

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: JOANNE REALTY LLC
J GEHA, CORP.**

FILE NO.: OCI-UST-18-59-00075

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 12 October 2016, 19 April 2017 and 30 October 2018, DEM notified one or both Respondents of the statutory deadline for the permanent closure of the underground storage tanks at the facility that is the subject of this Notice of Violation (“NOV”) 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 Regulated Substances and Hazardous Materials (250-RICR-140-25-1)* (the “UST Regulations”). Respondents failed to comply with the notices. On 21 August 2018, DEM issued a Notice of Intent to Enforce (“NIE”) by certified mail to Respondents for additional violations that are the subject of the NOV. The NIE required Respondents to take specific actions to correct the violations. On 23 August 2018, the NIE was delivered to J GEHA, CORP. On 10 October 2018, the DEM received documents from J GEHA, CORP in response to the NIE. The documents failed to fully address the NIE. On 12 October 2018, DEM issued a Notice of Non-Compliance (“NNC”) by certified mail to Respondents as a follow up to the NIE. On 18 October 2018, the NNC was delivered to J GEHA, CORP. On 24 October 2018, DEM received documents from J GEHA, CORP in response to the NNC. The documents addressed only one of the requirements set forth in the NNC.

C. Facts

- (1) The property is located at 585 Tiogue Avenue, Assessor’s Plat 38, Lot 174 in the Town of Coventry, Rhode Island (the Property”). The Property includes a convenience store and a motor fuel storage and dispensing system (the “Facility”).
- (2) JOANNE REALTY LLC owns the Property.
- (3) J GEHA, CORP. 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 UST Regulations.
- (5) The Facility is registered with DEM and is identified as UST Facility No. 00075.
- (6) The USTs are registered with DEM for the Facility as follows:

UST ID No.	Date Installed	Capacity	Product Stored
002	May 1987	8,000 gallons	Gasoline
004	May 1987	8,000 gallons	Gasoline
006	May 1987	8,000 gallons	Gasoline

- (7) The USTs and product pipelines are single walled.
- (8) On 16 August 2018, DEM inspected the Facility. The inspection revealed the following issues of non-compliance with the UST Regulations:
 - (a) Written verification that the *Veeder Root TLS 300C* automatic tank gauging system (“ATG”) had been utilized to perform valid 0.2 gallon-per-hour leak tests for UST Nos. 002, 004 and 006 at least once every 30 days, during the time period of April 2016 through July 2018, was not available.
 - (b) Written verification that UST Nos. 002, 004 and 006 had been tested for tightness by a DEM-licensed tightness tester during the year 2017 was not available. A tank tightness test report for these USTs for the year 2017 has not been received by DEM.
 - (c) Written verification that the product pipelines for UST Nos. 002 and 004/006 had been tested for tightness by a DEM-licensed tightness tester during the year 2017 was not available. A tightness test report for these product pipelines for the year 2017 has not been received by DEM.
 - (d) The ATG was deactivated or malfunctioning at the time of inspection. Upon information and belief, Respondents had not reported the deactivation or malfunction to DEM.
 - (e) The spill containment basins for UST Nos. 002, 004 and 006 were holding solid debris at the time of inspection.
 - (f) The tank field observation well and the groundwater monitoring wells were not labeled. Two of the wells were not secured against tampering.
 - (g) The registered Class A/B UST facility operator’s (Mr. Gil Duarte) Rhode Island registration and certification expired in June 2018, as he was certified by the

Commonwealth of Massachusetts, and he has yet to present written verification that he has passed the Rhode Island *International Code Council* (“ICC”) examination. Upon information and belief, Respondents had not registered and assigned new ICC-certified Class A and Class B UST facility operators to the Facility.

- (h) A training log for all of 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 she had been trained as at least a Class C UST facility operator. Upon information and belief, the Facility was being operated without any trained and/or certified UST facility operators on duty.
 - (i) Review of the Class A/B UST facility operator’s monthly inspection checklists on file at the Facility revealed that they did not include the name of the certified Class A or B UST facility operator who was performing the inspections (they only contained an illegible signature).
- (9) On 24 October 2018, J GEHA, CORP notified DEM that the ATG had been repaired and reactivated.
- (10) On 21 May 2019, DEM inspected the Facility. The inspection revealed that the USTs are still in use and that the ATG was not being utilized to perform monthly 0.2 gallon-per-hour leak tests for UST Nos. 002, 004 and 006.
- (11) As of the date of the NOV, Respondents have yet to demonstrate a return to compliance with the non-compliance set forth in subsections C(8) (a), (b), (c), (e), (f), (g), (h) and (i) and C(10) above.

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 after 32 years from the date of installation.
- (2) **UST Regulations, Part 1.10(D)(1)(b)** – requiring owners/operators of single-walled USTs and product pipelines installed between 8 May 1985 and 20 July 1992 to permanently close the USTs within 32 years of the date of installation.
- (3) **UST Regulations, Rule 8.08(B)(2) [recently amended to Part 1.10(F)(2)(b)]** – requiring that ATGs be utilized to perform monthly 0.2 gallon-per-hour leak tests for single-walled USTs.
- (4) **UST Regulations, Rule 8.08(B)(4) [recently amended to Part 1.10(F)(2)(d)]** – requiring annual tightness testing for single-walled USTs.

- (5) **UST Regulations, Rule 8.09(B)(1) [recently amended to Part 1.10(G)(3)(a)]** – requiring annual tightness testing for single-walled product pipelines.
- (6) **UST Regulations, Rule 8.15(B) [recently amended to Part 1.10(M)(2)]** – prohibiting the deactivation of continuous monitoring systems, requiring immediate reporting of any deactivation of a continuous monitoring system, requiring repair of the system within 15 days and requiring temporary closure of USTs if the system cannot be reactivated or repaired within 15 days.
- (7) **UST Regulations, Rule 8.16(A)(1) [recently amended to Part 1.10(N)(1)(a)]** - requiring that spill containment basins be always kept free of liquids and debris.
- (8) **UST Regulations, Rule 8.19(A) [recently amended to Part 1.10(Q)(1)(a)]** – requiring all ground water monitoring wells be equipped with a labeled and tamper resistant cover.
- (9) **UST Regulations, Rules 8.22(A) and (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 UST facility operators assigned to their facilities, requiring that Class C UST facility operator training logs be maintained at each facility and prohibiting the operation of UST facilities without at least one trained Class C UST facility operator on duty.
- (10) **UST Regulations, Rule 8.22(F) [recently amended to Part 1.10(U)(5)(k), Part 1.10(U)(6)(g) and Part 1.10(U)(9)]** – requiring the registered Class A or B UST facility operator to perform monthly on-site UST facility inspections and to properly document those inspections on the requisite form and maintained on file at the facility for 3 years.

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) **IMMEDIATELY, upon receipt of the NOV**, remove the USTs 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 USTs 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 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 DEM’s Office of Waste Management (“OWM”) and, **with their consent and approval, complete the permanent closure of the USTs and their product pipelines** in accordance with Part 1.15(D) of the UST Regulations.

- (4) **Within 30 days of the removal of the USTs**, complete and submit to OWM a *Closure Assessment Report* in accordance with Part 1.15(D)(10) of the UST Regulations, the *UST Closure Assessment Guidelines*, October 1998, and Parts 2.12 and 2.13 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 10 days of the soil disposal, submit documentation of disposal to OWM, in accordance with Part 2.13 of the OPC Regulations.
- (6) If, after review of the *Closure Assessment Report*, OWM determines that a site investigation is required, complete the site investigation and submit a *Site Investigation Report* (“SIR”) to OWM in accordance with Part 1.14(H) of the UST Regulations within the time frame specified by OWM.
- (7) If, after review of the SIR, OWM 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 OWM. 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 OWM.
- (8) All the tank field observation and groundwater monitoring wells (that are not destroyed during the closure project) shall be inspected by a qualified person and repaired or modified as necessary to ensure that they are labeled and secured against tampering, as per Part 1.10(Q)(1)(a) of the UST Regulations. Written or photographic verification of compliance shall be submitted to OC&I.

F. Penalty

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:

\$54,088

- (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 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 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:

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 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 Coventry, 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 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

Dated: _____

CERTIFICATION

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

JOANNE REALTY LLC
c/o Colette Geha, Registered Agent
342 Manton Avenue
Providence, RI 02909

J GEHA, CORP.
c/o Joseph Geha, Registered Agent
585 Tiogue Avenue
Coventry, RI 02816

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY	
Program:	OFFICE OF COMPLIANCE AND INSPECTION, UST
File No.:	OCI-UST-18-59-00075
Respondents:	JOANNE REALTY LLC and J GEHA, CORP.

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) & (2) – Single-Walled USTs	Type I <i>(\$25,000 Max. Penalty)*</i>	Major	\$12,500	3 UST systems	\$37,500
D (3) – Failure to perform periodic leak tests for the USTs with the ATG	Type II <i>(\$12,500 Max. Penalty)*</i>	Minor	\$2,000	1 violation	\$2,000
D (4) – Failure to perform tank tightness testing	Type II <i>(\$12,500 Max. Penalty)*</i>	Minor	\$1,750	1 violation	\$1,750
D (5) – Failure to perform product pipeline tightness testing	Type II <i>(\$12,500 Max. Penalty)*</i>	Minor	\$1,500	1 violation	\$1,500
D (6) – Deactivation of the ATG, failure to repair the ATG within 15 days, failure to report the malfunction and failure to temporarily close the USTs	Type II <i>(\$12,500 Max. Penalty)*</i>	Major	\$6,250	1 violation	\$6,250
D (9) & (10) – Failure to assign 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	\$3,000	1 violation	\$3,000
SUB-TOTAL					\$52,000

*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 permanently close the USTs. 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 ▪ First Month of Non-compliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	<p>C Corp.</p> <p>\$50,000</p> <p>May 2019</p> <p>15 September 2019</p> <p>1 September 2019</p> <p>8.1%</p>	<p>\$832</p>
<p>Failing to test the tanks and pipelines for tightness. 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 ▪ First Month of Non-compliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	<p>C Corp.</p> <p>\$1,626</p> <p>January 2018</p> <p>3 May 2018</p> <p>1 September 2019</p> <p>8.1%</p>	<p>\$1,256</p>
SUB-TOTAL			\$2,088

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 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 = \$54,088

PENALTY MATRIX WORKSHEET

CITATION: Single-Walled USTs
 VIOLATION NOS.: D (1) & (2)

TYPE		
<u>X</u> TYPE I DIRECTLY related to protecting health, safety, welfare or environment.	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 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i>		
(1) The extent to which the act or failure to act was out of compliance: Respondents failed to permanently close the USTs and have continued to operate the USTs in violation of the R.I. Gen. Laws and the UST Regulations. The operation of single-walled USTs after they reach 32 years of age 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, residential structures and underground utilities. The Facility is in a GB groundwater classification zone but within 100 feet of 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 Pawtuxet River watershed, within 200 feet of Tiogue Lake and within 300 feet of freshwater wetlands associated with Pawtuxet River.		
(3) Amount of the pollutant: Considered, but not utilized for this calculation.		
(4) Toxicity or nature of the pollutant: The volatile nature of gasoline presents both a potential public health hazard (due to potential inhalation of benzene) and a potential public safety hazard (due to the potential for explosion). Gasoline can cause significant soil and groundwater contamination if released to the environment. Certain petroleum constituents are potentially harmful to human health and safety and the environment. Benzene, a component of gasoline, is a known carcinogen.		
(5) Duration of the violation: Approximately 6 months – Respondents have been operating in violation of this requirement since 1 May 2019.		
(6) Areal extent of the violation: Considered, but not utilized for this calculation.		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** Respondents failed to take reasonable and appropriate steps to prevent and/or mitigate the non-compliance by permanently closing the USTs before 1 May 2019. Respondents have yet to take any steps to mitigate the non-compliance despite receiving the written notices from 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 their failure to comply immediately with the requirements set forth in R. I. Gen. Laws and the UST Regulations. Respondents, as owners and operators of the Facility, had full control over the occurrence of the violation.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u> X </u> MAJOR	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 \$12,500	\$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	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION:	Failure to perform periodic leak tests with the ATG
VIOLATION NO.:	D (3)

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:** Respondents failed to utilize the ATG to perform 0.2 gallon-per-hour leak tests for UST Nos. 002, 004 and 006. At the time of inspection, the ATG was deactivated and Respondents were unable to present written verification of compliance. These periodic leak tests are expressly required by the UST Regulations for single-walled USTs and are significant to the regulatory program. Failure to comply presumably reduces the likelihood of detecting a leak from a UST.
- (2) **Environmental conditions:** The Facility is in a densely developed area with numerous potential vapor receptors including commercial structures, residential structures and underground utilities. The Facility is in a GB groundwater classification zone but within 100 feet of 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 Pawtuxet River watershed, within 200 feet of Tiogue Lake and within 300 feet of freshwater wetlands associated with Pawtuxet River.
- (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 ½ years – Respondents have been non-compliant with this rule since at least April 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 non-compliance:** Respondents failed to prevent the non-compliance by utilizing the ATG to perform monthly 0.2 gallon-per-hour leak tests for UST Nos. 002, 004 and 006 during the period of April 2016 through July 2018. Respondents have yet to verify a return to compliance despite receiving the NIE from 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 UST Regulations. As owner and operator of the Facility, Respondents had full control over the occurrence of the violation. The UST Regulations expressly require the utilization of ATGs to perform monthly 0.2 gallon-per-hour leak tests 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.

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 tank tightness testing	
VIOLATION NO.:	D	(4)

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:** Respondents failed to procure the services of a DEM-licensed tightness tester to perform tightness testing of UST Nos. 002, 004 and 006. Periodic tightness testing of single-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 a release from a UST.
- (2) **Environmental conditions:** The Facility is in a densely developed area with numerous potential vapor receptors including commercial structures, residential structures and underground utilities. The Facility is in a GB groundwater classification zone but within 100 feet of 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 Pawtuxet River watershed, within 200 feet of Tiogue Lake and within 300 feet of freshwater wetlands associated with Pawtuxet River.
- (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:** 1 year (2017). Respondents had the tanks tested for tightness in 2018 and reported that they met the criteria for passing.
- (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 in 2017. Respondents had the USTs tested in 2018.
- (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 requirements set forth in the UST Regulations. As owner and operator of the Facility, Respondents 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 \$1,750	\$250 to \$1,250

PENALTY MATRIX WORKSHEET		
CITATION:	Failure to perform product pipeline tightness testing	
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:** Respondents failed to procure the services of a DEM-licensed tightness tester to perform tightness testing of the product pipelines for UST Nos. 002 and 004/006. Annual tightness testing of single-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 a release from a UST system.
- (2) **Environmental conditions:** The Facility is in a densely developed area with numerous potential vapor receptors including commercial structures, residential structures and underground utilities. The Facility is in a GB groundwater classification zone but within 100 feet of 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 Pawtuxet River watershed, within 200 feet of Tiogue Lake and within 300 feet of freshwater wetlands associated with Pawtuxet River.
- (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:** 1 year (2017). Respondents had the pipelines tested for tightness in 2018 and reported that they met the criteria for passing.
- (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 product pipelines tested for tightness in 2017. Respondents had the product pipelines tested in 2018.
- (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 requirements set forth in the UST Regulations. As owner and operator of the Facility, Respondents 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 \$1,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION:	Deactivation of the ATG, failure to repair the ATG within 15 days, failure to report the malfunction and failure to temporarily close the USTs
VIOLATION NO.:	D (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;">__ 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:** At the time of inspection, the ATG was deactivated, allegedly due to a malfunction. Respondents failed to report the deactivation to DEM, repair the ATG within 15 days or place the USTs into temporary closure until it could be repaired. Deactivation of an ATG is prohibited by the UST Regulations and any malfunction is required to be repaired within 15 days or the USTs must be placed into temporary closure. Failure to comply reduces the likelihood of detecting a release from a UST system. The ATG operation and maintenance requirements are significant to the regulatory program
- (2) **Environmental conditions:** The Facility is in a densely developed area with numerous potential vapor receptors including commercial structures, residential structures and underground utilities. The Facility is in a GB groundwater classification zone but within 100 feet of 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 Pawtuxet River watershed, within 200 feet of Tiogue Lake and within 300 feet of freshwater wetlands associated with Pawtuxet River.
- (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.
- (5) **Duration of the violation:** Full duration unknown – at least 69 days. DEM inspected the Facility on 16 August 2018 and documented that the ATG was deactivated. The ATG was not repaired and reactivated until approximately 24 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:** Respondents failed to prevent the non-compliance by immediately notifying DEM of the ATG deactivation and repairing and reactivating the ATG within 15 days or by placing the USTs into temporary closure until it could be repaired. On 24 October 2018, Respondents notified DEM that the ATG had been repaired.
- (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 requirements set forth in the UST Regulations. As owner and operator of the Facility, Respondents had full control over the occurrence of the violations. The ATG operation and maintenance 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.

<u> X </u> MAJOR	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 \$6,250	\$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	\$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 NO.:	D (9) and (10)

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:** Respondents failed to assign ICC-certified Class A and B UST facility operators. Respondents were unable to present written verification that they had trained and assigned Class C UST facility operators to the Facility. The Facility attendant on duty at the time of inspection was unable to present written verification that she had been trained as a Class C UST facility operator. The Class A/B UST facility 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 UST facility 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 densely developed area with numerous potential vapor receptors including commercial structures, residential structures and underground utilities. The Facility is in a GB groundwater classification zone but within 100 feet of 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 Pawtuxet River watershed, within 200 feet of Tiogue Lake and within 300 feet of freshwater wetlands associated with Pawtuxet River.

- (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 ½ years – Respondents have been non-compliant with these rules since at least April 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 non-compliance:** Respondents failed to prevent the non-compliance by assigning and operating with trained and certified Class A, B and C UST facility operators. Respondents have yet to verify a return to compliance despite receiving the NIE from 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 UST Regulations. As owners and operators of the Facility, Respondents 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 UST facility operators and that they 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	<u> X </u> MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250 \$3,000	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250