

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: SKEES REALTY, LTD.

FILE NO.: OCI-UST-18-62-00536

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 12 September 2018, the DEM issued a Notice of Intent to Enforce (“NIE”) to Respondent for the violations that are the subject of this Notice of Violation (“NOV”). The NIE required specific actions to correct the violations. On 21 September 2018, the DEM received a document from Respondent that was submitted in response to the NIE. On 8 November 2018, the DEM sent electronic correspondence to Respondent’s agent requesting an update on the status of the specific actions in the NIE. On 8 November 2018 and on or about 11 December 2018, the DEM received additional documents in response to the NIE. As of the date of the NOV, Respondent has failed to fully comply with the NIE.

C. Facts

- (1) The property is located at 753 East Main Road, Assessor’s Plat 113, Lot 800 in the Town of Middletown, Rhode Island (the Property). The Property includes 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 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”).
- (4) The Facility is registered with the DEM and is identified as UST Facility No. 00536.

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

UST ID No.	Date Installed	Capacity	Product Stored
009	25 April 1995	8,000 gallons	Gasoline
010	25 April 1995	10,000 gallons	Gasoline

- (6) On 10 September 2018, the DEM inspected the Facility. The inspection revealed the following:
- (a) Written verification that the interstitial spaces of the USTs had been tested for tightness by a DEM-licensed tightness tester during the year 2017 was not available. An interstitial space tightness test report for these USTs for the year 2017 has not been received by the DEM;
 - (b) Written verification that the interstitial spaces of the product pipelines for the USTs had been tested for tightness by a DEM-licensed tightness tester during each of the years 2015 and 2017 was not available. Tightness test reports for the interstitial space of these product pipelines for the years 2015 and 2017 have not been received by the DEM;
 - (c) One of the tank field observation wells was not labeled;
 - (d) No ICC-certified Class A/B operator was assigned to the Facility;
 - (e) A training log for all the Class C UST facility operators that had been trained and assigned to the Facility was not available. The Facility attendant was unable to present written verification that he had been trained as at least a Class C operator. Upon information and belief, the Facility was being operated without any trained and/or certified UST facility operators on duty; and
 - (f) Review of the Class A/B UST facility operator's monthly inspection checklists on file at the Facility revealed that the name of the person who performed the inspections was illegible. The DEM was unable to verify that the inspections were being performed by an ICC certified Class A or B UST facility operator. The inspections were being documented on an obsolete checklist.
- (7) On 21 September 2018, the DEM received documents from Respondent showing that an ICC-certified Class A/B operator (Mr. Gregory Jencks) was registered and assigned to the Facility on or about 17 September 2018.
- (8) On 8 November 2018, the DEM received a document from Respondent showing that the interstitial spaces of the product pipelines for the USTs was tested for tightness by a DEM-licensed tightness tester on 22 October 2018 and met the criteria for passing.

- (9) As of the date of the NOV, Respondent has not corrected the noncompliance issues described in subsections C(6)(a), (c), (e), and (f).

D. Violation

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

- (1) **UST Regulations, Rule 8.08(A)(3)(a) [recently amended to Part 1.10(F)(1)(c)]** – requiring interstitial space tightness testing for double-walled USTs when the tank has been installed for 20 years and every 2 years thereafter.
- (2) **UST Regulations, Rule 8.09(A)(2)(a) [recently amended to Part 1.10(G)(2)(b)]** – requiring interstitial space tightness testing for double-walled product pipelines when the pipeline has been installed for 20 years and every 2 years thereafter.
- (3) **UST Regulations, Rule 8.19(A) [recently amended to Part 1.10(Q)(1)(a)]** – requiring that groundwater monitoring wells be equipped with a labeled and tamper-resistant cover. Labels shall identify them as being groundwater monitoring or observation wells.
- (4) **UST Regulations, Rules 8.22(A), 8.22(A)(7) and 8.22(D) [recently amended to Part 1.10(U)(2), Part 1.10(U)(3) and Part 1.10(U)(4)]** – requiring owners/operators to have trained and certified Class A, B and C operators assigned to the facility, requiring that Class C operator training logs be maintained at each facility and prohibiting the operation of UST facilities without at least one trained Class C operator on duty.
- (5) **UST Regulations, Rule 8.22(F) [recently amended to Part 1.10(U)(5)(k) and Part 1.10(U)(6)(g)]** – requiring that a registered, certified Class A or B operator perform monthly on-site UST facility inspections and properly document those inspections on the requisite form.

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 **within 60 days of receipt of the NOV**:

- (1) If available, submit to the DEM's Office of Compliance and Inspection ("OC&I") written verification that the interstitial spaces of the USTs have been tested for tightness by a DEM-licensed tightness tester during the year 2017. If the interstitial spaces of these USTs have not been tested for tightness within the last 2 years, procure the services of a DEM-licensed tightness tester to perform such testing in accordance with Part 1.10(F)(1)(c) and Part 1.10(H) of the UST Regulations. Original copies of the tightness test report shall be submitted to the OC&I and the DEM's Office of Waste Management in accordance with Part 1.10(H)(4) of the UST

Regulations.

- (2) The tank field observation well at the southwest corner of the tank field shall be labeled in accordance with Part 1.10(Q)(1)(a) of the UST Regulations and *American Petroleum Institute Recommended Practice 1637*. Written or photographic verification of compliance shall be submitted to the OC&I.
- (3) The newly registered Class A/B UST facility operator (Mr. Gregory Jencks) shall train all appropriate Facility employees and attendants as Class C operators and compile a written training log for the Class C operators that have been trained and assigned to the Facility, as per Part 1.10(U)(2), Part 1.10(U)(3), Part 1.10(U)(4) and Part 1.10(U)(7) of the UST Regulations. A copy of the completed training log shall be submitted to the OC&I. The Facility shall henceforth be operated only with at least 1 trained Class A, B, or C operator on duty during all hours of operation, as per Part 1.10(U)(4)(c) of the UST Regulations.
- (4) The newly registered Class A/B UST facility operator shall henceforth perform the monthly facility inspections required in Part 1.10(U)(5)(k) and Part 1.10(U)(6)(g) of the UST Regulations and document the inspections on the requisite form. Written verification of a return to compliance shall be submitted to the 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:

\$6,154

- (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 the 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 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 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 the 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 the 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
One Capitol Hill, 2ND Floor
Providence, RI 02903

(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 1.7B 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:

Tricia Quest, 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 the 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 Middletown, 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) Tricia Quest of the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey Tyrrell of the DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 7407.

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

FOR THE DIRECTOR

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

Dated: _____

CERTIFICATION

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

SKEES REALTY, LTD.
c/o Christian C. Potter, Esq., Registered Agent
1850 Warwick Avenue
Warwick, RI 02889

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY	
Program:	OFFICE OF COMPLIANCE AND INSPECTION, UST
File No.:	OCI-UST-18-62-00536
Respondent:	SKEES REALTY, LTD.

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 tightness testing	Type II <i>(\$12,500 Max. Penalty)*</i>	Minor	\$1,500	1 violation	\$1,500
D (2) – Failure to perform product pipeline tightness testing	Type II <i>(\$12,500 Max. Penalty)*</i>	Minor	\$1,500	1 violation	\$1,500
D (4) & (5) – Failure to assign and operate with Class A, B and C UST facility operators and failure to have a certified Class A or B UST facility operator perform monthly inspections	Type II <i>(\$12,500 Max. Penalty)*</i>	Moderate	\$2,500	1 violation	\$2,500
<i>SUB-TOTAL</i>					\$5,500

*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 for tightness in 2017. The economic benefit of noncompliance 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 ▪ 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>\$578</p> <p>May 2017</p> <p>1 June 2019</p> <p>1 June 2019</p>	<p>\$364</p>
<p>Failing to test the interstitial space of the pipelines for tightness in 2015. The economic benefit of noncompliance 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 ▪ 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>\$406</p> <p>May 2015</p> <p>1 June 2019</p> <p>1 June 2019</p>	<p>\$290</p>
SUB-TOTAL			\$654

ADMINISTRATIVE PENALTY SUMMARY (continued)

COST RECOVERY

ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.

A review of the record in this matter has revealed that the 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 = \$6,154

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 1.10A.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 USTs. Periodic tightness testing of the interstitial spaces of double-walled USTs is expressly required by the UST Regulations and is significant to the regulatory program. Failure to comply presumably reduces the likelihood of detecting and 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, which are groundwater resources presumed to be suitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells proximate to the Facility. The Facility is located within 3,600 feet of a non-community water supply wellhead protection area and within 4,300 feet of a surface water protection area for the City of Newport’s water supply. The Facility is located within the Aquidneck Island/Coastal Atlantic watershed and within 1,100 feet of regulated freshwater wetlands.
- (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 human carcinogen.
- (5) **Duration of the violation:** Approximately 2 years – the tests should have been performed in April 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 USTs tested for tightness in 2017. Respondent has yet to mitigate the non-compliance, despite receiving the NIE from the DEM, which required that it 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 tank interstitial space 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:** Respondent had the tanks tested for tightness in 2016 (which was credited to 2015) and they met the criteria for passing; however, testing was required to have been performed in both 2015 and 2017.

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

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

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

FACTORS CONSIDERED:

Taken from Part 1.10A.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 the USTs. Periodic tightness testing of the interstitial space of double-walled product pipelines is expressly required by the UST Regulations and is significant to the regulatory program. Failure to comply presumably reduces the likelihood of detecting and 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, which are groundwater resources presumed to be suitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells proximate to the Facility. The Facility is located within 3,600 feet of a non-community water supply wellhead protection area and within 4,300 feet of a surface water protection area for the City of Newport’s water supply. The Facility is located within the Aquidneck Island/Coastal Atlantic watershed and within 1,100 feet of regulated freshwater wetlands.
- (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 human carcinogen.
- (5) **Duration of the violation:** Approximately 3.5 years. The test should have been performed in April 2015 and April 2017, but no tests were performed until 22 October 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 noncompliance:** Respondent failed to prevent the non-compliance by having the interstitial spaces of the product pipelines tested for tightness in 2015 and 2017. Respondent attempted to mitigate the non-compliance by performing the tests on 22 October 2018 and the pipelines reportedly met the criteria for passing.
- (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 product pipeline interstitial space 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 \$1,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION:	Failure to assign and operate with Class A, B and C UST facility operators and failure to have a certified Class A or B UST facility operator perform monthly inspections
VIOLATION NOS.:	D (4) and (5)

TYPE		
<p style="text-align: center;">____ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><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 1.10A.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 assign ICC-certified Class A and B operators to the Facility after the previously-registered operator’s Rhode Island registration expired in October 2017. Respondent was unable to present written verification that it had trained and assigned Class C operators to the Facility. The Facility attendant on duty at the time of inspection was unable to present written verification that he had been trained as a Class C operator. The Class A/B operator’s monthly inspection checklists on file at the Facility did not identify the operator who performed the inspections (the names were missing or illegible). The UST Regulations prohibit the operation of UST facilities without trained and certified Class A, B and C operators. 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, which are groundwater resources presumed to be suitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells proximate to the Facility. The Facility is located within 3,600 feet of a non-community water supply wellhead protection area and within 4,300 feet of a surface water protection area for the City of Newport’s water supply. The Facility is located within the Aquidneck Island/Coastal Atlantic watershed and within 1,100 feet of regulated freshwater wetlands.
- (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 human carcinogen.
- (5) **Duration of the violation:** Approximately 1 year – the prior ICC certified operator’s registration expired in October 2017 and a new ICC certified operator was not registered and assigned until September 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 assigning and continuously operating with trained and certified Class A, B and C operators. Respondent assigned a new Class A/B operator in September 2018. Respondent has yet to verify a full return to compliance with the UST Regulations despite receiving the NIE from the DEM, which required that it 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 immediately with the UST Regulations. As owner and operator of the Facility, Respondent had full control over the occurrence of the violations. The UST Regulations expressly require that UST facilities be operated by trained and certified Class A, B and C operators and that the facility be inspected monthly by certified Class A or B 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	<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