

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE:   CARPARELLI ENTERPRISES, L.L.C.       FILE NO.: OCI-UST-18-51-00506**  
**BRITLEY, INC.**  
**7-ELEVEN, INC.**

NOTICE OF VIOLATION

A.    Introduction

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

B.    Administrative History

On 7 February 2018, the DEM issued a Notice of Intent to Enforce (the “NIE”) to Respondents for the violations identified during an inspection of the facility on 5 February 2018 that are the subject of this Notice of Violation (the “NOV”). The NIE required that Respondents take specific actions to correct the violations. On 12 February 2018, the NIE was delivered to Respondents. On 4 May 2018, the DEM inspected the facility and observed that none of the violations in the NIE were satisfactorily addressed. Additional violations occurred at the facility as a result of a spill of gasoline on or about 8 August 2018, the improper repair of equipment on 3 October 2018, and water intrusion into two tanks that were documented on 3 October 2018 and continued through 28 December 2018, when the tanks were taken out of operation. As of the date of the NOV, the violations have not been fully corrected.

C.    Facts

- (1)    The property is located at 11-13 Post Road, Assessor’s Plat 98, Lot 105 in the Town of Westerly, Rhode Island (the Property”). The Property includes a convenience store and a motor fuel storage and dispensing system (the “Facility”).
- (2)    CARPARELLI ENTERPRISES, L.L.C. owns the Property.
- (3)    BRITLEY, INC. and 7-ELEVEN, INC. operate the Facility.
- (4)    Underground storage tanks (“USTs” or “tanks”) are located on the Property, which tanks are used for storage of petroleum products and which are subject to the Rhode Island Code of Regulations titled *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials (250-RICR-140-25-1)* (the “UST Regulations”).

(5) The Facility is registered with the DEM and is identified as UST Facility No. 00506.

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

UST ID No.	Date Installed	Capacity	Product Stored
006	11 June 1990	10,000 gallons	Low Grade (Regular) Gasoline
007	12 June 1990	10,000 gallons	Mid-Grade Gasoline
008	11 June 1990	10,000 gallons	High Grade (Super) Gasoline

(7) On 5 February 2018, 28 February 2018 and 4 May 2018, the DEM inspected the Facility. The inspection revealed the following:

(a) The concrete tank mat for UST Nos. 006, 007 and 008 was observed to be in poor condition at the time of each inspection. The inspectors observed numerous cracks and missing sections of concrete;

(b) The metallic piping components housed inside the tank top sumps for UST Nos. 006, 007 and 008 are subject to chronic submersion in water, however, they are not protected against corrosion;

(c) The dispenser shear valves were not anchored to the concrete footings at the time of each inspection;

(d) The spill containment basins and the tank top sumps for UST Nos. 006, 007 and 008 were holding liquids; and

(e) According to the training log on file at the Facility at the time of the 5 February 2018 inspection, the on-duty Class C UST facility operator's certification had expired. Upon information and belief, the Facility was being operated without at least one properly trained Class C UST facility operator on duty.

(8) On 19 June 2018, the DEM received documents showing that the Facility retrained five Class C operators during late February-early March 2018 in accordance with the requirements of the UST Regulations.

(9) On 8 August 2018, a release of approximately 101 gallons of gasoline occurred at the Facility (the "Release #1"). A subsequent investigation revealed that the Release was the result of a ruptured dispenser hose and a malfunctioning emergency shut-off switch. Remedial actions were taken by NRC East

Environmental Services, Inc. and AECOM Technical Services, Inc. (“AECOM”) on behalf of Respondents to address Release #1, which generated four 55-gallon drums of used absorbent material and approximately 16.32 tons of petroleum-impacted soil.

- (10) On or about 13 August 2018, Respondents procured the services of AECOM to install a groundwater monitoring well adjacent to the tank field (“MW-8”).
- (11) On or about 28 August 2018, Respondents procured the services of AECOM to collect groundwater samples from MW-8 and submit them for laboratory analysis. The laboratory analysis performed by TestAmerica Laboratories, Inc. revealed the presence of benzene at a concentration of 72.1 micrograms per liter (“ug/L”) that exceeded the *Method One GA Groundwater Objective* of 5 ug/L set forth in the Rhode Island Code of Regulations titled *Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases (250-RICR-140-30-1)* (the “Release #2”).
- (12) On 3 October 2018, Respondents procured the services of Rockin Horse Enterprises, LLC to excavate the area between the tank field and MW-8. It was discovered that the Stage II vapor recovery pipeline and the secondary product pipeline had been damaged during the installation of MW-8. The Stage II vapor recovery pipeline was cut and capped (the “Repair”). These actions were not reported to the DEM until 25 October 2018.
- (13) Upon information and belief, Respondents failed to repair the damaged secondary product pipeline and they failed to perform tightness testing of the primary product pipelines after the Repair was completed.
- (14) On 3 October 2018, the DEM inspected the Facility, obtained an inventory report from the *Veeder Root TLS 350* continuous monitoring system (“CMS”) and observed that the tank gauging probes were measuring approximately 12.15 inches of water in UST No. 008 and approximately 14.35 inches of water in UST No. 007.
- (15) On 18 October 2018, the DEM inspected the Facility, obtained data from the CMS and observed that the CMS was reporting a leak detection rate increase “warning” for UST No. 006 and that the tank gauging probe was measuring 1.04 inches of water in UST No. 007.
- (16) On 23 October 2018, the DEM received copies of Respondents’ inventory reconciliation reports for June through September 2018. Review of the reports for September 2018 revealed that UST Nos. 007 and 008 began taking on excess water (more than 5 inches) on 19 September 2018, that UST No. 008 had 12.12 inches of water on 30 September 2018 and that UST No. 007 had 14.34 inches of water on 30 September 2018. Upon information and belief, Respondents failed to report the suspected leaks to the DEM and they failed to have the excess water removed as soon as the levels reached 1 inch.

- (17) On 25 October 2018, the DEM received a report prepared by AECOM. The report stated that approximately 579 gallons of water removed from UST Nos. 007 and 008.
- (18) On 26 December 2018, the DEM inspected the Facility. Review of records kept at the Facility revealed that UST Nos. 007 and 008 were continuing to take on water and that 4 incidents of water-contaminated gasoline were purchased at the Facility. The Facility attendant informed the DEM inspectors that water was being evacuated from the USTs on a weekly basis.
- (19) On 24 January 2019, Respondents submitted a temporary closure application to the DEM's Office of Waste Management (the "OWM") for UST Nos. 007 and 008.
- (20) On 25 January 2019, the OWM approved the temporary closure application.
- (21) On 25 January 2019, the DEM received a report for UST No. 008, which was prepared by Tanknology, Inc. The report identified the following conditions inside the tank: a build-up of residue, sediment, debris and sludge in the lower half of the tank; possible moisture staining on the lower tank wall; a possible "spider crack" on the upper tank wall; peeling on the tank's walls in several locations; blistering of the tank's walls; peeling and exposed fibers at a tank seam; and corrosion of steel risers.
- (22) On 6 February 2019, the DEM received a report for UST No. 007, which was prepared by Tanknology, Inc. The report identified the following conditions inside the tank: a steady drip indicating water ingress at the bung for extra riser between STP and ATG risers; dark residue or sediment along the bottom of the tank; peeling resin and possible crack formation on top of tank near bungs; and some exposed fibers along the center seam.
- (23) Respondents failed to report Release #1 and Release #2 to the DEM and, as of the date of the NOV, investigate the releases in accordance with the requirements of the UST Regulations.
- (24) Respondents failed to immediately report each of the water intrusion incidents to the DEM as required by the UST Regulations.
- (25) Respondents failed to submit written notification to and obtain the approval of the DEM before performing the Repair.
- (26) As of the date of the NOV, Respondents have failed to demonstrate that the findings described in subsections B (7)(a), (b), (c) and (d) above have been rectified in accordance with the requirements of the UST Regulations.
- (27) As of the date of the NOV, Respondents had yet to fully investigate the conditions

described in subsections B (12) through B (18), B (21) and B (22) above in accordance with the requirements of the UST Regulations.

D. Violation

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

- (1) **UST Regulations, Rule 8.02(A) (recently amended to Part 1.10B.1)** – requiring that UST systems be operated and maintained in accordance with applicable national codes of practice, including Petroleum Equipment Institute’s RP 500-05 titled *Recommended Practices for Inspection and Maintenance of Motor Fuel Dispensing Equipment* and Petroleum Equipment Institute’s RP 900-07 titled *Recommended Practices for Inspection and Maintenance of UST Systems*.
- (2) **UST Regulations, Rule 8.05 (recently amended to Part 1.10E.1)** – requiring corrosion protection for unprotected steel tanks and metallic piping.
- (3) **UST Regulations, Rule 8.12 (recently amended to Part 1.10J.1)** – requiring that dispenser shear valves be installed in accordance with the manufacturer’s specifications to ensure proper operation.
- (4) **UST Regulations, Rule 8.16(A)(1) (recently amended to Part 1.10N.1.a) and Rule 8.16(D) (recently amended to Part 1.10N.3)** – requiring that spill containment basins and tank top sumps be kept free of liquids and debris always.
- (5) **UST Regulations, Rule 8.22(A) (recently amended to Part 1.10U.2)** – requiring UST facility owners/operators to have trained Class C UST facility operators assigned to the facility.
- (6) **UST Regulations, Rule 8.22(D)(1) (recently amended to Part 1.10U.4.c and Part 1.10U.7.a)** – requiring UST facility owners/operators to have at least one trained Class C UST facility operator on duty at the facility during all operating hours.
- (7) **UST Regulations, Rule 10.01 (recently amended to Part 1.12A.1)** – prohibiting the modification of UST facilities without prior written notification to and approval by the DEM.
- (8) **UST Regulations, Rule 10.04(D) (recently amended to Part 1.12D.1.f)** – requiring tightness testing of product pipelines following facility modifications/repairs.
- (9) **UST Regulations, Rule 10.04(F) (recently amended to Part 1.12D.1.i)** – requiring that all damaged tank system components be replaced immediately.
- (10) **UST Regulations, Rule 12.03(A) (recently amended to Part 1.14C.1)** – requiring owners/operators to investigate suspected leaks or releases from UST systems.
- (11) **UST Regulations, Rule 12.04(A) (recently amended to Part 1.14D.2.a)** – requiring

immediate reporting of suspected and confirmed releases to the DEM.

- (12) **UST Regulations, Rule 12.07 (recently amended to Part 1.14G.1)** – requiring owners/operators to submit a Release Characterization Report to the DEM within 7 days of confirming a leak or release from a UST system.

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:

- (1) **Within 30 days of receipt of the NOV**, submit to the OWM a proposed scope-of-work, prepared by a qualified environmental consultant, for the completion of a site investigation of the Property in accordance with Part 1.14H of the UST Regulations for the Release. The OWM will review the proposal and issue instructions for proceeding with the site investigation.
- (2) **Within 45 days of receipt of the NOV**, submit a completed *Permanent Closure Application for USTs* to the OWM and, **with OWM’s consent and approval, complete the permanent closure of UST Nos. 007 and 008** in accordance with Part 1.15 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 Part 1.15D.10 of the UST Regulations, the *UST Closure Assessment Guidelines*, October 1998, and Part 2.12 of the Rhode Island Code of Regulations titled *Oil Pollution Control Regulations (250-RICR-140-25-2)* (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 Part 2.13 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 Part 1.14H of the 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 Part 1.14I of the 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.

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:

**\$26,250**

- (2) The proposed administrative penalty is calculated pursuant to the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* and must be paid to 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  
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 Rhode Island Code of Regulations titled *Rules and Regulations for the Administrative Adjudication Division (250-RICR-10-00-1)* Part 1.7B.

(2) A copy of each request for hearing must also be forwarded to:

Christina Hoefsmit, 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 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 Westerly, 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) Christina Hoefsmit 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, Administrator  
Office of Compliance and Inspection

Dated: \_\_\_\_\_

CERTIFICATION

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

CARPARELLI ENTERPRISES, L.L.C.  
c/o Vincent J. Naccarato, Esq., Registered Agent  
96 Franklin Street  
Westerly, RI 02891

BRITLEY, INC.  
c/o George A. Comolli, Esq., Registered Agent  
15 Franklin Street  
Westerly, RI 02891

7-ELEVEN, INC.  
c/o Corporate Creations Network Inc., Registered Agent  
10 Dorrance Street, Suite 700  
Providence, RI 02903

by Certified Mail.

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<b>ADMINISTRATIVE PENALTY SUMMARY</b>	
Program:	OFFICE OF COMPLIANCE AND INSPECTION, UST
File No.:	OCI-UST 18-51-00506
Respondents:	CARPARELLI ENTERPRISES, L.L.C., BRITLEY, INC. and 7-ELEVEN, INC.

<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 (3) – Failure to operate with properly installed shear valves, intact dispenser hoses and fully functional shut-off switches	Type II <i>(\$12,500 Max. Penalty)*</i>	Major	\$6,250	1 violation	\$6,250
D (5) and (6) - Failure to train and operate with Class C operators	Type II <i>(\$12,500 Max. Penalty)*</i>	Minor	\$1,250	1 violation	\$1,250
D (7), (8) and (9) – Repair of the UST system without prior written notification to and approval by the DEM, failure to perform post-repair tightness testing and failure to repair the damaged secondary product pipeline	Type I <i>(\$25,000 Max. Penalty)*</i>	Major	\$12,500	1 violation	\$12,500
D (10), (11), (12) – Failure to properly report and investigate the releases or suspected releases of petroleum products	Type I <i>(\$25,000 Max. Penalty)*</i>	Moderate	\$6,250	1 violation	\$6,250
<b>SUB-TOTAL</b>					<b>\$26,250</b>

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

## **ADMINISTRATIVE PENALTY SUMMARY (continued)**

### **ECONOMIC BENEFIT FROM NON-COMPLIANCE**

**COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT COMPLY. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:**

- THERE IS NO IDENTIFIABLE BENEFIT FROM NON-COMPLIANCE; OR
- THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED.

A review of the record in this matter has revealed that Respondents have either enjoyed no identifiable benefit from the non-compliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.

### **COST RECOVERY**

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

A review of the record in this matter has revealed that 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 = \$26,250**

PENALTY MATRIX WORKSHEET		
CITATION:	Failure to operate with properly installed shear valves, intact dispenser hoses and a functional emergency shut-off switch	
VIOLATION NOs.:	D	(1) and (3)

TYPE		
___ TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>X</u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	___ TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.

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

**FACTORS CONSIDERED:**

Taken from Part 1.10A.1.b of the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)*

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents operated the UST systems with improperly installed shear valves. Shear valves are designed to prevent catastrophic releases of petroleum products from pressurized pipelines if a dispenser is accidentally struck by a vehicle or in the event of a fire. Failure to install the devices in accordance with the manufacturer’s specifications could result in a significant threat to public health and safety. Respondents operated the Facility with a faulty dispenser hose and a malfunctioning shut-off switch, which resulted in the release of approximately 100 gallons of gasoline on or about 8 August 2018 and impacts to the land and waters of the State. Proper inspection and maintenance of these components would likely have prevented or lessened the severity of the release.
- (2) **Environmental conditions:** The Facility is in a densely developed area with numerous potential vapor receptors including commercial structures, residential structures and underground utilities. The Facility is in a GA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment. The USTs are installed within 530 feet of a community water supply wellhead protection area. The Facility is located within the Pawcatuck sole source aquifer and the Pawcatuck River watershed. The Facility is located within 100 feet of Mastuxet Brook and its associated wetlands.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** The volatile nature of gasoline presents both a potential public health hazard (due to potential inhalation of benzene) and a potential public safety hazard (due to the potential for explosion). Gasoline can cause significant soil and groundwater contamination if released to the environment. Benzene, a component of gasoline, is a known carcinogen.
- (5) **Duration of the violation:** Full duration unknown for the shear valves – approximately 1 year. The violation was first identified during an inspection on 5 February 2018. The dispenser hose and shut off switch were repaired at the time of Release #1 in August 2018 – it is unknown how long this equipment was in disrepair.
- (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 noncompliance:** Respondents failed to prevent the non-compliance by ensuring that the shear valves were maintained in accordance with the manufacturer’s specifications, that the dispenser hose was in good condition and that the emergency shut-off switch was functional. The DEM has no knowledge of what steps, if any, Respondents may have taken to mitigate the non-compliance with the shear valves, despite receiving the NIE from the DEM, which required that they do so. Respondents replaced the dispenser hose and repaired the shut-off switch after Release #1.
- (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 the UST Regulations. As owners and operators of the Facility, Respondents had full control over the occurrence of the alleged violations. The requirements to properly install shear valves and maintain dispensing equipment and emergency devices are clearly established in the UST Regulations.
- (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	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500 <b>\$6,250</b>	\$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 train and operate with Class C operators	
VIOLATION NOS.:	D	(5) and (6)

TYPE		
___ TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>X</u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	___ TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.

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

**FACTORS CONSIDERED:**

Taken from Part 1.10A.1.b of the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)*

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents failed to train and operate with Class C operators. At the time of inspection, the facility operator was unable to present written verification that she had been trained as at least a Class C operator. Respondents failed to provide to the DEM a list of all the Class C operators that had been trained and assigned to the Facility. The UST Regulations expressly require all owners/operators of regulated UST facilities to have trained Class C operators assigned to the facility and prohibit the operation of UST facilities without at least one trained Class C operator on duty during all operating hours.
- (2) **Environmental conditions:** The Facility is in a densely developed area with numerous potential vapor receptors including commercial structures, residential structures and underground utilities. The Facility is in a GA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment. The USTs are installed within 530 feet of a community water supply wellhead protection area. The Facility is located within the Pawcatuck sole source aquifer and the Pawcatuck River watershed. The Facility is located within 100 feet of Mastuxet Brook and its associated wetlands.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** The volatile nature of gasoline presents both a potential public health hazard (due to potential inhalation of benzene) and a potential public safety hazard (due to the potential for explosion). Gasoline can cause significant soil and groundwater contamination if released to the environment.
- (5) **Duration of the violation:** Full duration unknown – at least 4 months (February 2018 to June 2018). The violations were identified during an inspection on 5 February 2018 and documents were provided to the DEM on 19 June 2018.
- (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 noncompliance:** Respondents failed to prevent the non-compliance by training all its UST facility operators as at least Class C operators and compiling a list of all the trained Class C operators assigned to the Facility. Respondents re-trained all the Class C operators in late February-early March 2018 and submitted an updated training log to the DEM on 19 June 2018 to mitigate the noncompliance.
- (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 the UST Regulations. As owners and operators of the Facility, Respondents had full control over the occurrence of the violation. The UST facility operator training requirements are clearly established in the regulations.
- (10) **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:	Repair of the UST system without prior written notification to and approval by the DEM, failure to perform post-repair tightness testing and failure to repair the damaged secondary product pipeline
VIOLATION NOs.:	D (7), (8) and (9)

### 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;">_____ 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>
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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 Part 1.10A.1.b of the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)*

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents failed to submit written notification to and obtain the approval of the DEM prior to the Repair. Failure to comply withholds important information from the regulatory program, prevents the DEM from ensuring that the work is performed in conformance with the UST Regulations and National Codes of Practice and prevents inspection of the excavated area prior to backfilling. Respondents failed to perform post Repair tightness testing of the pipelines and submit the test report to the DEM. Respondents failed to repair the secondary product pipeline that was damaged during the drilling of the borehole for MW-8 and continued to operate without compliant secondary containment for the pressurized product pipeline.
  
- (2) **Environmental conditions:** The Facility is in a densely developed area with numerous potential vapor receptors including commercial structures, residential structures and underground utilities. The Facility is in a GA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment. The USTs are installed within 530 feet of a community water supply wellhead protection area. The Facility is located within the Pawcatuck sole source aquifer and the Pawcatuck River watershed. The Facility is located within 100 feet of Mastuxet Brook and its associated wetlands.
  
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
  
- (4) **Toxicity or nature of the pollutant:** The volatile nature of gasoline presents both a potential public health hazard (due to potential inhalation of benzene) and a potential public safety hazard (due to the potential for explosion). Gasoline can cause significant soil and groundwater contamination if released to the environment.
  
- (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.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the non-compliance by submitting written notification to and obtaining the approval of the DEM before making the Repair, by performing tightness testing of the pipelines after the Repair was completed and by repairing the damaged secondary product pipeline. Respondents submitted some of the required information to the DEM to partly mitigate the noncompliance.
- (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 the UST Regulations. As owners and operators of the Facility, Respondents had full control over the occurrence of the violations. The UST Regulations explicitly require prior written notification to and approval by the DEM for UST facility modifications, post-modification/repair tightness testing and repair of any damaged UST system components.
- (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	<b>MAJOR</b>	\$12,500 to \$25,000 <b>\$12,500</b>	\$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

## PENALTY MATRIX WORKSHEET

CITATION:	Failure to properly report and investigate the release or suspected release of petroleum products
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VIOLATION NOs.:	D (10), (11), (12)
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### TYPE

  X   **TYPE I**

DIRECTLY related to protecting health, safety, welfare or environment.

\_\_\_ **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 PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

**FACTORS CONSIDERED:**

Taken from Part 1.10A.1.b of the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)*

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents failed to immediately notify the DEM of the following: the release of gasoline from the ruptured dispenser hose (Release #1); the groundwater analysis of samples that revealed a concentration of benzene above the DEM's groundwater standard (Release #2); the presence of more than 12 inches of water in two of the USTs and the leak detection rate increase warning. Respondents failed to submit Release Characterization Reports to the DEM within 7 days of Release #1 and Release #2 and failed to fully investigate the releases and suspected leaks. Failure to comply withholds vital information from the DEM, which is needed to fulfill the DEM's obligations to protect public health and safety and the environment.
- (2) **Environmental conditions:** The Facility is in a densely developed area with numerous potential vapor receptors including commercial structures, residential structures and underground utilities. The Facility is in a GA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment. The USTs are installed within 530 feet of a community water supply wellhead protection area. The Facility is located within the Pawcatuck sole source aquifer and the Pawcatuck River watershed. The Facility is located within 100 feet of Mastuxet Brook and its associated wetlands.
- (3) **Amount of the pollutant:** Approximately 101 gallons of gasoline were released when the dispenser hose ruptured. Approximately 16 tons of petroleum-impacted soil were excavated from the Property following the release. The benzene concentration in the groundwater sample was 72.1 micrograms per liter (ug/L), which is approximately 15 times over the DEM's groundwater standard of 5 ug/L.
- (4) **Toxicity or nature of the pollutant:** The volatile nature of gasoline presents both a potential public health hazard (due to potential inhalation of benzene) and a potential public safety hazard (due to the potential for explosion). Gasoline can cause significant soil and groundwater contamination if released to the environment.
- (5) **Duration of the violation:** Considered, but not utilized for this calculation.
- (6) **Areal extent of the violation:** Unknown at this time as Release #1 and Release #2 have not been fully investigated in accordance with the UST Regulations.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the non-compliance by immediately reporting the releases, suspected leaks and unusual operating conditions to the DEM in accordance with the UST Regulations and submit Release Characterization Reports to the DEM and failed to fully investigate the releases and unusual operating conditions in accordance with the UST Regulations. Respondents have submitted some of the required information to the DEM to partly mitigate the non-compliance and they had UST Nos. 007 and 008 emptied on 28 December 2018. Respondents have yet to fully investigate the releases and unusual operating conditions in full compliance with the UST Regulations despite being required to do so 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 the UST Regulations. As owners and operators of the facility, Respondents had full control over the occurrence of the violation. The UST facility release reporting and investigation requirements are clearly established in the UST Regulations.
- (10) **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 <b>\$6,250</b>	\$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