

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Imad E. Melhem
GNI West Warwick Inc.**

FILE NO.: OCI-UST-20-56-01263

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 10 November 2020, DEM issued a *Notice of Intent to Enforce* (“NIE”) to Respondents for some of the violations that are the subject of this *Notice of Violation* (“NOV”). The NIE required specific actions to correct the violations. On 16 November 2020, the NIE was delivered to Respondents. As of the date of the NOV, Respondents have failed to fully comply with the NIE.

C. Facts

- (1) The property is located at 929 Providence Street, Assessor’s Plat 39, Lot 213 in West Warwick, Rhode Island (the Property”). The Property includes a service station and a motor fuel storage and dispensing system (the “Facility”).
- (2) 929 Providence Street, LLC owns the Property.
- (3) On 21 April 2014, the Rhode Island Secretary of State revoked the *Certificate of Organization* for 929 Providence Street LLC. Imad E. Melhem is the last known member or authorized person for 929 Providence Street, LLC.
- (4) GNI West Warwick, Inc. operates the Facility.
- (5) 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 *Rules and Regulations for Underground Storage Facilities Used for Regulated Substances and Hazardous Materials (250-RICR-140-25-1)* [effective 20 November 2018 to Current] (the “UST Regulations”).
- (6) The Facility is registered with DEM and is identified as UST Facility No. 01263.

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

UST ID No.	Date Installed	Capacity	Product Stored
005/014	22 October 1993	500/500 gallons	Heating Oil/Used Oil
012	22 October 1993	10,000 gallons	Gasoline
013	22 October 1993	10,000 gallons	Gasoline

(8) The product pipelines for UST Nos. 012 and 013 are double-walled.

(9) On 30 October 2020, DEM inspected the Facility. The inspection and a subsequent file review revealed the following:

(a) Written verification that the interstitial spaces of the product pipelines for UST Nos. 012 and 013 had been tested for tightness by a DEM-licensed tightness tester within the last 2 years was not available. Product pipeline interstitial space tightness testing reports for UST Nos. 012 and 013 for the year 2019 have not been received by DEM;

(b) The “power” status indicator lamp on the *Veeder Root TLS 350* continuous monitoring system (“CMS”) console was malfunctioning (not illuminating);

(c) The CMS was displaying “fuel alarms” for the leak sensors deployed in the interstitial space of UST Nos. 005/014 and the tank top sump for UST No. 013. Upon information and belief, Respondents failed to report the alarm conditions to DEM and failed to investigate the alarm conditions and taken the necessary steps to remedy the conditions that triggered the alarm signals;

(d) The tank top sump for UST No. 013 was holding a liquid mixture; and

(e) The fill ports for UST Nos. 005, 012, 013 and 014 were not labeled to identify the products stored inside the USTs.

(10) On 17 August 2021, DEM reviewed its records and determined that Respondents have not submitted written verification that they procured the services of a qualified contractor to perform the following tests:

(a) Cathodic protection for UST Nos. 005/014, 012 and 013. The cathodic protection was last tested on 24 May 2018;

(b) Tank interstitial space tightness for UST Nos. 005/014, 012 and 013. The tanks were last tested on 23 April 2019; and

(c) Line leak detector, dispenser shear valve and CMS for UST Nos. 012 and 013. The line leak detectors, shear valves and CMS were last tested on 23 April 2020.

- (11) As of the date of the NOV, Respondents have yet to demonstrate that the alleged non-compliance set forth in subsection C (9) above has been rectified.

D. Violation

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

- (1) **UST Regulations, Part 1.10(E)(5)** – requiring the owner/operator to retain a qualified cathodic protection tester to test UST sacrificial anode cathodic protection systems at least once every 3 years.
- (2) **UST Regulations, Part 1.10(F)(1)(c)** - requiring interstitial space tightness testing for double-walled USTs at 20 years of age and every 2 years thereafter.
- (3) **UST Regulations, Part 1.10(G)(2)(b)** – requiring interstitial space tightness testing for double-walled product pipelines at 20 years of age and every 2 years thereafter.
- (4) **UST Regulations, Part 1.10(I)(1)** – requiring annual testing of line leak detectors by a qualified person.
- (5) **UST Regulations, Part 1.10(J)(1)** – requiring annual testing of dispenser shear valves.
- (6) **UST Regulations, Part 1.10(M)(1) and Part 1.10(M)(2)** – requiring that UST continuous monitoring systems be maintained in accordance with the manufacturer’s performance standards and that malfunctioning systems be repaired within 15 days.
- (7) **UST Regulations, Part 1.10(M)(3) and Part 1.14(C)(1)(a)** – requiring owners/operators to immediately respond to and investigate all release detection signals associated with the UST systems.
- (8) **UST Regulations, Part 1.10(M)(9)** – requiring that UST continuous monitoring systems be inspected and tested by qualified persons on an annual basis.
- (9) **UST Regulations, Part 1.10(N)(3)(c)** – requiring that UST sumps be kept free of liquids at all times.
- (10) **UST Regulations, Part 1.10(P)(1)** – requiring that the UST fill ports be labeled to identify the materials stored inside the tanks.

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:

- (1) **IMMEDIATELY** procure the services of a qualified person to investigate the fuel alarms for the leak sensors deployed in the interstitial space of UST No. 005/014 and the tank top sump for UST No. 013 in accordance with Part 1.10(M)(3) and Part 1.14(C)(1)(a) of the UST Regulations and submit to DEM's – Office of Compliance and Inspection ("OC&I") a written report detailing the outcome of the investigation and any remedial actions taken to rectify the cause of each alarm signal.
- (2) **IMMEDIATELY** procure the services of a DEM-licensed tightness tester to test the outer wall of UST No. 005/014 and the inner walls of each compartment in accordance with Part 1.10(F)(1)(c), Part 1.10(F)(3)(d) and Part 1.10(H) of the UST Regulations and submit a copy of the tightness test report to OC&I. An original copy of the tightness test report shall also be submitted to DEM's Office of Land Reclamation and Sustainable Materials Management ("LRSMM"), in accordance with Part 1.10(H)(4) of the UST Regulations.
- (3) **IMMEDIATELY** repair or replace the "power" status indicator lamp on the CMS console in accordance with Part 1.10(M)(2) of the UST Regulations and submit written verification of compliance to OC&I.
- (4) **IMMEDIATELY** evacuate and clean the tank top sump for UST No. 013 in accordance with Part 1.10(N)(3)(c) of the UST Regulations. All wastes removed from these sumps shall be managed and disposed of in accordance with Part 1.7.3 of the *Rules and Regulations for Hazardous Waste Management (250 RICR 140-10-1)* [effective 22 April 2020 to Current] and submit written or photographic verification of compliance to OC&I.
- (5) **IMMEDIATELY** label or permanently mark the fill ports for UST Nos. 005, 012, 013 and 014 to identify the product stored inside each tank, as per Part 1.10(P)(1) of the UST Regulations and *American Petroleum Institute Recommended Practice 1637* and submit written or photographic verification of compliance to OC&I.
- (6) **Within 30 days of receipt of the NOV**, procure the services of a DEM-licensed tightness tester to perform tightness testing of the interstitial spaces of the product pipelines for UST Nos. 012 and 013 in accordance with Part 1.10(G)(2)(b) and Part 1.10(H) of the UST Regulations and submit a copy of the tightness test report to OC&I. An original copy of the tightness test report shall also be submitted to LRSMM, in accordance with Part 1.10(H)(4) of the UST Regulations.

- (7) **Within 30 days of receipt of the NOV**, procure the services of a qualified cathodic protection tester to test the sacrificial anode cathodic protection systems for UST Nos. 005/014, 012 and 013 in accordance with Part 1.10(E)(5), Part 1.10(E)(6) and Part 1.10(E)(7) of the UST Regulations and submit a copy of the report to OC&I. An original copy of the cathodic protection test report shall also be submitted to LRSMM, in accordance with Part 1.10(E)(7) of the UST Regulations.
- (8) **Within 30 days of receipt of the NOV**, procure the services of a DEM-licensed tightness tester to test the outer walls of UST Nos. 012 and 013 in accordance with Part 1.10(F)(1)(c) and Part 1.10(H) of the UST Regulations and submit a copy of the tightness test report to OC&I. An original copy of the tightness test report shall also be submitted to LRSMM, in accordance with Part 1.10(H)(4) of the UST Regulations.
- (9) **Within 30 days of receipt of the NOV**, procure the services of a qualified person to test the line leak detectors, shear valves and CMS for UST Nos. 005/014, 012 and 013 in accordance with Part 1.10(I)(1), Part 1.10(J)(1) and Part 1.10(M)(9) of the UST Regulations and submit copies of the test reports to OC&I. Original copies of the test reports shall also be submitted to LRSMM, in accordance with these Parts.

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:

\$13,063

- (2) The proposed administrative penalty is calculated pursuant to the *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* [effective 19 March 2021 to Current] (the “Penalty Regulations”) 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 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 DEM 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 *Rules and Regulations for the Administrative Adjudication Division (250-RICR-10-00-1)* [effective 27 November 2014 to Current].

(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 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 West Warwick, 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 DEM's Office of Legal Services at (401) 222-6607 or at joseph.lobianco@dem.ri.gov. All other inquiries should be directed to Tracey Tyrrell of DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 2777407 or at tracey.tyrrell@dem.ri.gov.

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

FOR THE DIRECTOR

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

Dated: _____

CERTIFICATION

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

Imad E. Melhem
2672 West Shore Road
Warwick, RI 02889

GNI West Warwick, Inc.
c/o Imad Melhem, Registered Agent
2762 West Shore Road
Warwick, RI 02889

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY	
Program:	OFFICE OF COMPLIANCE AND INSPECTION, UST
File No.:	OCI-UST-20-56-01263
Respondents:	Imad E. Melhem and GNI West Warwick, 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) – Failure to test the UST cathodic protection systems	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,750	1 violation	\$1,750
D (2) – Failure to perform UST interstitial space tightness testing	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,750	1 violation	\$1,750
D (3) – Failure to perform product pipeline interstitial space tightness testing	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,750	1 violation	\$1,750
D (4), (5) and (8) – Failure to test the line leak detectors, shear valves and tank monitor	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,250	1 violation	\$1,250
D (7) – Failure to investigate release detection signals and rectify each cause	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$6,250	1 violation	\$6,250
SUB-TOTAL					\$12,750

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

ADMINISTRATIVE PENALTY SUMMARY (continued)

ECONOMIC BENEFIT FROM NON-COMPLIANCE		
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.		
DESCRIPTION OF BENEFIT	CALCULATION	AMOUNT
<p>Failing to test the interstitial spaces of the pipelines for tightness in 2019. The economic benefit of non-compliance was determined by using an EPA computer model titled <i>BEN</i> that performs a detailed economic analysis. The dates, dollar amounts and values used in this analysis are listed in this table.</p>	<ul style="list-style-type: none"> ▪ Profit Status ▪ Filing Status ▪ Initial Capital Investment ▪ One-time Non-depreciable Expense ▪ First Month of Non-compliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control Equipment Annual Inflation Rate ▪ Discount Compound Rate 	<p>C Corp.</p> <p>\$340</p> <p>October 2019</p> <p>1 December 2021</p> <p>1 December 2021</p> <p>7.2%</p>
<p>Failing to test the cathodic protection system, the interstitial spaces of the USTs and pipelines for tightness, the line leak detectors, shear valves and tank monitor in 2021. The economic benefit of non-compliance was determined by using an EPA computer model titled <i>BEN</i> that performs a detailed economic analysis. The dates, dollar amounts and values used in this analysis are listed in this table.</p>	<ul style="list-style-type: none"> ▪ Profit Status ▪ Filing Status ▪ Initial Capital Investment ▪ One-time Non-depreciable Expense ▪ First Month of Non-compliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control Equipment Annual Inflation Rate ▪ Discount Compound Rate 	<p>C Corp.</p> <p>\$2,078</p> <p>May 2021</p> <p>1 December 2021</p> <p>1 December 2021</p> <p>6.7%</p>
SUB-TOTAL		\$313

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.
<p>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.</p>

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$13,063

PENALTY MATRIX WORKSHEET		
CITATION:	Failure to test the UST cathodic protection systems	
VIOLATION NO.:	D	(1)

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

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

FACTORS CONSIDERED:

Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents failed to procure the services of a qualified cathodic protection tester to perform testing of the cathodic protection systems for UST Nos. 005/014, 012 and 013. This test is expressly required by the UST Regulations at least once every 3 years to ensure that steel tanks are receiving adequate levels of corrosion protection. Such testing is significant to the regulatory program. Failure to comply presumably reduces the likelihood of preventing corrosion of steel USTs and the resultant releases of petroleum or hazardous substances.
- (2) **Environmental conditions:** The Facility is in a densely developed area with numerous potential vapor receptors including residential structures and underground utilities. The Facility is in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells proximate to the Facility. The Facility is located within 220 feet of wetlands associated with the Pawtuxet River and it is situated within its 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, used oil and heating oil can cause significant soil and groundwater contamination if released to the environment.
- (5) **Duration of the violation:** Approximately 4 months – Respondents have been non-compliant since 24 May 2021.
- (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:** Respondents failed to prevent the non-compliance by having the cathodic protection tested before 24 May 2021. Respondents have made no apparent attempt 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. As owner and operator of the Facility, Respondents had full control over the occurrence of the violation. The cathodic protection testing 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 \$1,750	\$250 to \$1,250

PENALTY MATRIX WORKSHEET		
CITATION:	Failure to perform UST interstitial space tightness testing	
VIOLATION NO.:	D	(2)

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

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

FACTORS CONSIDERED:

Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents failed to procure the services of a DEM-licensed tightness tester to perform tightness testing of the interstitial spaces of UST Nos. 005/014, 012 and 013. Tightness testing of double-walled USTs is expressly required by the UST Regulations at 20 years of age and every 2 years thereafter. Tank interstitial space tightness testing is significant to the regulatory program. Failure to comply presumably reduces the likelihood of detecting and/or preventing releases from UST systems.
- (2) **Environmental conditions:** The Facility is in a densely developed area with numerous potential vapor receptors including residential structures and underground utilities. The Facility is in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells proximate to the Facility. The Facility is located within 220 feet of wetlands associated with the Pawtuxet River and it is situated within its 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, used oil and heating oil can cause significant soil and groundwater contamination if released to the environment.
- (5) **Duration of the violation:** Approximately 5 months – Respondents have been non-compliant since 23 April 2021.
- (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:** Respondents failed to prevent the non-compliance by having the interstitial spaces of the USTs tested for tightness before 23 April 2021. Respondents have made no apparent attempt to mitigate the non-compliance, despite receiving the NIE requiring them to 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. As owner and operator of the Facility, Respondents had full control over the occurrence of the violation. The tank tightness testing 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 \$1,750	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION:	Failure to perform product pipeline interstitial space tightness testing
VIOLATION NO.:	D (3)

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;"><u>X</u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>

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

FACTORS CONSIDERED:

Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents failed to procure the services of a DEM-licensed tightness tester to perform tightness testing of the interstitial spaces of the product pipelines for UST Nos. 012 and 013. Such tightness testing of double-walled product pipelines is expressly required by the UST Regulations at 20 years of age and every 2 years thereafter. Interstitial space tightness testing is significant to the regulatory program. Failure to comply presumably reduces the likelihood of detecting and/or preventing releases from UST systems.
- (2) **Environmental conditions:** The Facility is in a densely developed area with numerous potential vapor receptors including residential structures and underground utilities. The Facility is in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells proximate to the Facility. The Facility is located within 220 feet of wetlands associated with the Pawtuxet River and it is situated within its watershed.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** The volatile nature of gasoline presents both a potential public health hazard (due to potential inhalation of benzene) and a potential public safety hazard (due to the potential for explosion). Gasoline can cause significant soil and groundwater contamination if released to the environment.
- (5) **Duration of the violation:** Approximately 2 years – Respondents have been non-compliant since October 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:** Respondents failed to prevent the non-compliance by having the interstitial spaces of the product pipelines tested for tightness during each of the years 2019 and 2021. Respondents have made no apparent attempt to mitigate the non-compliance, despite receiving the NIE requiring them to 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. As owner and operator of the Facility, Respondents had full control over the occurrence of the violation. The tightness testing requirements are clearly established in the UST Regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Respondents reported that the pipelines were tested for tightness in 2017 and met the criteria for passing.

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 the line leak detectors, shear valves and tank monitor
VIOLATION NOs.:	D (4), (5) and (8)

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

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

FACTORS CONSIDERED:

Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents failed to procure the services of a qualified contractor to test the line leak detectors, shear valves and tank monitor for UST Nos. 005/014, 012 and 013. Such testing of this important equipment is expressly required by the UST Regulations on an annual basis and is significant to the regulatory program. Failure to comply could allow faulty leak detection/prevention equipment to remain in use and presumably reduce the likelihood of detecting and/or preventing releases from UST systems, which would result in threats to public health and safety and the environment.
- (2) **Environmental conditions:** The Facility is in a densely developed area with numerous potential vapor receptors including residential structures and underground utilities. The Facility is in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells proximate to the Facility. The Facility is located within 220 feet of wetlands associated with the Pawtuxet River and it is situated within its 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, used oil and heating oil can cause significant soil and groundwater contamination if released to the environment.
- (5) **Duration of the violation:** Approximately 5 months – Respondents have been non-compliant since 23 April 2021.
- (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:** Respondents failed to prevent the non-compliance by having the line leak detectors, shear valves and tank monitor tested before 23 April 2021. Respondents have made no apparent attempt 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. As owner and operator of the Facility, Respondents had full control over the occurrence of the violations. The leak detection/prevention equipment testing 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

PENALTY MATRIX WORKSHEET		
CITATION:	Failure to investigate the release detection signals and rectify each cause	
VIOLATION NO.:	D	(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 Penalty Regulations.

- (1) **The extent to which the act or failure to act was out of compliance:** The CMS was displaying “fuel alarms” for the leak sensors deployed in the interstitial space of UST No. 005/014 and in the tank top sump for UST No. 013. Respondents failed to report the alarms to DEM, immediately investigate them and take remedial action in accordance with the requirements of the UST Regulations. All such alarm conditions are required to be investigated immediately and remedial action shall be taken immediately to rectify the cause of each alarm. Failure to comply reduces the likelihood of detecting or preventing a release from a UST system. The CMS operation and maintenance requirements are significant to the regulatory program
- (2) **Environmental conditions:** The Facility is in a densely developed area with numerous potential vapor receptors including residential structures and underground utilities. The Facility is in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells proximate to the Facility. The Facility is located within 220 feet of wetlands associated with the Pawtuxet River and it is situated within its 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, used oil and heating oil can cause significant soil and groundwater contamination if released to the environment.
- (5) **Duration of the violation:** Unknown. DEM observed the alarms during the inspection on 30 October 2020.
- (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 immediately notifying DEM of the alarm conditions, investigating the alarms and taking remedial action. Respondents have yet to mitigate the non-compliance despite receiving the NIE requiring them to 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. As owner and operator of the Facility, Respondents had full control over the occurrence of the violations. The CMS operation and maintenance 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 \$6,250	\$1,250 to \$2,500	\$250 to \$1,250