

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: SCORPIO REALTY, LLC  
Scorpio Towing & Recovery, Inc.**

**FILE NO.: UST 2017-46-19121**

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 22 August 2017, the DEM issued a Letter of Non-Compliance (“LNC”) to Respondents for the violations that are the subject of this Notice of Violation (“NOV”). The LNC required specific actions to correct the violations. On 24 August 2017, the LNC was delivered to SCORPIO REALTY, LLC. The DEM was unable to confirm through the post office that the LNC issued to Scorpio Towing & Recovery, Inc. was delivered. On 26 October 2017, the DEM sent the LNC by electronic correspondence to Duane Souza, the president of and registered agent for Scorpio Towing & Recovery, Inc. As of the date of the NOV, Respondents have failed to respond to or comply with the LNC.

C. Facts

- (1) The property is located at 3 Tag Drive, Assessor’s Plat 10, Lot 622, in the Town of North Providence, Rhode Island (the “Property”). The Property includes a motor fuel storage and dispensing system and a motor vehicle service facility (the “Facility”).
- (2) SCORPIO REALTY, LLC owns the Property.
- (3) Scorpio Towing & Recovery, Inc. operates the Facility.
- (4) Underground storage tanks (“USTs” or “tanks”) are located on the Property, which are used for storage of petroleum products and which are subject to the DEM’s *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the “UST Regulations”).
- (5) The Facility is registered with the DEM and is identified as UST Facility No. 19121.

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

UST ID No.	Date Installed	Capacity	Product Stored
001	4 August 1997	2,000 gallons	Diesel
002	4 August 1997	2,000 gallons	Diesel

(7) The USTs and product pipelines are double walled.

(8) On 17 August 2017, the DEM inspected the Facility. The inspection revealed the following:

- (a) Monthly inventory reconciliation reports for the USTs for the period of May 2015 through August 2017 were not available;
- (b) Written verification that the interstitial space of the USTs had been tested for tightness by a DEM-licensed tightness tester during the year 2017 was not available;
- (c) Written verification that the interstitial spaces of the product pipelines for the USTs had been tested for tightness by a DEM-licensed tightness tester during the year 2017 was not available;
- (d) The “power” status indicator lamp on the *Veeder Root ILS 350* continuous monitoring system (“CMS”) console was malfunctioning at the time of inspection;
- (e) Written verification that the CMS had been certified/tested by a qualified person within the last year was not available;
- (f) The eastern tank field observation well was not labeled or secured against tampering;
- (g) A training log for all the Class C operators that have been trained and assigned to the Facility was not available at the time of inspection. Written verification that the owners/operators had trained and assigned at least one Class C operator was not available; and
- (h) Written verification that the USTs were being gauged monthly for the presence of water at the bottom of the USTs was not available.

(9) As of the date of the NOV, Respondents have failed to demonstrate compliance with the findings described in Section C (8) above.

D. Violation

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

- (1) **DEM's UST Regulations, Rules 8.08(A)(2) and 11.03** – requiring UST owners/operators to compile monthly inventory reconciliation and leak check records.
- (2) **DEM's UST Regulations, Rule 8.08(A)(3)** – requiring interstitial space tightness testing for double-walled USTs at 20 years of age.
- (3) **DEM's UST Regulations, Rule 8.09(A)(2)** – requiring interstitial space tightness testing for double-walled product pipelines at 20 years of age.
- (4) **DEM's UST Regulations, Rule 8.15(B)** – pertaining to the maintenance of a CMS.
- (5) **DEM's UST Regulations, Rule 8.15(F)** – requiring that a CMS be inspected and tested by qualified persons on an annual basis.
- (6) **DEM's UST Regulations, Rule 8.19(A)** – requiring that groundwater monitoring and tank field observation wells be labeled and secured against tampering.
- (7) **DEM's UST Regulations, Rule 8.22(A)** – requiring UST owners and operators to have trained Class C operators assigned to the facility.
- (8) **DEM's UST Regulations, Rule 8.22(A)(7)** – requiring UST owners and operators to maintain lists of all the trained Class C operators that have been assigned to the facility.
- (9) **DEM's UST Regulations, Rule 11.03(G)** – requiring UST owners and operators to gauge the USTs monthly for the presence of water at the bottom of the tank.

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 remedial actions **within 60 days of receipt of the NOV**:

- (1) IMMEDIATELY begin compiling monthly inventory reconciliation records for the USTs in accordance with Rules 8.08(A)(2), 11.02(B)(5) and 11.03 of the DEM's UST Regulations and submit written verification of a return to compliance to the DEM's Office of Compliance and Inspection ("OC&I").
- (2) IMMEDIATELY begin manually gauging each UST for the presence of water at least once per month, and maintain records of such, in accordance with Rule 11.03(G) of the DEM's UST Regulations. Written verification of compliance shall be submitted to the OC&I. Water is required to be evacuated any time that gauging reveals more

than 1 inch at the bottom of the tanks. All liquids removed from the USTs shall be managed and disposed of or recycled in strict compliance with Rule 5.3 of the DEM's *Rules and Regulations for Hazardous Waste Management*.

- (3) Procure the services of a DEM-licensed tightness tester to test the interstitial space of the USTs for tightness in accordance with Rules 8.08(A)(3) and 8.10 of the DEM's UST Regulations and submit a copy of the tightness test report to the OC&I. An original copy of the tightness test report shall also be submitted to the DEM's Office of Waste Management ("OWM") in accordance with Rule 8.10(D) of the DEM's UST Regulations.
- (4) Procure the services of a DEM-licensed tightness tester to test the interstitial spaces of the product pipelines for the USTs for tightness in accordance with Rules 8.09(A)(2) and 8.10 of the DEM's UST Regulations and submit a copy of the tightness test report to the OC&I. An original copy of the tightness test report shall also be submitted to the OWM in accordance with Rule 8.10(D) of the DEM's UST Regulations.
- (5) Repair or replace the power status indicator lamp on the CMS console in accordance with Rule 8.15(B) of the DEM's UST Regulations. Written or photographic verification of compliance shall be submitted to the OC&I.
- (6) Procure the services of a qualified person to test and certify the CMS in accordance with Rule 8.15(F) of the DEM's UST Regulations and submit a copy of the certification/test report to the OC&I.
- (7) Label and secure against tampering the eastern tank field observation well in accordance with Rule 8.19(A) of the DEM's UST Regulations and *American Petroleum Institute Recommended Practice 1637*. Written or photographic verification of compliance shall be submitted to the OC&I. Compliance may be achieved by painting the manway lid white, stenciling it with a black triangle and affixing a padlock to the expandable watertight cap on the PVC well casing.
- (8) Prepare a training log for the Class C operators that have been trained and assigned to the Facility in accordance with Rule 8.22(A) of the DEM's UST Regulations and submit a copy to the OC&I. If you have not trained and assigned any of your employees as Class C operators, perform such training in accordance with Rules 8.22 (A) and (D) of the DEM's UST Regulations and submit a copy of the training log. The training log shall be kept on file at the Facility in accordance with Rule 8.22(A)(7) of the DEM's 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:

**\$7,602**

- (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 Director 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  
One Capitol Hill, 2<sup>ND</sup> Floor  
Providence, RI 02903

- (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, Suite 425  
Providence, RI 02908-5767

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

(4) Each respondent must file a separate and timely request for an administrative hearing before 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 with regard to any violation set forth herein, then the NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (vi) and 42-17.6-4(b) and (c).

(5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.

(6) An original signed copy of the NOV is being forwarded to the Town of North Providence, 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:

SCORPIO REALTY, LLC  
c/o Timothy J. Dodd, Esq., Registered Agent  
215 Broadway  
Providence, RI 02903

Scorpio Towing & Recovery, Inc.  
c/o Duane Souza, Registered Agent  
26 Derby Avenue  
Johnston, RI 02919

by Certified Mail.

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<b>ADMINISTRATIVE PENALTY SUMMARY</b>	
<i>Program:</i>	<i>OFFICE OF COMPLIANCE AND INSPECTION, UST</i>
<i>File No.:</i>	<i>UST 2017-46-19121</i>
<i>Respondents:</i>	<i>SCORPIO REALTY, LLC and Scorpio Towing &amp; Recovery, Inc.</i>

<b>GRAVITY OF VIOLATION</b>					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION NO. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D (1) and (9) – Monthly Inventory And Gauging USTs	Type II <i>(\$12,500 Max. Penalty)*</i>	Moderate	\$2,500	1 violation	\$2,500
D (2) and (3) – Tightness Testing	Type II <i>(\$12,500 Max. Penalty)*</i>	Minor	\$1,750	1 violation	\$1,750
D (5) – CMS Testing	Type II <i>(\$12,500 Max. Penalty)*</i>	Minor	\$1,250	1 violation	\$1,250
D (7) and (8) – Class C Operator Requirements	Type II <i>(\$12,500 Max. Penalty)*</i>	Minor	\$1,500	1 violation	\$1,500
<b>SUB-TOTAL</b>					<b>\$7,000</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 COMPLY. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS: - THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.		
<b>DESCRIPTION OF BENEFIT</b>	<b>CALCULATION</b>	<b>AMOUNT</b>
Failure to perform tightness and CMS tests in 2017. The economic benefit of noncompliance was determined by using an EPA computer model titled <i>BEN</i> that performs a detailed economic analysis. The dollar amounts and number of missed tests used in this analysis are listed in this table.	1 UST tightness test @ \$289 2 Product Pipeline tests @ \$203 per test 1 CMS test @ \$273	\$602
<b>SUB-TOTAL</b>		\$602

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

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$7,602**

**PENALTY MATRIX WORKSHEET**

CITATION: Monthly Inventory And Gauging USTs

VIOLATION NOS.: D (1) and (9)

**TYPE**

     **TYPE I**  
DIRECTLY related to protecting health, safety, welfare or environment.

  **X**   **TYPE II**  
INDIRECTLY related to protecting health, safety, welfare or environment.

     **TYPE III**  
INCIDENTAL to protecting health, safety, welfare or environment.

**DEVIATION FROM THE STANDARD**

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

**FACTORS CONSIDERED:**

Taken from Part 1.10A.1.b of the DEM's *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 compile monthly inventory reconciliation reports for the USTs and failed to gauge the USTs for the presence of water monthly. The requirements to perform inventory reconciliation and leak checks and to gauge USTs for the presence of water are important to the regulatory program. Failure to comply reduces the likelihood of detecting releases from the USTs.
- (B) **Environmental conditions:** The Facility is located in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. There are no known drinking water supply wells proximate to the Facility. The USTs are located within 50 feet of the Woonasquatucket River and within its watershed.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** Diesel fuel is capable of causing significant soil and groundwater contamination if released to the environment. Petroleum product constituents are toxic to aquatic organisms.
- (E) **Duration of the violation:** Full duration unknown – at least 28 months – May 2015 through August 2017.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **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 and/or mitigate the noncompliance, despite receiving an LNC from the 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:** Considered, but not utilized for this calculation.
- (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 the failure to comply with the requirements set forth in Rules 8.08(A)(2) and 11.03 of the DEM's UST Regulations. As owners and operators of the Facility, Respondents had full control over the occurrence of the violations. The inventory reconciliation and water gauging requirements are clearly established in the DEM's UST Regulations.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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

<b><i>PENALTY MATRIX WORKSHEET</i></b>		
CITATION:	Tightness Testing	
VIOLATION NOS.:	D	(2) and (3)

<b>TYPE</b>		
___ <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.	___ <b>TYPE III</b> <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.

**DEVIATION FROM THE STANDARD**  
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

**FACTORS CONSIDERED:**

Taken from Part 1.10A.1.b of the DEM's *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 test the interstitial spaces of the UST and the product pipelines for tightness by a DEM-licensed tightness tester. Secondary containment tightness testing is important to the regulatory program. Such testing is required after double-walled tanks and piping have been in the ground for 20 years and it is used to determine whether the outer walls are capable of containing leaks from the primary tanks and lines. Failure to comply would reduce the likelihood of preventing releases of petroleum to the environment.
- (B) **Environmental conditions:** The Facility is located in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. There are no known drinking water supply wells proximate to the Facility. The USTs are located within 50 feet of the Woonasquatucket River and within its watershed.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** Diesel fuel is capable of causing significant soil and groundwater contamination if released to the environment. Petroleum constituents are toxic to aquatic organisms.
- (E) **Duration of the violation:** Approximately 4 months – the tests were required to be completed by August 2017.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable and appropriate steps to prevent and/or mitigate the noncompliance, despite receiving an LNC from the 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:** Considered, but not utilized for this calculation.
- (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 the failure to comply with the requirements set forth in Rules 8.08(A)(3), 8.09(A)(2) of the DEM's UST Regulations. As owners and operators of the Facility, Respondents had full control over the occurrence of the violations. The tank and pipeline interstitial space tightness testing requirements are clearly established in the DEM's UST Regulations.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<b>MAJOR</b>	<b>MODERATE</b>	<u>  X  </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

**PENALTY MATRIX WORKSHEET**

CITATION: CMS Testing

VIOLATION NO.: D (5)

**TYPE**

     **TYPE I**  
DIRECTLY related to protecting health, safety, welfare or environment.

  **X**   **TYPE II**  
INDIRECTLY related to protecting health, safety, welfare or environment.

     **TYPE III**  
INCIDENTAL to protecting health, safety, welfare or environment.

**DEVIATION FROM THE STANDARD**

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

**FACTORS CONSIDERED:**

Taken from Part 1.10A.1.b of the DEM's *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 have the CMS certified/tested by a qualified person. Maintenance of a CMS is important to the regulatory program. Such testing is required on an annual basis to ensure that the system meets the manufacturer's performance standards. Failure to comply would reduce the likelihood of detecting or preventing releases of petroleum to the environment.
- (B) **Environmental conditions:** The Facility is located in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. There are no known drinking water supply wells proximate to the Facility. The USTs are located within 50 feet of the Woonasquatucket River and within its watershed.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** Diesel fuel is capable of causing significant soil and groundwater contamination if released to the environment. Petroleum constituents are toxic to aquatic organisms.
- (E) **Duration of the violation:** Approximately 8 months – the test was required to be completed by 29 April 2017.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable and appropriate steps to prevent and/or mitigate the noncompliance, despite receiving an LNC from the 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:** Considered, but not utilized for this calculation.
- (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 the failure to comply with the requirements set forth in Rule 8.15(F) of the DEM's UST Regulations. As owners and operators of the Facility, Respondents had full control over the occurrence of the violation. The annual CMS testing requirement is clearly established in the DEM's UST Regulations.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<b>MAJOR</b>	<b>MODERATE</b>	<u>  X  </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>\$1,250</b>	\$250 to \$1,250

**PENALTY MATRIX WORKSHEET**

CITATION: Class C Operator Requirements

VIOLATION NOs.: D (7) and (8)

**TYPE**

     **TYPE I**  
DIRECTLY related to protecting health, safety, welfare or environment.

  **X**   **TYPE II**  
INDIRECTLY related to protecting health, safety, welfare or environment.

     **TYPE III**  
INCIDENTAL to protecting health, safety, welfare or environment.

**DEVIATION FROM THE STANDARD**

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

**FACTORS CONSIDERED:**

Taken from Part 1.10A.1.b of the DEM's *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 assign any trained Class C operators to the Facility. This requirement is important to the regulatory program. Non-compliance with this rule precludes the environmental and public safety safeguards and assurances obtained by properly training and certifying the facility operators.
- (B) **Environmental conditions:** The Facility is located in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. There are no known drinking water supply wells proximate to the Facility. The USTs are located within 50 feet of the Woonasquatucket River and within its watershed.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** Diesel fuel is capable of causing significant soil and groundwater contamination if released to the environment. Petroleum constituents are toxic to aquatic organisms.
- (E) **Duration of the violation:** Approximately 5 years – the requirement to assign Class C operators came into effect on 1 August 2012.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable and appropriate steps to prevent and/or mitigate the noncompliance, despite receiving an LNC from the 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:** Considered, but not utilized for this calculation.
- (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:** Respondents, as owners and operators of the Facility, had full control over the occurrence of the violation. The requirement to assign trained Class C operators to regulated UST facilities is clearly established in the DEM's UST Regulations.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<b>MAJOR</b>	<b>MODERATE</b>	<u>  X  </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