

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Leon Petroleum, LLC  
Riverside Gas & Cstore, Inc.**

**FILE NO.: UST 20-41-02989**

**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 2 September 2020, DEM issued a *Notice of Intent to Enforce* (“NIE”) to Riverside Gas & Cstore, Inc. for the alleged violations that are the subject of this *Notice of Violation* (“NOV”). The NIE required specific actions to correct the violations. On 4 September 2020, the NIE was delivered to Riverside Gas & Cstore, Inc. On 6 October 2020, the NIE was mailed to Leon Petroleum, LLC. On 13 October 2020, the NIE was delivered to Leon Petroleum, LLC. On 14 October 2020, DEM received a letter in response to the NIE issued to Leon Petroleum, LLC. The letter explained the actions that would be taken to comply with the NIE. As of the date of the NOV, Respondents have failed to comply with the NIE.

C. Facts

- (1) The property is located at 3393 Pawtucket Avenue, Assessor’s Map 310, Block 6, Parcel 3 in East Providence, Rhode Island (the “Property”). The Property includes a service station, a convenience store and a motor fuel storage and dispensing system (the “Facility”).
- (2) Leon Petroleum, LLC owns the Property. The transfer took place on or about 24 April 2015 without written notification to DEM.
- (3) Upon information and belief, Riverside Gas & Cstore, Inc. operates the Facility. A *Change of UST Facility Operator* form has not been received by DEM for 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 *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”).
- (5) The UST facility is registered with DEM and is identified as UST Facility No. 02989.
- (6) The USTs are registered with DEM for the facility as follows:

UST ID No.	Date Installed	Capacity	Product Stored
006	14 September 1999	8,000 gallons	Gasoline
007	14 September 1999	6,000 gallons	Gasoline

- (7) UST Nos. 006 and 007 and their product pipelines are double walled.
- (8) On 26 August 2020, DEM inspected the Facility. The inspection and a review of DEM’s files for the Facility revealed the following:
  - (a) Written verification that the interstitial spaces of UST Nos. 006 and 007 had been tested for tightness by a DEM-licensed tightness tester during the year 2019 was not available. A tank interstitial space tightness test report for these USTs for the year 2019 has not been received by DEM;
  - (b) Written verification that the interstitial spaces of the product pipelines for UST Nos. 006 and 007 had been tested for tightness by a DEM-licensed tightness tester during the year 2019 was not available. A tightness test report for these product pipelines for the year 2019 has not been received by DEM;
  - (c) Written verification that the line leak detectors for UST Nos. 006 and 007 had been tested by a qualified person during the year 2020 was not available;
  - (d) Written verification that the dispenser shear valves had been tested during the year 2020 was not available;
  - (e) The *Veeder Root TLS 300C* continuous monitoring system (“CMS”) was displaying “fuel alarms” for the leak sensors deployed in the tank top sumps for UST Nos. 006 and 007 at the time of inspection. Review of the alarm history stored in the CMS revealed that the alarms had been in effect since at least 15 May 2020. Upon information and belief, Respondents had neither investigated nor reported the alarms to DEM in accordance with Part 1.10(M)(3) and Parts 1.14(B), (C) and (D) of the UST Regulations;
  - (f) Written verification that the CMS had been certified/tested by a qualified person during the year 2020 was not available;

- (g) The spill containment basins for UST Nos. 006 and 007, the tank top sumps for UST Nos. 006 and 007 and the dispenser sumps were holding liquid mixtures at the time of inspection;
  - (h) The tank field observation wells were not labeled or secured against tampering. Groundwater monitoring wells remain in place on the Property and, upon information and belief, they are no longer utilized for their intended purpose;
  - (i) Review of the Class A/B operator's monthly inspection checklists on file at the Facility revealed the following:
    - 1. They did not include the full name and signature of the certified Class A or B operator who was performing the inspections;
    - 2. The inspections were being documented on an obsolete checklist;
    - 3. Inspection checklists for the time period of June 2018 through December 2019 were not available; and
    - 4. The inspector ("Kenneth") reported that the Facility was in full compliance with the UST Regulations during every month of 2020 in apparent disregard for the alleged violations set forth in subsection C(8) of the NOV.
  - (j) Compliance with Part 1.10(U)(9) of the UST Regulations could not be verified; and
  - (k) Written verification that any of the Facility attendants on duty at the time of inspection had been trained as, at least, a Class C operator was not available. A training log for all the Class C operators that had been assigned to the Facility was not available. Upon information and belief, the Facility was being operated without at least 1 trained Class C operator on duty.
- (10) On 19 January 2021, DEM issued an approval letter to Respondents for a proposed product pipeline replacement project. The proposal indicated that no excavation would be required and DEM's approval pertained only to the scope-of-work outlined in the proposal.
- (11) On 17 February 2021, DEM inspected the Facility and observed that the concrete tank mat had been saw-cut and removed and that excavation of pea stone had taken place. In the absence of the tank mat, the tanks were unprotected and the Facility remained in operation. The inspector observed that the proposed pipeline replacement had not been completed and that the tank top sump for UST No. 006 was filled with liquid.

- (12) As of the date of the NOV, Respondents have yet to demonstrate that the above-referenced issues of non-compliance have been rectified in accordance with the UST Regulations.

D. Violation

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

- (1) **UST Regulations, Part 1.7(P)(2)** – requiring owners/operators to report changes in their registration applications to DEM on the requisite form.
- (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)** – requiring annual testing of line leak detectors by qualified persons.
- (5) **UST Regulations, Part 1.10(J)** – requiring annual testing of dispenser shear valves.
- (6) **UST Regulations, Part 1.10(M)(3) and Parts 1.14(B), (C) and (D)** – requiring immediate investigation and reporting of release detection signals by the owner/operator.
- (7) **UST Regulations, Parts 1.10(M)(7), (8) and (9)** – requiring that UST continuous monitoring systems be inspected and tested by qualified persons on an annual basis.
- (8) **UST Regulations, Part 1.10(N)(1)(a) and Part 1.10(N)(3)** – requiring that spill containment basins and sumps be kept free of liquids and debris at all times.
- (9) **UST Regulations, Part 1.10(Q)(1)(a)** – requiring that all tank field observation and groundwater monitoring wells be labeled and secured against tampering.
- (10) **UST Regulations, Part 1.10(Q)(1)(e)** – requiring the compliant abandonment of groundwater monitoring wells that are no longer utilized for their intended purpose.
- (11) **UST Regulations, Part 1.10(U)(2)(a)** – requiring owners/operators of UST facilities to have trained Class C operators assigned to the facility.
- (12) **UST Regulations, Part 1.10(U)(3)(e)** – requiring owners/operators of UST facilities to maintain training logs for all the Class C operators that have been assigned to their facility.

- (13) **UST Regulations, Part 1.10(U)(4)(c)** – requiring that at least 1 trained Class C operator be present at a UST facility during all hours of operation.
- (14) **UST Regulations, Parts 1.10(U)(5) and (6)** – requiring Class A and B operators to inspect the facility on a monthly basis, ensure that the UST systems are compliantly operated and maintained, ensure that required records are compliantly maintained and ensure that the facilities have trained Class C operators.
- (15) **UST Regulations, Part 1.10(U)(9)** – requiring the registered, certified Class A or B operator to perform monthly on-site UST facility inspections and to document those inspections on the requisite form.
- (16) **UST Regulations, Part 1.12(D)(1)(b)** - requiring the prior written approval of DEM for any modification or repair that requires the excavation of soil or removal, replacement, reconfiguration or disturbance of any subsurface UST component.
- (17) **UST Regulations, Part 1.12(D)(1)(d)** - requiring that a qualified environmental consultant be present at a facility for any modification or repair that requires excavation.
- (18) **UST Regulations, Part 1.18** – prohibiting the transfer of Certificates of Registration without written notification to DEM within 7 days of the transfer.

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 tank top sumps for UST Nos. 006 and 007, as per Part 1.10(M)(3) and Part 1.14(C)(1)(a) of the UST Regulations. Submit a written report to DEM’s Office of Compliance and Inspection (“OC&I”) detailing the outcome of the investigation and any remedial actions taken to rectify any problems or malfunctions that may be revealed.
- (2) **IMMEDIATELY** procure the services of a qualified person to evacuate and clean the spill containment basins for UST Nos. 006 and 007, the tank top sumps for UST Nos. 006 and 007 and the dispenser sumps in accordance with Part 1.10(N)(1)(a) and Part 1.10(N)(3) of the UST Regulations. All wastes removed from these basins and 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)*. Written or photographic verification of the compliance shall be submitted to OC&I.

- (3) **Within 60 days of receipt of the NOV**, complete all the following remedial actions:
- (a) Submit to DEM's Office of Land Revitalization & Sustainable Materials Management ("LRSMM") a revised *Application for the Repair or Modification of a UST System* for the pipeline replacement project along with written verification that you have retained the services of a qualified environmental consultant to oversee the project. Upon receipt of written approval from the LRSMM, complete the facility modification project in full compliance with the approval notice and Parts 1.12 and 1.13 of the UST Regulations.
  - (b) Submit to the LRSMM a completed *Change in Ownership of a UST or UST Facility* form and a completed *Change of UST Facility Operator* form in accordance with Part 1.7(P)(2) and Part 1.18(B)(3) of the UST Regulations. These forms are available on DEM's website at <http://www.dem.ri.gov/documents/forms/index.php#ust>;
  - (c) Procure the services of a DEM-licensed tightness tester to test the interstitial spaces of UST Nos. 006 and 007 for tightness perform in accordance with Parts 1.10(F)(1)(c) and 1.10(H) of the UST Regulations. Original copies of the tightness test report shall be submitted to OC&I and LRSMM in accordance with Part 1.10(H)(4) of the UST Regulations;
  - (d) Procure the services of a DEM-licensed tightness tester to test the interstitial spaces of the product pipelines for UST Nos. 006 and 007 for tightness in accordance with Part 1.10(G)(2)(b) and Part 1.10(H) of the UST Regulations. Original copies of the tightness test report shall be submitted to OC&I and LRSMM in accordance with Part 1.10(H)(4) of the UST Regulations;
  - (e) Procure the services of a qualified person to test the line leak detectors for UST Nos. 006 and 007 in accordance with Part 1.10(I)(1) of the UST Regulations and submit a copy of the test report to OC&I;
  - (f) Procure the services of a qualified person to test the dispenser shear valves in accordance with Part 1.10(J)(1) of the UST Regulations and submit a copy of the test report to OC&I;
  - (g) Procure the services of a qualified person to certify/test the CMS in accordance with Parts 1.10(M)(7), (8) and (9) of the UST Regulations and submit a copy of the certification/testing report to OC&I;
  - (h) The tank field observation wells shall be inspected and repaired or modified as necessary to ensure that they are labeled, secured against tampering and fitted with expandable watertight caps around the PVC well casings, as per Part 1.10(Q) of the UST Regulations. Written or photographic verification of compliance shall be submitted to OC&I;

- (i) Any groundwater monitoring wells remaining on the Property shall be abandoned by a licensed, qualified well drilling contractor in full compliance with Part 1.10(Q)(1)(e) of the UST Regulations and Part 3.22(H) of the *Groundwater Quality Rules (250-RICR-150-05-3)*;
- (j) The registered Class A/B UST facility operator shall train all appropriate Facility employees and attendants as Class C UST facility operators and compile a written training log for the Class C UST facility operators that have been trained and assigned to the Facility, as per Part 1.10(U)(2)(a) and Part 1.10(U)(3)(e) of the UST Regulations. A copy of the completed training log shall be submitted to OC&I. The Facility shall henceforth be operated only with at least 1 trained Class C UST facility operator on duty during all hours of operation, as per Part 1.10(U)(4)(c) of the UST Regulations; and
- (k) The registered, certified Class A/B UST facility operator (Kenneth Iasimone) shall henceforth perform the monthly UST facility inspections in full compliance with Parts 1.10(U)(5), (6) and (9) of the UST Regulations and document the results of those inspections on the requisite checklist. Each completed checklist shall include the full names and signatures of the inspector and the property owner. Written verification of a return to compliance 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:

**\$19,844**

- (2) The proposed administrative penalty is calculated pursuant to the *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* [effective 31 December 2001 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:

Christina Hoefsmit, Esquire  
DEM - Office of Legal Services  
235 Promenade Street, 4<sup>TH</sup> Floor  
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 regarding any violation set forth herein, then this 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 East 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 or at [christina.hoefsmit@dem.ri.gov](mailto:christina.hoefsmit@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. 77407 or at [tracy.tyrrell@dem.ri.gov](mailto:tracy.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:

Leon Petroleum, LLC  
c/o Mehtab Akhtar, Resident Agent  
3393 Pawtucket Avenue  
Riverside, RI 02915

Riverside Gas & Cstore, Inc.  
c/o Muhammad Kashif, Registered Agent  
3393 Pawtucket Avenue  
Riverside, RI 02915

by Certified Mail.

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## ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST

File No.: OCI-UST-20-41-02989

Respondents: Leon Petroleum, LLC and Riverside Gas and Cstore, 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 (2) – Tank outer wall tightness testing	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,250	1 violation	\$1,250
D (3) – Pipeline outer wall tightness testing	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,250	1 violation	\$1,250
D (4), (5) and (7) – Annual leak detection/prevention equipment testing	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,250	1 violation	\$1,250
D (6) – Failure to investigate and rectify release detection signals	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$4,375	1 violation	\$4,375
D (11) through (15) – Operator training	Type II <i>(\$12,500 Max. Penalty) *</i>	Moderate	\$4,375	1 violation	\$4,375
D (16) and (17) - Unauthorized facility modifications	Type I <i>(\$25,000 Max. Penalty) *</i>	Moderate	\$6,250	1 violation	\$6,250
<b>SUB-TOTAL</b>					<b>\$18,750</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 NON-COMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED.		
<b>DESCRIPTION OF BENEFIT</b>	<b>CALCULATION</b>	<b>AMOUNT</b>
<p>Avoiding the cost of hiring a licensed tester to test the interstitial spaces of the tanks and 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"> <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 style="text-align: center;">C Corp.</p> <p style="text-align: center;">\$848</p> <p style="text-align: center;">September 2019</p> <p style="text-align: center;">1 July 2021</p> <p style="text-align: center;">1 June 2021</p> <p style="text-align: center;">7.6%</p>
<p>Avoiding the cost of hiring a qualified contractor to test the line leak detectors, shear valves and tank monitor in 2020. 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 style="text-align: center;">C Corp.</p> <p style="text-align: center;">\$545</p> <p style="text-align: center;">August 2020</p> <p style="text-align: center;">15 June 2020</p> <p style="text-align: center;">1 June 2020</p> <p style="text-align: center;">7.6%</p>
<b><i>SUB-TOTAL</i></b>		<b>\$1,094</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 = \$19,844**

# PENALTY MATRIX WORKSHEET

CITATION: Tank outer wall 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 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 test the outer walls of UST Nos. 006 and 007 for tightness during the year 2019. Tank outer wall tightness testing is an important, required component of leak detection programs at UST facilities. Such testing is required biennially when double-walled tanks reach 20 years of age. Upon information and belief, Respondents have never had the tank outer walls tested for tightness. Failure to comply would presumably reduce the likelihood of preventing releases of petroleum product from the USTs.
- (2) **Environmental conditions:** The Facility is in a densely developed area with potential vapor receptors including commercial structures and underground utilities. The Facility is in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells in the vicinity of the Facility. The USTs are installed within 1,000 feet of Providence River and the Facility lies 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. Certain petroleum constituents are potentially harmful to human health and safety and the environment.
- (5) **Duration of the violation:** Respondents have been non-compliant with this rule since September 2019.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.

(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 by having the tanks outer walls tested for tightness in or before September 2019. Respondents have made no attempt to mitigate the alleged violation despite receiving the 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 with the UST Regulations. As owners and operators of the Facility, Respondents had complete 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>  X  </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: Pipeline outer wall tightness testing  
 VIOLATION NO.: D (3)

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

**DEVIATION FROM THE STANDARD**  
 THE DEGREE TO WHICH A 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 test the secondary product pipelines for tightness during the year 2019. Pipeline tightness testing is an important, required component of leak detection programs at UST facilities. Such testing is required biennially when the piping reaches 20 years of age. Upon information and belief, Respondents have never had the secondary piping tested for tightness. Failure to comply would presumably reduce the likelihood of preventing releases of petroleum product from the pipelines.
- (2) **Environmental conditions:** The Facility is in a densely developed area with potential vapor receptors including commercial structures and underground utilities. The Facility is in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells in the vicinity of the Facility. The tanks are installed within 1,000 feet of Providence River and the Facility lies 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. Certain petroleum constituents are potentially harmful to human health and safety and the environment.
- (5) **Duration of the violation:** Respondents have been non-compliant with this rule since September 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 secondary pipelines tested for tightness during the year 2019. Respondents have yet to mitigate the non-compliance despite receiving the 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 with the UST Regulations. As owners and operators of the Facility, Respondents had complete 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>  X  </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: Annual leak detection/prevention equipment testing  
 VIOLATION NOs.: D (4), (5) and (7)

<b>TYPE</b>		
___ <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<b>X</b> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	___ <b>TYPE III</b> <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
<b>DEVIATION FROM THE STANDARD</b> THE DEGREE TO WHICH A 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 Penalty Regulations.</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 procure the services of a qualified technician to test the line leak detectors, shear valves and tank monitor during the year 2020. These devices are important, required components of leak detection/prevention programs at UST facilities. Annual testing is required to ensure that they are operating in conformance with the manufacturer’s performance standards. Failure to comply would presumably reduce the likelihood of detecting or preventing releases of petroleum product to the environment.</li> <li>(2) <b>Environmental conditions:</b> The Facility is in a densely developed area with potential vapor receptors including commercial structures and underground utilities. The Facility is in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells in the vicinity of the Facility. The tanks are installed within 1,000 feet of Providence River and the Facility lies within its 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> 1 year.</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 by having the line leak detectors, shear valves and tank monitor tested during the year 2020. Respondents have yet to mitigate the non-compliance despite receiving the 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 with the UST Regulations. As owners and operators of the Facility, Respondents had complete control over the occurrence of the violations.
- (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>  X  </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 investigate and rectify release detection signals  
 VIOLATION NO.: D (6)

<b>TYPE</b>		
<u>  X  </u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>          </u> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>          </u> <b>TYPE III</b> <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
<b>DEVIATION FROM THE STANDARD</b> THE DEGREE TO WHICH A 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 Penalty Regulations.</p> <p>(1) <b>The extent to which the act or failure to act was out of compliance:</b> At the time of inspection on 26 August 2020, the CMS was displaying “fuel alarms” for the leak sensors deployed in the tank top sumps for UST Nos. 006 and 007. The alarm history stored in the CMS indicated that the alarms had been in effect since at least 15 May 2020. 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.</p> <p>(2) <b>Environmental conditions:</b> The Facility is in a densely developed area with potential vapor receptors including commercial structures and underground utilities. The Facility is in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells in the vicinity of the Facility. The tanks are installed within 1,000 feet of Providence River and the Facility lies within its watershed.</p> <p>(3) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</p> <p>(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.</p> <p>(5) <b>Duration of the violation:</b> Approximately 9 months – Respondents have been non-compliant with these requirements since at least 15 May 2020.</p> <p>(6) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</p>		
(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 immediately investigating, reporting and rectifying each alarm in accordance with the UST Regulations. Respondents have yet to mitigate the non-compliance despite receiving the 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 with the UST Regulations. As owners and operators of the Facility, Respondents had complete control over the occurrence of the violations.
- (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>  X  </u> <b>MINOR</b>
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		<b>TYPE I</b>	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 <b>\$4,375</b>	\$1,250 to \$2,500	\$250 to \$1,250

# PENALTY MATRIX WORKSHEET

CITATION: Operator training  
 VIOLATION NOs.: D (11) through (15)

<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;"><b>X</b> <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 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 Penalty Regulations.</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 did not include the full name and signature of the certified Class A or B operator who performed the inspections; the inspections were being documented on an obsolete checklist; inspection checklists for the time period of June 2018 through December 2019 were not available; and the inspector reported that the Facility was in full compliance with the UST Regulations during every month of 2020 in apparent disregard for the alleged violations set forth in subsection (C)(8) of the NOV. Respondents failed to train and assign Class C operators to the Facility. Failure to comply would presumably increase the likelihood of a release of the regulated substance to the environment and in increased threats to public health and safety.</li> <li>(2) <b>Environmental conditions:</b> The Facility is in a densely developed area with potential vapor receptors including commercial structures and underground utilities. The Facility is in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells in the vicinity of the Facility. The tanks are installed within 1,000 feet of Providence River and the Facility lies within its 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> Approximately 8 months – Respondents have been non-compliant with these requirements since at least June 2018.</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 by assigning trained Class C operators to the Facility, ensure that the Facility was operated with at least 1 Class C operator on duty during all hours of operation and ensure that the registered Class A/B operator inspected the Facility on a monthly basis and took immediate corrective action if deficiencies were revealed. Respondents have yet to mitigate the non-compliance despite receiving the 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 with the UST Regulations. As owners and operators of the Facility, Respondents had complete control over the occurrence of the violations.
- (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>	<u>  X  </u> <b>MODERATE</b>	<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 <b>\$4,375</b>	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

# PENALTY MATRIX WORKSHEET

CITATION: Unauthorized facility modifications  
 VIOLATION NOs.: D (16) and (17)

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

**DEVIATION FROM THE STANDARD**  
 THE DEGREE TO WHICH A 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 authorized their contractor to remove the concrete tank mat above the USTs and excavate some of the pea stone backfill. Respondents also allowed the excavation work to take place without having a qualified environmental consultant on site to oversee the activities and screen the backfill for petroleum contamination. These modifications were not included in the scope of work submitted to DEM on 7 January 2021 and they were not authorized in the DEM’s piping replacement approval notice dated 19 January 2021. The UST Regulations prohibit owners/operators from modifying their UST systems without prior written notification to and approval by DEM. Failure to comply prevents DEM from ensuring that UST facility modifications meet the requirements of the UST Regulations and from determining whether or not a release of petroleum product from the existing UST system has occurred.
- (2) **Environmental conditions:** The Facility is in a densely developed area with potential vapor receptors including commercial structures and underground utilities. The Facility is in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells in the vicinity of the Facility. The tanks are installed within 1,000 feet of Providence River and the Facility lies 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. Certain petroleum constituents are potentially harmful to human health and safety and 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.

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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 obtaining the prior written approval of DEM for the concrete tank mat modifications and the excavation activities. Respondents have yet to take any action 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 their failure to comply with the UST Regulations. As owners and operators of the Facility, Respondents had complete control over the occurrence of the violations.
- (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>	<u>  <b>X</b>  </u> <b>MODERATE</b>	<b>MINOR</b>
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		<b>TYPE I</b>	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 <b>\$6,250</b>	\$2,500 to \$6,250	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250