

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

IN RE: City of East Providence

FILE NO.: UST 2010-EP

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 party ("Respondent") has violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Administrative History

DEM issued an informal notice to the Respondent on 11 October 2006 for violations of the underground petroleum storage tank regulations. The informal notice involved many of the facilities and violations that are the subject of this notice of violation. The informal notice required the Respondent to take specific actions to comply with the regulations, however, the Respondent failed to fully comply with the informal notice.

C. Facts

- (1) The subject properties are located at:
 - (a) 913 Broadway in the city of East Providence, Rhode Island.
 - (b) 66 Wampanoag Trail in the city of East Providence, Rhode Island.
 - (c) 750 Waterman Avenue in the city of East Providence, Rhode Island.
 - (d) Silver Street in the city of East Providence, Rhode Island.
 - (e) Veterans Memorial Parkway in the city of East Providence, Rhode Island.
 - (f) 2000 Pawtucket Avenue in the city of East Providence, Rhode Island.
 - (g) 30 North Broadway in the city of East Providence, Rhode Island.

The properties at 913 Broadway, 66 Wampanoag Trail, and 30 North Broadway include a fire station, the property at 750 Waterman Avenue includes a police station, the properties at Silver Street and Veterans Memorial Parkway include

sewage pumping stations, and the property at 2000 Pawtucket Avenue includes a high school (collectively, the “Facilities”).

- (2) Respondent is the owner and operator of underground petroleum storage tanks (“USTs” or “tanks”) that are located at the Facilities, which USTs are subject to the DEM Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials (the “UST Regulations”).
- (3) The Facilities are registered with DEM in accordance with Section 6.00 of the UST Regulations and are identified as follows:

UST Facility No. 01432 – Fire Station #1 913 Broadway			
UST ID No.	Date Installed	Capacity	Product Stored
001	1983	2,000 gallons	Gasoline
002	1983	2,000 gallons	Diesel

UST Facility No. 01435 – Fire Station #4 66 Wampanoag Trail			
UST ID No.	Date Installed	Capacity	Product Stored
004	2 September 1999	1,000 gallons	Diesel

UST Facility No. 01436 – East Providence Police Station 750 Waterman Avenue			
UST ID No.	Date Installed	Capacity	Product Stored
002	7 March 1990	10,000 gallons	Gasoline

UST Facility No. 01438 – Silver Street Pumping Station 140 Silver Street			
UST ID No.	Date Installed	Capacity	Product Stored
002	19 September 1994	2,000 gallons	Diesel

UST Facility No. 01440 – Watchemoket Pumping Station 525 Veterans Memorial Parkway			
UST ID No.	Date Installed	Capacity	Product Stored
001	1980	2,000 gallons	Diesel

UST Facility No. 01682- East Providence High School 2000 Pawtucket Avenue			
UST ID No.	Date Installed	Capacity	Product Stored
001	1981	10,000 gallons	Diesel Fuel
004	23 May 2007	25,000 gallons	No. 4 Heating Oil

UST Facility No. 18977 – Fire Station #3			
30 North Broadway			
UST ID No.	Date Installed	Capacity	Product Stored
001	4 June 2002	2,000 gallons	Diesel

- (4) On 25 May 2010, DEM inspected UST Facility No. 01432. The inspection revealed the following:
- (a) Respondent failed to procure the services of a qualified cathodic protection tester to perform a complete operational survey of the impressed current cathodic protection system for the USTs in calendar year 2009. A survey was last performed in calendar year 2007.
 - (b) The continuous monitoring system (“CMS”) was displaying “fuel alarms” at the time of the inspection. Respondent failed to investigate the “fuel alarms”.
 - (c) Respondent failed to procure the services of a qualified person to certify/test the CMS in calendar years 2005, 2006, 2007 and 2009.
 - (d) Respondent failed to maintain the spill containment basins and tank top sumps for the USTs free of liquids.
- (5) On 25 May 2010, DEM inspected UST Facility No. 01435. The inspection revealed the following:
- (a) The “alarm” status indicator lamp on the CMS console was malfunctioning at the time of inspection.
 - (b) Respondent failed to investigate the “fuel alarm” that was being displayed by the CMS on 25 May 2010. Information stored in the alarm history of the CMS indicated that the fuel alarm may have been in effect since 18 January 2010.
 - (c) Respondent failed to maintain the tank top sump free of liquid.
 - (d) The UST is not equipped with a submerged fill tube.
- (6) On 25 May 2010, DEM inspected UST Facility No. 01436. The inspection revealed the following:
- (a) The UST is a single walled tank.
 - (b) The visible segment of the product pipeline, beneath the product dispenser, was constructed of bare steel that was in contact with the ground.

- (c) Respondent has failed to compile daily and monthly inventory control records, consistent with the requirements of the UST Regulations. Records have not been properly compiled since May 2007.
 - (d) The ATG was inoperable at the time of the inspection. Respondent had no records of ATG leak tests for the last three years.
 - (e) The spill containment basin was holding fuel at the time of inspection.
 - (f) The tank field observation wells were not labeled or secured against tampering.
- (7) On 25 May 2010, DEM inspected UST Facility No. 01438. The inspection revealed the following:
- (a) The UST is not equipped with a submerged fill tube.
 - (b) The UST failed a cathodic protection test that was performed by PCA Engineering, Inc. (“PCA”) in August 2009. Repairs were completed by PCA and subsequent testing revealed that the UST was receiving adequate levels of corrosion protection. Respondent failed to report the test failure to DEM and failed to obtain the prior of approval of DEM for the repairs.
- (8) On 25 May 2010, DEM inspected UST Facility No. 01440. The inspection revealed the following:
- (a) The CMS was displaying a “leak alarm” at the time of inspection. The alarm history stored in the CMS indicated that leak alarms had also occurred on 3 May 2010 and 22 March 2010. Respondent failed to investigate the leak alarms.
 - (b) The UST failed a cathodic protection test performed by PCA on 31 August 2009. Repairs were completed by PCA and subsequent testing on 30 September 2009 revealed that the UST was receiving adequate levels of corrosion protection. Respondent failed to report the test failure to DEM and failed to obtain the prior of approval of DEM for the repairs.
 - (c) Respondent has failed to inspect the impressed current cathodic protection system at least once every sixty days to ensure that the equipment was running properly.
 - (d) The UST is not equipped with a submerged fill tube.
 - (e) The UST is not equipped with overfill protection, as evidenced by the lack of an automatic shut off valve, vent whistle, or high level alarm.
- (9) On 29 July 2010, DEM inspected UST Facility No. 01682. The inspection revealed the following:

- (a) UST No. 001 is a single walled tank with interior lining and/or cathodic protection.
 - (b) Respondent has failed to inspect the impressed current cathodic protection system for UST No. 001 at least once every sixty days to ensure that the equipment was running properly.
 - (c) Respondent has failed to compile daily and monthly inventory control records, consistent with the requirements of the UST Regulations, for UST No. 001. The records have not been properly compiled since July 2007.
 - (d) Respondent has failed to test the CMS on a monthly basis to ensure effective operation. The CMS has not been tested since November 2008.
- (10) On 25 May 2010, DEM inspected UST Facility No. 18977. The inspection revealed the following:
- (a) The UST is a double walled tank.
 - (b) Respondent has failed to compile daily and monthly inventory control records, consistent with the requirements of the UST Regulations. The records have not been properly compiled since May 2007.
 - (c) Respondent failed to procure the services of a qualified person to test the line leak detector in calendar years 2005, 2007, 2008 and 2009.
 - (d) Respondent failed to test the dispenser shear valve in calendar years 2007, 2008 and 2009.
 - (e) The CMS was deactivated at the time of inspection. DEM was informed that the CMS has been inoperable for at least the last five years.
 - (f) Respondent failed to maintain the spill containment basin and tank top sump free of liquids and solid debris.
- (11) As of the date of this Notice of Violation (“NOV”), the Respondent has failed to comply with the DEM Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials (the “UST Regulations”).

D. Violation

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

- (1) **UST Regulations, Rule 8.05** – requiring the owner/operator to provide corrosion protection of all unprotected steel tanks and piping.

- (2) **UST Regulations, Rule 8.07(B)(1)** – requiring the owner/operator to retain a cathodic protection tester to inspect and test all USTs equipped with impressed current cathodic protection systems within six months of installation or repair, at least every two years following the installation date, and whenever construction or maintenance in the area of the structure occurs.
- (3) **UST Regulations, Rule 8.07(C)** – requiring the owner/operator to inspect USTs with impressed current cathodic protection systems every sixty days to ensure the equipment is running properly.
- (4) **UST Regulations, Rule 8.07(E)** – requiring that any deactivation or failure of a corrosion protection system shall be reported within twenty four hours to the DEM.
- (5) **UST Regulations, Rule 8.07(F)** – requiring the owner/operator to obtain the prior approval of DEM for any repairs of existing cathodic protection systems.
- (6) **UST Regulations, Rules 8.08(A)(2), 8.08(B)(3), 8.08 (C)(3) and 11.03** – requiring the owner/operator to compile and maintain daily and monthly inventory control records for USTs.
- (7) **UST Regulations, Rule 8.08(B)(2)** – requiring the owner/operator to utilize ATGs to perform 0.2-gallon per hour leak tests for single-walled USTs at least once per month.
- (8) **UST Regulations, Rule 8.11** – requiring the owner/operator to retain a qualified tester to perform annual testing of line leak detectors.
- (9) **UST Regulations, Rule 8.12** – requiring the owner/operator to perform annual testing of shear valves.
- (10) **UST Regulations, Rule 8.15(A)** – requiring the owner/operator to install, calibrate, operate and maintain leak monitoring devices in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running conditions.
- (11) **UST Regulations, Rule 8.15(B)** – prohibiting the owner/operator from shutting off or deactivating leak monitoring devices at any time except for repair and requiring any malfunction to be repaired within fifteen working days of its first occurrence. If the device(s) cannot be repaired within fifteen days, the affected system(s) shall be temporarily closed in accordance with Rule 13.03 of the UST Regulations until satisfactory repairs are made. The owner/operator shall perform daily manual tank gauging and inventory record keeping in the event of a monitoring system being deactivated. Any deactivation of a monitoring device shall be immediately reported to the Director by the owner/operator.
- (12) **UST Regulations, Rules 8.15(C) and 12.03(A)** – requiring the owner/operator to immediately respond to and promptly investigate all release detection signals.

- (13) **UST Regulations, Rule 8.15(E)** – requiring the owner/operator to perform monthly testing of UST continuous monitoring systems.
- (14) **UST Regulations, Rule 8.15(F)** – requiring the owner/operator to retain a qualified person annually to inspect, calibrate and test UST continuous monitoring systems.
- (15) **UST Regulations, Rule 8.16(A)(1)** – requiring the owner/operator to keep spill containment basins free of liquids.
- (16) **UST Regulations, Rule 8.16(B)** – requiring the owner/operator to ensure that USTs are equipped with an approved overfill protection device.
- (17) **UST Regulations, Rule 8.16(D)** – requiring the owner/operator to maintain piping collection and transition sumps, submersible pump head containment structures, and dispenser pans/sumps, where existing, such that all penetration fittings and entry boots are in good condition, all sensors are secured in an upright position and located at least one inch below the lowest penetration fitting or entry boot, and are kept clean and dry.
- (18) **UST Regulations, Rules 8.17 and 9.07** – requiring that USTs be equipped with submerged fill tubes.
- (19) **UST Regulations, Rule 8.19(A)** – requiring the owner/operator to equip all groundwater monitoring wells and tank pad observation wells with a label (that identifies them as groundwater monitoring or observation wells) and a tamper-resistant cover.

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 complete the following **within sixty days of receipt of this NOV**:

- (1) **For UST Facility No. 01432:**
 - (a) Procure the services of a qualified cathodic protection tester to test the impressed current cathodic protection system for UST Nos. 001 and 002 in accordance with Rule 8.07(B)(1) of the UST Regulations and submit a copy of the test report to the DEM – Office of Compliance and Inspection (“OC&I”).
 - (b) Submit to OC&I written verification that the fuel alarms that were displayed by the CMS on 25 May 2010 have been investigated and rectified in accordance with Rules 8.15(C) and 12.03(A) of the UST Regulations.
 - (c) Procure the services of a qualified person to certify/test the CMS in accordance with Rule 8.15(F) of the UST Regulations and submit a copy of the certification/test report to OC&I.

- (d) Evacuate and clean the spill containment basins and tank top sumps for UST Nos. 001 and 002 in accordance with Rules 8.16 (A) and (D) of the UST Regulations. All wastes removed shall be managed and disposed of in accordance with Section 5.00 of the DEM's Rules and Regulations for Hazardous Waste Management (the "Hazardous Waste Regulations").

(2) **For UST Facility No. 01435:**

- (a) The "alarm" status indicator lamp on the CMS console shall be repaired or replaced in accordance with Rule 8.15(B) of the UST Regulations.
- (b) Submit to OC&I written verification that the fuel alarm that was displayed by the CMS on 25 May 2010 has been investigated and rectified in accordance with Rules 8.15(C) and 12.03(A) of the UST Regulations.
- (c) Evacuate and clean the tank top sump for UST No. 004 in accordance with Rule 8.16(D) of the UST Regulations. All wastes removed shall be managed and disposed of in accordance with Section 5.00 of the Hazardous Waste Regulations.
- (d) Equip UST No. 004 with a submerged fill tube in accordance with Rules 8.17, 9.07 and 10.00 of the UST Regulations (if this tank is not receiving pumped deliveries) **OR** procure the services of a qualified person to remove the ball-float vent valve overflow protection device that the owner and installer indicated would be included when the tank was installed in September 1999 (if this tank is receiving pumped deliveries). A written report describing the modifications shall be submitted to OC&I.

(3) **For UST Facility No. 01436:**

- (a) Submit to OC&I written verification that the metallic segments of the product pipeline for UST No. 002 complies with the corrosion protection requirements set forth in Rule 8.05 of the UST Regulations, in accordance with Rule 10.00 of the UST Regulations and the Applicable National Codes of Practice set forth in Appendix B of the UST Regulations.
- (b) Equip UST No. 002 with a new, approved ATG in accordance with Rules 8.08(B)(1), 8.15 and 10.00 of the UST Regulations. Written verification of compliance shall be submitted to OC&I.
- (c) Submit to OC&I written verification that the new ATG will be used to perform 0.2-gallon per hour leak tests for UST No. 002 at least once per month in accordance with Rule 8.08(B)(2) of the UST Regulations.
- (d) Submit to OC&I written verification of compliance with the inventory control requirements for UST No. 002, as set forth in Rules 8.08(B)(3), 11.02(B)(4) and 11.03 of the UST Regulations.
- (e) Submit to OC&I written verification that the new ATG will be tested at least once per month to ensure that it is operating effectively and that a record of such shall be maintained, in accordance with Rule 8.15(E) and 11.02(B)(3) of the UST Regulations.
- (f) Evacuate and clean the spill containment basin for UST No. 002 in

accordance with Rule 8.16(A) of the UST Regulations. All wastes removed shall be managed and disposed of in accordance with Section 5.00 of the Hazardous Waste Regulations.

- (g) Label and secure the tank field observation wells against tampering in accordance with Rule 8.19(A) of the UST Regulations. Written verification of compliance shall be submitted to OC&I.

(4) For UST Facility No. 01438:

- (a) Equip UST No. 001 with a submerged fill tube in accordance with Rule 8.17 of the UST Regulations (if this tank is not receiving pumped deliveries) **OR** procure the services of a qualified person to remove the ball-float vent valve and install a new overfill protection device in accordance with Rule 9.13(C) of the UST Regulations and the applicable National Codes of Practice set forth in the UST Regulations (if this tank is receiving pumped deliveries). A written report describing the modifications shall be submitted to OC&I.

(5) For UST Facility No. 01440:

- (a) Submit to OC&I written verification that the leak alarm that was displayed by the CMS on 25 May 2010 has been investigated and rectified in accordance with Rules 8.15(C) and 12.03(A) of the UST Regulations.
- (b) Submit to OC&I written verification that the impressed current cathodic protection system for UST No. 001 is being inspected at least once every sixty days and that a record of such is being maintained in accordance with Rules 8.07(C) and 11.02(A)(8) of the UST Regulations.
- (c) Submit to OC&I written verification that UST No. 001 is now equipped with an appropriate overfill protection device that is consistent with the requirements of Rule 9.13(C) of the UST Regulations.
- (d) If UST No. 001 is receiving gravity drop deliveries, the tank shall be equipped with a submerged fill tube in accordance with Rule 8.17 of the UST Regulations. Submit to OC&I written verification of compliance.

(6) For UST Facility No. 01682:

- (a) Submit to OC&I written verification that the impressed current cathodic protection system for UST No. 001 is being inspected at least once every sixty days and that a record of such is being maintained, in accordance with Rules 8.07(C) and 11.02(A)(8) of the UST Regulations.
- (b) Submit to OC&I written verification of compliance with the inventory control requirements for UST No. 001, as set forth in Rules 8.08(C)(3), 11.02(B)(4) and 11.03 of the UST Regulations.
- (c) Submit to OC&I written verification that the CMS is being tested at least once per month to ensure that it is operating effectively and maintaining a record of such, in accordance with Rule 8.15(E) and 11.02(B)(3) of the

UST Regulations

(7) **For UST Facility No. 18977:**

- (a) Equip UST No. 001 with a new, approved CMS in accordance with Rules 8.08(A)(1), 8.09(A)(1), 8.15, 9.15, 9.16 and 10.00 of the UST Regulations. Written verification of compliance shall be submitted to OC&I.
- (b) Submit to OC&I written verification of compliance with the inventory control requirements for UST No. 001, as set forth in Rules 8.08(A)(2), 11.02(B)(4) and 11.03 of the UST Regulations.
- (c) Procure the services of a qualified person to test the line leak detector for UST No. 001 in accordance with Rule 8.11 of the UST Regulations and submit a copy of the test report to OC&I.
- (d) Test the dispenser shear valves in accordance with Rule 8.12 of the UST Regulations and submit a copy of the test report to OC&I.
- (e) Submit to OC&I written verification that the new CMS is being tested on a monthly basis to ensure effective operation and that a record of such is being maintained in accordance with Rules 8.15(E) and 11.02(B)(3) of the UST Regulations.
- (f) Evacuate and clean the spill containment basin and tank top sump for UST No. 001 in accordance with Rules 8.16 (A) and (D) of the UST Regulations. All wastes removed shall be managed and disposed of in accordance with Section 5.00 of the Hazardous Waste Regulations.

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:

Seventy Four Thousand One Hundred Seventy Six Dollars (\$74,176.00)

- (2) The proposed administrative penalty is calculated pursuant to the DEM Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the Director within twenty days of your receipt of this NOV. Payment shall be in the form of a check made payable to the "General Treasury - Water & Air Protection Program Account" and shall be forwarded to the DEM Office of

Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.

- (3) Penalties assessed against respondent in this 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 the Director determines that reasonable efforts have been made to comply promptly with this 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 the DEM 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 twenty days of your receipt of this 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, 3RD Floor
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 Rule 7.00(b) of the DEM Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters.

- (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, 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 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 with regard to 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 (v) and 42-17.6-4(b) and (c).
- (5) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) This 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 at the DEM - Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey D'Amadio Tyrrell of the DEM - 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

David E. Chopy, Chief
DEM Office of Compliance and Inspection

Date: _____

CERTIFICATION

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

Richard M. Brown, City Manager
City of East Providence
145 Taunton Avenue
East Providence, RI 02914

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST

File No.: UST 2010 – EP

Respondent: City of East Providence

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) – Failure to provide corrosion protection for bare steel product piping	Type II (\$ 12,500 Max. Penalty)*	Moderate	\$2,500	1	\$2,500.00
D (2) and (3) – Failure to test and inspect impressed current cathodic protection systems	Type II (\$ 12,500 Max. Penalty)*	Minor	\$1,500	3	\$4,500.00
D (4) and (5) – Failure to report cathodic protection system test failures and failure to obtain the prior approval of DEM for system repairs	Type II (\$ 12,500 Max. Penalty)*	Moderate	\$4,000	2	\$8,000.00
D (6) – Failure to compile and maintain inventory control records	Type II (\$ 12,500 Max. Penalty)*	Moderate	\$5,000	3	\$15,000.00
D (8) and (9) - Failure to test a line leak detector and shear valve	Type II (\$ 12,500 Max. Penalty)*	Minor	\$1,500	1	\$1,500.00
D (10) and (11) – Failure to operate and maintain UST continuous monitoring systems as required	Type II (\$ 12,500 Max. Penalty)*	Major	\$6,250	2	\$12,500.00
D (12) – Failure to respond to and investigate release detection signals	Type II (\$ 12,500 Max. Penalty)*	Moderate	\$5,000	3	\$15,000.00

D (13) and (14) – Failure to test leak monitoring devices on a monthly and annual basis	Type II (\$ <u>12,500</u> Max. Penalty)*	Minor	\$2,000	2	\$4,000.00
D (15) and (17) – Failure to maintain the spill containment basins and tank top sumps free of liquids and debris	Type II (\$ <u>12,500</u> Max. Penalty)*	Minor	\$1,250	4	\$5,000.00
D (16) – Failure to install overfill protection	Type II (\$ <u>12,500</u> Max. Penalty)*	Moderate	\$3,000	1	\$3,000.00
SUB-TOTAL					\$71,000.00

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

ECONOMIC BENEFIT FROM NONCOMPLIANCE		
COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT ARE IN COMPLIANCE. 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.		
<i>DESCRIPTION OF BENEFIT</i>	<i>CALCULATION</i>	<i>AMOUNT</i>
Cost of cathodic protection testing	2 UST systems X 1 year = 2 missing tests @ \$414 per test	\$828.00
Cost of line leak detector testing	1 UST X 4 years = 4 missing tests @ \$96 per test	\$384.00
Cost of tank monitor testing	1 CMS X 4 years = 4 missing tests @ \$273 per test	\$1,092.00
Cost of overfill protection installation	1 UST @ \$872 per tank	\$872.00
SUB-TOTAL		\$3,176.00

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$74,176.00

PENALTY MATRIX WORKSHEET

CITATION: *Failure to provide corrosion protection for bare steel piping segments*

VIOLATION NO.: D (1)

TYPE		
<p>____TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>X</u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>____TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondent failed to provide corrosion protection for the bare steel segments of the product pipeline for the UST at Facility No. 01436. The DEM inspectors observed that the visible portion of the product pipeline was constructed of bare steel that was in contact with the ground. Failure to provide corrosion protection for steel product piping could allow for corrosion of the piping components, which could result in a release of the regulated substance. Historically, corrosion of bare steel pipelines has been a primary cause of releases at UST facilities.</p> <p>(B) Environmental conditions: The facility is located in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells proximate to the facility. The facility is located in a developed area with potential vapor receptors including commercial and residential structures and underground utilities. The facility is located in the Barrington/Warren Rivers watershed.</p> <p>(C) Amount of the pollutant: Not relevant.</p> <p>(D) 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 is capable of causing significant soil and groundwater contamination if released to the environment. Certain petroleum constituents are potentially harmful to human health and safety and the environment.</p> <p>(E) Duration of the violation: Respondent has been non-compliant with this rule since December 1998 (the date the rule became effective).</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent the non-compliance or mitigate the non-compliance despite receiving a Notice of Intent to Enforce (NIE) dated 11 October 2006 from DEM, which required that it do so.
- (H) **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:** Not relevant.
- (I) **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 Respondent for its failure to comply with the UST regulations and for its failure to comply with the NIE issued by DEM on 11 October 2006. The corrosion protection requirements are clearly established in the UST regulations. Respondent, as owner and operator of the facility, had complete control over the occurrence of the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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

PENALTY MATRIX WORKSHEET

CITATION: *Failure to test and inspect impressed current cathodic protection systems*

VIOLATION NO.: D (2) and (3)

TYPE		
<p style="text-align: center;">___ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u>X</u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondent failed to procure the services of a qualified cathodic protection tester to perform a complete operational survey of the impressed current cathodic protection (ICCP) system for the USTs at Facility No. 01432 in calendar year 2009. Respondent failed to inspect the ICCP system for the UST at Facility No. 01440 at least once every sixty days to ensure that the system was running properly and failed to inspect the ICCP system for UST No. 001 at Facility No. 01682 at least once every sixty days to ensure that the system was running properly. Testing of ICCP systems is required to ensure that the systems are continuously operating to provide adequate corrosion protection for the USTs. Failure to test these systems could allow for inadequate protection and premature corrosion of the steel tanks.</p> <p>(B) Environmental conditions: Facility No. 01432 is located in a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. Facility No. 01682 is located on the grounds of a public high school. The facilities are located in GB groundwater classification zones, which are groundwater resources designated as unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells proximate to the facilities. Facility No. 01432 and Facility No. 01440 are located in the Providence River watershed. Facility No. 01682 is located in the Barrington/Warren Rivers watershed.</p> <p>(C) Amount of the pollutant: Not relevant.</p> <p>(D) Toxicity or nature of the pollutant: The volatile nature of gasoline presents both a potential public health hazard (due to potential inhalation of benzene) and a potential public safety hazard (due to the potential for explosion). Gasoline and diesel fuel are capable of causing significant soil and groundwater contamination if released to the environment. Certain petroleum constituents are potentially harmful to human health and safety and the environment.</p> <p>(E) Duration of the violation: Unknown for the rule requiring sixty day inspections. Respondent has been non-compliant with the rule requiring operational surveys by a qualified tester since calendar year 2009 for Facility No. 01432.</p>		
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- (F) **Areal extent of the violation:** Not relevant.
- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent and/or mitigate the non-compliance.
- (H) **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:** Not relevant.
- (I) **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 Respondent for its failure to comply with the UST regulations. The corrosion protection system testing requirements are clearly established in the UST regulations. Respondent, as owner and operator of the facilities, had complete control over the occurrence of the violations. The DEM advised the Respondent of these requirements in a Notice of Intent to Enforce issued to the Respondent on 11 October 2006.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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 report cathodic protection system test failures and failure to obtain the prior approval of DEM for system repairs*
 VIOLATION NO.: D (4) and (5)

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.

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** Respondent failed to notify DEM when testing of the cathodic protection systems at Facility Nos. 01438 and 01440 revealed that the systems were not operating properly. Respondent also failed to obtain the prior approval of DEM for the repairs that were subsequently performed at each facility. The UST regulations require that all failed cathodic protection system tests be reported to DEM by both the owner and the tester and that repairs only be completed with the prior approval of DEM. Test failure notification and the review and approval of cathodic protection system repairs are of great importance to the regulatory program.
- (B) **Environmental conditions:** The facilities are located in GB groundwater classification zones, which are groundwater resources designated as unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells proximate to the facilities. The facilities are located in the Providence River watershed. Both facilities are located in close proximity to estuarine habitats (Wachemoket Cove and Bullock’s Cove).
- (C) **Amount of the pollutant:** Not relevant.
- (D) **Toxicity or nature of the pollutant:** Diesel fuel is capable of causing significant soil and groundwater contamination if released to the environment. Certain petroleum constituents are potentially harmful to human health and safety and the environment.
- (E) **Duration of the violation:** Not relevant.
- (F) **Areal extent of the violation:** Not relevant.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent the non-compliance.
- (H) **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:** Not relevant.
- (I) **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 Respondent for its failure to comply with the UST regulations. The corrosion protection system testing and permitting requirements are clearly established in the UST regulations. Respondent, as owner and operator of the facilities, had complete control over the occurrence of the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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 \$4,000	\$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 compile and maintain inventory control records
 VIOLATION NO.: D (6)

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 PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondent failed to compile inventory control records for the UST at Facility No. 01436, the UST at Facility No. 18977, and UST No. 001 at Facility No. 01682 consistent with the requirements of the UST regulations. Inventory control is an important and required component of leak detection programs at UST facilities. Failure to perform inventory control would presumably reduce the likelihood of detecting a release from a UST.</p> <p>(B) Environmental conditions: Facility No. 01436 is located in a developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. The facilities are located in GB groundwater classification zones, which are groundwater resources designated as unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells proximate to the facilities. Facility No. 01436 and Facility No. 01682 are located in the Barrington/Warren Rivers watershed. Facility No. 18977 is located within the Ten Mile River watershed.</p> <p>(C) Amount of the pollutant: Not relevant.</p> <p>(D) Toxicity or nature of the pollutant: The volatile nature of gasoline presents both a potential public health hazard (due to potential inhalation of benzene) and a potential public safety hazard (due to the potential for explosion). Gasoline and diesel fuel are capable of causing significant soil and groundwater contamination if released to the environment. Certain petroleum constituents are potentially harmful to human health and safety and the environment.</p> <p>(E) Duration of the violation: Respondent has been non-compliant with this rule since May 2007 at Facility Nos. 01436 and 18977 and has been non-compliant with this rule since February 2007 at Facility No. 01682.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent and/or mitigate the non-compliance. In December 2008, Respondent submitted copies of its inventory control records for the months of April, May and July 2008 for Facility No. 01682, however, DEM's review of the records revealed that the records were not consistent with the requirements of the UST regulations.
- (H) **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:** Not relevant.
- (I) **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 Respondent for its failure to comply with the UST regulations. The inventory control requirements are clearly established in the UST regulations. Respondent, as owner and operator of the facilities, had complete control over the occurrence of the violations. The DEM advised the Respondent of this requirement in a Notice of Intent to Enforce issued to the Respondent on 11 October 2006 for Facility No. 01436 and Facility No. 01682.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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 \$5,000	\$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 a line leak detector and shear valve
 VIOLATION NO.: D (8) and (9)

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 PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondent failed to procure the services of a qualified person to test the line leak detector for the UST at Facility No. 18977 and failed to perform functionality testing of the dispenser shear valve for the UST. Line leak detectors and shear valves are important, required components of release prevention and fire safety programs at UST facilities. Annual functionality testing is required to ensure that they are operating in conformance with the manufacturers' performance standards.</p> <p>(B) Environmental conditions: The facility is located in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells proximate to the facility. The facility is located in the Ten Mile River watershed.</p> <p>(C) Amount of the pollutant: Not relevant.</p> <p>(D) Toxicity or nature of the pollutant: Diesel fuel is capable of causing significant soil and groundwater contamination if released to the environment. Certain petroleum constituents are potentially harmful to human health and safety and the environment.</p> <p>(E) Duration of the violation: Four years for the line leak detector testing and three years for the shear valve testing. The line leak detector and shear valve require annual testing. The line leak detector test was not completed in calendar years 2005 through 2009 and the shear valve test was not completed in calendar years 2007 through 2009.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent and/or mitigate the non-compliance.
- (H) **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:** Not relevant.
- (I) **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 Respondent for the failure to comply with the UST regulations. The line leak detector and shear valve testing requirements are clearly established in the UST regulations. Respondent, as owner and operator of the facility, had complete control over the occurrence of the violations.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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 operate and maintain UST continuous monitoring systems as required
 VIOLATION NO.: D (10) and (11)

TYPE		
<p style="text-align: center;">___ TYPE I</p> <p style="text-align: center;"><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u>X</u> TYPE II</p> <p style="text-align: center;"><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ TYPE III</p> <p style="text-align: center;"><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondent failed to maintain in an operable condition the UST continuous monitoring systems at Facility Nos. 01436 and 18977. The automatic tank gauge (ATG) at Facility No. 01436 was inoperable and the continuous monitoring system (CMS) at Facility No. 18977 was deactivated. Proper operation of ATG and CMS systems is of major importance to the regulatory program and a major requirement of the UST regulations.</p> <p>(B) Environmental conditions: Facility No. 01436 is located in a developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. The facilities are located in GB groundwater classification zones, which are groundwater resources designated as unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells proximate to the facilities. Facility No. 01436 is located in the Barrington/Warren Rivers watershed. Facility No. 18977 is located in the Ten Mile River watershed.</p> <p>(C) Amount of the pollutant: Not relevant.</p> <p>(D) Toxicity or nature of the pollutant: The volatile nature of gasoline presents both a potential public health hazard (due to potential inhalation of benzene) and a potential public safety hazard (due to the potential for explosion). Gasoline and diesel fuel are capable of causing significant soil and groundwater contamination if released to the environment. Certain petroleum constituents are potentially harmful to human health and safety and the environment.</p> <p>(E) Duration of the violation: The ATG and CMS have been inoperable since at least 2005.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent and/or mitigate the non-compliance.
- (H) **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:** Not relevant.
- (I) **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 Respondent for its failure to comply with the UST regulations. The leak monitoring equipment operation and maintenance requirements are clearly established in the UST regulations. Respondent, as owner and operator of the facility, had complete control over the occurrence of the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

<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 \$6,250	\$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

PENALTY MATRIX WORKSHEET

CITATION: Failure to respond to and investigate release detection signals
 VIOLATION NO.: D (12)

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 PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondent failed to respond to and investigate release detection signals. The DEM inspection of 25 May 2010 revealed that the continuous monitoring system (CMS) at Facility No. 01432 was displaying “fuel alarms” for the tank top sump sensors, the CMS at Facility No. 01435 was displaying a “fuel alarm” for the tank top sump sensor and that the CMS at Facility No. 01440 was displaying a “leak alarm”. Failure to respond to such signals as required could allow a release to go undetected.</p> <p>(B) Environmental conditions: Facility No. 01432 is located in a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. The facilities are located in GB groundwater classification zones, which are groundwater resources designated as unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells proximate to the facilities. The facilities are located in the Providence River watershed.</p> <p>(C) Amount of the pollutant: Not relevant.</p> <p>(D) Toxicity or nature of the pollutant: The volatile nature of gasoline presents both a potential public health hazard (due to potential inhalation of benzene) and a potential public safety hazard (due to the potential for explosion). Gasoline and diesel fuel are capable of causing significant soil and groundwater contamination if released to the environment. Certain petroleum constituents are potentially harmful to human health and safety and the environment.</p> <p>(E) Duration of the violation: The leak alarm at Facility No. 01440 first appeared on 22 March 2010. The fuel alarm at Facility No. 01435 may have been in effect since 18 January 2010. It is not known how long the fuel alarms were in effect at Facility No. 01432.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent and/or mitigate the non-compliance.
- (H) **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:** Not relevant.
- (I) **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 Respondent for its failure to comply with the UST regulations. The necessary procedures for leak detection signal response are clearly established in the UST regulations. Respondent, as owner and operator of the facilities, had complete control over the occurrence of the violations. DEM advised the Respondent of this requirement in a Notice of Intent to Enforce issued to the Respondent on 11 October 2006 for Facility No. 01432.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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 \$5,000	\$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 leak monitoring devices on a monthly and annual basis

VIOLATION NO.: D (13) and (14)

TYPE		
<p>____TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>X</u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>____TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondent failed to procure the services of a qualified person to test the continuous monitoring system (CMS) at Facility No. 01432 in calendar years 2005, 2006, 2007 and 2009. Respondent failed to test the CMS at Facility No. 01682 on a monthly basis to ensure that it was operating effectively since November 2008. Annual functionality testing is required to ensure that a CMS is operating in conformance with the manufacturer’s performance standards. Owners/operators are required to test a CMS on a monthly basis to ensure that it is operating effectively. Failure to perform such testing would reduce the likelihood of detecting a release from a UST system.</p> <p>(B) Environmental conditions: Facility No. 01432 is located in developed areas with numerous potential vapor receptors including commercial and residential structures and underground utilities. The facilities are located in GB groundwater classification zones, which are groundwater resources designated as unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells proximate to the facilities. The facilities are located in the Providence River watershed.</p> <p>(C) Amount of the pollutant: Not relevant.</p> <p>(D) Toxicity or nature of the pollutant: The volatile nature of gasoline presents both a potential public health hazard (due to potential inhalation of benzene) and a potential public safety hazard (due to the potential for explosion). Gasoline and diesel fuel are capable of causing significant soil and groundwater contamination if released to the environment. Certain petroleum constituents are potentially harmful to human health and safety and the environment.</p> <p>(E) Duration of the violation: Respondent has been non-compliant with these rules since at least 2005.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent and/or mitigate the non-compliance by testing the CMS at Facility No. 01682 on a monthly basis and by having the CMS at Facility Nos. 01432 annually tested by a qualified person.
- (H) **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:** Not relevant.
- (I) **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 Respondent for the failure to comply with the UST regulations. The tank monitor testing requirements are clearly established in the UST regulations. Respondent, as owner and operator of the facilities, had complete control over the occurrence of the violation. The DEM advised the Respondent of these requirements in a Notice of Intent to Enforce issued to the Respondent on 11 October 2006.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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 \$2,000	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to maintain the spill containment basins and tank top sumps free of liquids and debris
 VIOLATION NO.: D (15) and (17)

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.

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** Respondent failed to maintain the spill containment basins at Facility Nos. 01432, 01436 and 18977 free of liquids and failed to maintain the tank top sumps at Facility Nos. 01432, 01435 and 18977 free of liquids. The basins and sumps are required to be kept free of liquids at all times. Allowing liquids to remain could allow petroleum products to seep into the ground (if the basins are not completely liquid tight). Failure to keep tank top sumps free of liquids will inhibit the performance of the product piping leak sensors and, therefore, reduce the likelihood of detecting a release from a UST system.
- (B) **Environmental conditions:** Facility Nos. 01432 and 01436 are located in developed areas with numerous potential vapor receptors including commercial and residential structures and underground utilities. The facilities are located in a GB groundwater classification zones, which are groundwater resources designated as unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells proximate to the facilities. Facility Nos. 01432 and 01435 are located in the Providence River watershed. Facility No. 01436 is located in the Barrington/Warren Rivers watershed. Facility No. 18977 is located in the Ten Mile River watershed.
- (C) **Amount of the pollutant:** Not relevant.
- (D) **Toxicity or nature of the pollutant:** The volatile nature of gasoline presents both a potential public health hazard (due to potential inhalation of benzene) and a potential public safety hazard (due to the potential for explosion). Gasoline and diesel fuel are capable of causing significant soil and groundwater contamination if released to the environment. Certain petroleum constituents are potentially harmful to human health and safety and the environment.
- (E) **Duration of the violation:** The duration of these violations is not known.
- (F) **Areal extent of the violation:** Not relevant.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent the non-compliance by keeping the spill containment basins and tank top sumps free of liquids.
- (H) **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:** Not relevant.
- (I) **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 Respondent for the failure to comply with the UST regulations. The spill containment and sump maintenance requirements are clearly established in the UST regulations. Respondent, as owner and operator of the facilities, had complete control over the occurrence of the violation. The DEM advised the Respondent of these requirements in a Notice of Intent to Enforce issued to the Respondent on 11 October 2006.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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: Failure to install overfill protection
 VIOLATION NO.: D (16)

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 PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** Respondent failed to install an overfill protection device on the UST at Facility No. 01440. Plans filed with DEM in May and November 1998 indicate that the UST was equipped with an automatic shut-off valve in the fill tube. The DEM inspection of May 2010 revealed that the UST is not equipped with an automatic shut-off valve. All regulated USTs are required to have an overfill protection device that is consistent with the requirements of the UST regulations. Failure to install an overfill protection device could result in a release of petroleum product to the environment.
- (B) **Environmental conditions:** Facility No. 01440 is located in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells proximate to the facility. The facility is located in the Providence River watershed, adjacent to Wachemoket Cove, an estuarine habitat.
- (C) **Amount of the pollutant:** Not relevant.
- (D) **Toxicity or nature of the pollutant:** Diesel fuel is capable of causing significant soil and groundwater contamination if released to the environment. Certain petroleum constituents are potentially harmful to human health and safety and the environment.
- (E) **Duration of the violation:** All regulated tanks were required to have overfill protection on or before January 1996.
- (F) **Areal extent of the violation:** Not relevant.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent the non-compliance by installing overfill protection for the UST.
- (H) **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:** Not relevant.
- (I) **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 Respondent for its failure to comply with the UST regulations. The overfill protection requirements are clearly established in the UST regulations. Respondent, as owner and operator of the Facility, had complete control over the occurrence of the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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