

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF COMPLIANCE & INSPECTION

IN RE: **Raymond Bruneault dba
ROAD RUNNER AUTOMOTIVE LLC**

FILE NO.: **OCI-UST-19-15-01501**

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 3 July 2018, DEM issued a *Letter of Non-Compliance* ("LNC") to Respondent by certified mail for the violations that are the subject of this *Notice of Violation* ("NOV"). The LNC required Respondent to take specific actions to correct the violations. On 6 August 2018, Respondent submitted a letter to DEM in response to the LNC. Respondent stated that the facility is unmanned and that the property was listed for sale. Respondent stated that he was using the gasoline for personal use only until it was exhausted and if the property was not sold or leased, the facility would be put into temporary closure. On 14 January 2019, DEM issued a *Notice of Intent to Enforce* ("NIE") to Respondent by certified mail for the violations that were the subject of the LNC and for additional violations that are also the subject of the NOV. The NIE required Respondent to take specific actions to correct the violations. On 19 January 2019, the NIE was delivered to Respondent. Respondent failed to respond to or comply with the remedial requirements set forth by DEM in the NIE.

C. Facts

- (1) The subject property is located at 448 Great Road, Assessor's Plat 6, Lot 25 in the Town of North Smithfield, Rhode Island (the "Property"). The Property includes a service station and a motor fuel storage and dispensing system (the "Facility").
- (2) ROAD RUNNER AUTOMOTIVE LLC owns the Property according to the Town of North Smithfield's land evidence records, however, the *Certificate of Organization/Registration* for this company was revoked by the Rhode Island Secretary of State on 27 June 2017. Respondent is the last known authorized person for ROAD RUNNER AUTOMOTIVE LLC.

- (3) Respondent operates the Facility, doing business as ROAD RUNNER AUTOMOTIVE LLC.
- (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 Rhode Island Code of Regulations titled *Rules and Regulations for Underground Storage Facilities Used for Regulated Substances and Hazardous Materials (250-RICR-140-25-1)* (the “UST Regulations”).
- (5) The Facility is registered with DEM and is identified as UST Facility No. 01501.
- (6) The USTs are registered with DEM for the Facility as follows:

UST ID No.	Date Installed	Capacity	Product Stored
001	1 March 1990	8,000 gallons	Gasoline
003	1 March 1990	8,000 gallons	Gasoline

- (7) UST Nos. 001 and 003 and the product pipelines are double walled.
- (8) On 3 July 2018, DEM attempted to inspect the Facility and observed that it was closed, that UST Nos. 001 and 003 were not in use and that the Facility appeared to be abandoned.
- (9) By letter dated 6 August 2018, Respondent notified DEM that the Facility was closed, that it was being offered for sale and that the remaining fuel in the USTs would be used for personal use.
- (10) On 19 October 2018, DEM performed a compliance inspection at the Facility and observed that UST Nos. 001 and 003 were not in use and that the Facility appeared to be abandoned.
- (11) The inspections and a review of DEM’s file for the Facility revealed the following instances of non-compliance with the UST Regulations:
 - (a) Written verification that the interstitial spaces of UST Nos. 001 and 003 were tested for tightness by a DEM-licensed tightness tester during the year 2017 is not available. Tank interstitial space tightness testing reports for UST Nos. 001 and 003 for the year 2017 have not been received by DEM.
 - (b) Written verification that the interstitial spaces of the product pipelines for UST Nos. 001 and 003 were tested for tightness by a DEM-licensed tightness tester during the year 2017 is not available. Product pipeline interstitial space tightness testing reports for UST Nos. 001 and 003 for the year 2017 have not been received by DEM.
 - (c) Written verification that the line leak detectors for UST Nos. 001 and 003 were

tested by a qualified person during the year 2018 is not available.

- (d) Written verification that the dispenser shear valves were tested during the year 2018 is not available.
 - (e) The *Veeder Root TLS 350* continuous monitoring system (“CMS”) was displaying a “fuel alarm” for the leak sensor deployed in the tank top sump for UST No. 001 on 19 October 2018. Upon information and belief, Respondent had not reported and investigated the alarm condition and has yet to take the necessary steps to remedy its cause.
 - (f) Written verification that the CMS was tested by a qualified person during the year 2018 is not available.
 - (g) Written verification that the registered, certified Class A/B UST facility operator (Mr. Raymond Bruneault) had performed monthly on-site Facility inspections during the time period of January 2016 through September 2018 is not available.
- (12) As of the date of the NOV, Respondent has failed to correct the noncompliance described in subsection C (11) above.
- (13) A review of DEM’s files for the Facility on 16 June 2020 revealed that no test reports for the year 2019 have been submitted to DEM. The interstitial spaces of the tanks and pipelines, the line leak detectors, the shear valves and the tank monitor were all required to have been tested during the year 2019.

D. Violation

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

- (1) **UST Regulations, Part 1.10(F)(c)** – requiring interstitial space tightness testing for double-walled USTs at 20 years of age and every two years thereafter.
- (2) **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 two years thereafter.
- (3) **UST Regulations, Part 1.10(I)** – requiring that line leak detectors be tested by qualified persons on an annual basis.
- (4) **UST Regulations, Part 1.10(J)** – requiring that dispenser shear valves be tested on an annual basis.
- (5) **UST Regulations, Part 1.10(M)(3) and Part 1.14(C)(1)(a)** – requiring the owner/operator to immediately investigate release detection signals.

- (6) **UST Regulations, Part 1.10(M)(7), Part 1.10(M)(8) and Part 1.10(M)(9)** – requiring that UST continuous monitoring systems be tested and certified by qualified persons on an annual basis.
- (7) **UST Regulations, Part 1.10(U)(5)(k), Part 1.10(U)(6)(g) and Part 1.10(U)(9)** – requiring that UST facilities be inspected monthly by the certified, registered Class A or B UST facility operators.

E. Order

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

- (1) **Within 7 days of receipt of the NOV** and in accordance with Part 1.15(C) of the UST Regulations, procure the services of a qualified contractor to evacuate the contents of the USTs and their product pipelines. The tanks shall be evacuated to 1 inch or less of liquid at the bottom of the tanks and the fill ports for the tanks shall be locked. Respondent shall then submit a completed *Underground Storage Tank Temporary Closure Application* to DEM's Office of Land Revitalization and Sustainable Materials Management ("LRSMM"). Written verification of compliance shall be submitted to DEM's Office of Compliance and Inspection ("OC&I").
- (2) Either complete the actions described in subsections E(2)(a)-(g) below **within 45 days of receipt of the NOV**, or initiate the action described in subsection E(2)(h)-(l) below within the time frames specified:
 - (a) Procure the services of a DEM-licensed tightness tester to perform tightness testing of the interstitial spaces of UST Nos. 001 and 003 in accordance with Part 1.10(F)(1)(c) and Part 1.10(H) of the UST Regulations and submit a copy of the tightness test report to OC&I. An original copy of the tightness test report shall also be submitted to LRSMM, in accordance with Part 1.10(H)(4) of the UST Regulations.
 - (b) Procure the services of a DEM-licensed tightness tester to perform tightness testing of the interstitial spaces of the product pipelines for UST Nos. 001 and 003 in accordance with Part 1.10(G)(2)(b) and Part 1.10(H) of the UST Regulations and submit a copy of the tightness test report to OC&I. An original copy of the tightness test report shall also be submitted to LRSMM, in accordance with Part 1.10(H)(4) of the UST Regulations.
 - (c) Procure the services of a qualified person to test the line leak detectors for UST Nos. 001 and 003 in accordance with Part 1.10(I) of the UST Regulations. Written verification of compliance shall be submitted to OC&I.
 - (d) Procure the services of a qualified person to test the dispenser shear valves in accordance with Part 1.10(J) of the UST Regulations. Written verification of

compliance shall be submitted to OC&I.

- (e) In accordance with Part 1.10(M)(3) and Part 1.14(C)(1)(a) of the UST Regulations, investigate the fuel alarm for the leak sensor deployed in the tank top sump for UST No. 001 and submit a written report to OC&I, which shall detail the outcome of your investigation and any remedial actions taken to rectify any problems that may be identified.
- (f) Procure the services of a qualified person to certify/test the CMS in accordance with Part 1.10(M)(7), Part 1.10(M)(8) and Part 1.10(M)(9) of the UST Regulations. Written verification of compliance shall be submitted to OC&I.
- (g) The registered Class A/B UST facility operator (Mr. Raymond Bruneault) shall henceforth perform the monthly facility inspections required in Part 1.10(U)(5)(k), Part 1.10(U)(6)(g) and Part 1.10(U)(9) of the UST Regulations. Written verification of a return to compliance shall be submitted to OC&I.

OR

- (h) Within 45 days of receipt of the NOV, submit a completed *Permanent Closure Application for USTs* to LRSMM and, **upon approval of the application, complete the permanent closure of the USTs** in accordance with Part 1.15(D) of the UST Regulations.
- (i) **Within 30 days of the removal of the USTs**, complete and submit to LRSMM a *Closure Assessment Report* in accordance with Part 1.15(D)(10) of the UST Regulations, the *UST Closure Assessment Guidelines*, October 1998, and Part 2.12 and Part 2.13 of the Rhode Island Code of Regulations titled *Oil Pollution Control Regulations (250-RICR-140-25-2)* (the “OPC Regulations”).
- (j) **Within 30 days of the removal of the USTs**, remove and properly dispose of any contaminated soil encountered during the tank closure and within 10 days of the soil disposal, submit documentation of disposal to LRSMM, in accordance with Part 2.13 of the OPC Regulations.
- (k) If, after review of the *Closure Assessment Report*, LRSMM determines that a site investigation is required, complete the site investigation and submit a *Site Investigation Report* (“SIR”) to LRSMM in accordance with Part 1.14(H) of the UST Regulations within the time frame specified by LRSMM.
- (l) If, after review of the SIR, LRSMM determines that a *Corrective Action Plan* (“CAP”) is required, submit a proposed CAP in accordance with Part 1.14(I) of the UST Regulations within the time frame specified by LRSMM. LRSMM will review the proposed CAP and issue further instruction on how to proceed. The CAP shall be implemented in accordance with an *Order of Approval* issued by DEM.

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:

\$10,908

- (2) The proposed administrative penalty is calculated pursuant to the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* and must be paid to DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a certified check, cashier's check or money order made payable to the "General Treasury - Water & Air Protection Program" and shall be forwarded to DEM's Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against 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 the Director 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 Rhode Island Code of Regulations titled *Rules and Regulations for the Administrative Adjudication Division (250-RICR-10-00-1)*.
- (2) A copy of each request for hearing must also be forwarded to:
- Susan Forcier, Esquire
DEM - Office of Legal Services
235 Promenade Street, Suite 425
Providence, RI 02908-5767
- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then the NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (vi) and 42-17.6-4(b) and (c).
- (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) An original signed copy of the NOV is being forwarded to the Town of North Smithfield, 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) Susan Forcier of DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey Tyrrell of DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 7407.

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

FOR THE DIRECTOR

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

Date: _____

CERTIFICATION

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

Raymond Bruneault dba
ROAD RUNNER AUTOMOTIVE LLC
502 Wood Avenue
Woonsocket, RI 02895

Raymond Bruneault dba
ROAD RUNNER AUTOMOTIVE LLC
448 Great Road
North Smithfield, RI 02896

Raymond Bruneault dba
ROAD RUNNER AUTOMOTIVE LLC
141 Hartford Avenue
Woonsocket, RI 02895

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY	
Program:	OFFICE OF COMPLIANCE AND INSPECTION, UST
File No.:	OCI-UST-19-15-01501
Respondent:	Raymond Bruneault dba ROAD RUNNER AUTOMOTIVE 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) – Failure to perform tank interstitial space tightness testing	Type II <i>(\$12,500 Max. Penalty)*</i>	Minor	\$2,000	1 violation	\$2,000
D (2) – Failure to perform product pipeline interstitial space tightness testing	Type II <i>(\$12,500 Max. Penalty)*</i>	Minor	\$2,000	1 violation	\$2,000
D (3), (4) and (6) – Failure to have the line leak detectors, shear valves and tank monitor tested	Type II <i>(\$12,500 Max. Penalty)*</i>	Minor	\$2,000	1 violation	\$2,000
D (5) – Failure to investigate the release detection signal	Type II <i>(\$12,500 Max. Penalty)*</i>	Minor	\$1,500	1 violation	\$1,500
D (7) – Failure to have a certified Class A or B UST facility operator perform monthly inspections	Type II <i>(\$12,500 Max. Penalty)*</i>	Minor	\$1,500	1 violation	\$1,500
SUB-TOTAL					\$9,000

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

ADMINISTRATIVE PENALTY SUMMARY (continued)

ECONOMIC BENEFIT FROM NON-COMPLIANCE			
COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT COMPLY. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:			
- THERE IS NO IDENTIFIABLE BENEFIT FROM NON-COMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED.			
DESCRIPTION OF BENEFIT	CALCULATION		AMOUNT
<p>Failing to test the interstitial spaces of the tanks and pipelines for tightness in 2017. The economic benefit of non-compliance was determined by using an EPA computer model entitled <i>BEN</i> that performs a detailed economic analysis. The dates, dollar amounts and values used in this analysis are listed in this table.</p>	<ul style="list-style-type: none"> ▪ Profit Status ▪ Filing Status ▪ Initial Capital Investment ▪ One-time Non-depreciable Expense ▪ Annually Recurring Costs ▪ First Month of Non-compliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	<p>For profit, other than a C Corp.</p> <p>\$848</p> <p>October 2017</p> <p>15 October 2020</p> <p>1 October 2020</p> <p>7.7%</p>	<p>\$539</p>
<p>Failing to test the line leak detectors and tank monitor in 2018. The economic benefit of non-compliance was determined by using an EPA computer model titled <i>BEN</i> that performs a detailed economic analysis. The dates, dollar amounts and values used in this analysis are listed in this table.</p>	<ul style="list-style-type: none"> ▪ Profit Status ▪ Filing Status ▪ Initial Capital Investment ▪ One-time Non-depreciable Expense ▪ Annually Recurring Costs ▪ First Month of Non-compliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	<p>For profit, other than a C Corp.</p> <p>\$545</p> <p>January 2019</p> <p>15 October 2020</p> <p>1 October 2020</p> <p>8.0%</p>	<p>\$401</p>

ADMINISTRATIVE PENALTY SUMMARY (continued)

ECONOMIC BENEFIT FROM NON-COMPLIANCE		
COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT COMPLY. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:		
- THERE IS NO IDENTIFIABLE BENEFIT FROM NON-COMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED.		
DESCRIPTION OF BENEFIT	CALCULATION	AMOUNT
<p>Failing to test the interstitial spaces of the tanks and pipelines for tightness and failing to test the line leak detectors and tank monitor in 2019. The economic benefit of non-compliance was determined by using an EPA computer model titled <i>BEN</i> that performs a detailed economic analysis. The dates, dollar amounts and values used in this analysis are listed in this table.</p>	<ul style="list-style-type: none"> ▪ Profit Status ▪ Filing Status ▪ Initial Capital Investment ▪ One-time Non-depreciable Expense ▪ Annually Recurring Costs ▪ First Month of Non-compliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	<p>For profit, other than a C Corp.</p> <p>\$1,393</p> <p>January 2020</p> <p>15 October 2020</p> <p>1 October 2020</p> <p>8.0%</p>
<i>SUB-TOTAL</i>		\$1,908

COST RECOVERY
ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.
<p>A review of the record in this matter has revealed that DEM has not incurred any additional or extraordinary costs during the investigation, enforcement and resolution of this enforcement action (excluding non-overtime personnel costs), for which the State is not otherwise reimbursed.</p>

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$10,908

PENALTY MATRIX WORKSHEET		
CITATION:	Failure to perform tank interstitial space tightness testing	
VIOLATION NO.:	D	(1)

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

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

FACTORS CONSIDERED:

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

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent failed to procure the services of a DEM-licensed tightness tester to perform interstitial space tightness testing of UST Nos. 001 and 003 during each of the years 2017 and 2019. Interstitial space tightness testing for double-walled USTs is expressly required by the UST Regulations at 20 years of age and at least every two years thereafter. Such tightness testing is significant to the regulatory program. Failure to comply presumably reduces the likelihood of detecting a release from a UST.
- (2) **Environmental conditions:** The Facility is in a developed area with potential vapor receptors including commercial structures, residential structures and underground utilities. The Facility is in a GA groundwater classification zone and within 300 feet of a GAA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment and which are located in wellhead protection areas for community water supply wells, groundwater reservoirs and portions of their recharge areas or in groundwater dependent areas. The Facility is located within 180 feet of a non-community water supply wellhead protection area and within 300 feet of a groundwater recharge area. The Facility is located within the Emerson Brook - Blackstone River watershed. The Facility is located within 90 feet of regulated freshwater wetland.
- (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. Benzene, a component of gasoline, is a known carcinogen.
- (5) **Duration of the violation:** Respondent has been in violation with this Rule since October 2017.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent the non-compliance by having the USTs tested for tightness in 2017 and 2019. Respondent has yet to mitigate the non-compliance despite receiving the NIE from DEM, which required that he 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 Respondent for the failure to comply with the UST Regulations. As owner and operator of the Facility, Respondent had full control over the occurrence of the violation. The tightness testing requirements are clearly established in the UST Regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** 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 \$2,000	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION:	Failure to perform product pipeline interstitial space tightness testing
VIOLATION NO.:	D (2)

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;">___ X ___ 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>
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DEVIATION FROM THE STANDARD

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

FACTORS CONSIDERED:

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

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent failed to procure the services of a DEM-licensed tightness tester to perform tightness testing of the interstitial spaces of the product pipelines for UST Nos. 001 and 003 during each of the years 2017 and 2019. Such tightness testing of double-walled product pipelines is expressly required by the UST Regulations at 20 years of age and every two years thereafter. Interstitial space tightness testing is significant to the regulatory program. Failure to comply presumably reduces the likelihood of detecting and/or preventing releases from UST systems.
- (2) **Environmental conditions:** The Facility is in a developed area with potential vapor receptors including commercial structures, residential structures and underground utilities. The Facility is in a GA groundwater classification zone and within 300 feet of a GAA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment and which are located in wellhead protection areas for community water supply wells, groundwater reservoirs and portions of their recharge areas or in groundwater dependent areas. The Facility is located within 180 feet of a non-community water supply wellhead protection area and within 300 feet of a groundwater recharge area. The Facility is located within the Emerson Brook - Blackstone River watershed. The Facility is located within 90 feet of regulated freshwater wetland.
- (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. Benzene, a component of gasoline, is a known carcinogen.
- (5) **Duration of the violation:** Respondent has been in violation of this Rule since October 2017.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent the non-compliance by having the interstitial spaces of the product pipelines tested for tightness during each of the years 2017 and 2019. Respondent has yet to mitigate the non-compliance despite receiving the NIE from DEM, which required that he 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 Respondent for the failure to comply with the UST Regulations. As owner and operator of the Facility, Respondent had full control over the occurrence of the violation. The tightness testing requirements are clearly established in the UST Regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** 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 \$2,000	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION:	Failure to have the line leak detectors, shear valves and tank monitor tested
VIOLATION NOS.:	D (3), (4) and (6)

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

DEVIATION FROM THE STANDARD

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

FACTORS CONSIDERED:

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

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent failed to procure the services of a qualified person to test the line leak detectors, shear valves and tank monitor for UST Nos. 001 and 003 during each of the years 2018 and 2019. Annual functionality testing of leak detection equipment is expressly required by the UST Regulations and is of significant importance to the regulatory program. Failure to comply presumably reduces the likelihood of detecting and/or preventing releases from UST systems.

- (2) **Environmental conditions:** The Facility is in a developed area with potential vapor receptors including commercial structures, residential structures and underground utilities. The Facility is in a GA groundwater classification zone and within 300 feet of a GAA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment and which are located in wellhead protection areas for community water supply wells, groundwater reservoirs and portions of their recharge areas or in groundwater dependent areas. The Facility is located within 180 feet of a non-community water supply wellhead protection area and within 300 feet of a groundwater recharge area. The Facility is located within the Emerson Brook - Blackstone River watershed. The Facility is located within 90 feet of regulated freshwater wetland.

- (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. Benzene, a component of gasoline, is a known carcinogen.

- (5) **Duration of the violation:** 2 years.

- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent the non-compliance by having the line leak detectors, shear valves and tank monitor tested during each of the years 2018 and 2019. Respondent has yet to mitigate the non-compliance despite receiving the NIE from DEM, which required that he 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 Respondent for the failure to comply with the UST Regulations. As owner and operator of the Facility, Respondent had full control over the occurrence of the violation. The annual functionality testing requirements are clearly established in the UST Regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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

PENALTY MATRIX WORKSHEET		
CITATION:	Failure to investigate the release detection signal	
VIOLATION NO.:	D	(5)

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

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

FACTORS CONSIDERED:

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

- (1) **The extent to which the act or failure to act was out of compliance:** At the time of inspection on 19 October 2018, the CMS was displaying a "fuel alarm" for the leak sensor for the product pipeline for UST No. 001. Upon information and belief, Respondent has yet to investigate the release detection signal and rectify its cause in accordance with the UST Regulations. The UST Regulations expressly require immediate investigation of all release detection signals. Failure to comply reduces the likelihood of preventing a release from a UST system. The investigation of suspected leaks or releases is of significant importance to the regulatory program
- (2) **Environmental conditions:** The Facility is in a developed area with potential vapor receptors including commercial structures, residential structures and underground utilities. The Facility is in a GA groundwater classification zone and within 300 feet of a GAA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment and which are located in wellhead protection areas for community water supply wells, groundwater reservoirs and portions of their recharge areas or in groundwater dependent areas. The Facility is located within 180 feet of a non-community water supply wellhead protection area and within 300 feet of a groundwater recharge area. The Facility is located within the Emerson Brook - Blackstone River watershed. The Facility is located within 90 feet of regulated freshwater wetland.
- (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. Benzene, a component of gasoline, is a known carcinogen.
- (5) **Duration of the violation:** At least 1 year. It is not known how long the fuel alarm had been in effect prior to the inspection.
- (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 immediately investigating the fuel alarm and taking steps to rectify its cause. Upon information and belief, Respondent has yet 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 Respondent for the failure to comply with the UST Regulations by investigating the release detection signal and taking steps to rectify its cause. As owner and operator of the Facility, Respondent had full control over the occurrence of the violation. The requirements for investigation of suspected releases are clearly established in the UST Regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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

PENALTY MATRIX WORKSHEET

CITATION:	Failure to have a certified Class A or B UST facility operator perform monthly inspections
VIOLATION NO.:	D (7)

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

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

FACTORS CONSIDERED:

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

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent failed to have a registered, certified Class A or B UST facility operator perform monthly inspections of the Facility in accordance with the UST Regulations. These required inspections are of significant importance to the regulatory program. Failure to comply would presumably reduce the likelihood of preventing or detecting releases of the regulated substance.

- (2) **Environmental conditions:** The Facility is in a developed area with potential vapor receptors including commercial structures, residential structures and underground utilities. The Facility is in a GA groundwater classification zone and within 300 feet of a GAA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment and which are located in wellhead protection areas for community water supply wells, groundwater reservoirs and portions of their recharge areas or in groundwater dependent areas. The Facility is located within 180 feet of a non-community water supply wellhead protection area and within 300 feet of a groundwater recharge area. The Facility is located within the Emerson Brook - Blackstone River watershed. The Facility is located within 90 feet of regulated freshwater wetland.

- (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. Benzene, a component of gasoline, is a known carcinogen.

- (5) **Duration of the violation:** Approximately 4 years. Respondent has been unable to present written verification of compliance for the time period of January 2016 through the present.

- (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 inspecting the Facility on a monthly basis and documenting the results of those inspections on the requisite checklist. Respondent has yet to verify a return to compliance despite receiving the NIE from DEM, which required that he 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 Respondent for the failure to comply with the UST Regulations. As owner and operator of the Facility, Respondent had full control over the occurrence of the violation. The UST Regulations expressly require that UST facilities be inspected monthly by certified Class A or B UST facility operators.
- (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 \$1,500	\$250 to \$1,250