

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: ST. TONY'S LLC  
LaSalle Service Station, Inc.**

**FILE NOs.: OCI-UST 19-55-01520  
and LS-2816**

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 8 June 2017, 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"). On 31 July 2017, DEM received reports prepared by Respondents in response to the NIE. Based on DEM's review of the reports, DEM determined that the violations required an assessment of an administrative penalty. On 10 November 2017, DEM issued an *Expedited Citation Notice* ("ECN") that included an administrative penalty. The ECN was sent by certified mail – however, DEM has no record the ECN was delivered. Respondents failed to respond to the ECN or pay the administrative penalty, and the ECN expired on or about 13 December 2017.

On 4 February 2019, DEM issued an informal written notice to Respondent LaSalle Service Station, Inc. ("LSS") for some of the violations that are the subject of the NOV. The informal written notice required specific actions to correct the violations. On 25 March 2019, DEM received a response to the notice. The response failed to comply with the notice, and as of the date of the NOV, the actions required in the notice have not been completed.

On 29 August 2019, as a result of an inspection of the facility that documented additional violations that are the subject of the NOV, DEM issued a *Letter of Non-Compliance* ("LNC") to LSS. The LNC required specific actions to correct the violations. LSS failed to respond to or comply with the LNC. On 28 October 2019, DEM issued an NIE to LLS and Respondent ST. TONY'S LLC ("ST") for the violations. The NIE required specific actions to correct the violations. LSS and ST received the NIE on 5 November 2019 and 8 November 2019, respectively. As of the date of the NOV, Respondents have failed to comply with the NIE.

C. Facts

- (1) The subject property is located at 1055 Smith Street, Assessor’s Plat 85, Lot 197 in the City of Providence, Rhode Island (the Property”). The Property includes a motor vehicle service station and a motor fuel storage and dispensing system (the “Facility”).
- (2) Respondent ST. TONY’S LLC owns the Property. Respondent acquired the Property on or about 21 December 2012.
- (3) Respondent LaSalle Service Station, Inc. is the operator of the Facility.
- (4) Respondents are the owners and operators of 3 underground storage tanks (“USTs” or “tanks”) located on the Property, which tanks are used for storage of petroleum products and which are subject to the Rhode Island Code of Regulations titled *Rules and Regulations for Underground Storage Facilities Used for Regulated Substances and Hazardous Materials (250-RICR-140-25-1)* (the “UST Regulations”).
- (5) The Facility is registered with DEM and is identified as UST Facility No. 01520.
- (6) The USTs are registered with DEM for the Facility as follows:

UST ID No.	Date Installed	Capacity	Product Stored
005	30 November 1990	6,000 gallons	Gasoline
008	30 November 1990	6,000 gallons	Gasoline
009	1 December 1990	10,000 gallons	Gasoline

- (7) The USTs are double walled.
- (8) On 3 May 1991, DEM received a report regarding a release of petroleum product on the Property (the “Release”). Prior to and since Respondent ST. TONY’S LLC’s ownership of the Property and Respondent LaSalle Service Station, Inc.’s operation of the Facility, investigatory and remedial activities have occurred both on and off the Property to address and monitor the Release.
- (9) On 6 June 2017, DEM inspected the Facility. The inspection and review of documents revealed the following:
  - (a) Written verification that the product pipelines for UST Nos. 005, 008 and 009 had been tested for tightness by a DEM-licensed tightness tester during the year 2015 was not available;
  - (b) Written verification that the line leak detectors for UST Nos. 005, 008 and 009 had been tested by a qualified person during the year 2015 was not available;

- (c) Written verification that the dispenser shear valves had been tested for functionality during the year 2015 was not available; and
  - (d) Written verification that the *Veeder Root TLS 350* continuous monitoring system (“CMS”) had been certified/tested by a qualified person during the year 2015 was not available.
  - (e) Written verification that the registered Class A/B UST facility operator had performed monthly inspections of the Facility during the time periods of January 2016 through December 2016 and February 2017 through June 2017 was not available.
- (10) On 30 January 2019, DEM received a *Quarterly Product Recovery, Gauging Summary & Groundwater Sampling* report dated 15 January 2019, which was prepared by Hoffman Engineering, Inc. (“HEI”) on behalf of Respondents in response to the Release. HEI reported that laboratory analysis of a groundwater sample collected from one of the groundwater monitoring wells installed on the Property (“MW-5”) had a concentration of benzene above the *Method One GB Groundwater Objective* set forth in Part 1.9.3(F)(3)(5) of the Rhode Island Code of Regulations titled *Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases (250-RICR-140-30-1)* (the “Remediation Regulations”).
- (11) By letter dated 4 February 2019, due to the persistent, non-compliant benzene contamination in MW-5 (and the persistent petroleum compound contamination in other on-site monitoring wells), DEM notified Respondents that they were required to procure the services of a qualified environmental consultant to develop a new *Corrective Action Plan* (“CAP”) to address the ongoing petroleum contamination in accordance with Part 1.14(I) of the UST Regulations. DEM required that the proposed CAP be submitted within 60 days of receipt of the letter.
- (12) On 25 March 2019, in response to the 4 February 2019 letter, DEM received a proposal for further investigation of the Property in preparation for development of a CAP, which was submitted by HEI on behalf of Respondents.
- (13) On 28 August 2019, DEM inspected the Facility. The inspection revealed the following:
- (a) Written verification that the annular spaces of UST Nos. 005, 008 and 009 had been tested for tightness by a DEM-licensed tightness tester during the year 2019 was not available;
  - (b) Written verification that the product pipelines for UST Nos. 005, 008 and 009 had been tested for tightness by a DEM-licensed tightness tester during each of the years 2018 and 2019 was not available;

- (c) Written verification that the line leak detectors for UST Nos. 005, 008 and 009 had been tested by a qualified person during each of the years 2018 and 2019 was not available;
- (d) Written verification that the dispenser shear valves had been tested for functionality during each of the years 2018 and 2019 was not available; and
- (e) Written verification that the CMS had been certified/tested by a qualified person during each of the years 2018 and 2019 was not available.

The last test report on file with DEM was for tests performed in July 2017.

- (14) As of the date of the NOV, Respondents have not submitted a CAP proposal for DEM's review.
- (15) As of the date of the NOV, Respondents have yet to demonstrate a return to compliance for the findings set forth in subsection C (13) above.

D. Violation

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

- (1) **UST Regulations, Part 1.10(F)(1)(c) [formerly Rule 8.08(A)(3)]** – requiring tightness testing of the interstitial spaces of double-walled USTs by DEM-licensed tightness testers at 20 years of age and every two years thereafter.
- (2) **UST Regulations, Part 1.10(G)(3)(a) [formerly Rule 8.09(B)(1)]** – requiring annual tightness testing of primary product pipelines by DEM-licensed tightness testers.
- (3) **UST Regulations, Part 1.10(I)(1) [formerly Rule 8.11]** – requiring annual functionality testing of line leak detectors by qualified persons.
- (4) **UST Regulations, Part 1.10(J)(1) [formerly Rule 8.12]**– requiring annual functionality testing of shear valves.
- (5) **UST Regulations, Part 1.10(M)(7), Part 1.10(M)(8) and Part 1.10(M)(9) [formerly Rule 8.15(F)]** – requiring annual functionality testing of UST continuous monitoring systems by qualified persons.
- (6) **UST Regulations, Part 1.10(U)(5)(k), Part 1.10(U)(6)(g) and Part 1.10(U)(9) [formerly Rule 8.22(F)]**– requiring registered Class A and/or B UST facility operators to perform monthly inspections of their facilities and to document the results of those inspections on the requisite checklist.

- (7) **UST Regulations, Part 1.14(B)(1) [formerly Rule 12.02]** – requiring owners/operators to investigate and clean up any spills, leaks or releases in accordance with Section 14 of the UST Regulations and all other applicable local, state or federal statutes or regulations.
- (8) **UST Regulations, Part 1.14(I)(2) and Part 1.14(I)(3) [formerly Rule 12.12(A)]** – requiring owners/operators to take corrective action when required to do so by DEM.

E. Order

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

- (1) **Within 7 days of receipt of the NOV**, submit to DEM’s Office of Compliance and Inspection (“OC&I”) written verification that you have retained the services of a qualified environmental consultant to develop a CAP proposal for DEM’s review and approval
- (2) **Within 30 days of receipt of the NOV**, submit to DEM’s Office of Waste Management (“OWM”) a proposed scope-of-work, prepared by your consultant, for the development of a CAP in accordance with Part 1.14(I) of the UST Regulations.
- (3) OWM will review the proposed scope-of-work and issue further instruction on how to proceed with the CAP development. The CAP shall be developed and implemented in full compliance with Part 1.14 of the UST Regulations.
- (4) The CAP shall be implemented by Respondents in accordance with an approved schedule and an *Order of Approval* issued by OWM.
- (5) Notify OWM's Leaking Underground Storage Tank Program at least 48 hours prior to any excavation, well installation, repair or replacement of equipment at the Property so that a representative of OWM may be present.
- (6) Submit quarterly status reports of all investigatory, sampling, and remedial activities that take place at the Property.
- (7) Continue the site investigation, operation of all remediation procedures specified in the CAP and submission of required status reports until OWM may determine that the soils and/or groundwater located on and around the Property have been adequately investigated and/or treated. OWM may require a period of monitoring to ensure that standards have been met. Continue submission of required quarterly status reports until such time that OWM issues written approval for termination of remedial activities at the Property.

- (8) **Within 30 days of receipt of the NOV**, procure the services of a DEM-licensed tightness tester to test the interstitial spaces of UST Nos. 005, 008 and 009 in full compliance with Part 1.10(F)(1)(c) and Part 1.10(H) of the UST Regulations. Original copies of the tightness test reports shall be submitted to OWM in accordance with Part 1.10(H)(4) of the UST Regulations within 30 days. Copies of the tightness test reports shall also be submitted to OC&I.
- (9) **Within 30 days of receipt of the NOV**, procure the services of a DEM-licensed tightness tester to test the primary product pipelines for UST Nos. 005, 008 and 009 in full compliance with Part 1.10(G)(3)(a) and Part 1.10(H) of the UST Regulations. Original copies of the tightness test reports shall be submitted to OWM in accordance with Part 1.10(H)(4) of the UST Regulations within 30 days. Copies of the tightness test reports shall also be submitted to OC&I.
- (10) **Within 30 days of receipt of the NOV**, procure the services of a qualified person to perform functionality testing of the line leak detectors, shear valves and CMS in accordance with Part 1.10(I)(1), Part 1.10(J)(1), Part 1.10(M)(7), Part 1.10(M)(8), and Part 1.10(M)(9) of the UST Regulations. Copies of the test reports shall be submitted to 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:

**\$20,971**

- (2) The proposed administrative penalty is calculated pursuant to the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* and must be paid to DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a certified check, cashier's check or money order made payable to the "General Treasury - Water & Air Protection Program" and shall be forwarded to DEM's Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against 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, Suite 350  
Providence, RI 02908-5767

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
- (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Part 1.7(B) of the Rhode Island Code of Regulations titled *Rules and Regulations for the Administrative Adjudication Division (250-RICR-10-0-1)*.
- (2) A copy of each request for hearing must also be forwarded to:

Christina Hoefsmit, 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 City of Providence, 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) Christina Hoefsmit of DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey Tyrrell of DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 7407.

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

FOR THE DIRECTOR

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

Dated: \_\_\_\_\_



CERTIFICATION

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

ST. TONY'S LLC  
c/o Ragheed Elias, Resident Agent  
1055 Smith Street  
Providence, RI 02908

LaSalle Service Station, Inc.  
c/o Robert J. Ameen, Esq., Registered Agent  
390 Newport Avenue  
Pawtucket, RI 02861

by Certified Mail.

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<b>ADMINISTRATIVE PENALTY SUMMARY</b>	
Program:	OFFICE OF COMPLIANCE AND INSPECTION, UST COMPLIANCE
File Nos.:	OCI-UST-19-55-01520 and LS-2816
Respondents:	ST. TONY'S LLC and LaSalle Service Station, Inc.

<b>GRAVITY OF VIOLATION</b>					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION NO. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D (1) – Failure to test the USTs for tightness	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,750	1 violation	\$1,750
D (2) – Failure to test the product pipelines for tightness	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,750	1 violation	\$1,750
D (3), (4) and (5) – Failure to have the line leak detectors, shear valves and tank monitor tested	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,750	1 violation	\$1,750
D (6) – Failure to have the Class A/B UST facility operator perform monthly inspections	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,250	1 violation	\$1,250
D (7) and (8) – Failure to develop and implement a CAP	Type I <i>(\$25,000 Max. Penalty) *</i>	Major	\$12,500	1 violation	\$12,500
<b>SUB-TOTAL</b>					<b>\$19,000</b>

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

## ADMINISTRATIVE PENALTY SUMMARY (continued)

<b>ECONOMIC BENEFIT FROM NON-COMPLIANCE</b>		
COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT COMPLY. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:		
- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.		
<b>DESCRIPTION OF BENEFIT</b>	<b>CALCULATION</b>	<b>AMOUNT</b>
<p>Failure to test the pipelines for tightness and test the line leak detectors and tank monitor in 2015. 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"> <li>▪ Profit Status</li> <li>▪ Filing Status</li> <li>▪ Initial Capital Investment</li> <li>▪ One-time Non-depreciable Expense</li> <li>▪ First Month of Non-compliance</li> <li>▪ Compliance Date</li> <li>▪ Penalty Due Date</li> <li>▪ Useful Life of Pollution Control</li> <li>▪ Equipment Annual Inflation Rate</li> <li>▪ Discount Compound Rate</li> </ul>	<p>C Corp.</p> <p>\$1,220 November 2015 1 July 2020 1 July 2020</p> <p>7.5%</p>
<p>Failure to test the pipelines for tightness and test the line leak detectors and tank monitor in 2018. 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"> <li>▪ Profit Status</li> <li>▪ Filing Status</li> <li>▪ Initial Capital Investment</li> <li>▪ One-time Non-depreciable Expense</li> <li>▪ First Month of Non-compliance</li> <li>▪ Compliance Date</li> <li>▪ Penalty Due Date</li> <li>▪ Useful Life of Pollution Control</li> <li>▪ Equipment Annual Inflation Rate</li> <li>▪ Discount Compound Rate</li> </ul>	<p>C Corp.</p> <p>\$1,220</p> <p>July 2018 1 July 2020 1 July 2020</p> <p>8.1%</p>
<p>Failure to test the tanks and pipelines for tightness and test the line leak detectors and tank monitor 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"> <li>▪ Profit Status</li> <li>▪ Filing Status</li> <li>▪ Initial Capital Investment</li> <li>▪ One-time Non-depreciable Expense</li> <li>▪ First Month of Non-compliance</li> <li>▪ Compliance Date</li> <li>▪ Penalty Due Date</li> <li>▪ Useful Life of Pollution Control</li> <li>▪ Equipment Annual Inflation Rate</li> <li>▪ Discount Compound Rate</li> </ul>	<p>C Corp.</p> <p>\$1,982 July 2019 1 July 2020 1 July 2020</p> <p>8.1%</p>
<b>SUB-TOTAL</b>		<b>\$1,971</b>

## **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 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 = \$20,971**

# PENALTY MATRIX WORKSHEET

CITATION: Failure to test the USTs for tightness  
 VIOLATION NO.: D (1)

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;">___<b>X</b>___ 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.		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <ol style="list-style-type: none"> <li>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondents failed to have the interstitial spaces of UST Nos. 005, 008 and 009 tested for tightness by a DEM-licensed tightness tester during the year 2019. Such testing is required at two-year intervals after double-walled USTs reach 20 years of age to ensure that the inner and outer walls of the tanks remain tight. Failure to comply could allow defective tanks to remain in use and result in the release of petroleum products to the environment.</li> <li>(2) <b>Environmental conditions:</b> The Facility is located in a densely developed area with numerous potential vapor receptors including residential structures, 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 public or private drinking water supply wells proximate to the Facility. The USTs are installed within 850 feet of regulated freshwater wetlands. The Facility is in the Woonasquatucket River watershed.</li> <li>(3) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> 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. Certain petroleum constituents are potentially harmful to human health and safety and the environment.</li> <li>(5) <b>Duration of the violation:</b> Respondents should have had the UST Nos. 005, 008 and 009 tested for tightness by 17 July 2019.</li> <li>(6) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</li> </ol>		
(continued)		

(continued from the previous page)

- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** Respondents failed to prevent the non-compliance when they failed to have the interstitial spaces of UST Nos. 005, 008 and 009 tested for tightness before 17 July 2019. Respondents have yet to mitigate the non-compliance despite receiving the LNC and the 28 October 2019 NIE 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 their failure to comply immediately with the requirements set forth in the UST Regulations. Respondents, as owners and operators of the Facility, had full control over the occurrence of the violation.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Respondents had the interstitial spaces of the USTs tested for tightness on 17 July 2017 and reported that they met the criteria for passing.

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

# PENALTY MATRIX WORKSHEET

CITATION: Failure to test the product pipelines for tightness  
 VIOLATION NO.: D (2)

<b>TYPE</b>		
<p style="text-align: center;">_____ <b>TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u>X</u> <b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ <b>TYPE III</b></p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <ol style="list-style-type: none"> <li>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondents failed to have the product pipelines for UST Nos. 005, 008 and 009 tested for tightness by a DEM-licensed tightness tester during each of the years 2015, 2018 and 2019. Such testing is required annually to ensure that the pressurized product pipelines remain tight. Failure to comply could allow defective pipelines to remain in use and result in the release of petroleum products to the environment.</li> <li>(2) <b>Environmental conditions:</b> The Facility is located in a densely developed area with numerous potential vapor receptors including residential structures, 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 public or private drinking water supply wells proximate to the Facility. The USTs are installed within 850 feet of regulated freshwater wetlands. The Facility is in the Woonasquatucket River watershed.</li> <li>(3) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> 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. Certain petroleum constituents are potentially harmful to human health and safety and the environment.</li> <li>(5) <b>Duration of the violation:</b> Respondents failed to comply during three of the last five years. The pipelines have not been tested for tightness since 17 July 2017.</li> <li>(6) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</li> </ol>		
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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 when they failed to have the product pipelines for UST Nos. 005, 008 and 009 tested for tightness during each of the years 2015, 2018 and 2019. Respondents have yet to mitigate the non-compliance despite receiving the LNC and the 28 October 2019 NIE 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 their failure to comply immediately with the requirements set forth in the UST Regulations. Respondents, as owners and operators of the Facility, had full control over the occurrence of the violation.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Respondents had the product pipelines tested for tightness on 27 May 2016 and 17 July 2017 and reported that they met the criteria for passing.

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



# PENALTY MATRIX WORKSHEET

CITATION: Failure to have the line leak detectors, shear valves and tank monitor tested  
 VIOLATION NOs.: D (3), (4) and (5)

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;">_____ <b>X</b> 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.		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <ol style="list-style-type: none"> <li>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondents failed to have the line leak detectors, shear valves and CMS for UST Nos. 005, 008 and 009 tested by a qualified person during each of the years 2015, 2018 and 2019. Such testing is required annually to ensure that this release detection/prevention equipment continues to function in accordance with the manufacturer’s performance standards. Failure to comply could allow defective equipment to remain in use and result in the release of petroleum products to the environment and/or increased fire hazards.</li> <li>(2) <b>Environmental conditions:</b> The Facility is located in a densely developed area with numerous potential vapor receptors including residential structures, 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 public or private drinking water supply wells proximate to the Facility. The USTs are installed within 850 feet of regulated freshwater wetlands. The Facility is in the Woonasquatucket River watershed.</li> <li>(3) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> 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. Certain petroleum constituents are potentially harmful to human health and safety and the environment.</li> <li>(5) <b>Duration of the violation:</b> Respondents failed to comply during three of the last five years. These devices have not been tested since 17 July 2017.</li> <li>(6) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</li> </ol>		
(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 when they failed to have the line leak detectors, shear valves and CMS for UST Nos. 005, 008 and 009 tested during each of the years 2015, 2018 and 2019. Respondents have yet to mitigate the non-compliance despite receiving the LNC and the 28 October 2019 NIE 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 their failure to comply immediately with the requirements set forth in the UST Regulations. Respondents, as owners and operators of the Facility, had full control over the occurrence of the violation.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Respondents had these devices tested on 27 May 2016 and 17 July 2017 and reported that they met the criteria for passing.

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

# PENALTY MATRIX WORKSHEET

CITATION: Failure to have the Class A/B UST facility operator perform monthly inspections  
 VIOLATION NO.: D (6)

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;">___<b>X</b>___ 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.		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <ol style="list-style-type: none"> <li>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondents failed to have the registered Class A/B UST facility operator perform monthly inspections of the Facility. Owners/operators are required to have their registered Class A or B UST facility operators inspect their facilities on a monthly basis to ensure that they are being operated in accordance with the UST Regulations. Failure to comply could result in the release of petroleum products to the environment and/or increased threats to public health and safety.</li> <li>(2) <b>Environmental conditions:</b> The Facility is located in a densely developed area with numerous potential vapor receptors including residential structures, 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 public or private drinking water supply wells proximate to the Facility. The USTs are installed within 850 feet of regulated freshwater wetlands. The Facility is in the Woonasquatucket River watershed.</li> <li>(3) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> 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. Certain petroleum constituents are potentially harmful to human health and safety and the environment.</li> <li>(5) <b>Duration of the violation:</b> 17 months – January 2016 through December 2016 and February 2017 through June 2017.</li> <li>(6) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</li> </ol>		
(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 when they failed to have the registered Class A/B UST facility operator perform monthly inspections of the Facility. Respondents submitted written verification of a return to compliance in August 2017 and were found to be compliant at the time of DEM's 28 August 2019 inspection.
- (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 their failure to comply immediately with the requirements set forth in the UST Regulations. Respondents, as owners and operators of the Facility, had full control over the occurrence of the violation.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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

# PENALTY MATRIX WORKSHEET

CITATION: Failure to develop and implement a CAP  
 VIOLATION NO.: D (7) and (8)

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

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

**FACTORS CONSIDERED:**

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

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents failed to procure the services of a qualified environmental consultant develop and implement a CAP to address the soil and groundwater contamination as required by DEM. DEM required Respondents to take remedial action in response to the persistent and excessive petroleum compound contamination found in groundwater samples collected on and off the Property. Failure to comply would likely result in the further degradation of the environment and in increased threats to public health and safety.
- (2) **Environmental conditions:** The Facility is located in a densely developed area with numerous potential vapor receptors including residential structures, 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 public or private drinking water supply wells proximate to the Facility. The USTs are installed within 850 feet of regulated freshwater wetlands. The Facility is in the Woonasquatucket River watershed. Groundwater contamination from petroleum compounds has been discovered in on-site and off-site groundwater monitoring wells.
- (3) **Amount of the pollutant:** Benzene was present in groundwater samples collected from one on-site groundwater monitoring well at a concentration of 340 ug/L, which is approximately 2.4 times the *Method One GB Groundwater Objective* set forth in the Remediation Regulations.
- (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. Certain petroleum constituents are potentially harmful to human health and safety and the environment. Benzene is a known human carcinogen.
- (5) **Duration of the violation:** Respondents were required to submit a proposed CAP by approximately 7 April 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 noncompliance:** Respondents failed to prevent the non-compliance by submitting a proposed CAP to DEM within 60 days of receipt of the 4 February 2019 notice. Respondents have yet to mitigate the non-compliance despite receiving the 4 February 2019 notice and 8 October 2019 NIE 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 the UST Regulations. As owners and operators of the Facility, Respondents had full control over the occurrence of the violations. The requirements and procedures for the investigation and remediation of UST releases are clearly established in the UST Regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Respondents have been paying for the services of an environmental consultant to investigate the release since taking title to the Property.

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