

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: 1345 TRAIL, LLC  
1345 Royal Fuel, Inc**

**FILE NO.: OCI-UST-23-33-02186**

**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 24 February 2023, RIDEM issued a *Notice of Intent to Enforce* (“NIE”) to Respondents for one of the alleged violations that is the subject of this *Notice of Violation* (“NOV”). The NIE required specific actions to correct the alleged violation. The NIE was delivered to Respondents on 1 March 2023. As of the date of the NOV, Respondents have failed to comply with the NIE.

**C. FACTS**

- (1) The property is located at 1345 Wampanoag Trail, Assessor's Map 811, Block 1, Parcel 18 in East Providence, Rhode Island (“Property”). The Property includes a motor fuel storage and dispensing system and a convenience store (“Facility”).
- (2) 1345 TRAIL, LLC owns the Property.
- (3) 1345 Royal Fuel, Inc 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 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. 02186.

- (6) The USTs are registered with RIDEM as follows:

| UST ID No. | Date Installed  | Capacity       | Product Stored |
|------------|-----------------|----------------|----------------|
| 006        | 4 December 2000 | 12,000 gallons | Gasoline       |
| 007        | 4 December 2000 | 8,000 gallons  | Gasoline       |

- (7) The USTs and product pipelines are double walled.
- (8) On 14 October 2021, RIDEM received a *Standardized Hydrostatic Tightness Testing Form* for the Facility, which was submitted by Compliance Testing Services, Inc. (“CTS”) on behalf of Respondents. CTS reported that the tank top sump for UST No. 007 and all the dispenser sumps (collectively, “Sumps”) had failed tightness tests performed on 11 October 2021.
- (9) On 28 December 2021, Respondents submitted a *UST Regulation Variance Application Form* (“Variance”) to RIDEM, requesting RIDEM’s approval to temporarily continue operation of the USTs with the deficient Sumps.
- (10) By letter dated 4 January 2022, RIDEM approved the Variance, which allowed Respondents to continue operating the USTs until no later than 4 April 2022.
- (11) On 19 May 2023, RIDEM performed a partial inspection of the Facility and observed that the UST systems were still in operation. The Facility was open and gasoline was being offered for sale. RIDEM’s inspector observed customers dispensing fuel into their vehicles.
- (12) Upon information and belief, Respondents have not repaired the Sumps.
- (13) A review of RIDEM’s file for the Facility revealed that Respondents have failed to submit written verification that the interstitial spaces of UST Nos. 006 and 007 and their product pipelines were tested for tightness by a RIDEM-licensed tightness tester during the year 2022. The most recent tests on file with RIDEM were performed on 24 November 2020.

D. VIOLATION

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

- (1) **UST Rules, Part 1.10(F)(1)(c)** – requiring owners/operators to procure the services of RIDEM-licensed tightness testers to test the interstitial spaces of double walled USTs at 20 years of age and then at least once every 2 years thereafter.
- (2) **UST Rules, Part 1.10(G)(2)(b)** – requiring owners/operators to procure the services of RIDEM-licensed tightness testers to test the interstitial spaces of double walled product pipelines at 20 years of age and then at least once every 2 years thereafter.
- (3) **UST Rules, Part 1.10(N)(3)(d)(1)** – requiring owners/operators to remove UST systems from service if an associated tank top or dispenser sump fails a tightness test.

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) **IMMEDIATELY remove UST Nos. 006 and 007 from service and cease and desist from dispensing fuel from the UST systems.** Written verification of compliance shall be submitted to RIDEM’s Office of Compliance and Inspection (“OC&I”) within 7 days.
- (2) **UST Nos. 006 and 007 shall be kept out of service until** the Sumps have been repaired or replaced in full compliance with Part 1.10(N)(3)(d), Part 1.11 and Part 1.12 of the UST Rules. All repairs or tank system modifications require prior written notification to and approval by RIDEM’s Office of Land Revitalization and Sustainable Materials Management (“OLR&SMM”). If the UST systems are not repaired or modified accordingly within 1 year, the systems shall be permanently closed in full compliance with Part 1.15 of the UST Rules.
- (3) **Within 30 days of receipt of the NOV,** procure the services of a RIDEM-licensed tightness tester to test the interstitial spaces of UST Nos. 006 and 007 and their product pipelines for tightness in accordance with Part 1.10(F)(1)(c), Part 1.10(G)(2)(b) and Part 1.10(H) of the UST Rules. Original copies of the reports shall be submitted to OC&I and OLR&SMM in accordance with Part 1.10(H)(4) 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:

**\$12,375**

- (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 Rules") 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, 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 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 this 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 East Providence, 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) Jenna Giguere of RIDEM's Office of Legal Services at (401) 222-6607 ext. 2772306 or at [jenna.giguere@dem.ri.gov](mailto: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](mailto: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:

1345 TRAIL, LLC  
c/o Haji I. Ahmad, Resident Agent  
1345 Wampanoag Trail  
East Providence, RI 02915

1345 Royal Fuel, Inc.  
c/o Haji I. Ahmad, Registered Agent  
1345 Wampanoag Trail  
East Providence, RI 02915

by Certified Mail.

\_\_\_\_\_



# ADMINISTRATIVE PENALTY SUMMARY

Program: UST  
 File No.: OCI-UST-23-33-02186  
 Respondents: 1345 TRAIL, LLC and 1345 Royal Fuel, Inc

| <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) – Tank tightness testing   | Type II<br><i>(\$12,500 Max. Penalty) *</i> | Minor     | \$1,500             | 1 violation                      | \$1,500         |
| D (2) – Product pipeline tightness testing                             | Type II<br><i>(\$12,500 Max. Penalty) *</i> | Minor     | \$1,500             | 1 violation                      | \$1,500         |
| D (3) – Operating the USTs with deficient tank top and dispenser sumps | Type II<br><i>(\$12,500 Max. Penalty) *</i> | Major     | \$9,375             | 1 violation                      | \$9,375         |
| <b>SUB-TOTAL</b>   |   |           |                     |                                  | <b>\$12,375</b> |

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

| <b>ECONOMIC BENEFIT FROM NON-COMPLIANCE</b>   |
|---|
| <p>COSTS OF COMPLIANCE, EQUIPMENT, O&amp;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:</p> <ul style="list-style-type: none"> <li>- THERE IS NO IDENTIFIABLE BENEFIT FROM NON-COMPLIANCE, OR</li> <li>- THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED.</li> </ul> <p>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.</p> |

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

**TOTAL PENALTY PROPOSED UNDER PENALTY RULES = \$12,375**

# PENALTY MATRIX WORKSHEET

CITATION: Tank tightness testing  
 VIOLATION NO.: D (1)

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

- (1) **The extent to which the act or failure to act was out of compliance:** RIDEM has not received written verification that Respondents procured the services of a RIDEM-licensed tightness tester to test the interstitial spaces of UST Nos. 006 and 007 for tightness during the year 2022. Upon information and belief, the required tightness tests were not performed. Periodic tightness testing of double-walled USTs after they reach 20 years of age is an important, required component of release detection/prevention programs at UST facilities. Failure to comply could allow a leaking tank to remain in use and increase the likelihood of adverse impacts to public health and safety and the environment.
- (2) **Environmental conditions:** The Facility is in a developed area with numerous potential vapor receptors including commercial structures, residential structures and underground utilities. The UST system is in a GA groundwater classification zone, which are groundwater resources determined to be suitable for drinking water use without treatment. The UST system is installed within 470 feet of wetlands associated with Barrington River and the Facility lies within its watershed. Upon information and belief, there are no drinking water supply wells near the Facility.
- (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.
- (5) **Duration of the violation:** Approximately 8 months – Respondents have been in violation since 24 November 2022. The outer walls of the USTs were tested for tightness on 24 November 2020, and it was reported to RIDEM 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 non-compliance:** Respondents failed to prevent the non-compliance by having UST Nos. 006 and 007 tested for tightness before 24 November 2022. Respondents have yet to mitigate the non-compliance.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM 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.

|              |                 |                                  |
|--------------|-----------------|----------------------------------|
| <b>MAJOR</b> | <b>MODERATE</b> | <u>  <b>X</b>  </u> <b>MINOR</b> |
|--------------|-----------------|----------------------------------|

| Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000 |                 | TYPE I               | TYPE II                              | TYPE III           |
|---|-----------------|----------------------|--------------------------------------|--------------------|
| DEVIATION<br>FROM<br>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<br><b>\$1,500</b> | \$250 to \$1,250   |

# PENALTY MATRIX WORKSHEET

CITATION: Product pipeline tightness testing  
 VIOLATION NO.: D (2)

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

- (1) **The extent to which the act or failure to act was out of compliance:** RIDEM has not received written verification that Respondents procured the services of a RIDEM-licensed tightness tester to test the interstitial spaces of the product pipelines for UST Nos. 006 and 007 for tightness during the year 2022. Upon information and belief, the required tightness tests were not performed. Periodic tightness testing of double-walled product pipelines after they reach 20 years of age is an important, required component of release detection/prevention programs at UST facilities. Failure to comply could allow a leaking pipeline to remain in use and increase the likelihood of adverse impacts to public health and safety and the environment.
- (2) **Environmental conditions:** The Facility is in a developed area with numerous potential vapor receptors including commercial structures, residential structures and underground utilities. The UST system is in a GA groundwater classification zone, which are groundwater resources determined to be suitable for drinking water use without treatment. The UST system is installed within 470 feet of wetlands associated with Barrington River and the Facility lies within its watershed. Upon information and belief, there are no drinking water supply wells near the Facility.
- (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.
- (5) **Duration of the violation:** Approximately 8 months – Respondents have been in violation since 24 November 2022. The outer walls of the product pipelines were tested for tightness on 24 November 2020, and it was reported to RIDEM 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 non-compliance:** Respondents failed to prevent the non-compliance by having UST Nos. 006 and 007 tested for tightness before 24 November 2022. Respondents have yet to mitigate the non-compliance.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM 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.

|              |                 |                           |
|--------------|-----------------|---------------------------|
| <b>MAJOR</b> | <b>MODERATE</b> | <u>  X  </u> <b>MINOR</b> |
|--------------|-----------------|---------------------------|

| Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000 |                 | TYPE I               | TYPE II                              | TYPE III           |
|---|-----------------|----------------------|--------------------------------------|--------------------|
| DEVIATION<br>FROM<br>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<br><b>\$1,500</b> | \$250 to \$1,250   |

# PENALTY MATRIX WORKSHEET

CITATION: Operating the USTs with deficient tank top and dispenser sumps  
 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 VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.  |  |  |
| <p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Rules.</p> <ol style="list-style-type: none"> <li>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondents failed to take UST Nos. 006 and 007 out of service and have continued to operate these UST systems after the Sumps failed hydrostatic tightness testing that was performed on 11 October 2021. RIDEM granted a variance to Respondents to continue operating the USTs until 4 April 2022, to allow time for repairs. Respondents failed, however, to make the necessary repairs before the variance expired. Operation of UST systems with deficient tank top and dispenser sumps is prohibited (if the deficient sumps cannot be repaired or replaced within 30 days or if a temporary variance is not granted). The Sumps are designed to contain releases if the pressurized product pipelines housed inside them develop leaks. Failure to comply reduces the likelihood of detecting or preventing releases of the regulated substances to the environment. Failure to comply increases the likelihood of adverse impacts to public health and safety and the environment.</li> <li>(2) <b>Environmental conditions:</b> The Facility is in a developed area with numerous potential vapor receptors including commercial structures, residential structures and underground utilities. The UST system is in a GA groundwater classification zone, which are groundwater resources determined to be suitable for drinking water use without treatment. The UST system is installed within 470 feet of wetlands associated with Barrington River and the Facility lies within its watershed. Upon information and belief, there are no drinking water supply wells near the Facility.</li> <li>(3) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> 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.</li> <li>(5) <b>Duration of the violation:</b> Approximately 16 months – Respondents were required to repair or replace the Sumps, or take the UST systems out of service, on or before 4 April 2022.</li> <li>(6) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</li> </ol> |  |  |
| (continued)  |  |  |

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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 repairing or replacing the Sumps or taking the UST systems out of service before 4 April 2022. Respondents failed to mitigate the non-compliance despite receiving the NIE, which required them to do so.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM 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. The UST Rules expressly requires that UST systems be removed from service if any associated tank top or dispenser sumps fail a tightness test (RIDEM policy allows for the operation of such UST systems only if repairs can be completed within 30 days of the test failure or if a temporary variance is granted). Respondents, as owners and operators of the Facility, 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.

|                    |          |       |
|--------------------|----------|-------|
| <u>  X  </u> MAJOR | MODERATE | MINOR |
|--------------------|----------|-------|

| Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000 |              | TYPE I               | TYPE II                               | TYPE III           |
|---|--------------|----------------------|---------------------------------------|--------------------|
| DEVIATION<br>FROM<br>STANDARD   | <b>MAJOR</b> | \$12,500 to \$25,000 | \$6,250 to \$12,500<br><b>\$9,375</b> | \$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   |