

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: DADA REALTY, LLC
JANU CORP.**

FILE NO.: OCI-UST-23-1-00752

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 19 October 2021, RIDEM issued a letter to JANU CORP. by regular mail for some of the alleged violations that are the subject of this *Notice of Violation* (“NOV”). The letter required specific actions to correct the alleged violations. On 11 August 2022, RIDEM issued a *Notice of Intent to Enforce* (“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. In response to the NIE, Respondents’ attorney advised RIDEM that Respondents were in the process of hiring a qualified contractor to comply with the NIE. As of the date of the NOV, Respondents have failed to fully comply with the NIE.

C. FACTS

- (1) The property is located at 1196 West Shore Road, Assessor's Plat 336, Lot 148 in Warwick, Rhode Island (“Property”). The Property includes a gasoline filling station and a convenience store ("Facility").
- (2) DADA REALTY, LLC owns the Property.
- (3) JANU CORP. and 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. 00752.

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

UST ID No.	Date Installed	Capacity	Product Stored
009	24 November 1998	8,000 gallons	Gasoline
010	24 November 1998	8,000 gallons	Gasoline
011	24 November 1998	8,000 gallons	Gasoline

- (7) The USTs are double walled.
- (8) On 12 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 sumps for UST Nos. 010 and 011 and both the dispenser sumps had failed tightness tests performed on 1 October 2021.
- (9) On 4 August 2022, RIDEM inspected the Facility. The inspection and subsequent file reviews revealed the following:
- (a) Written verification that Respondents had procured the services of a RIDEM-licensed tightness tester to test the interstitial spaces of UST Nos. 009, 010 and 011 for tightness during each of the years 2021 and 2023 is/was not available. Interstitial space tightness test reports for these USTs for each of the years 2021 and 2023 have not been received by RIDEM.
 - (b) Written verification that Respondents had procured the services of a RIDEM-licensed tightness tester to test the interstitial spaces of the product pipelines for UST Nos. 009/010 and 011 for tightness during each of the years 2021 and 2023 is/was not available. Interstitial space tightness test reports for these product pipelines for the years 2021 and 2023 have not been received by RIDEM.
 - (c) The tank top sumps and double-walled spill containment basins for UST Nos. 009, 010 and 011 were holding liquids at the time of inspection.
 - (d) The interstitial space monitoring gauge for the spill containment basin for UST No. 009 indicated that liquid was present in the interstitial space at the time of inspection. The inspector was unable to determine how long the gauge had been indicating liquid intrusion as Respondents had failed to notify RIDEM of the issue.
 - (e) Non-compliant deployment of the leak sensors inside the tank top sumps for UST Nos. 010 and 011. The sensors were not positioned within 1 inch of the sumps’ low points.

- (10) On 2 March 2023, RIDEM inspected the Facility and observed that the UST systems were still in operation. The Facility was open, and gasoline was being offered for sale. The Facility attendant acknowledged that the USTs remained in operation.
- (11) On 30 March 2023, Respondents submitted a *Sump and Under-Dispenser Repair Application* to RIDEM (“Application”).
- (12) By letter dated 18 May 2023, RIDEM approved the Application (“Approval”).
- (13) As of the date of the NOV, Respondents have failed to fully correct the alleged violations set forth in sections C (9) and C (10) 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, Part 1.10(B)(1)** – requiring that USTs be maintained and operated by trained personnel and in compliance with the national codes of practice incorporated in the UST Rules.
- (2) **UST Rules, Part 1.10(F)(1)(c)** – requiring tightness testing of the interstitial spaces of double walled USTs by a RIDEM-licensed tightness tester at 20 years of age and then once every 2 years thereafter.
- (3) **UST Rules, Part 1.10(G)(2)(b)** – requiring tightness testing of the interstitial spaces of double walled product pipelines by a RIDEM-licensed tightness tester at 20 years of age and then once every 2 years thereafter.
- (4) **UST Rules, Part 1.10(N)(1)(a)** – requiring that spill containment basins be properly maintained, in good condition and free of water, product, liquid or debris.
- (5) **UST Rules, Part 1.10(N)(1)(c)(3) and Part 1.10(N)(1)(c)(4)** – requiring that double walled spill containment basins be repaired or replaced within 180 days if the interstitial monitoring device indicates that the interstitial space is no longer liquid tight and requiring that RIDEM be notified of such a failure within 24 hours.
- (6) **UST Rules, Part 1.10(N)(3)(b)** – requiring that leak sensors deployed in sumps be secured in an upright position and located no more than 1 inch above the lowest points of the sumps.
- (7) **UST Rules, Part 1.10(N)(3)(c)** – pertaining to inspection and monitoring of sumps.
- (8) **UST Rules, Part 1.10(N)(3)(d)(1)** – requiring that USTs be removed 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. 009, 010 and 011 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. 009, 010 and 011 shall be kept out of service until** the deficient tank top and dispenser 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 and the Approval. Any repairs or tank system modifications require prior written notification to and approval by the RIDEM's Office of Land Revitalization and Sustainable Materials Management ("OLR&SMM"). If the UST systems are not repaired or modified within 1 year, permanently close the UST systems in full compliance with Part 1.15 of the UST Rules.
- (3) **IMMEDIATELY** evacuate and clean the spill containment basins and tank top sumps for UST Nos. 009, 010 and 011 in accordance with Part 1.10(B)(1), Part 1.10(N)(1)(a) and Part 1.10(N)(3) of the UST Rules. All wastes removed from the basins and sumps shall be managed and disposed of or recycled in full compliance with Part 1.7.3 of Rhode Island's *Rules and Regulations for Hazardous Waste Management* (250-RICR-140-10-1). Written or photographic verification of compliance shall be submitted to OC&I.
- (4) **IMMEDIATELY** reposition each of the leak sensors deployed in the tank top sumps for UST Nos. 010 and 011 so that each sensor is perpendicular to the sump's floor and set no more than 1 inch above the sumps' low point, as per Part 1.10(N)(3)(b) of the UST Rules. Written or photographic verification of compliance shall be submitted to the OC&I.
- (5) **Within 30 days of receipt of the NOV,** procure the services of a qualified person to inspect and test the spill containment basin for UST No. 009 in accordance with Part 1.10(N)(1)(c) of the UST Rules (to determine the cause of the liquid intrusion warning). If repair or replacement of the basin is deemed necessary, all such work shall be completed in accordance with the manufacturer's specifications and Part 1.10(N)(1)(c) and Part 1.12 of the UST Rules. Written verification of compliance shall be submitted to OC&I.

- (6) **After the tank top sumps, dispenser sumps and spill containment basin are repaired or replaced and before returning the UST systems to operation:**
- (a) Procure the services of a RIDEM-licensed tightness tester to test the interstitial spaces of UST Nos. 009, 010 and 011 for tightness in accordance with Part 1.10(F)(1)(c) and Part 1.10(H) of the UST Rules. Original copies of the tightness test report shall be submitted to OC&I and OLR&SMM in accordance with Part 1.10(H)(4) of the UST Rules.
 - (b) Procure the services of a RIDEM-licensed tightness tester to test the interstitial spaces of the product pipelines for UST Nos. 009/010 and 011 for tightness in accordance with Part 1.10(G)(2)(b) and Part 1.10(H) of the UST Rules. Original copies of the tightness test report 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:

\$16,377

- (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:

Joseph J. LoBianco, 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 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 Warwick, Rhode Island, wherein the Property is located, to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and Section 42-17.1-2 (31), as amended.
- (7) The NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Joseph J. LoBianco of RIDEM's Office of Legal Services at (401) 222-6607 ext. 2772302 or at joseph.lobianco@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:

DADA REALTY, LLC
c/o Joseph A. Lamagna, Esq., Resident Agent
2417 Mendon Road
Woonsocket, RI 02895

JANU CORP.
c/o Joseph A. Lamagna, Esq., Registered Agent
2417 Mendon Road
Woonsocket, RI 02895

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: UST
 File No.: OCI-UST-23-1-00752
 Respondents: DADA REALTY, LLC and JANU 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 (2) – Failure to test the tanks’ interstitial spaces for tightness	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,750	1 violation	\$1,750
D (3) – Failure to test the product pipelines’ interstitial spaces for tightness	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,500	1 violation	\$1,500
D (1), (4), (6) & (7) – Failure to compliantly maintain spill containment basins and sumps and compliantly deploy pipeline leak sensors	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,500	1 violation	\$1,500
D (5) – Failure to compliantly respond to a leak detection signal for a double walled spill containment basin	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,500	1 violation	\$1,500
D (8) – Operating the USTs with deficient tank top and dispenser sumps	Type II <i>(\$12,500 Max. Penalty) *</i>	Major	\$9,375	1 violation	\$9,375
SUB-TOTAL					\$15,625

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

ADMINISTRATIVE PENALTY SUMMARY (continued)

ECONOMIC BENEFIT FROM NON-COMPLIANCE			
<p>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:</p> <ul style="list-style-type: none"> - THERE IS NO IDENTIFIABLE BENEFIT FROM NON-COMPLIANCE, OR - THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED. 			
DESCRIPTION OF BENEFIT	CALCULATION		AMOUNT
<p>Delayed cost in testing the tanks and pipelines for tightness by a licensed tester during the year 2023. 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>\$1,102</p> <p>February 2021</p> <p>9/1/2023</p> <p>8/1/2023</p> <p>7.5%</p>	<p>\$19</p>
<p>Avoided cost in testing the tanks and pipelines for tightness by a licensed tester during the year 2021. 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>\$1,102</p> <p>February 2021</p> <p>8/1/2023</p> <p>8/1/2023</p> <p>7.5%</p>	<p>\$733</p>
SUB-TOTAL			\$752

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 RULES = \$16,377

PENALTY MATRIX WORKSHEET

CITATION: Failure to test the tanks' interstitial spaces for tightness
 VIOLATION NO.: D (2)

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

DEVIATION FROM THE STANDARD
 THE DEGREE TO WHICH A 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:** Written verification that Respondents had procured the services of a RIDEM-licensed tightness tester to test the interstitial spaces of UST Nos. 009, 010 and 011 for tightness during each of the years 2021 and 2023 is/was not available. RIDEM has not received interstitial space tightness test reports for these USTs for each of the years 2021 and 2023. Upon information and belief, Respondents failed to have the tightness tests performed. These tightness tests are important, required components of leak detection programs at regulated UST facilities. Failure to comply could allow a leaking tank to remain in use and result in adverse impacts to public health and safety and the environment.
- (2) **Environmental conditions:** The Facility is in a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. The UST system is in a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. The Facility is within Old Mill Creek/Narragansett Bay watershed. The USTs are within 330 feet of a regulated coastal wetland associated with Lockwood Brook.
- (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:** 2 years. The tanks were required to be tested on or before 19 February 2021 and then again before 19 February 2023.
- (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 when they failed to have the tanks tested on or before 19 February 2021 and then again before 19 February 2023. Respondents failed to mitigate the non-compliance despite receiving the NIE 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 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 tank tightness testing requirements set forth in the UST Rules. Periodic tightness testing of the interstitial spaces of double-walled USTs is expressly required by the UST Rules. 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.

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 test the product pipelines' interstitial spaces for tightness
 VIOLATION NO.: D (3)

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 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:** Written verification that Respondents had procured the services of a RIDEM-licensed tightness tester to test the interstitial spaces of the product pipelines for UST Nos. 009/010 and 011 for tightness during each of the years 2021 and 2023 is/was not available. Interstitial space tightness test reports for these pipelines for each of the years 2021 and 2023 have not been received by RIDEM. Upon information and belief, Respondents failed to have the tightness tests performed. These tightness tests are important, required components of pipeline leak detection programs at regulated UST facilities. Failure to comply could allow a leaking pipeline to remain in use and result in adverse impacts to public health and safety and the environment.
- (2) **Environmental conditions:** The Facility is in a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. The UST system is in a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. The Facility is within Old Mill Creek/Narragansett Bay watershed. The USTs are within 330 feet of a regulated coastal wetland associated with Lockwood Brook.
- (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:** 2 years. The pipelines were required to be tested on or before 19 February 2021 and then again before 19 February 2023.
- (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 when they failed to have the pipelines tested on or before 19 February 2021 and then again before 19 February 2023. Respondents failed to mitigate the non-compliance despite receiving the NIE 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 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 product pipeline tightness testing requirements set forth in the UST Rules. Periodic tightness testing of the interstitial spaces of double-walled product pipelines is expressly required by the UST Rules. 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.

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

PENALTY MATRIX WORKSHEET

CITATION: Failure to compliantly maintain spill containment basins and sumps and compliantly deploy pipeline leak sensors

VIOLATION NOs.: D (1), (4), (6) and (7)

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>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Rules.</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 keep the spill containment basins and tank top sumps free of liquids and failed to ensure that the pipeline leak sensors for UST Nos. 010 and 011 were deployed within 1 inch of the tank top sumps’ low points. Failure to comply diminishes both the effectiveness of the spill containment around the fill pipes and the pipeline leak detection system, which could result in adverse impacts to public health and safety and the environment. (2) Environmental conditions: The Facility is in a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. The UST system is in a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. The Facility is within Old Mill Creek/Narragansett Bay watershed. The USTs are within 330 feet of a regulated coastal wetland associated with Lockwood Brook. (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: Full duration unknown – at least 8 months. (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 when they failed to keep the basins and sumps free of liquids and compliantly deploy the pipeline leak sensors. Respondents failed to mitigate the non-compliance despite receiving the NIE 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 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 spill containment basin maintenance, sump maintenance and pipeline leak detection system operation requirements set forth in the UST Rules. Compliant maintenance of spill containment basins and sumps and compliant operation of pipeline leak detection systems are expressly required by the UST Rules. Respondents, as owners and operators of the Facility, 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 \$1,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to compliantly respond to a leak detection signal for a double walled spill containment basin

VIOLATION NO.: D (5)

TYPE		
<p style="text-align: center;">___ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;"><u>X</u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;">___ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A 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 Rules.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: At the time of the 4 August 2022 inspection, RIDEM’s inspector observed that the annular space monitoring gauge for the spill containment basin for UST No. 009 was indicating that liquid was present in the annular space. Upon information and belief, Respondents failed to immediately investigate the warning signal and report it to RIDEM. The presence of liquid in the annular space indicates that there may be a breach or defect in the inner or outer walls of the basin, which could result in adverse impacts to public health and safety and the environment. (2) Environmental conditions: The Facility is in a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. The UST system is in a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. The Facility is within Old Mill Creek/Narragansett Bay watershed. The USTs are within 330 feet of a regulated coastal wetland associated with Lockwood Brook. (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: Unknown, due to Respondents’ failure to report the warning signal to RIDEM. (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 when they failed to immediately report, investigate and rectify the spill containment basin annular space liquid intrusion issue. Respondents failed to mitigate the non-compliance despite receiving the NIE from RIDEM, which required that they do so. As of the date of the NOV, Respondents have yet to notify RIDEM whether they have investigated and rectified the problem.
- (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 immediately with the double walled spill containment basin warning signal response requirements set forth in the UST Rules. Immediate response, reporting and remedial action are expressly required by the UST Rules for such warning signals. 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.

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: Operating the USTs with deficient tank top and dispenser sumps

VIOLATION NO.: D (8)

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>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Rules.</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 take UST Nos. 009, 010 and 011 out of service and have continued to operate these UST systems after the tank top sumps for UST Nos. 010 and 011 and the dispenser sumps failed hydrostatic tightness testing on 1 October 2021. Operation of UST systems with deficient tank top and dispenser sumps is prohibited by the UST Rules (if the deficient sumps cannot be repaired or replaced within 30 days). These 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. (2) Environmental conditions: The Facility is in a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. The UST system is in a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. The Facility is within Old Mill Creek/Narragansett Bay watershed. The USTs are within 330 feet of a regulated coastal wetland associated with Lockwood Brook. (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: 17 months. Respondents were required to repair or replace the sumps, or take the UST systems out of service, on or before 1 November 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 noncompliance:** Respondents failed to prevent the non-compliance when they failed to repair or replace the sumps or take the USTs out of service before 1 November 2021. Respondents failed to mitigate the non-compliance despite receiving written notices 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 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 immediately with the sump tightness testing requirements set forth in the UST Rules. The UST Rules expressly requires that deficient sumps be repaired or replaced within 30 days, or the associated UST systems be removed from service. 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
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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 \$9,375	\$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