

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Chaouki Sarkis  
Mike Sarkis  
Rodrique Elfakhry  
Michel Slaibi**

**FILE NO.: UST 2010-00386**

NOTICE OF VIOLATION

A. Introduction

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

B. Administrative History

DEM issued notices of noncompliance to Mike Sarkis on 21 November 2008 and 27 January 2009, Mike Sarkis and Chaouki Sarkis on 29 December 2009, and Rodrique Elfakhry and Michel Slaibi on 4 January 2010 for the violations. The Respondents failed to respond to any of the notices.

C. Facts

- (1) The subject property is located at 100 Main Street in the Town of Warren, Rhode Island (the “Property”).
- (2) The Property includes a service station and six underground storage tanks (“USTs” or “tanks”), which tanks are used for storage of petroleum products and waste oil (the “Facility”).
- (3) The Property is owned by 100 Main Street, LLC. The Property was acquired by 100 Main Street, LLC on 29 August 2007.
- (4) The Rhode Island Secretary of State’s corporations database lists 100 Main Street LLC as an inactive corporation, having its principal place of business at 100 Main Street, Warren, Rhode Island. The date of the Revocation Certificate was 15 June 2009. The record lists Chaouki Sarkis as a Member of the corporation.
- (5) The Facility was operated by Mike Sarkis. Mr. Sarkis identified himself as the operator of the Facility at the time of the DEM inspection on 23 October 2008.

- (6) The Facility is currently operated by Rodrique Elfakhry and Michel Slaibi. Mr. Elfakhry and Mr. Slaibi have been operating the Facility since November 2009.
- (7) The Facility is subject to the DEM Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials, as is or as amended (the “UST Regulations”).
- (8) The Facility is registered with DEM in accordance with Section 6.00 of the UST Regulations and is identified as UST Facility No. 00386.
- (9) The USTs are registered with DEM as follows:

<b>UST ID No.</b>	<b>Date Installed</b>	<b>Capacity</b>	<b>Substance Stored</b>
002	22 August 1988	4,000 gallons	Kerosene
004	27 July 1988	8,000 gallons	Diesel
006	27 July 1988	8,000 gallons	Gasoline
008	27 July 1988	8,000 gallons	Gasoline
011	27 July 1988	1,000 gallons	Waste Oil
013	27 July 1988	1,000 gallons	No. 2 Fuel Oil

- (10) DEM inspected the Facility on 23 October 2008 and 29 December 2009. The inspections revealed the following:
  - (a) The Facility was being operated by Mike Sarkis at the time of the 23 October 2008 inspection and was being operated by Rodrique Elfakhry and Michel Slaibi at the time of the 29 December 2009 inspection.
  - (b) Segments of the product pipelines for UST Nos. 002, 004, 006 and 008, at the submersible turbine pump manways and beneath the product dispensers, are constructed of bare steel that is in contact with the ground and not protected against corrosion.
  - (c) Inventory control record-keeping requirements for UST Nos. 002, 004, 006 and 008 were not compiled and maintained, when the Facility was in operation, during the time period of September 2007 through December 2009.
  - (d) Tank tightness testing of UST Nos. 002, 004, 006, 008 and 011 was not performed by a licensed tightness tester in 2009.
  - (e) The *Veeder Root TLS 350* automatic tank gauging system (“ATG”) was not reading the tank gauging probe for UST No. 011 at the time of either inspection. The probe was either malfunctioning or deactivated. Manual tank gauging records for the UST were not available at the time of either inspection.
  - (f) Tightness testing of the product pipelines for UST Nos. 002, 004, 006 and 008 was not performed by a licensed tightness tester in 2008 and 2009.

- (g) Testing of the line leak detectors for UST Nos. 002, 004, 006 and 008 was not performed by a licensed tightness tester in 2008 and 2009.
  - (h) Testing of the dispenser shear valves was not performed in 2008 and 2009.
  - (i) The “alarm”, “warning” and “power” status indicator lamps on the ATG console were malfunctioning at the time of the 29 December 2009 inspection.
  - (j) Testing of the ATG at least once per month to ensure that it was operating effectively was not performed.
  - (k) The ATG was not certified/tested by a qualified person in 2007, 2008 and 2009.
  - (l) The 29 December 2009 inspection revealed that the fill ports for UST Nos. 011 and 013 were not labeled to identify the materials stored inside the tanks. The fill port for UST No. 002 was painted green. The correct color code for kerosene is brown. The paint used to label the fill ports for UST Nos. 004, 006 and 008 was worn and faded.
  - (m) The tank field observation wells were not labeled or secured against tampering. The eastern well is screened to the top of the well casing.
- (11) DEM was not notified of the change in operation of the Facility.
- (12) As of the date of this Notice of Violation (“NOV”), the Respondents have failed to comply with the UST Regulations.

D. Violation

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

- (1) **UST Regulations, Rule 6.16(B)(1)** – requiring that facility owners/operators notify DEM in writing within 10 days of a change in operation of the facility.
- (2) **UST Regulations, Rule 8.05** – requiring the owner/operator to provide corrosion protection of all unprotected steel tanks and piping.
- (3) **UST Regulations, Rules 8.08(B)(3) and 11.03** – requiring the owner/operator to compile and maintain inventory control records for USTs.
- (4) **UST Regulations, Rules 8.08(B)(4) and 8.08(E)(2)(a)(3)** – requiring the owner/operator to retain a licensed tank tightness tester to perform tank tightness tests every five years once a monitoring device has been installed, until such time as the tank has been installed for a period of twenty years, and once every two years thereafter.

- (5) **UST Regulations, Rule 8.08(E)(2)(a)(2)** – requiring the owner/operator to utilize ATGs to perform 0.2-gallon per hour leak tests for waste oil USTs at least once per month.
- (6) **UST Regulations, Rule 8.09 (B)(1)** – requiring the owner/operator to retain a licensed tester to perform tightness testing of pressurized, single-walled product pipelines.
- (7) **UST Regulations, Rule 8.11** – requiring the owner/operator to retain a qualified tester to perform annual testing of line leak detectors.
- (8) **UST Regulations, Rule 8.12** – requiring the owner/operator to perform annual testing of shear valves.
- (9) **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.
- (10) **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 15 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.
- (11) **UST Regulations, Rule 8.15(E)** – requiring the owner/operator to perform monthly testing of UST continuous monitoring systems.
- (12) **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.
- (13) **UST Regulations, Rule 8.18** – requiring the owner/operator to permanently label, or otherwise permanently mark, all fill pipes and/or fill box covers so that the product inside the tank is identified.
- (14) **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.

- (15) **UST Regulations, Rule 8.19 (C)** – prohibiting groundwater monitoring wells and tank pad observation wells from being screened to the top of the well casing.

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 (60) days of receipt of this NOV**:

- (1) Submit an updated UST Facility Registration Form to the DEM – Office of Waste Management at 235 Promenade Street, Suite 380, Providence, RI 02908-5767.
- (2) Submit to the DEM – Office of Compliance and Inspection (“OC&I”) written verification that you have upgraded the metallic segments of the product pipelines for UST Nos. 002, 004, 006 and 008 to comply 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.
- (3) Submit to OC&I written verification that you are now in compliance with the inventory control requirements for UST Nos. 002, 004, 006 and 008, as set forth in Rules 8.08(B)(3), 11.02(B)(4) and 11.03 of the UST Regulations.
- (4) Submit to OC&I copies of tightness testing reports that show that UST Nos. 002, 004, 006, 008 and 011 have been tested for tightness by a licensed tightness tester within the last two years in accordance with Rules 8.08(B)(4), 8.08(E)(2) and 8.10 of the UST Regulations.
- (5) Submit to OC&I written verification that either the ATG probe for UST No. 011 has been repaired or replaced in accordance with Rules 8.02(A), 8.08(E)(2)(a) and 8.15 of the UST Regulations and the ATG was used to perform 0.2-gallon per hour leak tests at least once every 30 days in accordance with Rule 8.08(E)(2)(a)(2) of the UST Regulations **OR** that manual tank gauging has been performed in accordance with Rule 8.08(E)(2)(b)(2) of the UST Regulations and the services of a licensed tightness tester have been procured to perform tank tightness testing of UST No. 011 on an annual basis, in accordance with Rules 8.08(E)(2)(b)(1) and 8.10 of the UST Regulations.
- (6) Submit to OC&I a copy of the tightness testing report that shows that the product pipelines for UST Nos. 002, 004, 006 and 008 have been tested for tightness by a licensed tightness tester within the last year in accordance with Rules 8.09(B)(1) and 8.10 of the UST Regulations.
- (7) Submit to OC&I a copy of the test report that shows that the line leak detectors for UST Nos. 002, 004, 006 and 008 have been tested by a qualified person within the last year in accordance with Rule 8.11 of the UST Regulations.

- (8) Submit to OC&I a copy of the test report that shows that the dispenser shear valves have been tested within the last year in accordance with Rule 8.12 of the UST Regulations.
- (9) Submit to OC&I written verification that the status indicator lamps on the ATG console have been repaired or replaced and that they are now fully functional, in accordance with Rule 8.15(B) of the UST Regulations.
- (10) Submit to OC&I written verification that you are now in compliance with the monthly ATG testing requirements set forth in Rules 8.15(E) and 11.02(B)(3) of the UST Regulations.
- (11) Submit to OC&I a copy of the test report that shows that the ATG has been certified/tested by a qualified person within the last year in accordance with Rule 8.15(F) of the UST Regulations.
- (12) Submit to OC&I written verification that the fill ports for UST Nos. 002, 004, 006, 008, 011 and 013 are labeled or otherwise permanently marked to identify the materials stored inside the tanks in accordance with Rule 8.17 of the UST Regulations and API RP 1637. The correct color code for kerosene is brown and the color code for used oil is purple.
- (13) Submit to OC&I written verification that the tank field observation wells are retrofitted in full compliance with Rules 8.19 (A), (B), (C) and (D) 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:

**Twenty-One Thousand Four Hundred and Six Dollars (\$21,406.00)**

- (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 (20) days of your receipt of this NOV. Payment shall be in the form of a certified 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 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 (20) 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, 3<sup>RD</sup> 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, 4<sup>TH</sup> 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) An original signed copy of this NOV is being forwarded to the Town of Warren 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) 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

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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:

Chaouki Sarkis  
231 Colonial Road  
North Attleborough, MA 02760

Mike Sarkis  
100 Main Street  
Warren, RI 02885

Rodrique Elfakhry  
100 Main Street  
Warren, RI 02885

Michel Slaibi  
100 Main Street  
Warren, RI 02885

by Certified Mail.

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## ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST

File No.: UST 2010 – 00386

Respondents: Chaouki Sarkis, Mike Sarkis, Rodrique Elfakhry and Michel Slaibi

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D (2) – Failure to provide corrosion protection for the bare steel piping segments	Type II <i>(\$ 12,500 Max. Penalty)*</i>	Moderate	\$3,000	1	\$3,000.00
D (3) – Failure to compile and maintain inventory control records	Type II <i>(\$ 12,500 Max. Penalty)*</i>	Moderate	\$4,000	1	\$4,000.00
D (4) – Failure to perform tank tightness testing	Type II <i>(\$ 12,500 Max. Penalty)*</i>	Minor	\$2,250	1	\$2,250.00
D (5), (9) and (10) – Failure to maintain and operate the ATG for UST No. 011 and perform monthly 0.2-gallon per hour leak tests	Type II <i>(\$ 12,500 Max. Penalty)*</i>	Minor	\$1,500	1	\$1,500.00
D (6) – Failure to perform product pipeline tightness testing	Type II <i>(\$ 12,500 Max. Penalty)*</i>	Minor	\$2,000	1	\$2,000.00
D (7) and (8) – Failure to test the line leak detectors and shear valves	Type II <i>(\$ 12,500 Max. Penalty)*</i>	Minor	\$1,500	1	\$1,500.00
D (11) and (12) – Failure to test the ATG on a monthly and annual basis	Type II <i>(\$ 12,500 Max. Penalty)*</i>	Minor	\$1,750	1	\$1,750.00
<b>SUB-TOTAL</b>					<b>\$16,000.00</b>

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

**ADMINISTRATIVE PENALTY SUMMARY** (continued)

<b>ECONOMIC BENEFIT FROM NONCOMPLIANCE</b>		
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 tank tightness testing	5 USTs X 1 year = 5 missing tests @ \$439 per test	\$ 2,195.00
Cost of pipeline tightness testing	4 USTs X 2 years = 8 missing tests @ \$203 per test	\$1,624.00
Cost of line leak detector testing	4 USTs X 2 years = 8 missing tests @ \$96 per test	\$768.00
Cost of tank monitor testing	1 ATG X 3 years = 3 missing tests @ \$273 per test	\$819.00
<b>SUB-TOTAL</b>		<b>\$5,406.00</b>

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$21,406.00**

**PENALTY MATRIX WORKSHEET**

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

VIOLATION NO.: D (2)

<b>TYPE</b>		
<p>____ <b>TYPE I</b>  <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u><b>X</b></u> <b>TYPE II</b>  <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>____ <b>TYPE III</b>  <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> Respondents failed to provide corrosion protection for the bare steel segments of the product pipelines for UST Nos. 002, 004, 006 and 008. Failure to provide corrosion protection for pressurized steel piping could allow for corrosion of the piping components and cause a catastrophic release of the regulated substance. Historically, corrosion of bare steel pipelines has been a primary cause of releases at UST facilities.</p> <p>(B) <b>Environmental conditions:</b> The Facility is located in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. The Property is located within 450 feet of the Palmer River. The Facility is located in a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities.</p> <p>(C) <b>Amount of the pollutant:</b> Not relevant.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> 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, diesel fuel and kerosene 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) <b>Duration of the violation:</b> Respondents Chaouki Sarkis and Mike Sarkis have been non-compliant with this rule since taking ownership of the Facility in August 2007. Respondents Rodrigue Elfakhry and Michel Slaibi have been noncompliant with this rule since taking over operation of the Facility in November 2009. Corrosion protection was required by December 1998.</p> <p>(F) <b>Areal extent of the violation:</b> Not relevant.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the non-compliance by providing corrosion protection for the bare steel piping segments when they took possession of the Facility in August 2007. Respondents failed to mitigate the non-compliance despite receiving notices from DEM, which required that they 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 Respondents for their failure to comply immediately with the requirements set forth in Rule 8.05. The corrosion protection requirements are clearly established in the UST Regulations. Respondents, as owners and operators 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.

<b>MAJOR</b>	<u>  <b>X</b>  </u> <b>MODERATE</b>	<b>MINOR</b>
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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	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	<b>MODERATE</b>	\$6,250 to \$12,500	\$2,500 to \$6,250 <b>\$3,000</b>	\$1,250 to \$2,500
	<b>MINOR</b>	\$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 (3)

<b>TYPE</b>		
<p style="text-align: center;">___ <b>TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u><b>X</b></u> <b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ <b>TYPE III</b></p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> Respondents failed to compile inventory control records for UST Nos. 002, 004, 006 and 008, consistent with the requirements of the Rules 8.08(B)(3) and 11.03 UST Regulations, during the time period of September 2007 through December 2009. Inventory control is an important and required component of leak detection programs at UST facilities. Failure to perform inventory control would reduce the likelihood of detecting a release from a UST system.</p> <p>(B) <b>Environmental conditions:</b> The Facility is located in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. The Property is located within 450 feet of the Palmer River. The Facility is located in a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities.</p> <p>(C) <b>Amount of the pollutant:</b> Not relevant.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> 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, diesel fuel and kerosene 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) <b>Duration of the violation:</b> Respondents Chaouki Sarkis and Mike Sarkis have been non-compliant with this rule since taking ownership of the Facility in August 2007. Respondents Rodrique Elfakhry and Michel Slaibi have been noncompliant with this rule since taking over operation of the Facility in November 2009.</p> <p>(F) <b>Areal extent of the violation:</b> Not relevant.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the non-compliance by compiling and maintaining inventory control records for UST Nos. 002, 004, 006 and 008 during the time period of September 2007 through December 2009. Respondents failed to mitigate the non-compliance despite receiving notices from DEM, which required that they 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 Respondents for their failure to comply immediately with the requirements set forth in Regulation Nos. 8.08(B)(3) and 11.03. The inventory control requirements are clearly established in the UST Regulations. Respondents, as owners and operators 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.

<b>MAJOR</b>	<u>  <b>X</b>  </u> <b>MODERATE</b>	<b>MINOR</b>
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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
	<b>MODERATE</b>	\$6,250 to \$12,500	\$2,500 to \$6,250 <b>\$4,000</b>	\$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 perform tank tightness testing  
 VIOLATION NO.: D (4)

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><b>FACTORS CONSIDERED:</b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> Respondents failed to procure the services of a licensed tightness tester to perform tank tightness testing for UST Nos. 002, 004, 006, 008 and 011 during the year 2009. Tightness testing of single-walled USTs is an important, required component of release detection programs at UST facilities. Failure to perform tightness testing as required would reduce the likelihood of detecting a release from a UST system.</p> <p>(B) <b>Environmental conditions:</b> The Facility is located in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. The Property is located within 450 feet of the Palmer River. The Facility is located in a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities.</p> <p>(C) <b>Amount of the pollutant:</b> Not relevant.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> 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, diesel fuel, kerosene and used oil 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) <b>Duration of the violation:</b> Respondents have been non-compliant with this rule since December 2009.</p> <p>(F) <b>Areal extent of the violation:</b> Not relevant.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the non-compliance by having UST Nos. 002, 004, 006, 008 and 011 tested for tightness during the year 2009. Respondents failed to mitigate the non-compliance despite issuance of a notice to Respondents Rodrigue Elfakhry and Michel Slaibi from DEM on January 4, 2010, which required that they 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 Respondents for their failure to comply immediately with the requirements set forth in Regulation Nos. 8.08(B)(4) and 8.08(E)(2)(a)(3). The tank tightness testing requirements are clearly established in the UST Regulations. Respondents, as owners and operators 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.

<b>MAJOR</b>	<b>MODERATE</b>	<u>  <b>X</b>  </u> <b>MINOR</b>
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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	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	<b>MODERATE</b>	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250	\$1,250 to \$2,500 <b>\$2,250</b>	\$250 to \$1,250

**PENALTY MATRIX WORKSHEET**

CITATION: Failure to maintain and operate the ATG for UST No. 011 and perform monthly 0.2-gallon per hour leak tests  
 VIOLATION NO.: D (5), (9) and (10)

<b>TYPE</b>		
<p style="text-align: center;"><u>      </u> <b>TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u>  <b>X</b>  </u> <b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u>      </u> <b>TYPE III</b></p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> Respondents failed to maintain and operate the ATG for UST no. 011 and perform monthly 0.2 gallon per hour leak tests. At the time of time of each inspection, the ATG was not reading the gauging probe for UST No. 011. Upon information and belief, the gauging probe was either malfunctioning or it had been disabled. Respondents did not have any manual tank gauging records for UST No. 011 during either inspection to verify compliance with Rule 8.08(E)(2)(b) of the UST Regulations. ATGs are required to be continuously operated and utilized to perform 0.2-gallon per hour leak tests for single-walled USTs at least once per month. Deactivation is prohibited and any malfunction is required to be repaired within 15 days. The 0.2-gallon per hour leak test is an important, required component of release detection programs at UST facilities. Failure to perform these tests would presumably reduce the likelihood of detecting a release from a UST system.</p> <p>(B) <b>Environmental conditions:</b> The Facility is located in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. The Property is located within 450 feet of the Palmer River. The Facility is located in a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities.</p> <p>(C) <b>Amount of the pollutant:</b> Not relevant.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Waste oil 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) <b>Duration of the violation:</b> Respondents Chaouki Sarkis and Mike Sarkis have been non-compliant with this rule since at least October 2008. Respondents Rodrique Elfakhry and Michel Slaibi have been noncompliant with this rule since taking over operation of the Facility in November 2009.</p> <p>(F) <b>Areal extent of the violation:</b> Not relevant.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the non-compliance by maintaining and continuously operating the ATG for UST No. 011 and by performing 0.2-gallon per hour leak tests for UST No. 011 at least once per month. Respondents could have attempted to prevent the non-compliance by performing manual tank gauging for UST No. 011 in accordance with Rule 8.08(E)(2)(b) of the UST Regulations, however, they failed to do so. Respondents failed to mitigate the non-compliance despite receiving notices from DEM, which required that they 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 Respondents for their failure to comply immediately with the requirements set forth in Regulation Nos. 8.08(E)(2)(a)(1) and (2) and 8.15(A) and (B). The leak detection requirements for waste oil USTs are clearly established in the UST Regulations. The tank monitor operation and maintenance requirements are clearly established in the UST Regulations. Respondents, as owners and operators 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.

<b>MAJOR</b>	<b>MODERATE</b>	<u>  <b>X</b>  </u> <b>MINOR</b>
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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	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	<b>MODERATE</b>	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250	\$1,250 to \$2,500 <b>\$1,500</b>	\$250 to \$1,250

**PENALTY MATRIX WORKSHEET**

CITATION: Failure to perform product pipeline tightness testing  
 VIOLATION NO.: D (6)

<b>TYPE</b>		
<u>      </u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>  <b>X</b>  </u> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE III</b> <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:** Respondents failed to procure the services of a licensed tightness tester to perform tightness testing of the product pipelines for UST Nos. 002, 004, 006 and 008 during each of the years 2008 and 2009. Tightness testing of single-walled, pressurized product pipelines is an important, required component of release detection programs at UST facilities. Failure to perform tightness testing as required would reduce the likelihood of detecting a release from a UST system. A leak in a pressurized pipeline could result in a catastrophic release of the regulated substance.
- (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. The Property is located within 450 feet of the Palmer River. The Facility is located in a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities.
- (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, diesel fuel and kerosene 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:** Respondents Chaouki Sarkis and Mike Sarkis have been non-compliant with this rule during each of the years 2008 and 2009. Respondents Rodrique Elfakhry and Michel Slaibi have been noncompliant with this rule since taking over operation of the Facility in November 2009.
- (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:** Respondents failed to prevent the non-compliance by having the product pipelines for UST Nos. 002, 004, 006 and 008 tested for tightness during each of the years 2008 and 2009. Respondents failed to mitigate the non-compliance despite receiving notices from DEM, which required that they 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 Respondents for their failure to comply immediately with the requirements set forth in Regulation Nos. 8.09(B)(1). The pipeline testing requirements are clearly established in the UST Regulations. Respondents, as owners and operators 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.

<b>MAJOR</b>	<b>MODERATE</b>	<b><u>  X  </u> MINOR</b>
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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
	<b>MINOR</b>	\$2,500 to \$6,250	\$1,250 to \$2,500 <b>\$2,000</b>	\$250 to \$1,250

**PENALTY MATRIX WORKSHEET**

CITATION: Failure to test the line leak detectors and shear valves  
 VIOLATION NO.: D (7) and (8)

**TYPE**

<p style="text-align: center;"><u>      </u> <b>TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u>  <b>X</b>  </u> <b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u>      </u> <b>TYPE III</b></p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
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**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:** Respondents failed to procure the services of a qualified person to test the line leak detectors for UST Nos. 002, 004, 006 and 008 during each of the years 2008 and 2009. Respondents failed to perform functionality testing of the dispenser shear valves during each of the years 2008 and 2009. 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 manufacturer's performance standards.
  
- (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. The Property is located within 450 feet of the Palmer River. The Facility is located in a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities.
  
- (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, diesel fuel and kerosene 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:** Respondents Chaouki Sarkis and Mike Sarkis have been non-compliant with this rule during each of the years 2008 and 2009. Respondents Rodrique Elfakhry and Michel Slaibi have been noncompliant with this rule since taking over operation of the Facility in November 2009.
  
- (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:** Respondents failed to prevent the non-compliance by having the line leak detectors and shear valves for UST Nos. 002, 004, 006 and 008 tested during each of the years 2008 and 2009. Respondents failed to mitigate the non-compliance despite receiving notices from DEM, which required that they 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 Respondents for their failure to comply immediately with the requirements set forth in Regulation Nos. 8.11 and 8.12. The line leak detector and shear valve testing requirements are clearly established in the UST Regulations. Respondents, as owners and operators 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.

<b>MAJOR</b>	<b>MODERATE</b>	<u>  <b>X</b>  </u> <b>MINOR</b>
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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	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	<b>MODERATE</b>	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250	\$1,250 to \$2,500 <b>\$1,500</b>	\$250 to \$1,250

**PENALTY MATRIX WORKSHEET**

CITATION: Failure to test the ATG on a monthly and annual basis

VIOLATION NO.: D (11) and (12)

<b>TYPE</b>		
<u>      </u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>  <b>X</b>  </u> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE III</b> <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:** Respondents failed to procure the services of a qualified person to test the ATG during each of the years 2007, 2008 and 2009. Respondents failed to test the ATG on a monthly basis to ensure that it was operating effectively during the time period of August 2007 through December 2009. Annual functionality testing is required to ensure that an ATG is operating in conformance with the manufacturer’s performance standards. Owners/operators are required to test an ATG 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.
- (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. The Property is located within 450 feet of the Palmer River. The Facility is located in a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities.
- (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, diesel fuel, kerosene and used oil 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:** Respondents Chaouki Sarkis and Mike Sarkis have been non-compliant with the monthly testing requirement during the time period of August 2007 through December 2009. Respondents Rodrigue Elfakhry and Michel Slaibi have been noncompliant with this rule since taking over operation of the Facility in November 2009.
- (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:** Respondents failed to prevent the non-compliance by testing the ATG on a monthly basis during the time period of August 2007 through December 2009 and the failure to have the ATG tested by a qualified person during each of the years 2008 and 2009. Respondents failed to mitigate the non-compliance despite receiving notices from DEM, which required that they 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 Respondents for their failure to comply immediately with the requirements set forth in Regulation Nos. 8.15(E) and 8.15(F). The tank monitor testing requirements are clearly established in the UST Regulations. Respondents, as owners and operators 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.

<b>MAJOR</b>	<b>MODERATE</b>	<u>  <b>X</b>  </u> <b>MINOR</b>
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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	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	<b>MODERATE</b>	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250	\$1,250 to \$2,500 <b>\$1,750</b>	\$250 to \$1,250