

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: New England Motor Freight, Inc.
Myron P. Shevell**

FILE NO.: UST 2010-01948

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

DEM issued informal notices to New England Motor Freight, Inc. on 14 April 2010, 22 June 2010, and 15 September 2010 for the violations and spoke with a representative for New England Motor Freight, Inc. on 6 October 2010. New England Motor Freight, Inc. failed to fully comply with the notices.

C. Facts

- (1) The subject property is located at 400 Division Street in the city of Pawtucket, Rhode Island, Assessor’s Plat 25, Lot 337 (the “Property”).
- (2) The Property includes a trucking terminal and warehouse and underground storage tanks (“USTs” or “tanks”) used for storage of petroleum product (the “Facility”).
- (3) Myron P. Shevell owns the Property.
- (4) New England Motor Freight, Inc. (“NEMF”) operates the Facility.
- (5) The Facility is subject to DEM’s Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials, as amended (the “UST Regulations”).
- (6) The Facility is registered with DEM in accordance with Section 6.00 of the UST Regulations and is identified as UST Facility No. 01948.

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

UST ID No.	Date Installed	Capacity	Product Stored
004	21 May 1997	10,000 gallons	Diesel Fuel
005	13 April 2006	20,000 gallons	Diesel Fuel

(8) On 22 January 2010, DEM issued a letter to all registered UST owners/operators that required the owners/operators to inspect their facility and complete and submit to DEM a Compliance Certification Checklist, a Certification Statement form and any necessary Return to Compliance Plans (the “Compliance Certification Forms”).

(9) On 18 March 2010, DEM inspected the Facility. The inspection revealed the following:

- (a) Inventory control records for UST Nos. 004 and 005 were not available.
- (b) UST No. 005 was not equipped with a line leak detector.
- (c) Written verification that the dispenser shear valves had been tested during each of the years 2007, 2008 and 2009 was not available.
- (d) The *Veeder Root TLS 300C* continuous monitoring system (“CMS”) was displaying a “fuel alarm” for the tank top sump leak sensor for UST No. 005. Upon information and belief, the owner/operator had yet to investigate the release detection signal. The “alarm” and “power” status indicator lamps on the CMS console were malfunctioning at the time of inspection and the lens covers for these lamps were missing.
- (e) Written verification that the owner/operator had tested the CMS on a monthly basis was not available.
- (f) Written verification that the CMS had been certified/tested by a qualified person during each of the years 2007, 2008 and 2009.
- (g) The spill containment basins for UST Nos. 004 and 005 were holding apparent mixtures of fuel and water. The tank top sump for UST No. 005 was holding liquid.
- (h) The fill port for UST No. 004 was not labeled to identify the material stored inside the tank.

(10) On 27 April 2010, NEMF submitted inventory control records for UST Nos. 004

and 005.

- (11) On 28 June 2010 and 29 September 2010, DEM received letters from Taraco Precision Testing, Inc. (“Taraco”), which were submitted on behalf of NEMF. DEM’s review of the letters revealed that the issues of non-compliance described in Sections C (9)(b), C(9)(g) and C(9)(h) were resolved.
- (12) On 15 September 2010 DEM issued a Notice of Intent to Enforce (“NIE”) to NEMF. The NIE required the Respondent to inspect the Facility and complete and submit the Compliance Certification Forms to DEM on or before 5 October 2010.
- (13) As of the date of this Notice of Violation (“NOV”), NEMF has not submitted the Compliance Certification Forms to DEM or addressed all the issues of noncompliance described in Section C(9) of the NOV.

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, Rule 8.03** – requiring UST owners/operators to inspect their facility and complete and submit the Compliance Certification Forms within the time frame specified by the DEM.
- (2) **UST Regulations, Rules 8.08 (A)(2), 11.02 (B)(4) and 11.03** – requiring the owner/operator to compile and maintain inventory control records for USTs.
- (3) **UST Regulations, Rules 8.11 and 9.16 (A)** – requiring that pressurized product pipelines be equipped with approved line leak detectors.
- (4) **UST Regulations, Rule 8.12** – requiring the owner/operator to perform annual testing of shear valves.
- (5) **UST Regulations, Rule 8.15(B)** – requiring that the owner/operator repair any malfunction of a leak monitoring device within fifteen working days of its first occurrence. If the device(s) cannot be repaired within fifteen days, the affected system(s) shall be temporarily closed in accordance with Rule 13.03 of the UST Regulations until satisfactory repairs are made.
- (6) **UST Regulations, Rule 8.15 (C)** – requiring the owner/operator to respond immediately to alarms from leak monitoring devices.
- (7) **UST Regulations, Rule 8.15 (E)** – requiring the owner/operator to perform monthly testing of UST continuous monitoring systems.

- (8) **UST Regulations, Rule 8.15 (F)** – requiring the owner/operator to retain a qualified person annually to inspect, calibrate, and test UST continuous monitoring systems.
- (9) **UST Regulations, Rule 8.16 (A)(1)** – requiring the owner/operator to keep spill containment basins free of liquids.
- (10) **UST Regulations, Rule 8.18** – requiring the owner/operator to permanently label, or otherwise permanently mark, all fill pipes and/or fill box covers so that the product inside the tank is identified.
- (11) **UST Regulations, Rule 12.03** – requiring the owner/operator to promptly investigate all suspected leaks or releases, including, but not limited to, instances where release detection suggest a release may have occurred.

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 **within sixty days of receipt of this NOV**:

- (1) Submit the Compliance Certification Forms to DEM in accordance with Rule 8.03 of the UST Regulations.
- (2) Submit written verification that the dispenser shear valves have been tested within the last year, in accordance with Rule 8.12 of the UST Regulations.
- (3) Submit written verification that the status indicator lamps and lens covers on the CMS console have been repaired or replaced in accordance with Rule 8.15(B) of the UST Regulations.
- (4) Submit a report detailing the outcome and resolution of an investigation of the fuel alarm that was being displayed by the CMS on 18 March 2010, in accordance with Rules 8.15(C) and 12.03(A) of the UST Regulations.
- (5) Submit written verification that you are now testing the CMS on a monthly basis and maintaining a record of such, in accordance with Rules 8.15(E) and 11.02(B)(3) of the UST Regulations.
- (6) Submit written verification that the CMS has been certified/tested by a qualified person within the last year, in accordance with Rule 8.15(F) of the UST Regulations.

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:

Fifteen Thousand Five Hundred and Sixty-Nine Dollars (\$15,569.00)

- (2) The proposed administrative penalty is calculated pursuant to the DEM Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the Director within twenty days of your receipt of this NOV. Payment shall be in the form of a check made payable to the “General Treasury - Water & Air Protection Program Account” and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against respondents in this NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if the Director determines that reasonable efforts have been made to comply promptly with this NOV.

G. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM 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 twenty days of your receipt of this 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, 3RD Floor
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 Rule 7.00(b) of the DEM Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters.
- (2) A copy of each request for hearing must also be forwarded to:
- Joseph J. LoBianco, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH 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 with regard to 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 (v) and 42-17.6-4(b) and (c).
 - (5) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
 - (6) An original signed copy of this NOV is being forwarded to the city of Pawtucket, 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) This NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

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

David E. Chopy, Chief

DEM Office of Compliance and Inspection

Date: _____

CERTIFICATION

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

New England Motor Freight, Inc.
c/o Corporation Service Company, Registered Agent
222 Jefferson Boulevard, Suite 200
Warwick, RI 02888

Myron P. Shevell
1-71 North Avenue East
Elizabeth, NJ 07201

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST

File No.: UST 2010 – 01948

Respondents: New England Motor Freight, Inc. and Myron P. Shevell

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D (1) – Failure to submit ERP Compliance Certification Forms	Type II (\$ <u>12,500</u> Max. Penalty)*	Moderate	\$6,250	1 violation	\$6,250.00
D (3) – Operating a UST system without a line leak detector	Type II (\$ <u>12,500</u> Max. Penalty)*	Moderate	\$3,000	1 violation	\$3,000.00
D (4) – Failure to test shear valves	Type II (\$ <u>12,500</u> Max. Penalty)*	Minor	\$1,250	1 violation	\$1,250.00
D (5), (7) and (8) – Failure to maintain and test CMS	Type II (\$ <u>12,500</u> Max. Penalty)*	Moderate	\$3,000	1 violation	\$3,000.00
D (6) and (11) – Failure to investigate a release detection signal	Type II (\$ <u>12,500</u> Max. Penalty)*	Minor	\$1,250	1 violation	\$1,250.00
SUB-TOTAL					\$14,750.00

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

ADMINISTRATIVE PENALTY SUMMARY *(continued)*

ECONOMIC BENEFIT FROM NONCOMPLIANCE		
COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT ARE IN COMPLIANCE. 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.		
DESCRIPTION OF BENEFIT	CALCULATION	AMOUNT
Annual testing of the CMS	One CMS X 3 years = 3 missing tests @ \$273.00 per test	\$ 819.00
SUB-TOTAL		\$ 819.00

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$15,569.00

PENALTY MATRIX WORKSHEET

CITATION: Failure to submit ERP Compliance Certification Forms
 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;"><u>X</u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondents 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.</p> <p>(B) Environmental conditions: Not relevant.</p> <p>(C) Amount of the pollutant: Not relevant.</p> <p>(D) Toxicity or nature of the pollutant: Diesel fuel 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.</p> <p>(E) Duration of the violation: The Compliance Certification Forms were due on or before 5 October 2010.</p> <p>(F) Areal extent of the violation: Not relevant.</p> <p style="text-align: right;">(continued)</p>		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the non-compliance by submitting completed Compliance Certification Forms to DEM. Respondents have made no apparent attempt to mitigate the violation despite receiving an informal notice from DEM dated 15 September 2010.
- (H) **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:** Respondents were previously cited by DEM for this same violation in a NOV issued on 28 December 2005 and a Notice of Intent to Enforce issued on 6 August 2008.
- (I) **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:** Respondents had full control over the occurrence of the violation. DEM issued a letter to the UST owners/operators on 22 January 2010 requiring the owners/operators to comply with the ERP compliance certification rule and directing the owners/operators to the DEM website to obtain the necessary forms and workbooks. DEM issued an informal notice to the Respondents on 15 September 2010 requiring the Respondents to submit completed Compliance Certification Forms to DEM on or before 5 October 2010.

Any other factor(s) that may be relevant in determining the amount of a penalty: Not relevant.

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 \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Operating a UST system without a line leak detector
 VIOLATION NO.: D (3)

TYPE		
<u> </u> 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.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.

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

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** Respondents operated UST No. 005 without an approved line leak detector (LLD). LLDs are important, required components of leak prevention and fire-safety programs at UST facilities. LLDs are designed to detect a catastrophic leak in a pressurized product pipeline and reduce flow to lessen the severity of a release.
- (B) **Environmental conditions:** The facility is located in an industrial zone and 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 or sensitive receptors in the vicinity. The facility is located in the Providence River watershed.
- (C) **Amount of the pollutant:** Not relevant.
- (D) **Toxicity or nature of the pollutant:** Diesel fuel 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.
- (E) **Duration of the violation:** A LLD was required when the tank was installed in April 2006. Respondents operated UST No. 005 for approximately four years without a LLD.
- (F) **Areal extent of the violation:** Not relevant.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the non-compliance by installing the LLD with the UST tank in April 2006. Respondents mitigated the noncompliance by installing the LLD in June 2010.
- (H) **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:** Respondents were previously cited by DEM for violations of the UST Regulations in 2005 and 2008.
- (I) **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:** Respondents, as owners and operators of the facility, had full control over the occurrence of the violation. The UST Regulations mandate that all pressurized product pipelines be equipped with approved line leak detectors. Respondents indicated in their UST registration application that the product pipeline for UST No. 005 would be equipped with a *Red Jacket FX1DV* LLD.

Any other factor(s) that may be relevant in determining the amount of a penalty: Not relevant.

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: Failure to test shear valves

VIOLATION NO.: D (4)

TYPE		
<p style="text-align: center;"><u> </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> X </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> </u> 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><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondents failed to test the dispenser shear valves during each of the years 2007, 2008 and 2009. Annual testing is required to ensure effective operation. Shear valves are important, required components of release prevention and fire safety programs at UST facilities. Shear valves are designed to shut off flow to a pressurized pipeline in the event that a dispenser is accidentally dislodged from its base. A malfunctioning shear valve could allow for a catastrophic release of petroleum product if such an accident occurred.</p> <p>(B) Environmental conditions: The facility is located in an industrial zone and 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 or sensitive receptors in the vicinity. The facility is located in the Providence River watershed.</p> <p>(C) Amount of the pollutant: Not relevant.</p> <p>(D) Toxicity or nature of the pollutant: Diesel fuel 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.</p> <p>(E) Duration of the violation: Respondents have been non-compliant with this rule for three years.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the non-compliance by testing the shear valves. Respondents have yet to mitigate the non-compliance despite receiving a Letter of Noncompliance from DEM, which required that they do so.
- (H) **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:** Respondents were previously cited by DEM for violations of the UST Regulations in 2005 and 2008.
- (I) **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:** Respondents, as owners and operators of the facility, had full control over the occurrence of the violation. The UST Regulations expressly require annual testing of shear valves.

Any other factor(s) that may be relevant in determining the amount of a penalty: Not relevant.

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

PENALTY MATRIX WORKSHEET

CITATION: Failure to maintain and test CMS
 VIOLATION NO.: D (5), (7) and (8)

TYPE		
_____ TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	_____ X _____ TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	_____ TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondents failed to repair the malfunctioning status indicator lamps and replace the missing lens covers on the CMS. Respondents failed to test the CMS on a monthly basis during the time period of March 2007 through March 2010. Respondents failed to procure the services of a qualified person to certify/test the CMS during each of the years 2007, 2008 and 2009. Continuous monitoring systems are important, required components of release detection programs at UST facilities. Monthly and annual testing is required to ensure effective operation. Any malfunction is required to be repaired within fifteen days. Failure to test and maintain a CMS in accordance with the UST Regulations would presumably reduce the likelihood of detecting a release from a UST system.</p> <p>(B) Environmental conditions: The facility is located in an industrial zone and 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 or sensitive receptors in the vicinity. The facility is located in the Providence River watershed.</p> <p>(C) Amount of the pollutant: Not relevant.</p> <p>(D) Toxicity or nature of the pollutant: Diesel fuel 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.</p> <p>(E) Duration of the violation: Respondents have been non-compliant with the CMS testing rules for each of the last three years. It is not known how long the indicator lamps have been malfunctioning.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the non-compliance by repairing the CMS within fifteen days, test the CMS on a monthly basis during the time period of March 2007 through March 2010, and procure the services of a qualified person to certify/test the CMS during each of the years 2007, 2008 and 2009. Respondents have yet to mitigate the non-compliance despite receiving a Letter of Noncompliance from DEM, which required that they do so.
- (H) **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:** Respondents were previously cited by DEM for violations of the UST Regulations in 2005 and 2008.
- (I) **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:** Respondents, as owners and operators of the facility, had full control over the occurrence of the violations. The UST Regulations set forth specific requirements for the operation, maintenance and testing of continuous monitoring systems.

Any other factor(s) that may be relevant in determining the amount of a penalty: Not relevant.

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: Failure to investigate a release detection signal
 VIOLATION NOS.: D (6) and (11)

TYPE		
<u> </u> 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.	<u> </u> 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>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondents failed to investigate the “fuel alarm” for the piping collection sump sensor for UST No. 005, which was being displayed by the CMS on 10 March 2010.</p> <p>(B) Environmental conditions: The facility is located in an industrial zone and 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 or sensitive receptors in the vicinity. The facility is located in the Providence River watershed. The DEM inspector observed that the sump was holding approximately six inches of liquid at the time of inspection and that the sensor was immersed in the liquid.</p> <p>(C) Amount of the pollutant: Not relevant.</p> <p>(D) Toxicity or nature of the pollutant: Diesel fuel 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.</p> <p>(E) Duration of the violation: Respondents have been non-compliant with the requirement to submit a report since 16 June 2010. It is not known how long the “fuel alarm” had been in effect as the inspector was unable to access the alarm history stored in the CMS (the alarm history was password protected).</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the non-compliance by immediately investigating and rectifying the release detection signal at the time of its occurrence. Respondents have yet to mitigate the non-compliance despite receiving a Letter of Noncompliance from DEM, which required that they do so.
- (H) **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:** Respondents were previously cited by DEM for violations of the UST Regulations in 2005 and 2008.
- (I) **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 UST Regulation Nos. 8.15(C) and 12.03(A). DEM required that the alarm be investigated and that a report detailing the outcome and resolution of the investigation be submitted to DEM. As of the date of this NOV, DEM has not received a report from Respondents. Respondents, as owners and operators of the facility, had complete control over the occurrence of the violation. The requirements for investigation of suspected releases are clearly established in the UST Regulations.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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