

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: PMG NORTHEAST LLC
adhyashakti inc.**

FILE NO.: OCI-UST-21-6-01064

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 Rhode Island Department of Environmental Management (“Director” of “RIDEM”) has reasonable grounds to believe that the above-named parties (“Respondents”) have violated certain statutes and/or administrative regulations under RIDEM's jurisdiction.

B. ADMINISTRATIVE HISTORY

On 9 November 2020, RIDEM issued a *Notice of Intent to Enforce* (“NIE”) to PMG NORTHEAST LLC (“PMG”) by certified mail for some of the alleged violations that are the subject of this *Notice of Violation* (“NOV”). The NIE required specific actions to correct the violations. On 16 November 2020, the NIE was delivered to PMG. On 26 February 2021, RIDEM issued the NIE to adhyashakti, inc. (“ADH”) by certified mail, which was delivered on 3 March 2021. On 25 June 2021, RIDEM issued a second NIE to Respondents by certified mail for some of the alleged violations that are the subject of the NOV. The NIE required specific actions to correct the alleged violations. On 30 June 2021 and 1 July 2021, the NIE was delivered to ADH and PMG, respectively. Respondents complied with the second NIE. On 8 July 2021, RIDEM issued an *Expedited Citation Notice* (“ECN”) by certified mail to Respondents for some of the alleged violations that are the subject of the NOV. The ECN required specific actions to correct the alleged violations and payment of an administrative monetary penalty. Respondents were advised that the ECN would expire 60 days after receipt. On 10 July 2021 and 20 July 2021, the ECN was delivered to PMG and ADH, respectively. As of the date of the NOV, Respondents failed to comply with the ECN and have failed to fully comply with the first NIE.

C. FACTS

- (1) The property is located at 27 Plainfield Street, Assessor’s Plat 105, Lot 416, in Providence, Rhode Island (“Property”). The Property includes a convenience store and a motor fuel storage and dispensing system (“Facility”).
- (2) PMG owns the Property. PMG acquired the Property on 9 January 2020.
- (3) ADH 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 Rhode Island’s *Rules and Regulations for Underground Storage Facilities Used for Regulated Substances and Hazardous Materials* (250-RICR-140-25-1) (“UST Rules”).
- (5) The Facility is registered with RIDEM and is identified as UST Facility No. 01064.
- (6) The USTs are registered with RIDEM for the Facility as follows:

UST ID No.	Date Installed	Capacity	Product Stored
009	30 December 2004	2,500 gallons	Diesel
010	28 March 2018	10,000 gallons	Gasoline
011	28 March 2018	10,000 gallons	Gasoline
012	28 March 2018	8,000 gallons	Gasoline

- (7) On 2 July 2020, RIDEM inspected the Facility. The inspection and a review of RIDEM’s files revealed the following:
 - (a) Respondents failed to submit written notification to RIDEM for the transfer of the Property to PMG, the change in Facility operator and other changes to the Facility registration application.
 - (b) Written verification that the registered Class A/B UST facility operator, Thomas Beck (“Beck”), had performed monthly Facility inspections during the period of May 2018 through June 2020, and documented the results of those inspections on the requisite checklist, was not available.
 - (c) Written verification that any of the Facility attendants on duty at the time of inspection had been trained as, at least, a Class C UST operator was not available. A training log for all the Class C UST operators assigned to the Facility (“Class C Training Log”) was not available. Upon information and belief, the Facility was being operated without at least 1 trained Class C UST operator on duty.
- (8) Following the 2 July 2020 inspection, RIDEM received a Class C Training Log. RIDEM’s review of the training log revealed that it did not include the name of a certified, registered Class A/B UST facility operator who performed the training, and it was not presented on the requisite RIDEM form.
- (9) On 18 March 2021, PMG submitted a form to RIDEM to register Herb Casiano (“Casiano”) as the certified Class A/B UST operator for the Facility.
- (10) On 26 May 2021, the tank top sump (“Tank Top Sump”) and dispenser sump (“Dispenser Sump”) for UST No. 009 were tested for tightness and failed to meet the criteria for passing (“Failed Tests”).

- (11) The Dispenser Sump was subsequently tested on 23 July 2021 and 30 July 2021 and failed to meet the criteria for passing each time. On 18 October 2021, the Dispenser Sump passed a tightness test.
- (12) The Tank Top Sump was subsequently tested for tightness on 23 July 2021, 30 July 2021 and 18 October 2021 and failed to meet the criteria for passing each time. On 10 December 2021, the Tank Top Sump passed a tightness test.
- (13) On 10 December 2021, RIDEM received a *Sump and Under-Dispenser Containment Repair Application* (“Application”) for the repair work that had been performed on the Tank Top Sump. The Application states that the work was performed on 22 November 2021.
- (14) RIDEM’s review of the Application and an inquiry with the product supplier revealed that the technician who performed the repair work was not trained and certified by *ICON Containment Solutions* (“ICON”) prior to utilizing their product to repair the Tank Top Sump.
- (15) On 17 December 2021, PMG submitted documents to RIDEM for the repair work, including confirmation from ICON that they had reviewed the repairs and subsequently trained the technician.
- (16) On 21 December 2021, RIDEM reviewed the documents and notified Respondents that they were authorized to utilize UST No. 009.
- (17) Respondents failed to submit to RIDEM a temporary closure application for UST No. 009 after the Failed Tests.
- (18) Upon information and belief, the Dispenser Sump was repaired or modified at some point between 30 July 2021 and 18 October 2021 without prior written notification to and approval by RIDEM.
- (19) Upon information and belief, the Tank Top Sump was repaired or modified on 22 November 2021 without prior written notification to and approval by RIDEM.
- (20) As of the date of the NOV, Respondents have failed to address the noncompliance described in subsection C (7) above.

D. VIOLATION

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

(1) **UST Rules**

- (a) **Part 1.7(P)(2)** – requiring owners/operators to report changes in their registration applications to RIDEM on the requisite form.
- (b) **Part 1.10(N)(3)(d)(1)** – requiring owners/operators to immediately put UST systems into temporary closure if any of their associated containment sumps fail a tightness test.
- (c) **Part 1.10(N)(3)(d)(3)** – requiring owners/operators to obtain the approval of RIDEM before making any repairs or modifications to tank top or dispenser containment sumps.
- (d) **Part 1.10(U)(2)**– requiring owners/operators of UST facilities to have trained Class C UST operators assigned to the facility.
- (e) **Part 1.10(U)(3)(e)** – requiring owners/operators of UST facilities to maintain training logs for all the Class C UST operators assigned to the facility.
- (f) **Part 1.10(U)(4)(c)** – requiring that at least 1 trained Class C UST operator be present at a UST facility during all hours of operation.
- (g) **Part 1.10(U)(5) and Part 1.10 (U)(6)** – requiring Class A and B UST operators to inspect the facility monthly, ensure that the UST systems are compliantly operated and maintained, ensure that required records are compliantly maintained and ensure that the facility has trained Class C UST facility operators.
- (h) **Part 1.10(U)(9)** – requiring the registered, certified Class A or B UST operator to perform monthly on-site UST facility inspections and to document those inspections on the requisite form.
- (i) **Part 1.18** – prohibiting the transfer of Certificates of Registration without written notification to RIDEM within 7 days of the transfer.

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:

- (1) **Within 10 days of receipt of the NOV**, submit to RIDEM's Office of Land Revitalization & Sustainable Materials Management ("LRSMM") a completed *Change in Ownership of a UST or UST Facility* form and a completed *Change of UST Facility Operator* form in accordance with Part 1.7(P)(2) and Part 1.18(B)(3) of the UST Rules. These forms are available on RIDEM's website at <http://www.dem.ri.gov/documents/forms/index.php#ust>.
- (2) **Within 30 days of receipt of the NOV**, Casiano shall train all appropriate Facility employees and attendants as Class C UST operators and compile a written training log for the Class C UST operators that have been trained and assigned to the Facility (available at the above-referenced Internet address), as per Parts 1.10(U)(2), 1.10(U)(3), 1.10(U)(4), 1.10(U)(5), 1.10(U)(6) and 1.10(U)(7) of the UST Rules. A copy of the completed training log shall be submitted to RIDEM' Office of Compliance and Inspection ("OC&I"). The Facility shall henceforth be operated only with at least 1 trained Class C UST operator on duty during all hours of operation, as per Parts 1.10(U)(4) and 1.10(U)(7) of the UST Rules.
- (3) **Within 30 days of receipt of the NOV**, submit written verification to OC&I that the registered Class A/B UST operator is performing monthly on-site UST Facility inspections and documenting the results of those inspections on the requisite checklist (available at the above-referenced Internet address) in full compliance with Parts 1.10(U)(5)(k), 1.10(U)(6)(g) and 1.10(U)(9) of the UST Rules.

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:

\$9,875

- (2) The proposed administrative penalty is calculated pursuant to Rhode Island's *Rules and Regulations for Assessment of Administrative Penalties* (250-RICR-130-00-1) ("Penalty Regulations") and must be paid to RIDEM within 30 days of your receipt of the NOV. Penalty payments shall be by one of two methods:
 - (a) By certified check, cashier's check, or money order made payable to the **General Treasury – Water and Air Protection Program** and forwarded to:

Administrator, RIDEM Office of Compliance and Inspection
235 Promenade Street, Suite 220
Providence, RI 02908-5767

- (b) By wire transfer in accordance with instructions provided by RIDEM.
- (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 RIDEM 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 RIDEM'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 RIDEM'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
RIDEM - 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).
 - (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 Rhode Island's *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:

Jenna Giguere, Esquire
RIDEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.

- (4) Each respondent must file a separate and timely request for an administrative hearing before RIDEM'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 regarding 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 Providence, 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, then you may contact (or if you are represented by an attorney, please have your attorney contact) Jenna Giguere of RIDEM's Office of Legal Services at (401) 222-6607 or at jenna.giguere@dem.ri.gov. All other inquiries should be directed to Tracey Tyrrell of RIDEM's Office of Compliance and Inspection at (401) 222-1360, ext. 2777407 or at tracey.tyrrell@dem.ri.gov.

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
RIDEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

PMG NORTHEAST LLC
c/o Corporation Service Company, Resident Agent
222 Jefferson Boulevard, Suite 200
Warwick, RI 02888

adhyashakti inc.
c/o Daxesh V. Thakkar, Registered Agent
852 Park Avenue
Woonsocket, RI 02895

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: UST
 File No.: OCI-UST-21-6-01064
 Respondents: PMG NORTHEAST LLC and adhyashakti inc.

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION NOS. & CITATIONS	APPLICATION OF MATRIX		PENALTY CALCULATIONS		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D (1)(a) and D(1)(i) – Failure to report changes in registration information	Type III <i>(\$6,250 Max. Penalty) *</i>	Minor	\$500	1 violation	\$500
D (1)(b) – Failure to temporarily close a UST following tightness test failures	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$2,500	1 violation	\$2,500
D (1)(c) – Failure to obtain the approval of RIDEM before repairing or modifying UST system components	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$4,375	1 violation	\$4,375
D (1)(d) through D(1)(h) – Operator training	Type II <i>(\$12,500 Max. Penalty) *</i>	Moderate	\$2,500	1 violation	\$2,500
SUB-TOTAL					\$9,875

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

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.

A review of the record in this matter has revealed that Respondents have either enjoyed no identifiable benefit from the non-compliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.

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 RIDEM 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 = \$9,875

PENALTY MATRIX WORKSHEET

CITATION: Failure to report changes in registration information

VIOLATION NOs.: D (1)(a) and D(1)(i)

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

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

FACTORS CONSIDERED:

Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.

- (1) **The extent to which the act or failure to act was out of compliance:** PMG failed to submit prior written notification to RIDEM for the transfer of the Property. Respondents also failed to submit written notification of the change in Facility operator. UST facility owners and operators are required to submit written notification to RIDEM whenever there are changes in ownership of a UST facility or whenever there are changes in information provided on the UST registration application. This information is important to the regulatory program.
- (2) **Environmental conditions:** Considered, but not utilized for this calculation.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** Considered, but not utilized for this calculation.
- (5) **Duration of the violation:** Approximately 3 years – Respondents have been non-compliant since at least January 2020.
- (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 submitting written notification to RIDEM for all changes in the ownership and operation of the Facility. Respondents have made no attempt to mitigate the alleged noncompliance despite receiving the NIEs and ECN from RIDEM, 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 with the UST Rules. As owners and operators of the Facility, Respondents had complete control over the occurrence of the violations.
- (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	\$250 to \$1,250 \$500

PENALTY MATRIX WORKSHEET

CITATION: Failure to temporarily close a UST following tightness test failures
 VIOLATION NO.: D (1)(b)

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;"><u> </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;"><u> </u> TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents failed to put UST No. 009 into a compliant temporary closure after the Tank Top Sump and Dispenser Sump failed tightness tests. The UST Rules required the temporary closure of UST systems with deficient secondary containment. Failure to comply could result in a release of petroleum product to the environment and in threats to public health and safety. (2) Environmental conditions: The Facility is in an environmental justice area. The Facility is in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells in the vicinity of the Facility. The UST system is installed within 250 feet of a groundwater reservoir. The USTs are installed within 150 feet of Woonasquatucket River and the Property lies within its watershed. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: Diesel fuel 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. (5) Duration of the violation: Approximately 7 months – Respondents were non-compliant from 26 May 2021 through 21 December 2021. (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 putting UST No. 009 into temporary closure until the sumps could be repaired or modified in accordance with the UST Rules. Respondents mitigated the noncompliance by repairing the sumps, which were tested and passed, and submitted all required documentation to RIDEM. RIDEM authorized use of the UST on 21 December 2021.
- (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 with the UST Rules. As owners and operators of the Facility, Respondents had complete control over the occurrence of the violations.
- (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 \$2,500	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to obtain the approval of RIDEM before repairing or modifying UST system components

VIOLATION NO.: D (1)(c)

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 VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents repaired or modified the Tank Top Sump and Dispenser Sump without prior notification to and approval by RIDEM. The UST Rules prohibit the repair or modification of UST system containment sumps without the prior approval of RIDEM. The purpose of the rule is to ensure that any such repairs or modifications are made in conformance with the UST Rules, the applicable national codes of practice and the equipment or product manufacturer’s specifications. Failure to comply could result in substandard repairs or modifications and a release of petroleum product to the environment. (2) Environmental conditions: The Facility is in an environmental justice area. The Facility is in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells in the vicinity of the Facility. The UST system is installed within 250 feet of a groundwater reservoir. The USTs are installed within 150 feet of Woonasquatucket River and the Property lies within its watershed. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: Diesel fuel 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. (5) Duration of the violation: Considered, but not utilized for this calculation. (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 notifying and obtaining the approval of RIDEM before the Tank Top Sump and Dispenser Sump were repaired or modified. Respondents submitted the Application for the Tank Top Sump repairs, however, RIDEM’s review revealed that the technician was not compliantly trained and certified by the product manufacturer or supplier. Respondents eventually submitted all required documentation and RIDEM authorized use of UST No. 009 on 21 December 2021.
- (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 with the UST Rules. As owners and operators of the Facility, Respondents had complete 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.

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 \$4,375	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Operator training
 VIOLATION NOs.: D (1)(d) through D(1)(h)

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

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

FACTORS CONSIDERED:

Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents were unable to provide written verification that Beck had performed the required monthly inspections of the Facility. Respondents assigned a new Class A/B UST operator in March 2021; however, they have yet to verify that the operator is inspecting the Facility monthly and documenting those inspections on the requisite checklist. Respondents also failed to have the Class A/B UST operators train the assigned Class C UST operators. The UST Rules require that UST owners/operators have trained and certified UST operators assigned to the facility, that at least 1 Class C UST operator be on duty during all hours of operation and that the Class A/B UST operators inspect the facility monthly and then take immediate corrective action if any deficiencies are revealed. Failure to comply would presumably increase the likelihood of a release of petroleum products to the environment and in increased threats to 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 an environmental justice area. The Facility is in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells in the vicinity of the Facility. The UST system is installed within 250 feet of a groundwater reservoir. The USTs are installed within 150 feet of Woonasquatucket River and the Property lies within its 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 diesel fuel 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.
- (5) **Duration of the violation:** Full duration unknown – at least approximately 4 ½ years. Respondents have been non-compliant since at least May 2018.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.

(continued)

(continued from the previous page)

- (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 trained Class C UST operators to the Facility, ensuring that the Facility was operated with at least 1 Class C UST operator on duty during all hours of operation and by ensuring that the registered Class A/B UST operator inspect the Facility monthly. Respondents have yet to mitigate the non-compliance, despite receiving written notices from RIDEM requiring 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 with the UST Rules. As owners and operators of the Facility, Respondents had complete control over the occurrence of the violations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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