance with Rule 5.3 of the DEM's *Rules and Regulations for Hazardous Waste Management*, as amended. Written or photographic verification of compliance shall be submitted to the OC&I;
 - (c) Procure the services of a licensed well-drilling contractor to abandon all the groundwater monitoring wells (not the tank field observation wells) that remain on the property in accordance with Section 8 of Appendix One of the DEM's *Groundwater Quality Rules*. Written or photographic verification of compliance shall be submitted to the OC&I; and
 - (d) The Class A and B UST facility operators shall henceforth utilize the revised *RI DEM Facility Monthly Inspection Checklist for UST Systems* to document the monthly facility inspections. All completed checklists shall henceforth be signed by the Class A or B UST facility operators who perform the inspections. Submit a copy of a completed checklist to the OC&I to verify a return to compliance.

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:

\$14,500

- (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 Respondents in the NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if the Director determines that reasonable efforts have been made to comply promptly with the NOV.

G. Right to Administrative Hearing

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

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

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

(d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Part 1.7(B) of the 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 Pawtucket, Rhode Island wherein the Property is located, to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and Section 42-17.1-2 (31), as amended.

(7) The NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Joseph J. LoBianco of the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey Tyrrell of the DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 7407.

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

FOR THE DIRECTOR

By: _____
David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

TMSA REALTY LLC
c/o Munawar Ghumman, Registered Agent
3 Pine Swamp Road
Cumberland, RI 02864

SHOP N GO, INC.
c/o Shahzad Yaqoob, Registered Agent
1569 Plainfield Pike
Johnston, RI 02919

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY	
Program:	OFFICE OF COMPLIANCE AND INSPECTION, UST COMPLIANCE
File No.:	UST 18-33-00755
Respondents:	TMSA REALTY LLC and SHOP N GO, INC.

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) and (2) – Failure to submit tightness test reports within 15 days	Type III <i>(\$6,250 Max. Penalty)*</i>	Minor	\$750	1 violation	\$750
D (3), (4) and (5) – Failure to appropriately respond to failed tightness tests	Type I <i>(\$25,000 Max. Penalty)*</i>	Major	\$12,500	1 violation	\$12,500
D (7) – Failure to properly abandon groundwater monitoring wells	Type II <i>(\$12,500 Max. Penalty)*</i>	Minor	\$1,250	1 violation	\$1,250
SUB-TOTAL					\$14,500

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

ECONOMIC BENEFIT FROM NON-COMPLIANCE
<p>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:</p> <ul style="list-style-type: none"> - THERE IS NO IDENTIFIABLE BENEFIT FROM NON-COMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED.
<p>A review of the record in this matter has revealed that Respondents have either enjoyed no significant 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 = \$14,500

PENALTY MATRIX WORKSHEET

CITATION:	Failure to submit tightness test reports within 15 days
VIOLATION NOs.:	D (1) and (2)

TYPE		
<p style="text-align: center;">___ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ X TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10A.1.b of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents failed to submit the 27 February 2018 tightness test report to DEM within 15 days of the test completion date. Review of UST and pipeline tightness test reports is of significant importance to the regulatory program. Failure to comply withholds important information from DEM, which the Department needs to fulfill its public health and safety and environmental protection obligations. (2) Environmental conditions: The Facility is located in a densely developed area with numerous potential vapor receptors including commercial structures, residential 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 the Moshassuck River watershed. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: The volatile nature of gasoline presents both a potential public health hazard (due to potential inhalation of benzene) and a potential public safety hazard (due to the potential for explosion). Gasoline is capable of causing significant soil and groundwater contamination if released to the environment. (5) Duration of the violation: Considered, but not utilized for this calculation. (6) Areal extent of the violation: Considered, but not utilized for this calculation. 		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** Respondents failed to prevent the non-compliance by submitting the test reports to DEM within 15 days of the tests. The licensed tester submitted the reports to DEM on behalf of Respondents on 5 April 2018.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondents for the failure to comply immediately with Rule 8.08(A)(3)(d) and 8.09(A)(2)(d) of the UST Regulations. As owner and operator of the Facility, Respondents had full control over the occurrence of the violation. The UST Regulations expressly require the submittal of tightness test reports within 15 days.
- (10) **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	\$250 to \$1,250 \$750

PENALTY MATRIX WORKSHEET		
CITATION:	Failure to appropriately respond to failed tightness tests	
VIOLATION NOs.:	D	(3), (4) and (5)

TYPE		
<u> X </u> 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 1.10A.1.b of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents have failed to submit a Release Characterization Report to DEM and have failed to repair the secondary containment pipelines and continue to operate the UST systems with deficient secondary containment for the pressurized product pipelines. The UST Regulations prohibit the operation of product pipelines without adequate secondary containment.
- (2) **Environmental conditions:** The Facility is located in a densely developed area with numerous potential vapor receptors including commercial structures, residential 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 the Moshassuck River watershed.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** The volatile nature of gasoline presents both a potential public health hazard (due to potential inhalation of benzene) and a potential public safety hazard (due to the potential for explosion). Gasoline is capable of causing significant soil and groundwater contamination if released to the environment.
- (5) **Duration of the violation:** Respondents have been non-compliantly operating the UST systems with deficient secondary containment since 29 March 2018.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the non-compliance by submitting a Release Characterization Report and repairing the deficient secondary containment pipelines. As of the date of this NOV, Respondents have yet to mitigate the non-compliance.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondents for the failure to comply immediately with the requirements set forth in Rules 8.09(A)(2) (e), (f) and (g) of the UST Regulations. As owner and operator of the Facility, Respondents had full control over the occurrence of the violations. The procedures for responding to failed secondary containment pipeline tightness tests are clearly established in the UST Regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<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	MAJOR	\$12,500 to \$25,000 \$12,500	\$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 properly abandon groundwater monitoring wells	
VIOLATION NO.:	D	(7)

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

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

FACTORS CONSIDERED:

Taken from Part 1.10A.1.b of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents failed to abandon the groundwater monitoring wells. Failure to abandon wells can result in pollutants infiltrating the groundwater.
- (2) **Environmental conditions:** The Facility is located in a densely developed area with numerous potential vapor receptors including commercial structures, residential 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 the Moshassuck River watershed.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** The volatile nature of gasoline presents both a potential public health hazard (due to potential inhalation of benzene) and a potential public safety hazard (due to the potential for explosion). Gasoline is capable of causing significant soil and groundwater contamination if released to the environment.
- (5) **Duration of the violation:** Unknown.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the non-compliance by abandoning the wells in accordance with the UST Regulations. Respondents have yet to mitigate the non-compliance despite receiving the LNC from DEM, which required that they do so.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondents for the failure to comply immediately with the requirements set forth in Rule 8.19 of the UST Regulations. As owner and operator of the Facility, Respondents had full control over the occurrence of the violations. The well maintenance and groundwater evaluation requirements are clearly established in the UST Regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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 \$1,250	\$250 to \$1,250