

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: MADJOE LLC

**FILE NOS.: OCI-UST 20-13 and
OCI-UST- 20-25**

NOTICE OF VIOLATION

A. Introduction

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

B. Administrative History

On 19 February 2020, DEM issued a *Notice of Intent to Enforce* (“NIE”) by certified mail to Respondent for the alleged violations described in subsection C (10) of this *Notice of Violation* (“NOV”). The NIE required specific actions to correct the violations. The NIE was delivered to Respondent on 2 March 2020. As of the date of the NOV, Respondent has failed to comply with the NIE.

C. Facts

- (1) The subject property is located at 939 (a/k/a 957) Broad Street, Assessor’s Plat 2, Lot 21 in the City of Central Falls, Rhode Island (the “Property”). The Property includes a convenience store and a motor fuel storage and dispensing system (the “Facility”).
- (2) Respondent owns the Property.
- (3) 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”).
- (4) The Facility is registered with DEM and is identified as UST Facility No. 00914.

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

UST ID No.	Date Installed	Capacity	Product Stored
005	1 July 1990	1,000 gallons	Heating Oil
010	1 July 1990	12,000 gallons	Gasoline
011	1 July 1990	12,000 gallons	Gasoline
012	1 July 1990	12,000 gallons	Gasoline

- (6) Part 1.10(C) of the UST Regulations requires that UST owners/operators conduct inspections of the Facility and complete a *Compliance Certification Checklist and Forms Booklet for Underground Storage Tank Facilities* and any necessary *Return to Compliance Plans* (“Compliance Certification Forms”) and submit the completed Compliance Certification Forms to DEM within the time frame specified by DEM. All the necessary forms and workbooks are available on DEM’s web page.
- (7) On or about 11 March 2019, DEM sent written notification to all registered UST owners/operators to remind them to submit the Compliance Certification Forms to DEM on or before 30 June 2019.
- (8) On or about 10 July 2019, DEM sent a second written notice to all non-compliant registered UST owners/operators to remind them of the requirement to submit the Compliance Certification Forms to DEM on or before 31 July 2019.
- (9) On 7 February 2020, DEM issued a NIE by certified mail to Respondent for its failure to submit the Compliance Certification Forms to DEM. The NIE was delivered to Respondent on 14 February 2020. The NIE required submission of the forms by 29 February 2020.
- (10) On 14 February 2020, DEM inspected the Facility. The inspection revealed the following:
- (a) Written verification that the primary product pipelines for UST Nos. 010 and 011/012 were tested for tightness by a DEM-licensed tightness tester during the year 2018 was not available;
 - (b) Written verification that the line leak detectors for UST Nos. 010 and 011/012 had been tested by a qualified person during the year 2018 was not available;
 - (c) Written verification that the dispenser shear valves had been tested by a qualified person during the year 2018 was not available;
 - (d) The *Veeder Root TLS 350R* continuous monitoring system (“CMS”) was displaying a “fuel alarm” for the leak sensor deployed in the tank top sump for UST No. 012. Upon information and belief, the alarm had been in effect since at least 22 July 2019 and Respondent had yet to report and investigate the release detection signal in accordance with the UST Regulations. The leak sensor was mounted too high and it was not immersed in liquid, which was indicative of a malfunction;

- (e) Written verification that the CMS had been certified/tested by a qualified person during the year 2018 was not available;
 - (f) The spill containment basins for UST Nos. 005, 010 and 012 were holding liquids and/or solid debris at the time of inspection;
 - (g) The fill ports for UST Nos. 005, 010, 011 and 012 were not labeled to identify the products stored inside the tanks; and
 - (h) Two of the tank field observation wells were not labeled or secured against tampering.
- (11) As of the date of the NOV, Respondent has not submitted the Compliance Certification Forms to DEM.
- (12) As of the date of the NOV, Respondent has yet to rectify the alleged instances of non-compliance with the UST Regulations described in subsection C (10) above.

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 1.10(C)(1)(c)** – requiring UST owners/operators to inspect the facility and complete and submit the Compliance Certification Forms within the time frame specified by DEM.
- (2) **UST Regulations, Part 1.10(G)(3)(a)** – requiring annual tightness testing of single-walled product pipelines.
- (3) **UST Regulations, Part 1.10(I)(1)** – requiring that line leak detectors be tested by a qualified person on an annual basis.
- (4) **UST Regulations, Part 1.10(J)(1)** – requiring that dispenser shear valves be tested on an annual basis.
- (5) **UST Regulations, Part 1.10(M)(2)** – requiring that malfunctioning leak monitoring devices be repaired within 15 days.
- (6) **UST Regulations, Part 1.10(M)(3), Part 1.14(B), Part 1.14(C)(1)(a), and Part 1.14(D)(2)(a)** – requiring immediate investigation and reporting of release detection signals.
- (7) **UST Regulations, Part 1.10(M)(7), Part 1.10(M)(8) and Part 1.10(M)(9)** – requiring that continuous monitoring systems be tested by a qualified person on an annual basis.
- (8) **UST Regulations, Part 1.10(N)(1)** – requiring that spill containment basins be kept free of liquids and debris at all times.

- (9) **UST Regulations, Part 1.10(P)(1)** – requiring that UST fill ports be labeled to identify the product stored inside the tank.
- (10) **UST Regulations, Part 1.10(Q)(1)(a)** – requiring that groundwater monitoring wells and tank field observation wells be equipped with labeled and tamper-resistant covers.

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 inspect and test the leak sensor deployed in the tank top sump for UST No. 012, as per Part 1.10(M)(2) 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. Once repaired or replaced, the leak sensor shall be re-deployed so that its low point is set at least 1 inch below the lowest sump sidewall conduit penetration and otherwise in accordance with the manufacturer’s instructions.
- (2) **IMMEDIATELY** procure the services of a qualified person to investigate the fuel alarm for the leak sensor deployed in the tank top sump for UST No. 012, as per Part 1.10(M)(3) and Part 1.14(C)(1)(a) of the UST Regulations. Submit a written report to OC&I detailing the outcome of the investigation and any remedial actions taken to rectify any problems or malfunctions that may be revealed.
- (3) **Within 30 days of receipt of the NOV:**
 - (a) Submit the completed Compliance Certification Forms to DEM in accordance with Part 1.10(C)(1)(c) of the UST Regulations.
 - (b) If the line leak detectors for UST Nos. 010 and 011/012 have not been tested within the last year, procure the services of a qualified person to perform such testing in accordance with Part 1.10(I)(1) of the UST Regulations and submit a copy of the test report to OC&I.
 - (c) If the dispenser shear valves have not been tested within the last year, perform such testing in accordance with Part 1.10(J)(1) of the UST Regulations and submit a copy of the test report to OC&I.
 - (d) If the CMS has not been certified/tested within the last year, procure the services of a qualified person to perform such testing in accordance with Part 1.10(M)(7), Part 1.10(M)(8) and Part 1.10(M)(9) of the UST Regulations and submit a copy of the certification/testing report to OC&I.

- (e) Evacuate and clean the spill containment basins for UST Nos. 005, 010, 011 and 012 in accordance with Part 1.10(N)(1)(a) of the UST Regulations. All wastes removed from these basins shall be managed and disposed of in accordance with Part 1.7.3 of the *Rules and Regulations for Hazardous Waste Management (250-RICR-140-10-1)* [effective 22 April 2020 to Current]. Written or photographic verification of the compliance shall be submitted to OC&I.
- (f) Label or otherwise permanently mark each of fill port for UST Nos. 005, 010, 011 and 012 to identify the product stored inside the tank, as per Part 1.10(P)(1) of the UST Regulations. American Petroleum Institute publication *API RP 1637* may be used to satisfy this requirement. Written or photographic verification of compliance shall be submitted to OC&I.
- (g) Modify or repair the southern tank field observation wells to ensure that they are labeled and secured against tampering, as per Part 1.10(Q)(1)(a) of the UST Regulations. Written or photographic verification of 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:

\$10,757

- (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 check 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 Respondent in the NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if 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 *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, 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 regarding 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 Central Falls, 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. All other inquiries should be directed to Tracey Tyrrell of the DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 77407 or at tracey.tyrrell@dem.ri.gov.

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

FOR THE DIRECTOR

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

Date: _____

CERTIFICATION

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

MADJOE LLC
c/o Joseph Raheb, Esq., Resident Agent
650 George Washington Highway, Suite 201
Lincoln, RI 02865

R.I. 0288

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST
 File Nos.: OCI-UST 20-13 and OCI-UST-20-25
 Respondent: MADJOE LLC

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D (1) – ERP	Type II <i>(\$12,500 Max. Penalty) *</i>	Moderate	\$3,000	1 violation	\$3,000
D (2) – Pipeline Tightness Testing	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,875	1 violation	\$1,875
D (3), D (4) and D (7) – Testing of Line Leak Detectors, Shear Valves and Tank Monitor	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,875	1 violation	\$1,875
D (5) and D (6) – Maintenance of leak sensors and alarm response	Type II <i>(\$12,500 Max. Penalty) *</i>	Moderate	\$2,500	1 violation	\$2,500
SUB-TOTAL					\$9,250

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

ADMINISTRATIVE PENALTY SUMMARY (continued)

ECONOMIC BENEFIT FROM NON-COMPLIANCE		
COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT COMPLY. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:		
- THERE IS NO IDENTIFIABLE BENEFIT FROM NON-COMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED.		
DESCRIPTION OF BENEFIT	CALCULATION	AMOUNT
Failing to test the primary pipelines for tightness and failing to test the line leak detectors and tank monitor during the year 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.	<ul style="list-style-type: none"> ▪ Profit Status ▪ Filing Status ▪ Initial Capital Investment ▪ Annually recurring cost ▪ First Month of Non-compliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	For profit, other than a C Corp. \$905 December 2018 1 April 2021 1 April 2021 7.7%
<i>SUB-TOTAL</i>		\$1,507

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 = \$10,757

PENALTY MATRIX WORKSHEET

CITATION: ERP
 VIOLATION NO.: D (1)

TYPE		
___ TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>X</u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	___ TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent failed to submit completed Compliance Certification Forms to DEM. The UST Regulations require all UST owners/operators to certify their compliance with the UST Regulations by completing and submitting the Compliance Certification Forms within the time frame specified by DEM. (2) Environmental conditions: Considered, but not utilized for this calculation. (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 public health hazard (due to the potential inhalation of benzene) and a public safety hazard (due to the potential for explosion). Gasoline can cause significant soil and groundwater contamination if released to the environment. (5) Duration of the violation: The Compliance Certification Forms were due on or before 30 June 2019. (6) Areal extent of the violation: Considered, but not utilized for this calculation. <p style="text-align: right;">(continued)</p>		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent the non-compliance by submitting completed Compliance Certification Forms to DEM before 30 June 2019. Respondent has made no apparent attempt to mitigate the noncompliance, despite issuance of the NIE from DEM.
- (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:** Respondent, as owner and operator of the Facility, had full control over the occurrence of the violation. Compliance with the UST ERP is expressly required by the UST Regulations. DEM issued letters to the UST owners/operators in March 2019 and July 2019 requiring the owners/operators to comply with the ERP compliance certification rule and directing the owners/operators to DEM's webpage to obtain the necessary forms and workbooks. DEM issued an NIE to Respondent on 7 February 2020 requiring Respondent to submit completed Compliance Certification Forms to DEM within 15 days.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

___ MAJOR	<u> X </u> MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250 \$3,000	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Pipeline Tightness Testing
 VIOLATION NO.: D (2)

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

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

FACTORS CONSIDERED:

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

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent failed to have the primary product pipelines for UST Nos. 010 and 011/012 tested for tightness by a DEM-licensed tightness tester during the year 2018. Failure to comply reduces the likelihood of detecting or preventing releases of the regulated substance to the environment and the resultant threats to groundwater resources and public health and safety.
- (2) **Environmental conditions:** The Facility is in a densely developed area with numerous potential vapor receptors including residential structures, 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 Facility is in an environmental justice area. The Facility is located within 1,300 feet of the Blackstone River and 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:** 1 year. Respondent had been granted a variance approval by DEM, which required annual tightness testing of the primary product pipelines because the secondary pipelines could not be tested for tightness (the variance approval expired in December 2018).
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** Respondent failed to prevent the non-compliance by having the primary product pipelines for UST Nos. 010 and 011/012 tested for tightness by a DEM-licensed tightness tester during the year 2018. Respondent failed to mitigate the non-compliance, despite issuance of the NIE by DEM.
- (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:** Respondent has been cited by DEM on multiple occasions for alleged violations of the UST Regulations.
- (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 Respondent for its failure to comply with the requirements of DEM's variance approval. Respondent, as owner and operator 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.

MAJOR	MODERATE	<u>X</u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500 \$1,875	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Testing of Line Leak Detectors, Shear Valves and Tank Monitor
 VIOLATION NOS.: D (3), D (4) and D (7)

TYPE		
___ TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>X</u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	___ TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
FACTORS CONSIDERED:		
Taken from Part 1.10(A)(1)(b) of the Penalty Regulations		
<p>(1) The extent to which the act or failure to act was out of compliance: Respondent failed to have the line leak detectors, shear valves and tank monitor tested by a qualified person during the year 2018. Failure to comply reduces the likelihood of detecting or preventing releases of the regulated substance to the environment and the resultant threats to groundwater resources and public health and safety.</p> <p>(2) Environmental conditions: The Facility is in a densely developed area with numerous potential vapor receptors including residential structures, 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 Facility is in an environmental justice area. The Facility is located within 1,300 feet of the Blackstone River and lies within its watershed.</p> <p>(3) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(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.</p> <p>(5) Duration of the violation: 1 year.</p> <p>(6) Areal extent of the violation: 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:** Respondent failed to prevent the non-compliance by having the line leak detectors, shear valves and tank monitor tested during the year 2018. Respondent has yet to take any steps to mitigate the non-compliance, despite issuance of the NIE by DEM.
- (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:** Respondent has been cited by DEM on multiple occasions for alleged violations of the UST Regulations.
- (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 Respondent for its failure to comply with the equipment testing requirements set forth in the UST Regulations. Respondent, as owner and operator 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.

MAJOR	MODERATE	<u>X</u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500 \$1,875	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Maintenance of leak sensors and alarm response
 VIOLATION NOS.: D (5) and D (6)

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

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

FACTORS CONSIDERED:

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

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent failed to compliantly operate and maintain the leak sensor deployed in the tank top sump for UST No. 012. At the time of the 14 February 2020 inspection the leak sensor was positioned too high and it was in alarm mode, despite the fact that it was not immersed in liquid. Improper deployment of piping leak sensors essentially deactivates the leak detection system for the piping. Upon information and belief, the leak sensor was malfunctioning. The alarm signal had been in effect since at least July 2019 and, upon information and belief, Respondent had yet to report and investigate the release detection signal in accordance with the requirements of the UST Regulations. Failure to compliantly operate and maintain leak monitoring equipment could result in the failure to detect and prevent releases of petroleum product and could result in adverse impacts to public health and safety and the environment.
- (2) **Environmental conditions:** The Facility is in a densely developed area with numerous potential vapor receptors including residential structures, 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 Facility is in an environmental justice area. The Facility is located within 1,300 feet of the Blackstone River and 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:** 1 ½ years – the release detection signal was first activated in July 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:** Respondent failed to prevent the non-compliance by compliantly deploying the leak sensor in the tank top sump and by immediately reporting, investigating and rectifying any problems associated with the release detection signal. Respondent has yet to take any steps to mitigate the non-compliance, despite issuance of the NIE by DEM.
- (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:** Respondent has been cited by DEM on multiple occasions for alleged violations of the UST Regulations.
- (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 Respondent for its failure to compliantly operate the leak sensor, report and investigate the fuel alarm and rectify any deficiencies revealed by the alarm and investigation. Respondent, as owner and operator of the Facility, had full 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.

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