

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: MALIN BAY, LLC and
CAMPTON INDUSTRIES, L.L.C.**

FILE NO.: UST 2018-5-02778

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 the DEM's jurisdiction.

B. Administrative History

On 27 November 2017, 5 December 2017 and 8 January 2018, the DEM issued written notices to one or both Respondents for several of the violations at the facility that are the subject of this Notice of Violation (“NOV”). The notices required specific actions to return the facility to compliance with the DEM’s *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the “UST Regulations”). On 24 January 2018, the DEM received a letter from Nancy Hannon (“Hannon”) on behalf of MALIN BAY, LLC (“MALIN”) in response to the 5 December 2017 and 8 January 2018 notices. The letter stated that MALIN was working to correct the violations. On 21 February 2018, the DEM issued a written notice to Respondents for an additional violation at the facility that is the subject of the NOV. The notice required specific actions to correct the alleged violations. On 20 March 2018, a DEM representative spoke with Hannon. Hannon stated that no progress was made to address the violation in the 27 November 2017 notice. On 9 April 2018, the DEM sent electronic correspondence to Hannon regarding additional violations observed by the DEM during an inspection on 27 March 2018. The correspondence required specific actions to correct the violations. Hannon did not respond to the correspondence. As of the date of the NOV, Respondents have failed to fully comply with the notices.

C. Facts

- (1) The property is located at 2949 Tower Hill Road, Assessor's Plat 18-2, Lot 7 in the Town of South Kingstown, Rhode Island (the “Property”). The Property includes a convenience store and underground storage tanks (“USTs” or “tanks”) that are used for storage of petroleum products and are subject to the UST Regulations (the “Facility”).
- (2) CAMPTON INDUSTRIES, L.L.C. operates the Facility.

- (3) MALIN currently owns the Property, title having been transferred on 20 October 2017 from CAMPTON INDUSTRIES, L.L.C.
- (4) Respondents failed to notify DEM of the change in ownership in accordance with Rules 6.16 and 16.02 of the UST Regulations.
- (5) The Facility is registered with the DEM and is identified as UST Facility No. 02778.
- (6) The USTs are registered with the DEM as follows:

UST ID No.	Date Installed	Capacity	Product Stored
005	1976	20,000 gallons	Heating Oil No.2
006	1976	20,000 gallons	Heating Oil No.2
007	May 1996	6,000 gallons	Gasoline
008	May 1996	6,000 gallons	Gasoline
009	May 1996	6,000 gallons	Gasoline

- (7) UST Nos. 005 and 006 are single-walled USTs with no secondary containment.
- (8) On 7 November 2017, Compliance Testing Services, Inc. (“CTS”) attempted to test the secondary pipelines for UST Nos. 007, 008 and 009 for tightness, however, they found that the secondary (double walled) pipelines was no longer liquid tight. Respondents failed to immediately report the failed tests to DEM in accordance with the UST Regulations. CTS reported the failed or inconclusive tests to DEM on 5 December 2017. Following the tightness test failure, Respondents failed to complete the following actions:
 - (a) Submit a *Release Characterization Report* to DEM within seven days of the failed tests (and have yet to submit one);
 - (b) Have the primary product pipelines for UST Nos. 007, 008 and 009 tested for tightness by a DEM-licensed tightness tester within three days of the failed tests;
 - (c) Repair the secondary product pipelines for UST Nos. 007, 008 and 009 with DEM’s approval within 30 days of the failed tests; and
 - (d) Put UST Nos. 007, 008 and 009 into a compliant temporary closure within 30 days of the failed tests (Respondents continued to operate the UST systems with compromised secondary pipelines for an unknown duration).
- (9) On 8 February 2018, DEM inspected the Facility and observed that all of the product dispensers for UST Nos. 007, 008 and 009 had been removed, that the concrete traffic mat had been saw-cut around each dispenser and patched with new concrete. A DEM representative met with representatives of CTS and South Shore Contracting Company Corp. (“SSCC”) at the Facility and was advised that

soils had been excavated beneath each dispenser, that the secondary pipelines had been modified or repaired and that CTS was at the Facility to test the repaired/modified secondary pipelines for tightness. During the pipeline repair/modification project, Respondents failed to complete the following:

- (a) Submit prior written notification to and obtain the approval of DEM before making the repairs or modifications to the product pipelines of UST Nos. 007, 008 and 009; and
 - (b) Procure the services of a qualified environmental consultant to screen soils for contamination during the pipeline repair/modification project.
- (10) On 27 February 2018, DEM inspected the Facility and observed that UST Nos. 007, 008 and 009 were back in operation and that UST Nos. 005 and 006 were still in the ground.
- (11) On 27 March 2018, DEM inspected the Facility and observed the following:
- (a) UST Nos. 005 and 006 were still in the ground;
 - (b) A “liquid status” report from the CMS revealed that the CMS was no longer monitoring the product pipelines for UST Nos. 005, 006 and 008; and
 - (c) The leak sensor for the product pipeline for UST No. 007 was malfunctioning (the CMS was displaying a “sensor out” alarm).
- (12) On 11 April 2018, DEM inspected the Facility and determined the following:
- (a) Respondents have not paid the UST registration fees assessed by DEM and the Facility, therefore, does not have a valid registration with DEM;
 - (b) The overfill alarm for the USTs was malfunctioning at the time of inspection; and
 - (c) Respondents have not assigned *International Code Council* (“ICC”) certified Class A and Class B UST facility operators to the Facility and registered them with DEM.
- (13) As of the date of the NOV, the DEM has not received an application from Respondents to permanently close UST Nos. 005 and 006.

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) **DEM's UST Regulations, Rules 6.10, 6.12 and 6.13** – requiring UST owners/operators to pay UST registration and late fees assessed by DEM.
- (2) **DEM's UST Regulations, Rules 8.02(A) and 8.16(B)** – pertaining to the operation and maintenance of UST systems and requiring overfill protection for USTs.
- (3) **DEM's UST Regulations, Rule 8.04(A)** – requiring owners/operators of single-walled USTs and product pipelines installed before 8 May 1985 to permanently close the USTs and product pipelines by 22 December 2017.
- (4) **DEM's UST Regulations, Rule 8.09(A)(1)** – requiring continuous electronic leak monitoring for double-walled product pipelines.
- (5) **DEM's UST Regulations, Rules 8.09(A)(2)(e), 8.10(D) and 12.04(C)** – requiring that failed pipeline tightness tests be immediately reported to DEM.
- (6) **DEM's UST Regulations, Rules 8.09(A)(2)(f) and 12.07** – requiring the submittal of a Release Characterization Report to DEM within seven days of a failed tightness test.
- (7) **DEM's UST Regulations, Rules 8.09(A)(2)(g)** – requiring that primary product pipelines be tested for tightness within three days of a failed secondary pipeline tightness test, that failed secondary pipelines be repaired within 30 days.
- (8) **DEM's UST Regulations, Rule 8.15(B)** – prohibiting the deactivation of leak monitoring devices, requiring that all malfunctions be repaired within 15 days and requiring the temporary closure of affected USTs if repairs cannot be completed within 15 days.
- (9) **DEM's UST Regulations, Rule 8.22(A)** – requiring UST owners/operators to have at least one ICC-certified Class A and at least one ICC-certified Class B UST facility operator assigned to their facilities and registered with DEM.
- (10) **DEM's UST Regulations, Rule 10.01** – prohibiting the modification of UST systems without prior written notification to and approval by the Director of DEM.
- (11) **DEM's UST Regulations, Rule 10.04(C)** – requiring that an environmental consultant be present during UST modification or repair projects to screen any excavated soils for contamination and submit a report of their findings to DEM within 30 days of project completion.

- (12) **DEM's UST Regulations, Rule 16.01** – prohibiting the transfer of Certificates of Registration without providing written notification to DEM at least 30 days prior to the proposed transfer.

E. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), you are hereby ORDERED to:

- (1) **Within 7 days of receipt of the NOV**, procure the services of a qualified contractor to evacuate the contents of UST Nos. 005 and 006. The tanks shall be evacuated to one inch or less of liquid at the bottom of the tanks and the fill port for each tank shall be locked. Written verification of compliance shall be submitted to the DEM's Office of Compliance and Inspection ("OC&I") within ten days of receipt of this NOV.
- (2) **Within 45 days of receipt of the NOV**, submit a completed *Permanent Closure Application for USTs* to the DEM's Office of Waste Management ("OWM") and, **with their consent and approval, complete the permanent closure of the UST Nos. 005 and 006** in accordance with Rule 13.00 of the UST Regulations.
- (3) **Within 30 days of the removal of the USTs**, complete and submit to the OWM a *Closure Assessment Report* in accordance with Rule 13.11 of the DEM's UST Regulations, the *UST Closure Assessment Guidelines*, October 1998, and Section 13.00 of the DEM's *Oil Pollution Control Regulations* (the "OPC Regulations").
- (4) **Within 30 days of the removal of the USTs**, remove and properly dispose of any contaminated soil encountered during the tank closure and within ten days of the soil disposal, submit documentation of disposal to the OWM, in accordance with Section 13 of the OPC Regulations.
- (5) If, after review of the *Closure Assessment Report*, the OWM determines that a site investigation is required, complete the site investigation and submit a *Site Investigation Report* ("SIR") to the OWM in accordance with Rules 12.08, 12.09, and 12.10 of the DEM's UST Regulations within the time frame specified by the OWM.
- (6) If, after review of the SIR, the OWM determines that a *Corrective Action Plan* ("CAP") is required, submit a proposed CAP in accordance with Rules 12.12 through 12.18 of the DEM's UST Regulations within the time frame specified by the OWM. The OWM will review the proposed CAP and issue further instruction on how to proceed. The CAP shall be implemented in accordance with an *Order of Approval* issued by the DEM.

- (7) **Within 7 days of receipt of the NOV**, submit a completed *Release Characterization Report* to the OC&I for the failed/inconclusive secondary pipeline tightness tests that were performed on 7 November 2017, as per Rules 8.09(A)(2)(f) and 12.07 of the UST Regulations.
- (8) **Within 7 days of receipt of the NOV**, submit a completed *Application for the Repair or Replacement of Product Piping* for the repair work that has been completed for the product pipelines for UST Nos. 007, 008 and 009 by South Shore Contracting Company, Corp., as per Rule 10.01 of the UST Regulations.
- (9) **Within 7 days of receipt of the NOV**, submit a completed *Transfer of Certificate of Registration* form and a completed and updated *Underground Storage Tank Registration Form* to DEM in accordance with Rules 6.16 and 16.02 of the UST Regulations
- (10) **Within 15 days of receipt of the NOV**, procure the services of a qualified person to reactivate the product pipeline leak sensor for UST No. 008, repair the product pipeline leak sensor for UST No. 007 and repair or reactivate the high-level overfill alarm enunciator in accordance with Rules 8.02(A), 8.09(A)(1), 8.15(B) and 8.16(B) of the UST Regulations. Written verification of compliance shall be submitted to the OC&I.
- (11) **Within 30 days of receipt of the NOV**, re-excavate the repaired/modified sections of the product pipelines at each of the product dispensers. In accordance with Rule 10.04(C) of the UST Regulations, Respondents shall procure the services of a qualified environmental consultant to be present during the excavation and to screen the excavated soils for contamination. Respondents shall notify the DEM – Office of Waste Management’s UST Management Program (at 401-222-2797) **at least three days prior** to the excavation so that a DEM inspector may be present to witness the excavation.
- (12) **Within 30 days of the re-excavation project**, Respondents shall submit a written report detailing the consultant’s findings, as per Rule 10.04(C) of the UST Regulations.
- (13) **Within 30 days of receipt of the NOV**, assign at least one ICC-certified Class A and at least one ICC-certified Class B UST facility operator to the Facility and submit a completed *RI DEM Certified UST Operator Registration Form* to DEM in accordance with Rule 8.22 of the UST Regulations.
- (14) **Within 30 days of receipt of the NOV**, remit a payment of \$550.00 to DEM for all past-due registration and late fees that were assessed by DEM in accordance with Rules 6.10, 6.12 and 6.13 of the UST 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:

\$43,736

- (2) The proposed administrative penalty is calculated pursuant to the DEM's *Rules and Regulations for Assessment of Administrative Penalties*, as amended, and must be paid to the DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a certified check, cashier's check or money order 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 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 the 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 the 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 the 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 DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters*.
- (2) A copy of each request for hearing must also be forwarded to:
- Tricia Quest, 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 the 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 this NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (vi) and 42-17.6-4(b) and (c).
 - (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
 - (6) An original signed copy of the NOV is being forwarded to the Town of South Kingstown, Rhode Island, wherein the Property is located, to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and Section 42-17.1-2 (31), as amended.
 - (7) The NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Tricia Quest of the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey Tyrrell of the 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, Chief
Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

MALIN BAY, LLC
c/o Nancy Hannon, Resident Agent
1850 Warwick Avenue
Warwick, RI 02889

CAMPTON INDUSTRIES, L.L.C.
c/o Christian C. Potter, Esq., Resident Agent
38 Azalea Circle
Kingstown, RI 02881

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST

File No.: UST 2018-5-02778

Respondents: MALIN BAY, LLC and CAMPTON INDUSTRIES, L.L.C.

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 (3) – Maintaining single-walled USTs	Type II <i>(\$12,500 Max. Penalty) *</i>	Major	\$6,250	2 UST systems	\$12,500
D (4) & (8) – Deactivation of leak monitoring devices and failure to repair a malfunctioning leak sensor	Type II <i>(\$12,500 Max. Penalty) *</i>	Major	\$6,250	One	\$6,250
D (5), (6) & (7) – Failure to immediately report failed tests, submit a Release Characterization Report, test the primary pipelines for tightness within three days and take the USTs out of service within 30 days	Type II <i>(\$12,500 Max. Penalty) *</i>	Major	\$6,250	One	\$6,250
D (9) – Failure to assign Class A and B operators to the Facility	Type II <i>(\$12,500 Max. Penalty) *</i>	Moderate	\$5,000	One	\$5,000
D (10) & (11) – Failure to obtain the prior approval of DEM for the pipeline repairs and have an environmental consultant screen the excavation for contamination	Type I <i>(\$25,000 Max. Penalty) *</i>	Major	\$12,500	One	\$12,500
SUB-TOTAL					\$42,500

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

ADMINISTRATIVE PENALTY SUMMARY (continued)

ECONOMIC BENEFIT FROM NON-COMPLIANCE			
<p>COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT COMPLY. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:</p> <ul style="list-style-type: none"> - THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED. 			
DESCRIPTION OF BENEFIT	CALCULATION		AMOUNT
Failing to permanently close the USTs. 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.	<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, other than a C Corp.</p> <p>\$50,000</p> <p>December 2017 15 November 2018 1 November 2018</p> <p>7.3%</p>	\$1,236
SUB-TOTAL			\$1,236

COST RECOVERY
<p>ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.</p>
<p>A review of the record in this matter has revealed that the 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.</p>

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$43,736

PENALTY MATRIX WORKSHEET

CITATION: Maintaining single-walled USTs
 VIOLATION NOS.: D (3)

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
 THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Part 1.10A.1.b of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents failed to permanently close UST Nos. 005 and 006 by the 22 December 2017 deadline and maintained the UST systems in the ground in violation of the R.I. Gen. Laws and the UST Regulations. The maintenance of single-walled USTs beyond 22 December 2017 is prohibited. Single-walled USTs present a threat to the environment and public health and safety as there is no secondary containment to prevent releases of petroleum products and hazardous materials directly to the subsurface. Failure to comply increases the likelihood of a release of the regulated substance to the environment and the resultant threats to groundwater resources and public health and safety.
- (2) **Environmental conditions:** Residences and businesses in the vicinity of the Facility rely on private drinking water wells. 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 620 feet of freshwater wetlands, within 1,700 feet of Pettaquamscutt River and within 2,700 feet of a tributary of Fresh Meadow Brook. The Facility is located in the Saugatucket River watershed.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** No. 2 heating oil may cause significant soil and groundwater contamination if released to the environment. Certain petroleum constituents are potentially harmful to human health and safety and the environment.
- (5) **Duration of the violation:** 8 months.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** Respondents failed to prevent the non-compliance by permanently closing UST Nos. 005 and 006 by 22 December 2017, despite receiving a written final notice from the DEM dated 27 November 2017 requiring that they do so. As of the date of this NOV, DEM has not been made aware of any steps that Respondents may have taken to mitigate the non-compliance.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by 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 the failure to comply with the requirements set forth in R. I. Gen. Laws and Rule 8.04(A) of the UST Regulations. Respondents, as owner and operator 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.

<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: Deactivation of leak monitoring devices and failure to repair a malfunctioning leak sensor

VIOLATION NOS.: D (4) & (8)

TYPE		
<p style="text-align: center;">_____ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u>X</u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<p style="font-size: small;">THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</p>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10A.1.b of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents deactivated the leak sensors for the product pipelines for UST Nos. 005, 006 and 008 and failed to repair the malfunctioning leak sensor for the product pipeline for UST No. 007 within 15 days. The UST Regulations prohibit the deactivation of a leak monitoring devices and require that any malfunction be repaired within 15 days. If repairs cannot be completed within 15 days, then the UST system is required to be placed into temporary closure. Failure to comply could result in the failure to detect a leak in a product pipeline, which could result in a catastrophic release of petroleum product to the environment. DEM is not aware of any ongoing leaks from the product pipelines of the affected UST systems. (2) Environmental conditions: The Facility is in a developed area with potential vapor receptors including commercial structures, residential structure and underground utilities. Residences and businesses near the Facility rely on private drinking water wells. The Facility is in a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. The Facility is located within 620 feet of freshwater wetlands, within 1,700 feet of Pettaquamscutt River and within 2,700 feet of a tributary of Fresh Meadow Brook. The Facility is in the Saugatucket 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 public health hazard (due to potential inhalation of benzene) and a public safety hazard (due to the potential for explosion). Gasoline and No. 2 heating oil may 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: DEM first became aware of the deactivation and the malfunction on 27 March 2018. It is not known how long the sensors had been deactivated and malfunctioning as the CMS is password protected and DEM was unable to obtain an alarm history report. As of the date of this NOV, Respondents had yet to notify DEM that the issues have been resolved. (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 continuously operating the leak sensors for the product pipeline and by failing to repair the malfunctioning sensor within 15 days. Respondents have made no apparent attempt to mitigate the non-compliance, despite receiving electronic correspondence that was sent to MALIN from the DEM dated 9 April 2018 requiring that they do so.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by 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 the failure to comply immediately with the requirements set forth in Rules 8.09(A)(1) and 8.15(B) of the UST Regulations. Respondents, as owner and operator 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.

<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 immediately report failed tests, submit a Release Characterization Report, test the primary pipelines for tightness within three days and take the USTs out of service within 30 days

VIOLATION NOS.: D (5), (6) & (7)

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		
<p>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</p>		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10A.1.b of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</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 immediately report the failed or inconclusive secondary pipeline tightness tests to DEM and they failed to submit a Release Characterization Report to DEM within seven days. Respondents also failed to have the primary product pipelines tested for tightness within three days of the failed secondary pipeline tightness tests. Respondents then failed to remove UST Nos. 007, 008 and 009 from service after they had failed to complete repairs of the secondary product pipelines within 30 days of the failed or inconclusive tightness tests. Failure to comply results in vital information being withheld from DEM and may allow compromised pipelines to remain in use for extended periods, which may result in the release of the regulated substance to the environment. (2) Environmental conditions: The Facility is in a developed area with potential vapor receptors including commercial structures, residential structures and underground utilities. Residences and businesses near the Facility rely on private drinking water wells. The Facility is in a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. The Facility is located within 620 feet of freshwater wetlands, within 1,700 feet of Pettaquamscutt River and within 2,700 feet of a tributary of Fresh Meadow Brook. The Facility is in the Saugatucket 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 public health hazard (due to potential inhalation of benzene) and a public safety hazard (due to the potential for explosion). Gasoline may cause significant soil and groundwater contamination if released to the environment. Certain petroleum constituents are potentially harmful to human health and safety and the environment. Benzene, a component of gasoline, is a known carcinogen. (5) Duration of the violation: Full duration unknown – Respondents have been in violation of the rules since 7 November 2017. (6) Areal extent of the violation: Considered, but not utilized for this calculation. 		
<p>(continued)</p>		

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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 immediately reporting the failed tests to DEM, submitting a Release Characterization Report to DEM within seven days and by completing repairs with DEM's approval within 30 days. The failed tests were eventually reported to DEM by the tester 29 days after the tests were performed, however, Respondents have yet to submit a Release Characterization Report to DEM, despite receiving written notices that were sent to MALIN from the DEM dated 5 December 2017 and 8 January 2018 requiring that they do so. Respondents had the secondary pipelines repaired by a contractor and subsequently tested them for tightness, however, they failed to complete the repairs with prior written notification to and approval by the DEM.
- (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 the failure to comply immediately with the requirements set forth in Rules 8.09(A)(2), 8.10(D), 12.04(C) and 12.07 of the UST Regulations. Respondents, as owner and operator 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.

<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 assign Class A and B operators to the Facility
 VIOLATION NO.: D (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;">_ X _ TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10A.1.b of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</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 assign ICC-certified Class A and B UST facility operators to the Facility and register them with DEM in accordance with Rule 8.22(A) of the UST Regulations. The operator training requirements are significant to the regulatory program. Failure to comply would presumably reduce the likelihood of preventing and detecting releases from the UST systems. (2) Environmental conditions: The Facility is in a developed area with potential vapor receptors including commercial structures, residential structure and underground utilities. Residences and businesses near the Facility rely on private drinking water wells. The Facility is in a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. The Facility is within 620 feet of freshwater wetlands, within 1,700 feet of Pettaquamscutt River and within 2,700 feet of a tributary of Fresh Meadow Brook. The Facility is in the Saugatucket 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 public health hazard (due to potential inhalation of benzene) and a public safety hazard (due to the potential for explosion). Gasoline may 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 have been non-compliant with this Rule since 19 January 2018. Respondents had a certified Class A/B operator assigned to the Facility (Mr. Wassim Khiami), however, his certification expired on 19 January 2018 and Respondents have yet to replace him. (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 ensuring that Mr. Khiami had taken the ICC exam to renew his certification or by assigning new ICC-certified Class A and B UST facility operators to the Facility by 19 January 2018. Respondents have made no apparent attempt to mitigate the non-compliance.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by 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 the failure to comply immediately with the requirements set forth in Rule 8.22(A) of the UST Regulations. Respondents, as owner and operator 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	<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 obtain the prior approval of DEM for the pipeline repairs and have an environmental consultant screen the excavation for contamination

VIOLATION NOS.: D (10) & (11)

TYPE		
<p style="text-align: center;"><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> </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>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10A.1.b of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</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 submit prior written notification to and obtain the approval of the DEM for the pipeline repairs that were completed by SSCC for UST Nos. 007, 008 and 009. Respondents also failed to procure the services of an environmental consultant to screen soils for contamination during the repair project and submit a report of the findings to DEM within 30 days. The violations prevent DEM from ensuring that proposed repairs are to be completed by qualified persons in accordance with the UST Regulations and applicable national codes of practice and from ensuring whether a release may have occurred because of the piping deficiencies. Control and oversight of piping repair and replacement activities and having an environmental consultant screen excavation areas for contamination are significant to the regulatory program. Failure to comply may result in substandard repairs and installations and could allow releases of regulated substances to go undetected, which may result in threats to public health and safety and the environment. (2) Environmental conditions: The Facility is in a developed area with potential vapor receptors including commercial structures, residential structure and underground utilities. Residences and businesses near the Facility rely on private drinking water wells. The Facility is in a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. The Facility is located within 620 feet of freshwater wetlands, within 1,700 feet of Pettaquamscutt River and within 2,700 feet of a tributary of Fresh Meadow Brook. The Facility is in the Saugatucket 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 public health hazard (due to potential inhalation of benzene) and a public safety hazard (due to the potential for explosion). Gasoline may 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: Considered, but not utilized for this calculation. (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 take reasonable and appropriate steps to prevent the non-compliance by submitting written notification to and obtaining the approval of the DEM before completing the necessary repairs and having an environmental consultant on-site during the pipeline repair project to screen excavated soils for contamination and submit a report to DEM. Respondents have made no apparent attempt to mitigate the non-compliance.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by 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 the failure to comply immediately with the requirements set forth in Rules 10.01 and 10.04(C) of the UST Regulations. Respondents, as owner and operator 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.

<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 \$12,500	\$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	\$250 to \$1,250