

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Asa U. Mumtaz

FILE NO.: OCI-UST-23-12-01476

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 party (“Respondent”) has violated certain statutes and/or administrative regulations under RIDEM's jurisdiction.

B. ADMINISTRATIVE HISTORY

On 7 December 2021, RIDEM’s Office of Land Revitalization and Sustainable Materials Management (“OLR&SMM”) issued a letter by regular mail to Respondent for some of the alleged violations that are the subject of this Notice of Violation (“NOV”). The letter required specific actions to correct the violations. On 2 March 2023, OLR&SMM issued a *Notice of Intent to Enforce* (“NIE”) by certified mail to Respondent for these violations. The NIE required specific actions to correct the violations. The NIE was delivered to Respondent on 8 March 2023. On 2 March 2023, RIDEM’s Office of Compliance and Inspection (“OC&I”) issued a separate NIE to Respondent for an additional alleged violation that is the subject of the NOV. The NIE required specific actions to correct the violation. The NIE was delivered to Respondent on 6 March 2023. As of the date of the NOV, Respondent has failed to comply with the NIEs.

C. FACTS

- (1) The property is located at 7780 Post Road, Tax Assessor’s Plat 139, Lot 7 in North Kingstown, Rhode Island ("Property"). The Property includes a motor fuel storage and dispensing system and a convenience store (“Facility”).
- (2) ASNA Corp. owns the Property.
- (3) On 12 October 2022, the *Certificate of Incorporation/Authority* for ASNA Corp. was revoked by the Rhode Island Secretary of State. Asa U. Mumtaz is the last known president of ASNA Corp.

- (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. 01476.
- (6) The USTs are registered with RIDEM as follows:

UST ID No.	Date Installed	Capacity	Product Stored
004	7 February 1994	12,000 gallons	Gasoline
005	7 February 1994	6,000 gallons	Gasoline
006	7 February 1994	6,000 gallons	Diesel

- (7) The product pipelines for the USTs are double walled.
- (8) The spill containment basin for the UST No. 006 is single walled.
- (9) On 1 December 2021, RIDEM was notified by Compliance Testing Services, Inc. (“CTS”) that the following UST system components had failed tightness tests performed at the Facility on 1 December 2021:
 - (a) The outer walls of the product pipelines for UST Nos. 004 and 006.
 - (b) The tank top sumps for UST Nos. 004 and 006.
 - (c) The sumps for dispenser nos. 1/2 and 5/6.
 - (d) The spill containment basin for UST No. 006.
- (10) On or about 7 March 2022, RIDEM issued a letter to all registered UST owners/operators to remind them that they were required to comply with the UST Environmental Results Program (“ERP”) by inspecting their facilities, completing *Compliance Certification Checklists*, *Certification Statement* forms and any necessary *Return to Compliance Plans* (“2022 Compliance Certification Forms”) and submitting the forms to RIDEM before 30 June 2022.
- (11) On or about 1 August 2022, RIDEM sent a second written notice to all non-compliant registered UST owners/operators to remind them of the requirement to comply with the ERP. The non-compliant UST owners/operators were provided a second opportunity to complete and submit the required 2022 Compliance Certification Forms to RIDEM on or before 31 August 2022.
- (12) On 6 July 2023, RIDEM inspected the Facility. The inspection revealed that the Facility was shut down and the USTs were not in operation.

- (13) A review of RIDEM's file for the Facility revealed that RIDEM has not received written verification that Respondent had procured the services of a qualified cathodic protection tester to test the sacrificial anode cathodic protection for UST Nos. 004 and 005/006 during the year 2022. The most recent test on file with RIDEM was performed on 19 June 2019.
- (14) As of the date of the NOV, Respondent has not applied to RIDEM to place the USTs into temporary closure.
- (15) As of the date of the NOV, Respondent has failed to correct the issues described in subsection C (9) above.
- (16) As of the date of the NOV, RIDEM has not received completed 2022 Compliance Certification Forms for the Facility from Respondent.

D. VIOLATION

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

- (1) **UST Rules, Part 1.10(C)(1)(c)** – requiring UST owners/operators to inspect their facilities, complete the Compliance Certification Forms and submit the forms to RIDEM by the specified due date.
- (2) **UST Rules, Part 1.10(E)(5)** – requiring that UST sacrificial anode cathodic protection systems be tested by a qualified cathodic protection tester at least once every 3 years.
- (3) **UST Rules, Part 1.10(G)(2)(d)(5)** – requiring owners/operators to either have failed product pipelines repaired within 60 days or place the UST systems into a compliant temporary closure.
- (4) **UST Rules, Part 1.10(N)(1)(b)(1)** – requiring that single walled spill containment basins be repaired or replaced within 30 days of a tightness test failure.
- (5) **UST Rules, Part 1.10(N)(3)(d)(1)** – requiring that UST systems be removed from service and placed into temporary closure if any associated tank top or dispenser sumps fail a tightness test.
- (6) **UST Rules, Part 1.15(B)(1)** – prohibiting the abandonment of USTs or UST systems.

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 7 days of receipt of the NOV**, place UST Nos. 004, 005 and 006 into a compliant temporary closure and submit a completed *Underground Storage Tank Temporary Closure Application* to RIDEM's Office of Land Revitalization & Sustainable Materials Management ("OLR&SMM") in accordance with Part 1.10(G)(2)(d)(5), Part 1.15(C)(3), and Part 1.15(C)(4) of the UST Rules.
- (2) **Upon approval from OLR&SMM**, comply with Part 1.15(C)(5) and Part 1.15(C)(6) of the UST Rules while the tanks remain in temporary closure.
- (3) **UST Nos. 004, 005 and 006 shall be kept out of service until** the deficient product pipelines, tank top sumps and dispenser sumps have been repaired or replaced in full compliance with Part 1.10(G)(2)(d)(4), 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 OLR&SMM. If the product pipelines, tank top sumps and dispenser sumps are not repaired or replaced within 1 year, permanently close UST Nos. 004 and 005/006 in full compliance with Part 1.15 of the UST Rules.
- (4) **Within 30 days of receipt of the NOV**, replace the spill containment basin for UST No. 006 in full compliance with Part 1.10(N)(1)(b)(1) and Part 1.11 of the UST Rules. Written verification of compliance shall be submitted to OLR&SMM (via submittal of a *Spill Containment Basin Replacement Form*).
- (5) **Within 30 days of receipt of the NOV**, procure the services of a qualified cathodic protection tester to test the sacrificial anode cathodic protection for UST Nos. 004 and 005/006 in accordance with Part 1.10(E) of the UST Rules. Original copies of the test report shall be submitted to OLR&SMM in accordance with Part 1.10(E)(7) of the UST Rules and OC&I.
- (6) **Within 30 days of receipt of the NOV**, submit to OC&I completed 2022 Compliance Certification Forms for the Facility in accordance with Part 1.10(C)(1) 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:

\$14,500

- (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 Respondent 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, Suite 425
Providence, RI 02908-5767

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

(4) Each respondent must file a separate and timely request for an administrative hearing before 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 Town of North Kingstown, 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. All other inquiries should be directed to Tracey Tyrrell of RIDEM's Office of Compliance and Inspection at 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:

Asa U. Mumtaz
454 Fan Hill Road
Monroe, CT 06468

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: UST
 File No.: OCI-UST-23-12-01476
 Respondent: Asa U. Mumtaz

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION NO. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D (1) – ERP	Type II <i>(\$12,500 Max. Penalty) *</i>	Moderate	\$3,000	1 violation	\$3,000
D (2) – Failure to test the cathodic protection for the USTs	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,500	1 violation	\$1,500
D (3), D (5), D (6) and D (7) – Failure to apply for and obtain a temporary closure approval from RIDEM and abandonment of USTs	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$2,500	3 violations	\$7,500
D (4) – Failure to repair or replace a deficient spill containment basin	Type II <i>(\$12,500 Max. Penalty) *</i>	Moderate	\$2,500	1 violation	\$2,500
<i>SUB-TOTAL</i>					\$14,500

*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 Respondent has 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 RULES = \$14,500

PENALTY MATRIX WORKSHEET

CITATION: ERP
 VIOLATION NO.: D (1)

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:** RIDEM has not received completed 2022 Compliance Certification Forms for the Facility from Respondent. The UST Rules require all UST owners to certify compliance with the UST Rules by completing and submitting the Compliance Certification Forms within the time frame specified by RIDEM.
- (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:** The volatile nature of gasoline presents both a public health hazard (due to the potential inhalation of benzene) and a 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.
- (5) **Duration of the violation:** Approximately 1 year. The 2022 Compliance Certification Forms were due on or before 30 June 2022.
- (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:** Respondent failed to prevent the non-compliance by submitting completed 2022 Compliance Certification Forms for the Facility to RIDEM before 30 June 2022. Respondent has made no apparent attempt to mitigate the noncompliance despite receiving the NIE from RIDEM, which required that he 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:** Respondent, as owner of the Facility, had full control over the occurrence of the violation. RIDEM issued letters to UST owners/operators on or about 7 March 2022 and 1 August 2022 reminding the owners/operators of the requirement to comply with the ERP compliance certification rule and directing the owners/operators to RIDEM's website to obtain the necessary forms and workbooks. RIDEM issued the NIE to Respondent on 2 March 2023 requiring Respondent to submit completed 2022 Compliance Certification Forms to RIDEM within 15 days of receipt of the NIE.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u> </u> MAJOR	<u> X </u> MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250 \$3,000	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to test the cathodic protection for the USTs
 VIOLATION NO.: D (2)

TYPE		
<p style="text-align: center;">___ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">X TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A 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 Rules.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: RIDEM has not received a cathodic protection test report for UST Nos. 004 and 005/006 for the year 2022 from Respondent. The UST Rules require UST owners/operators to procure the services of a qualified cathodic protection tester to test sacrificial anode cathodic protection systems at least once every 3 years to determine whether the steel USTs are receiving adequate levels of corrosion protection. Upon information and belief, this required test was not performed during the year 2022. Failure to comply could result in corrosion of USTs and a release of petroleum product to the subsurface. (2) Environmental conditions: The USTs are in a GA groundwater classification zone, which are groundwater resources considered to be suitable for drinking water use without treatment. The Facility is in a developed area with potential vapor receptors, including commercial structures, residential structures and underground utilities. The Facility is within 400 feet of a high value/high vulnerability habitat. The USTs are within a coastal flood zone. The USTs are within 25 feet of a regulated freshwater wetland. The Facility is within Narragansett Bay – Lower West Passage 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 public health hazard (due to the potential inhalation of benzene) and a 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. (5) Duration of the violation: Approximately 1 year. Respondent was required to have the cathodic protection tested before 19 June 2022. (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:** Respondent failed to prevent the non-compliance by having the cathodic protection tested before 19 June 2022. Respondent has made no apparent attempt to mitigate the alleged noncompliance.
- (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:** Respondent, as owner of the Facility, had full control over the occurrence of the violation. Testing of UST sacrificial anode cathodic protection systems at least once every 3 years is expressly required by the UST Rules.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u> </u> MAJOR	<u> </u> 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 apply for and obtain a temporary closure approval from RIDEM and abandonment of USTs

VIOLATION NOs.: D (3), D (5), D (6) and D (7)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </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.		
<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: Respondent failed to repair the deficient pipelines and sumps within 30 days of the test failures. Respondent ceased operating UST Nos. 004, 005 and 006 at some point after 1 December 2021; however, he failed to notify RIDEM and failed to apply for and obtain a temporary closure approval from RIDEM, thereby abandoning the UST systems. Abandonment of UST systems is prohibited by the UST Rules. Abandoned USTs present a threat to public health and safety and the environment if they are not emptied of product and then neglected or if persons attempt to put them back into operation without repairing any deficiencies or without seeking RIDEM’s review and approval. (2) Environmental conditions: The USTs are in a GA groundwater classification zone, which are groundwater resources considered to be suitable for drinking water use without treatment. The Facility is in a developed area with potential vapor receptors, including commercial structures, residential structures and underground utilities. The Facility is within 400 feet of a high value/high vulnerability habitat. The USTs are within a coastal flood zone. The USTs are within 25 feet of a regulated freshwater wetland. The Facility is within Narragansett Bay – Lower West Passage 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 public health hazard (due to the potential inhalation of benzene) and a 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. (5) Duration of the violation: Full duration unknown – at least 1 month. RIDEM’s inspection of the Facility on 6 July 2023 revealed the USTs were abandoned. (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:** Respondent failed to prevent the non-compliance when he failed to repair the deficient pipelines and sumps within 30 days of the test failures or apply for and obtain RIDEM's approval for temporary closure of UST Nos. 004, 005 and 006 when they were taken out of service. Respondent failed to mitigate the non-compliance despite receiving written notices from RIDEM, which required that he 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:** Respondent, as owner of the Facility, had full control over the occurrence of the violations. The UST Rules expressly requires that defective pipelines and sumps be repaired or replaced within specified time frames and that the UST systems be placed into a compliant temporary closure if the defective components cannot be repaired or replaced as required.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u> </u> MAJOR	<u> </u> 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 repair or replace a deficient spill containment basin
 VIOLATION NO.: D (4)

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 Rules.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent failed to repair or replace the spill containment basin for UST No. 006 after it failed a tightness test that was performed on 1 December 2021. The UST Rules require repair or replacement of defective spill containment basins within 30 days of a failed test.
- (2) **Environmental conditions:** The USTs are in a GA groundwater classification zone, which are groundwater resources considered to be suitable for drinking water use without treatment. The Facility is in a developed area with potential vapor receptors, including commercial structures, residential structures and underground utilities. The Facility is within 400 feet of a high value/high vulnerability habitat. The USTs are within a coastal flood zone. The USTs are within 25 feet of a regulated freshwater wetland. The Facility is within Narragansett Bay – Lower West Passage watershed. Keeping a UST system in operation with a defective spill containment basin increases the likelihood of a release of petroleum product to the subsurface.
- (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.
- (5) **Duration of the violation:** Approximately 1½ years. Respondent was required to repair or replace the basin by 1 January 2022.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.

(continued)

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent the non-compliance by repairing or replacing the failed spill containment basin by 1 January 2022. Respondent has made no apparent attempt to mitigate the alleged noncompliance despite receiving the NIE from RIDEM, which required that he 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:** Respondent, as owner of the Facility, had full control over the occurrence of the violations. The UST Rules expressly require that defective spill containment basins be repaired or replaced within 30 days of a test failure.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

___ MAJOR	__X__ 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