

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Jeha Corp.  
MITRI PETROLEUM LLC**

**FILE NO.: OCI-UST-17-71-00262**

NOTICE OF VIOLATION

A. Introduction

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

B. Administrative History

On 29 September 2016 and 20 February 2018, the DEM sent written notices to Jeha Corp and on 17 April 2017 and 20 February 2018, the DEM sent written notices to MITRI PETROLEUM LLC. The notices advised Respondents of the statutory deadline for the permanent closure of the underground storage tanks at the facility and the actions required to keep the facility in compliance with the law and the Rhode Island Code of Regulations titled *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials (250-RICR-140-25-1)* (the “UST Regulations”). In addition, on 21 November 2017, the DEM issued a Notice of Intent to Prohibit Delivery (“NIPD”) to Respondents for operational violations that were observed during the DEM’s inspection of the facility on 16 November 2017. The NIPD required specific actions to correct the violations. On 27 November 2017, the notice was delivered to Respondents. As of the date of this Notice of Violation (“NOV”), Respondents have failed to comply with the notices regarding permanent closure of the underground storage tanks and have failed to fully comply with the NIPD.

C. Facts

- (1) The property is located at 1514 Newport Avenue, Assessor’s Plat 4, Lot 1124 in the City of Pawtucket, Rhode Island (the Property”). The Property includes a service station and a motor fuel storage and dispensing system (the “Facility”).
- (2) Jeha Corp. owns the Property.
- (3) MITRI PETROLEUM LLC operates the Facility.

- (4) Underground storage tanks (“USTs” or “tanks”) are located on the Property, which tanks are used for storage of petroleum products and which are subject to the DEM’s UST Regulations.
- (5) The Facility is registered with the DEM and is identified as UST Facility No. 00262.
- (6) The USTs are registered with the DEM for the Facility as follows:

UST ID No.	Date Installed	Capacity	Product Stored
002	October 1986	8,000 gallons	Gasoline
004	October 1986	8,000 gallons	Gasoline
006	October 1986	8,000 gallons	Gasoline
007	October 1986	1,000 gallons	Used Oil
009	October 1986	1,000 gallons	Heating Oil

- (7) UST Nos. 002, 004, 006 and 007 are single-walled with no secondary containment.
- (8) On 16 November 2017, the DEM inspected the Facility. The inspection revealed the following:
  - (a) Leakage was detected inside dispenser numbers 2/3, 5/7 and 6/8, as evidenced by gasoline dripping from the upper interior components of the dispensers, petroleum staining on the concrete apron below the dispensers, strong gasoline vapor odors inside and around the dispensers, liquid accumulations at the bottoms of the dispenser sumps and wet/stained components inside the dispensers;
  - (b) Written verification that Respondents had used the *Veeder Root TLS 350* continuous monitoring system (“CMS”) to perform monthly 0.2 gallon per hour leak tests for UST 007 during the period of August 2015 through October 2017 was not available;
  - (c) No documents were available to show that UST Nos. 002, 004, 006 and 007 were tested for tightness by a DEM-licensed tightness tester during each of the years 2015, 2016 and 2017. Testing was last performed on 28 October 2013;
  - (d) No documents were available to show that the line leak detectors for UST Nos. 002, 004 and 006 had been tested by a qualified person during each of the years 2015, 2016 and 2017;
  - (e) No documents were available to show that the dispenser shear valves for UST Nos. 002, 004 and 006 had been tested during each of the years 2015, 2016 and 2017;
  - (f) No records were available to show that the CMS had been certified/tested by a qualified person during each of the years 2015, 2016 and 2017;

- (g) A training log for all Class C operators that had been trained and assigned to the Facility was not available. No records were available to show that any of the Facility attendants on duty had been trained as at least Class C operators. Upon information and belief, the Facility was being operated without at least one trained Class C operator on duty;
  - (h) No records were available to show that the registered Class A/B operator, Karen DiPietro-Seymour, had performed monthly on-site Facility inspections during the period of October 2015 through October 2017; and
  - (i) The monthly Facility inspections were being performed by an operator, Yacoub Mitri, who is not an *International Code Council* (“ICC”) certified Class A or Class B operator and who is not registered with DEM for the Facility.
- (9) On 5 December 2017, Respondents procured the services of Compliance Testing Services, Inc. to test UST Nos. 002, 004, 006 and 007 for tightness and to test the line leak detectors, shear valves and tank monitor for the USTs. A copy of the test report was submitted to the DEM’s Office of Waste Management.
  - (10) On 30 October 2018, the DEM inspected the Facility. The inspection revealed that UST Nos. 002, 004, 006 and 007 were still in use.
  - (11) As of the date of the NOV, the DEM has not received an application from Respondents to permanently close UST Nos. 002, 004, 006 and 007.
  - (12) As of the date of the NOV, Respondents have not corrected the noncompliance issues described in subsections C(8)(a), (b), (g), (h) and (i).

D. Violation

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

- (1) **R.I. Gen. Laws §46-12-3(21)** – requiring that single-walled USTs and product pipelines installed between 8 May 1985 and 20 July 1992 no longer remain in use within 32 years of the date of installation.
- (2) **UST Regulations, Rule 8.02(A) (recently amended to Part 1.10B.1)** – requiring that UST systems be operated and maintained in accordance with applicable national codes of practice, including Petroleum Equipment Institute’s RP 500-05 titled *Recommended Practices for Inspection and Maintenance of Motor Fuel Dispensing Equipment* and The National Fire Protection Association’s Code 30A titled *Code for Motor Fuel Dispensing Facilities and Repair Garages* (collectively, the “Recommended Practices”).

- (3) **UST Regulations, Rule 8.04(B) (recently amended to Part 1.10D.1.b)** – requiring owners/operators of single-walled USTs and/or product pipelines installed between 8 May 1985 and 20 July 1992 to permanently close the USTs and/or product pipelines within 32 years of the date of installation.
- (4) **UST Regulations, Rule 8.08(E)(2)(a)(2) (recently amended to Part 1.10F.6.d)** – requiring that continuous monitoring systems be utilized to perform 0.2 gallon-per-hour leak tests for single-walled USTs at least once per month.
- (5) **UST Regulations, Rule 8.08(B)(4) (recently amended to Part 1.10F.2.d) and UST Regulations Rule 8.08(E)(2)(a)(3) (recently amended to Part 1.10F.6.d)** – requiring tank tightness tests by a qualified person every 5 years until the tank has been installed for 20 years, and once every 2 years thereafter until the tank has been installed for 30 years, and every year thereafter.
- (6) **UST Regulations, Rule 8.11 (recently amended to Part 1.10I.1)** – requiring annual testing of line leak detectors by a qualified person.
- (7) **UST Regulations, Rule 8.12 (recently amended to Part 1.10J.1)** – requiring annual testing of dispenser shear valves.
- (8) **UST Regulations, Rule 8.15(F) (recently amended to Part 1.10M.7, Part 1.10M.8 and Part 1.10M.9)** – requiring that UST continuous monitoring systems be inspected and tested by qualified persons on an annual basis.
- (9) **UST Regulations, Rule 8.22(A) (recently amended to Part 1.10U.2)** – requiring owners/operators to have trained Class C operators assigned to the facility.
- (10) **UST Regulations, Rule 8.22(A)(7) (recently amended to Part 1.10U.3.e)** – requiring owners/operators to maintain training logs for all the Class C operators assigned to the facility.
- (11) **UST Regulations, Rule 8.22(F) (recently amended to Part 1.10U.5.k, Part 1.10U.6.g and Part 1.10U.9)** – requiring the registered, certified Class A or B operator to perform monthly on-site UST facility inspections and to document those inspections on the requisite form.

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) **IMMEDIATELY, upon receipt of the NOV**, remove UST Nos. 002, 004, 006 and 007 from service and cease and desist from dispensing fuel from the USTs.

- (2) **Within 7 days of receipt of the NOV**, procure the services of a qualified contractor to evacuate the contents of the UST Nos. 002, 004, 006 and 007 and the 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. Written verification of compliance shall be submitted to the DEM's Office of Compliance and Inspection ("OC&I").
- (3) **Within 45 days of receipt of the NOV**, submit a completed *Permanent Closure Application for USTs* to the DEM's Office of Waste Management ("OWM") and, **with their consent and approval, complete the permanent closure of UST Nos. 002, 004, 006 and 007** in accordance with Part 1.15 of the UST Regulations.
- (4) **Within 30 days of the removal of the USTs**, complete and submit to the OWM a *Closure Assessment Report* in accordance with Part 1.15D.10 of the UST Regulations, the *UST Closure Assessment Guidelines*, October 1998, and Part 2.12 of the Rhode Island Code of Regulations titled *Oil Pollution Control Regulations (250-RICR-140-25-2)* (the "OPC Regulations").
- (5) **Within 30 days of the removal of the USTs**, remove and properly dispose of any contaminated soil encountered during the tank closure and within ten days of the soil disposal, submit documentation of disposal to the OWM, in accordance with Part 2.13 of the OPC Regulations.
- (6) If, after review of the *Closure Assessment Report*, the OWM determines that a site investigation is required, complete the site investigation and submit a *Site Investigation Report* ("SIR") to the OWM in accordance with Part 1.14H of the UST Regulations within the time frame specified by the OWM.
- (7) If, after review of the SIR, the OWM determines that a *Corrective Action Plan* ("CAP") is required, submit a proposed CAP in accordance with Part 1.14I of the UST Regulations within the time frame specified by the OWM. The OWM 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 the DEM.
- (8) If, after the closure, new USTs are installed and the existing dispensers remain in use, **within 7 days of installation of the new USTs**, Respondents shall procure the services of a qualified person to inspect each of the product dispensers to determine where the product leakage is occurring and make all necessary repairs to eliminate the leakage in accordance with Part 1.10B.1 of the UST Regulations and the Recommended Practices. Written verification of compliance shall be submitted to the OC&I.

- (9) If, after the closure, new USTs are installed, **within 7 days of installation of the new USTs**, the registered, ICC-certified Class A or B operator shall train all appropriate Facility employees and attendants as (at least) Class C operators and compile a written training log for the Class C operators that have been trained and assigned to the Facility in accordance with Part 1.10U.2, Part 1.10U.3, Part 1.10U.4 and Part 1.10 U.7 of the UST Regulations and submit a copy of the completed training log to the OC&I. The Facility shall henceforth be operated only with at least one trained Class C operator on duty during all hours of operation in accordance with Part 1.10U.4.c and Part 1.10U.7 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:

**\$37,037**

- (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 Respondents in the NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if 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  
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 Rhode Island Code of Regulations titled *Rules and Regulations for the Administrative Adjudication Division (250-RICR-10-00-1)* Part 1.7B.

- (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, 4<sup>TH</sup> Floor  
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before 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 City of Pawtucket, 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) Joseph J. LoBianco 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:

Jeha Corp.  
c/o John G. Jeha, Registered Agent  
76 Newport Avenue  
Pawtucket, RI 02861

MITRI PETROLEUM LLC  
c/o Robert J. Ameen, Esq., Resident Agent  
390 Newport Avenue  
Pawtucket, RI 02861

by Certified Mail.

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<b>ADMINISTRATIVE PENALTY SUMMARY</b>	
Program:	OFFICE OF COMPLIANCE AND INSPECTION, UST
File No.:	OCI-UST-17-71-00262
Respondents:	Jeha Corp. and MITRI PETROLEUM LLC

<b>GRAVITY OF VIOLATION</b>					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION NO. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D (1) and (3) – Use of Single-walled USTs	Type I <i>(\$25,000 Max. Penalty) *</i>	Moderate	\$6,250	4 USTs	\$25,000
D (4) – Failure to perform periodic leak tests	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,500	1 violation	\$1,500
D (5) – Failure to test the USTs for tightness	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$2,000	1 violation	\$2,000
D (6), (7) and (8) – Failure to test line leak detectors, shear valves and CMS	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$2,000	1 violation	\$2,000
D (9) and (10) – Failure to assign Class C operator	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,500	1 violation	\$1,500
D (11) – Failure to have an ICC certified Class A or B operator perform monthly inspections	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,500	1 violation	\$1,500
<b>SUB-TOTAL</b>					<b>\$33,500</b>

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

## ADMINISTRATIVE PENALTY SUMMARY (continued)

<b>ECONOMIC BENEFIT FROM NON-COMPLIANCE</b>			
COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT COMPLY. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:			
- THERE IS NO IDENTIFIABLE BENEFIT FROM NON-COMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED.			
<i>DESCRIPTION OF BENEFIT</i>	<i>CALCULATION</i>		<i>AMOUNT</i>
<p>Operation of single-walled USTs. 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 and dollar amounts used in this analysis are listed in this table.</p>	<ul style="list-style-type: none"> <li>▪ Profit Status</li> <li>▪ Filing Status</li> <li>▪ Capital Investment</li> <li>▪ One-time Non-Depreciable Expense</li> <li>▪ Annually Recurring Costs</li> <li>▪ First Month of Non-compliance</li> <li>▪ Compliance Date</li> <li>▪ Penalty Due Date</li> <li>▪ Useful Life of Pollution Control Equipment</li> <li>▪ Annual Inflation Rate</li> <li>▪ Discount Compound Rate</li> </ul>	<p>C Corp.</p> <p>\$50,000</p> <p>October 2018</p> <p>1 March 2019</p> <p>1 February 2019</p> <p>7.3%</p>	<p>\$423</p>
<p>Failure to test USTs for tightness, line leak detectors and CMS. 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 and dollar amounts used in this analysis are listed in this table.</p>	<ul style="list-style-type: none"> <li>▪ Profit Status</li> <li>▪ Filing Status</li> <li>▪ Capital Investment</li> <li>▪ One-time Non-Depreciable Expense</li> <li>▪ Annually recurring costs</li> <li>▪ First Month of Non-compliance</li> <li>▪ Compliance Date</li> <li>▪ Penalty Due Date</li> <li>▪ Useful Life of Pollution Control Equipment</li> <li>▪ Annual Inflation Rate</li> <li>▪ Discount Compound Rate</li> </ul>	<p>C Corp.</p> <p>\$2,221</p> <p>October 2015</p> <p>5 December 2017</p> <p>1 February 2019</p> <p>7.2%</p>	<p>\$3,114</p>
<b><i>SUB-TOTAL</i></b>			<p><b>\$3,537</b></p>

## **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 = \$37,037**

## PENALTY MATRIX WORKSHEET

CITATION:	Use of Single-walled USTs
VIOLATION NOs.:	D (1) and (3)

TYPE		
<p style="text-align: center;"><u>  X  </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ 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:** Respondents failed to permanently close UST Nos. 002, 004, 006 and 007 and have continued to operate the USTs in violation of the law and regulations. The operation of single-walled USTs beyond 32 years is prohibited. Single-walled USTs and pipelines present a threat to the environment and public health and safety as there is no secondary containment to prevent releases of petroleum products and hazardous materials directly to the subsurface. Failure to comply increases the likelihood of a release of the regulated substance to the environment and the resultant threats to groundwater resources and public health and safety.
- (2) **Environmental conditions:** The Facility is in a densely developed area with numerous potential vapor receptors including commercial structures and underground utilities. The Facility is in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. The Facility is located within 500 feet of a GA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment. The Facility is in a groundwater reservoir. Upon information and belief, there are no drinking water supply wells proximate to the Facility. The Facility is in the Ten Mile River watershed.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** The volatile nature of gasoline presents both a potential public health hazard (due to potential inhalation of benzene) and a potential public safety hazard (due to the potential for explosion). Gasoline and used oil can cause significant soil and groundwater contamination if released to the environment.
- (5) **Duration of the violation:** 2 months – 1 October 2018 to 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:** Respondents failed to prevent and/or mitigate the non-compliance by permanently closing UST Nos. 002, 004, 006 and 007. On 29 September 2016 and 20 February 2018, the DEM sent written notices to Jaha Corp and on 17 April 2017 and 20 February 2018, the DEM sent written notices to MITRI PETROLEUM LLC informing them of the required actions to comply with the law and the regulations.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondents for the failure to comply with the law and regulations. As owners and operators of the Facility, Respondents had full control over the occurrence of the violation. The law and regulations expressly require permanent closure of single-walled USTs within 32 years of the installation date.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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

## PENALTY MATRIX WORKSHEET

CITATION: Failure to perform periodic leak tests

VIOLATION NO.: D (4)

### TYPE

\_\_\_ TYPE I  
DIRECTLY related to protecting health, safety, welfare or environment.

\_\_\_ **X** \_\_\_ TYPE II  
INDIRECTLY related to protecting health, safety, welfare or environment.

\_\_\_ TYPE III  
INCIDENTAL 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:** Respondents failed to utilize the CMS to perform monthly 0.2 gallon-per-hour leak tests for UST No. 007. These periodic leak tests are expressly required for single-walled USTs by the regulations and are of significant importance to the regulatory program. Failure to comply would presumably reduce the likelihood of detecting leaks from the USTs.
- (2) **Environmental conditions:** The Facility is located in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. The Facility is located within 500 feet of a GA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment. The Facility is located in a groundwater reservoir. Upon information and belief, there are no drinking water supply wells proximate to the Facility. The Facility is located in the Ten Mile River watershed.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** Used oil is capable of causing significant soil and groundwater contamination if released to the environment. Used oil is typically contaminated with varying concentrations of hazardous materials such as benzene and lead.
- (5) **Duration of the violation:** Full duration unknown – at least 27 months (August 2015 through November 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 non-compliance:** Respondents failed to prevent the non-compliance by utilizing the CMS to perform periodic leak tests. Respondents have yet to mitigate the non-compliance, despite receiving the NIPD from the DEM, which required that they do so.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondents for the failure to comply with the periodic leak testing requirements set forth in the regulations. As owners and operators of the Facility, Respondents had full control over the occurrence of the violation. The regulations expressly require periodic leak testing for single-walled USTs.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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

PENALTY MATRIX WORKSHEET		
CITATION:	Failure to test the USTs for tightness	
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 1.10A.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:** Respondents failed to test UST Nos. 002, 004, 006 and 007 for tightness. Annual tightness testing of single-walled USTs aged 30 years or greater is expressly required by the regulations and is of significant importance to the regulatory program. Failure to comply could allow a compromised or faulty tank to remain in use and result in a release of petroleum product to the environment.
- (2) **Environmental conditions:** The Facility is located in a densely developed area with numerous potential vapor receptors including commercial structures and underground utilities. The Facility is located in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. The Facility is located within 500 feet of a GA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment. The Facility is located in a groundwater reservoir. Upon information and belief, there are no drinking water supply wells proximate to the Facility. The Facility is located in the Ten Mile River watershed.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** The volatile nature of gasoline presents both a potential public health hazard (due to potential inhalation of benzene) and a potential public safety hazard (due to the potential for explosion). Gasoline and used oil are capable of causing significant soil and groundwater contamination if released to the environment.
- (5) **Duration of the violation:** 2 years (2015 and 2016).
- (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:** Respondents failed to prevent the non-compliance by having the USTs tested for tightness during 2015 and 2016. Respondents mitigated the noncompliance by having the USTs tested for tightness on 5 December 2017. It was reported that they 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 Respondents for the failure to comply with the regulations. As owners and operators of the Facility, Respondents had full control over the occurrence of the violations. The UST tightness testing requirements are clearly established in the regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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

PENALTY MATRIX WORKSHEET		
CITATION:	Failure to test line leak detectors, shear valves and CMS	
VIOLATION NOS.:	D	(6), (7) and (8)

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:** Respondents failed to have the line leak detectors, shear valves and CMS tested by a qualified person. Periodic inspection and testing of this leak detection/prevention equipment is of significant importance to the regulatory program. These tests verify whether the devices are functioning in accordance with the manufacturer’s specifications. Failure to comply would presumably reduce the likelihood of detecting and preventing releases from the UST systems.
- (2) **Environmental conditions:** The Facility is located in a densely developed area with numerous potential vapor receptors including commercial structures and underground utilities. The Facility is located in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. The Facility is located within 500 feet of a GA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment. The Facility is located in a groundwater reservoir. Upon information and belief, there are no drinking water supply wells proximate to the Facility. The Facility is located in the Ten Mile River watershed.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** The volatile nature of gasoline presents both a potential public health hazard (due to potential inhalation of benzene) and a potential public safety hazard (due to the potential for explosion). Gasoline and used oil are capable of causing significant soil and groundwater contamination if released to the environment.
- (5) **Duration of the violation:** 2 years (2015 and 2016).
- (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:** Respondents failed to prevent the non-compliance by having the line leak detectors, shear valves and CMS tested in accordance with the regulations. Respondents mitigated the noncompliance by having all these devices tested on 5 December 2017. It was reported that they all 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 Respondents for the failure to comply immediately with the regulations. As owners and operators of the Facility, Respondents had full control over the occurrence of the violations. The leak detection/prevention equipment testing requirements are clearly established in the regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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

PENALTY MATRIX WORKSHEET		
CITATION:	Failure to assign Class C operator	
VIOLATION NOS.:	D	(9) and (10)

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:** Respondents failed to assign and operate with Class C operators and failed to provide to the DEM a list of all the Class C operators that had been trained and assigned to the Facility. The regulations expressly require all owners/operators of regulated UST facilities to have trained and certified Class C operators assigned to the facility and prohibit the operation of UST facilities without at least one trained Class C operator on duty during all operating hours.
- (2) **Environmental conditions:** The Facility is located in a densely developed area with numerous potential vapor receptors including commercial structures and underground utilities. The Facility is located in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. The Facility is located within 500 feet of a GA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment. The Facility is located in a groundwater reservoir. Upon information and belief, there are no drinking water supply wells proximate to the Facility. The Facility is located in the Ten Mile River watershed.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** The volatile nature of gasoline presents both a potential public health hazard (due to potential inhalation of benzene) and a potential public safety hazard (due to the potential for explosion). Gasoline and used oil are capable of causing significant soil and groundwater contamination if released to the environment.
- (5) **Duration of the violation:** Full duration unknown – at least 27 months (August 2015 through November 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:** Respondents failed to prevent the non-compliance by training all the Facility operators as at least Class C operators and by compiling a list of all the trained Class C operators that had been assigned to the Facility. Respondents have yet to mitigate the non-compliance, despite receiving the NIPD from the DEM, which required that they do so.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondents for the failure to comply with the regulations. As owners and operators of the Facility, Respondents had full control over the occurrence of the violations. The UST facility operator training requirements are clearly established in the regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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

## PENALTY MATRIX WORKSHEET

CITATION:	Failure to have an ICC certified Class A or B operator perform monthly inspections
VIOLATION NO.:	D (11)

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;">___ <b>X</b> ___ 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:** Respondents failed to have the ICC-certified Class A or B operator (Ms. Karin DiPietro-Seymour) inspect the Facility monthly and document the inspections on the requisite form in accordance with the regulations. The only inspection reports on file at the Facility were performed by an operator who was not an ICC-certified Class A or B operator. These inspections are expressly required by the regulations and are of significant importance to the regulatory program. Failure to comply would presumably reduce the likelihood of preventing or detecting releases from the USTs.
- (2) **Environmental conditions:** The Facility is located in a densely developed area with numerous potential vapor receptors including commercial structures and underground utilities. The Facility is located in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. The Facility is located within 500 feet of a GA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment. The Facility is located in a groundwater reservoir. Upon information and belief, there are no drinking water supply wells proximate to the Facility. The Facility is located in the Ten Mile River watershed.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** The volatile nature of gasoline presents both a potential public health hazard (due to potential inhalation of benzene) and a potential public safety hazard (due to the potential for explosion). Gasoline and used oil are capable of causing significant soil and groundwater contamination if released to the environment.
- (5) **Duration of the violation:** Full duration unknown – at least 2 years (August 2015 through November 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:** Respondents failed to prevent the non-compliance by ensuring that the ICC-certified Class A and B operator perform the monthly inspections. Respondents have yet to mitigate the non-compliance, despite receiving the NIPD from the DEM, which required that they do so.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondents for the failure to comply with the regulations. As owners and operators of the Facility, Respondents had full control over the occurrence of the violation. The Class A/B UST facility operator monthly inspection requirements are clearly established in the regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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