

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: PHILLIPPE REALTY, LLC
C T GAS, INC**

FILE NO.: OCI-UST-19-8-01063

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Department of Environmental Management (the “Director” of “DEM”) has reasonable grounds to believe that the above-named parties (“Respondents”) have violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Administrative History

On 14 August 2018, DEM issued a *Letter of Non-Compliance* (“LNC”) to Respondents for the violations that are the subject of this *Notice of Violation* (“NOV”). Respondents failed to comply with the remedial requirements set forth by DEM in the LNC. On 19 November 2018, DEM issued a *Notice of Intent to Enforce* (“NIE”) to PHILLIPPE REALTY, LLC for the violations that are the subject of the NOV. The NIE was delivered to Respondent on 26 November 2018. Respondent failed to comply with the remedial requirements set forth by DEM in the NIE. On 25 March 2019, DEM issued an Expedited Citation Notice (“ECN”) to Respondents for the violations that are the subject of the NOV. Respondents complied with the remedial requirements set forth in the ECN, however, Respondents failed to pay the assessed administrative penalty and the ECN expired.

C. Facts

- (1) The property is located at 503 Smithfield Road in the Town of North Smithfield, Rhode Island (the “Property”). The Property includes a motor fuel storage and dispensing system and a convenience store (the “Facility”).
- (2) PHILLIPPE REALTY, LLC owns the Property.
- (3) C T GAS, INC operates the Facility.
- (4) Underground storage tanks (“USTs” or “tanks”) are located on the Property, which are used for storage of petroleum products and which are subject to regulations titled *Rules and Regulations for Underground Storage Facilities used for Regulated Substances and Hazardous Materials* (the “UST Regulations”).
- (5) The Facility is registered with DEM and is identified as UST Facility No. 01063.

(6) The USTs are registered with DEM as follows:

UST No.	Date Installed	Capacity	Product Stored
010	1 July 1994	12000 gallons	Gasoline
011	1 July 1994	10000 gallons	Gasoline

(7) UST Nos. 010 and 011 and their product pipelines are double-walled.

(8) On 10 August 2018, DEM inspected the Facility. The inspection revealed the following:

- (a) Written verification that the interstitial spaces of UST Nos. 010 and 011 had been tested for tightness by a DEM-licensed tightness tester during the year 2016 was not available. An interstitial space tightness test report for these USTs for the year 2016 has not been received by DEM;
- (b) Written verification that the interstitial spaces of the product pipelines for UST Nos. 010 and 011 had been tested for tightness by a DEM-licensed tightness tester during the year 2016 was not available. An interstitial space tightness test report for these product pipelines for the year 2016 has not been received by DEM;
- (c) Written verification that the line leak detectors for UST Nos. 010 and 011 had been tested by a qualified person during each of the years 2016 and 2017 was not available;
- (d) Written verification that the dispenser shear valves had been tested by a qualified person during each of the years 2016 and 2017 was not available;
- (e) Written verification that the *Veeder Root TLS 350* continuous monitoring system had been certified/tested by a qualified person during each of the years 2016 and 2017 was not available; and
- (f) Written verification that the Facility had been inspected on a monthly basis by a certified Class A or B UST facility operator during the time period of April 2016 through July 2018 was not available.

(9) Mr. Toni Germanos was registered with DEM as the designated Class A and B UST facility operator for the Facility. Mr. Germanos' *International Code Council* ("ICC") certification as a Rhode Island Class A/B UST facility operator expired on or about 8 June 2018.

(10) On 2 April 2019, Mr. Elias Sleiman was registered with DEM as the designated Class A and B UST facility operator for the Facility. Respondents operated the Facility for more than 9 months without ICC-certified Class A and B UST facility operators assigned and registered with DEM.

- (11) As of the date of the NOV, Respondents have failed to demonstrate that they have addressed the noncompliance described in subsection C (8)(f) above.

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 Regulations [effective 26 April 2011 to 20 November 2018], Rule 8.08(A)(3)** – requiring that the interstitial spaces of double-walled USTs be tested for tightness by a DEM-licensed tightness tester at 20 years of age and every 2 years thereafter.
- (2) **UST Regulations [effective 26 April 2011 to 20 November 2018], Rule 8.09(A)(2)** – requiring that the interstitial spaces of double-walled product pipelines be tested for tightness by a DEM-licensed tightness tester at 20 years of age and every 2 years thereafter.
- (3) **UST Regulations [effective 26 April 2011 to 20 November 2018], Rule 8.11** – requiring that line leak detectors be tested by qualified persons on an annual basis.
- (4) **UST Regulations [effective 26 April 2011 to 20 November 2018], Rule 8.12** – requiring that shear valves be tested by qualified persons on an annual basis.
- (5) **UST Regulations [effective 26 April 2011 to 20 November 2018], Rule 8.15(F)** – requiring that UST continuous monitoring systems be certified/tested by qualified persons on an annual basis.
- (6) **UST Regulations [effective 26 April 2011 to 20 November 2018], Rule 8.22(A)** – requiring UST owners/operators to have trained and certified Class A and B operators assigned to the facility and registered with DEM.
- (7) **Rhode Island Code of Regulations titled *Rules and Regulations for Underground Storage Facilities used for Regulated Substances and Hazardous Materials (RICR-250-140-25-1)* [effective 20 November 2018 to Current], Part 1.10(U)(2) and Part 1.10(U)(4)** – requiring UST owners/operators to have trained and certified Class A and B operators assigned to the facility and registered with DEM.
- (8) **UST Regulations [effective 26 April 2011 to 20 November 2018], Rule 8.22(F)** – requiring that regulated UST facilities be inspected monthly by the registered, certified Class A and/or B operators.
- (9) **Rhode Island Code of Regulations titled *Rules and Regulations for Underground Storage Facilities used for Regulated Substances and Hazardous Materials (RICR-250-140-25-1)* [effective 20 November 2018 to Current], Part 1.10(U)(5)(k), Part 1.10(U)(6)(g) and Part 1.10(U)(9)** – requiring that regulated UST facilities be inspected monthly by the registered, certified Class A and/or B operators.

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 **within 30 days of receipt of the NOV** submit to DEM's Office of Compliance and Inspection written verification that Mr. Sleiman (the registered Class A/B UST facility operator) is performing the monthly facility inspections required in Part 1.10(U)(5)(k), Part 1.10(U)(6)(g) and Part 1.10(U)(9) of the Rhode Island Code of Regulations titled *Rules and Regulations for Underground Storage Facilities used for Regulated Substances and Hazardous Materials* (RICR-250-140-25-1) and documenting the results of those inspections on the requisite checklist.

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:

\$6,545

- (2) The proposed administrative penalty is calculated pursuant to the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* and must be paid to DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a check made payable to the "General Treasury - Water & Air Protection Program" and shall be forwarded to DEM's Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against Respondents in the NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if DEM determines that reasonable efforts have been made to comply promptly with the NOV.

G. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before DEM's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through F above. All requests for hearing MUST:
- (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);

- (b) Be **RECEIVED** by DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of the NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
235 Promenade Street, Suite 350
Providence, RI 02908-5767

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
- (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Part 1.7(B) of the Rhode Island Code of Regulations titled *Rules and Regulations for the Administrative Adjudication Division (250-RICR-10-00-1)*.
- (2) A copy of each request for hearing must also be forwarded to:

Joseph J. LoBianco, Esquire
DEM - Office of Legal Services
235 Promenade Street, Suite 425
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner 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) 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 DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey Tyrrell of DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 7407.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section G above.

FOR THE DIRECTOR

By: _____
David E. Chopy, Administrator
DEM Office of Compliance and Inspection

Date: _____

CERTIFICATION

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

PHILLIPPE REALTY, LLC
c/o Chaouki Khalil, Resident Agent
11 Hamlet Avenue
Woonsocket, RI 02895

C T GAS, INC
c/o Chaouki Khalil, Registered Agent
503 Smithfield Road
North Smithfield, RI 02896

R.I. 0288

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST
 File No.: OCI-UST-19-8-01063
 Respondents: PHILLIPPE REALTY, LLC and C T GAS, INC

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) and (2) – Tank and pipeline tightness testing	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,500	1 year	\$1,500
D (3), (4) and (5) – Testing of line leak detectors, shear valves and tank monitor	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,250	2 years	\$2,500
D (6), (7), (8) and (9) – Operating without a registered, certified Class A/B UST Facility Operator	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,250	1 violation	\$1,250
SUB-TOTAL					\$5,250

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

ADMINISTRATIVE PENALTY SUMMARY (continued)

ECONOMIC BENEFIT FROM NON-COMPLIANCE			
COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT COMPLY. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:			
- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.			
DESCRIPTION OF BENEFIT	CALCULATION		AMOUNT
<p>Failing to test the USTs and pipelines for tightness in 2016. 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 Noncompliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	<p>For profit C Corp.</p> <p>\$848</p> <p>July 2016 1 October 2018 1 June 2020</p> <p>7.5%</p>	<p>\$571</p>
<p>Failing to test the line leak detectors and tank monitor in 2016. 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 Noncompliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	<p>For profit C Corp.</p> <p>\$545</p> <p>December 2016 14 September 2018 1 June 2020</p> <p>7.5%</p>	<p>\$367</p>
<p>Failing to test the line leak detectors and tank monitor in 2017. 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 Noncompliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	<p>For profit C Corp.</p> <p>\$545</p> <p>December 2017 14 September 2018 1 June 2020</p> <p>7.8%</p>	<p>\$357</p>
SUB-TOTAL			\$1,295

ADMINISTRATIVE PENALTY SUMMARY (continued)

COST RECOVERY

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

A review of the record in this matter has revealed that DEM has not incurred any additional or extraordinary costs during the investigation, enforcement and resolution of this enforcement action (excluding non-overtime personnel costs), for which the State is not otherwise reimbursed.

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$6,545

PENALTY MATRIX WORKSHEET

CITATION: Tank and pipeline tightness testing
 VIOLATION NOs.: D (1) and (2)

TYPE		
<u> </u> 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.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i>.</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 procure the services of a DEM-licensed tightness tester to test the interstitial spaces of UST Nos. 010 and 011 and their product pipelines for tightness. Failure to comply reduces the likelihood of detecting or preventing releases of the regulated substance to the environment and the resultant threats to groundwater resources and public health and safety. (2) Environmental conditions: The Facility is located in a developed area with numerous potential vapor receptors including residential structures, commercial structures and underground utilities. The Facility is located in a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. The Facility is located within 1,400 feet of the wellhead protection area for a non-community water supply well. The Facility is located within 750 feet of a regulated freshwater wetland. The Facility is located in the Emerson Brook - Blackstone River watershed. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: The volatile nature of gasoline presents both a potential public health hazard (due to potential inhalation of benzene) and a potential public safety hazard (due to the potential for explosion). Gasoline 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: The testing should have been performed before 1 July 2016, however, the tanks and pipelines were not tested until 1 October 2018. (6) Areal extent of the violation: Considered, but not utilized for this calculation. 		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** Respondents failed to prevent the non-compliance by having the interstitial spaces of the tanks and pipelines tested for tightness during the year 2016. Respondents had the tanks and pipelines tested on 1 October 2018 to fulfill the year 2018 requirement.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondents for their failure to comply with the tightness testing requirements set forth in the UST Regulations. Respondents, as owners and operators of the Facility, had full control over the occurrence of the violation.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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: Testing of line leak detector, shear valve and tank monitor

VIOLATION NOs.: D (3), (4) and (5)

TYPE		
<p style="text-align: center;"><u> </u> 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;"><u> </u> TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR 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 Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i>.</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 have the line leak detectors, shear valves and tank monitor tested by a qualified person. Failure to comply reduces the likelihood of detecting or preventing releases of the regulated substance to the environment and the resultant threats to groundwater resources and public health and safety. (2) Environmental conditions: The Facility is located in a developed area with numerous potential vapor receptors including residential structures, commercial structures and underground utilities. The Facility is located in a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. The Facility is located within 1,400 feet of the wellhead protection area for a non-community water supply well. The Facility is located within 750 feet of a regulated freshwater wetland. The Facility is located in the Emerson Brook - Blackstone River watershed. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: The volatile nature of gasoline presents both a potential public health hazard (due to potential inhalation of benzene) and a potential public safety hazard (due to the potential for explosion). Gasoline 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 (2016 and 2017). (6) Areal extent of the violation: Considered, but not utilized for this calculation. 		

(continued)

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** Respondents failed to prevent the non-compliance by having the line leak detectors, shear valves and tank monitor tested during each of the years 2016 and 2017. Respondents had these devices tested in 2018 to fulfill the year 2018 requirements.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondents for their failure to comply with the equipment testing requirements set forth in the UST Regulations. Respondents, as owners and operators of the Facility, had full control over the occurrence of the violation.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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 \$1,250	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Operating without a registered, certified Class A/B UST Facility Operator
 VIOLATION NOs.: D (6), (7), (8) and (9)

TYPE		
<u> </u> 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.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i>.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents operated the Facility without trained and certified Class A and B UST facility operators assigned. The operation of regulated UST facilities without at least one Class A and one Class B UST facility operator assigned is prohibited. Upon information and belief, the Facility was not inspected by a trained and certified Class A or B UST facility operator on a monthly basis. Failure to comply would presumably reduce the likelihood of preventing and/or detecting releases from the UST systems and result in greater threats to public health and safety and the environment. (2) Environmental conditions: The Facility is located in a developed area with numerous potential vapor receptors including residential structures, commercial structures and underground utilities. The Facility is located in a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. The Facility is located within 1,400 feet of the wellhead protection area for a non-community water supply well. The Facility is located within 750 feet of a regulated freshwater wetland. The Facility is located in the Emerson Brook - Blackstone River watershed. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: The volatile nature of gasoline presents both a potential public health hazard (due to potential inhalation of benzene) and a potential public safety hazard (due to the potential for explosion). Gasoline 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: Respondents were in violation of the requirement to have certified Class A and B UST facility operators assigned from at least 8 June 2018 through 2 April 2019. Respondents were in violation of the monthly inspection requirement from at least April 2016 through March 2019. (6) Areal extent of the violation: Considered, but not utilized for this calculation. 		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** Respondents failed to prevent the non-compliance by assigning and registering new Class A and B UST facility operators to the Facility before Mr. Germanos' certification expired. Respondents failed to prevent the non-compliance by having a certified Class A or B UST facility operator inspect the Facility on a monthly basis from April 2016 through March 2019. Respondents assigned a new Class A/B UST facility operator to the Facility on 2 April 2019 in an effort to mitigate the non-compliance, however, they failed to submit written verification that the new operator is now inspecting the Facility on a monthly basis.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondents for their failure to comply with the Class A/B UST facility operator requirements set forth in the UST Regulations. Respondents, as owners and operators of the Facility, had full 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 \$1,250	\$250 to \$1,250