

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF COMPLIANCE & INSPECTION

IN RE: JJMC REALTY LLC  
J GEHA, CORP.

FILE NO.: OCI-UST-18-63-00553

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 28 September 2018, DEM issued a *Notice of Intent to Prohibit Delivery* ("NIPD") to Respondents for the violations that are the subject of this *Notice of Violation* ("NOV"). The NIPD required Respondents to take specific actions to correct the violations. On 4 October 2018, the NIPD was delivered to Respondent JJMC REALTY LLC. On 5 October 2018, the NIPD was delivered to Respondent J GEHA, CORP. Respondents failed to fully comply with the remedial requirements set forth by DEM in the NIPD.

C. Facts

- (1) The property is located at 335 Providence Street, Assessor's Plat 253, Lot 29 in the City of Warwick, Rhode Island (the Property"). The Property includes a convenience store and a motor fuel storage and dispensing system (the "Facility").
- (2) Respondent JJMC REALTY LLC owns the Property.
- (3) Respondent J GEHA, CORP. operates 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 Regulated Substances and Hazardous Materials (250-RICR-140-25-1)* (the "UST Regulations").
- (5) The Facility is registered with DEM and is identified as UST Facility No. 00553.

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

UST ID No.	Date Installed	Capacity	Product Stored
002	September 1994	4,000 gallons	Gasoline
004	September 1994	4,000 gallons	Gasoline
006	September 1994	4,000 gallons	Gasoline

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

(8) On 17 September 2018, a DEM representative performed a compliance inspection at the Facility. The inspection and a subsequent file review revealed instances of non-compliance with the UST Regulations, which are summarized below:

(a) Written verification that the interstitial spaces of UST Nos. 002, 004 and 006 had been tested for tightness by a DEM-licensed tightness tester during each of the years 2014, 2016 and 2018 was not available. Tank interstitial space tightness testing reports for UST Nos. 002, 004 and 006 for each of the years 2014, 2016 and 2018 have not been received by DEM. Upon information and belief, only one test has been performed in between the years 2014-2018, which was done on 3 May 2017.

(b) Written verification that the interstitial spaces of the product pipelines for UST Nos. 002 and 004/006 had been tested for tightness by a DEM-licensed tightness tester during each of the years 2014, 2016 and 2018 was not available. Product pipeline interstitial space tightness testing reports for UST Nos. 002, 004 and 006 for each of the years 2014, 2016 and 2018 have not been received by DEM. Upon information and belief, only one test has been performed in the last four years, which was done on 3 May 2017.

(c) The *Veeder Root TLS 350* continuous monitoring system (“CMS”) was displaying a “sensor out” alarm for the leak sensor deployed in the tank top sump for UST No. 004. The alarm history stored by the CMS indicated that the alarm had been in effect since 15 August 2018. Upon information and belief, Respondents had not reported and investigated the alarm condition and taken the necessary steps to remedy its cause.

(d) The “power” status indicator lamp on the CMS console was malfunctioning at the time of inspection.

(e) The spill containment basins for UST Nos. 002, 004 and 006 and the middle dispenser sump were holding liquid mixtures.

(f) A report submitted to DEM by Compliance Testing Services, Inc. on behalf of Respondents states that UST Nos. 002, 004 and 006 are not equipped with overfill prevention devices that are consistent with the requirements of the UST

Regulations. The DEM representative was able to confirm that the USTs were not equipped with automatic shut-off valves in their submerged fill tubes and that they were not equipped with an outside overfill alarm enunciator.

- (g) The fill ports for UST Nos. 004 and 006 were not labeled to identify the product stored inside the USTs.
  - (h) One of the groundwater monitoring wells lacked an expandable watertight cap for its PVC well casing and it was not secured against tampering. One of the tank field observation wells had a broken road box cover.
  - (i) The registered Class A/B UST facility operator's (Mr. Gil Duarte) Rhode Island registration and certification expired in February 2018 as he was certified by the Commonwealth of Massachusetts and he had yet to present written verification that he had passed the Rhode Island *International Code Council* ("ICC") examination. Upon information and belief, Respondents have not registered and assigned new ICC-certified Class A and Class B UST facility operators to the Facility.
  - (j) Review of the Class A/B UST facility operator's monthly inspection checklists on file at the Facility revealed that they did not include the name of the certified Class A or B UST facility operator who was performing the inspections (they only contained an illegible signature, or the name was not entered). Many of the checklists were otherwise incomplete.
  - (k) A training log for all the Class C UST facility operators that had been trained and assigned to the Facility was not available. No records were available to show that the Facility attendant on duty had been trained as at least a Class C UST facility operator. Upon information and belief, the Facility was being operated without at least one trained Class C UST facility operator on duty.
- (9) On or about 5 October 2018, Compliance Testing Services, Inc. ("CTS"), on behalf of Respondents, installed ball-float vent valve overfill prevention devices in UST Nos. 002, 004 and 006. This action rectified the noncompliance set forth in subsection C(8)(f) above.
- (10) On 23 October 2018, a DEM representative observed CTS personnel install new leak sensors in the tank top sumps for UST Nos. 004 and 006 to rectify the non-compliance set forth in subsection C(8)(c) above. CTS also opened the extractor risers for the USTs so that the DEM representative could verify that the ball-float vent valves had been installed.
- (11) As of the date of the NOV, Respondents have yet to demonstrate that the noncompliance set forth in subsections C(8)(a), (b), (d), (e), (g), (h), (i), (j) and (k) has been corrected.

D. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that Respondents are in violation of the following regulations:

- (1) **UST Regulations, Rule 8.08(A)(3) [recently amended to Part 1.10(F)(1)(c)]** – requiring interstitial space tightness testing for double-walled USTs at 20 years of age and every two years thereafter.
- (2) **UST Regulations, Rule 8.09(A)(2) [recently amended to Part 1.10(G)(2)(b)]** – requiring interstitial space tightness testing for double-walled product pipelines at 20 years of age and every two years thereafter.
- (3) **UST Regulations, Rule 8.15(B) [recently amended to Part 1.10(M)(1) and Part 1.10(M)(2)]** – requiring that UST continuous monitoring systems be maintained in accordance with the manufacturer’s performance standards and that malfunctioning systems be repaired within 15 days.
- (4) **UST Regulations, Rules 8.16(A)(1) and 8.16(D) [recently amended to Part 1.10(N)(1)(a) and Part 1.10(N)(3)(c)]** – requiring that spill containment basins and sumps be kept free of liquids at all times.
- (5) **UST Regulations, Rule 8.16(B) [recently amended to Part 1.10(N)(2)(a)]** – requiring that USTs be equipped with overfill prevention devices.
- (6) **UST Regulations, Rule 8.18 [recently amended to Part 1.10(P)(1)]** – requiring that the UST fill ports be labeled to identify the materials stored inside the tanks.
- (7) **UST Regulations, Rules 8.19(A), (B) and (D) [recently amended to Part 1.10(Q)(1)(a), Part 1.10(Q)(1)(b) and Part 1.10(Q)(1)(d)]** – requiring that groundwater monitoring and tank field observation wells be labeled, secured against tampering, equipped with locking gripper cap or plug and maintained to prevent pollution of the groundwater.
- (8) **UST Regulations, Rule 8.22(A) [recently amended to Part 1.10(U)(2) and Part 1.10(U)(4)(a)]** – requiring UST owners/operators to have trained and certified Class A, B and C UST facility operators assigned to the facility and registered with DEM.
- (9) **UST Regulations, Rule 8.22(D)(1) [recently amended to Part 1.10(U)(4)(c) and Part 1.10(U)(7)(a)]** – prohibiting the operation of UST facilities without at least one Class C UST facility operator on duty.
- (10) **UST Regulations, Rule 8.22(A)(7) [recently amended to Part 1.10(U)(3)(e)]** – requiring UST facility owners/operators to maintain training logs for all the trained Class C UST facility operators that have been assigned to their facilities.

- (11) **UST Regulations, Rule 8.22(F) [recently amended to Part 1.10U.5.k, Part 1.10(U)(6)(g) and Part 1.10(U)(9)]** – requiring that UST facilities be inspected monthly by the certified, registered Class A or B UST facility operators.

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) Procure the services of a DEM-licensed tightness tester to perform tightness testing of the interstitial spaces of UST Nos. 002, 004 and 006 in accordance with Part 1.10(F)(1)(c) and Part 1.10(H) of the UST Regulations and submit a copy of the tightness test report to the DEM – Office of Compliance and Inspection (“OC&I”). An original copy of the tightness test report shall also be submitted to the DEM – Office of Waste Management (“OWM”), in accordance with Part 1.10(H)(4) of the UST Regulations.
- (2) Procure the services of a DEM-licensed tightness tester to perform tightness testing of the interstitial spaces of the product pipelines for UST Nos. 002 and 004/006 in accordance with Part 1.10(G)(2)(b) and Part 1.10(H) of the 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 Part 1.10(H)(4) of the UST Regulations.
- (3) Repair or replace the “power” status indicator lamp on the CMS console in accordance with Part 1.10M.2 of the UST Regulations. Submit written verification of compliance to the OC&I.
- (4) Evacuate and clean the spill containment basins for UST Nos. 002, 004 and 006 and the dispenser sumps in accordance with Part 1.10(N)(1)(a) and Part 1.10(N)(3)(c) of the UST Regulations. All wastes removed from these basins and sumps shall be managed and disposed of in accordance with Part 1.7.3 of the Rhode Island Code of Regulations titled *Rules and Regulations for Hazardous Waste Management (250 RICR 140-10-1)*. Submit written or photographic verification of compliance to the OC&I.
- (5) Label or permanently mark the fill ports for UST Nos. 004 and 006 to identify the product stored inside the tanks, as per Part 1.10(P)(1) of the UST Regulations and *American Petroleum Institute Recommended Practice 1637*. Written or photographic verification of compliance shall be submitted to the OC&I.
- (6) Modify or repair the deficient groundwater monitoring wells and tank field observation wells by a qualified person to ensure full compliance with Part 1.10(Q)(1) of the UST Regulations. Written and/or photographic verification of compliance shall be submitted to the OC&I.

- (7) Assign at least one trained and certified Class A UST facility operator and at least one trained and certified Class B UST facility operator to the Facility in accordance with Part 1.10(U) of the UST Regulations and complete a *Certified Class A/B UST Operator Registration Form* in accordance with Part 1.10(U)(3)(b) of the UST Regulations and submit the form to the OWM along with copies of the Class A and Class B UST facility operators' examination certificates. Copies of the form and certificates shall also be submitted to the OC&I.
- (8) The newly-registered Class A/B UST facility operator(s) shall train all appropriate Facility employees and attendants as Class C UST facility operators and compile a written training log for the Class C UST facility operators that have been trained and assigned to the Facility, as per Part 1.10(U)(2), Part 1.10(U)(3), Part 1.10(U)(4), Part 1.10(U)(5), Part 1.10(U)(6) and Part 1.10(U)(7) of the UST Regulations. A copy of the completed training log shall be submitted to the OC&I. The Facility shall henceforth be operated only with at least one trained Class C UST facility operator on duty during all hours of operation, as per Part 1.10(U)(4) and Part 1.10(U)(7) of the UST Regulations.
- (9) The newly-registered Class A and/or B UST facility operators shall henceforth perform the monthly facility inspections required in Part 1.10(U)(5)(k) and Part 1.10(U)(6)(g) of the UST Regulations. Written verification of a return to compliance shall be submitted to the OC&I.

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:

**\$21,171**

- (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, Room 350  
Providence, RI 02908-5767

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
- (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Part 1.7(B) of the Rhode Island Code of Regulations titled *Rules and Regulations for the Administrative Adjudication Division (250-RICR-10-00-1)*.
- (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 City of Warwick, 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, Administrator  
DEM – Office of Compliance and Inspection

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

CERTIFICATION

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

JJMC REALTY LLC  
c/o Colette Geha, Registered Agent  
335 Providence Street  
Warwick, RI 02886

J GEHA, CORP.  
c/o Joseph Geha, Registered Agent  
585 Tiogue Avenue  
Coventry, RI 02816

by Certified Mail.

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<b>ADMINISTRATIVE PENALTY SUMMARY</b>	
Program:	OFFICE OF COMPLIANCE AND INSPECTION, UST
File No.:	OCI-UST-18-63-00553
Respondents:	JJMC REALTY LLC and J GEHA, CORP.

<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) – Failure to perform tank interstitial space tightness testing	Type II <i>(\$12,500 Max. Penalty)*</i>	Minor	\$1,750	1 violation	\$1,750
D (2) – Failure to perform product pipeline interstitial space tightness testing	Type II <i>(\$12,500 Max. Penalty)*</i>	Minor	\$1,750	1 violation	\$1,750
D (3) – Failure to repair the CMS within 15 days, failure to report the malfunction and failure to temporarily close the affected UST	Type II <i>(\$12,500 Max. Penalty)*</i>	Moderate	\$4,375	1 violation	\$4,375
D (5) – Failure to equip and operate the USTs with overfill prevention devices	Type II <i>(\$12,500 Max. Penalty)*</i>	Major	\$6,250	1 violation	\$6,250
D (8), (9), (10) & (11) – Failure to assign Class A, B and C UST facility operators, operating without at least one Class C operator on duty and failure to have a certified Class A or B UST facility operator perform monthly inspections	Type II <i>(\$12,500 Max. Penalty)*</i>	Moderate	\$3,000	1 violation	\$3,000
<b>SUB-TOTAL</b>					<b>\$17,125</b>

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

## ADMINISTRATIVE PENALTY SUMMARY (continued)

<b>ECONOMIC BENEFIT FROM NON-COMPLIANCE</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 NON-COMPLIANCE; OR			
- THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED.			
<b>DESCRIPTION OF BENEFIT</b>	<b>CALCULATION</b>		<b>AMOUNT</b>
<p>Failing to test the interstitial spaces of the tanks and pipelines for tightness in 2014. The economic benefit of noncompliance was determined by using an EPA computer model titled <i>BEN</i> that performs a detailed economic analysis. The dates, dollar amounts and values used in this analysis are listed in this table.</p>	<ul style="list-style-type: none"> <li>▪ Profit Status</li> <li>▪ Filing Status</li> <li>▪ Initial Capital Investment</li> <li>▪ One-time Non-depreciable Expense</li> <li>▪ First Month of Non-compliance</li> <li>▪ Compliance Date</li> <li>▪ Penalty Due Date</li> <li>▪ Useful Life of Pollution Control</li> <li>▪ Equipment Annual Inflation Rate</li> <li>▪ Discount Compound Rate</li> </ul>	<p>C Corp.</p> <p>\$1,476</p> <p>September 2014</p> <p>1 October 2019</p> <p>1 October 2019</p> <p>7.6%</p>	<p>\$1,168</p>
<p>Failing to test the interstitial spaces of the tanks and pipelines for tightness in 2018. The economic benefit of noncompliance was determined by using an EPA computer model titled <i>BEN</i> that performs a detailed economic analysis. The dates, dollar amounts and values used in this analysis are listed in this table.</p>	<ul style="list-style-type: none"> <li>▪ Profit Status</li> <li>▪ Filing Status</li> <li>▪ Initial Capital Investment</li> <li>▪ One-time Non-depreciable Expense</li> <li>▪ First Month of Non-compliance</li> <li>▪ Compliance Date</li> <li>▪ Penalty Due Date</li> <li>▪ Useful Life of Pollution Control</li> <li>▪ Equipment Annual Inflation Rate</li> <li>▪ Discount Compound Rate</li> </ul>	<p>C Corp.</p> <p>\$1,476</p> <p>September 2018</p> <p>1 October 2019</p> <p>1 October 2019</p> <p>8.1%</p>	<p>\$1,158</p>
<p>Delaying the cost of installing overfill prevention devices. The economic benefit of noncompliance was determined by using an EPA computer model titled <i>BEN</i> that performs a detailed economic analysis. The dates, dollar amounts and values used in this analysis are listed in this table.</p>	<ul style="list-style-type: none"> <li>▪ Profit Status</li> <li>▪ Filing Status</li> <li>▪ Initial Capital Investment</li> <li>▪ One-time Non-depreciable Expense</li> <li>▪ First Month of Non-compliance</li> <li>▪ Compliance Date</li> <li>▪ Penalty Due Date</li> <li>▪ Useful Life of Pollution Control</li> <li>▪ Equipment Annual Inflation Rate</li> <li>▪ Discount Compound Rate</li> </ul>	<p>C Corp.</p> <p>\$2,616</p> <p>June 2011</p> <p>5 October 2018</p> <p>1 October 2019</p> <p>7.3%</p>	<p>\$1,720</p>
<b>SUB-TOTAL</b>			<p>\$4,046</p>

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

### **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 = \$21,171**

PENALTY MATRIX WORKSHEET		
CITATION:	Failure to perform tank interstitial space tightness testing	
VIOLATION NO.:	D	(1)

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 1.10(A)(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 procure the services of a DEM-licensed tightness tester to perform interstitial space tightness testing of UST Nos. 002, 004 and 006 during each of the years 2014 and 2018. Interstitial space tightness testing for double-walled USTs is expressly required by the UST Regulations at 20 years of age and at least every two years thereafter. Such tightness testing is significant to the regulatory program. Failure to comply presumably reduces the likelihood of detecting a release from a UST.
- (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. Upon information and belief, there are no drinking water supply wells proximate to the Facility. The Facility is located within the Pawtuxet River watershed.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** The volatile nature of gasoline presents both 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:** 2 years – 2014 and 2018.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.

(continued)

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the non-compliance by having the USTs tested for tightness in 2014 and 2018. Respondents had the USTs tested in 2017.
- (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 UST Regulations. As owner and operator of the Facility, Respondents had full control over the occurrence of the violation. The tightness testing requirements are clearly established in the UST Regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Respondents reported that the tanks tested for tightness in 2017 met the criteria for passing.

<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

PENALTY MATRIX WORKSHEET		
CITATION:	Failure to perform product pipeline interstitial space tightness testing	
VIOLATION NO.:	D	(2)

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 1.10(A)(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 procure the services of a DEM-licensed tightness tester to perform tightness testing of the interstitial spaces of the product pipelines for UST Nos. 002, 004 and 006 during each of the years 2014 and 2018. Such tightness testing of double-walled product pipelines is expressly required by the UST Regulations at 20 years of age and every two years thereafter. Interstitial space tightness testing is significant to the regulatory program. Failure to comply presumably reduces the likelihood of detecting and/or preventing releases from UST systems.
- (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. Upon information and belief, there are no drinking water supply wells proximate to the Facility. The Facility is located within the Pawtuxet River watershed.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** The volatile nature of gasoline presents both 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:** 2 years – 2014 and 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 having the interstitial spaces of the product pipelines tested for tightness during each of the years 2014 and 2018. Respondents had the product pipelines tested in 2017.
- (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 UST Regulations. As owner and operator of the Facility, Respondents had full control over the occurrence of the violation. The tightness testing requirements are clearly established in the UST Regulations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Respondents reported that the pipelines tested for tightness in 2017 met the criteria for passing.

<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

## PENALTY MATRIX WORKSHEET

CITATION:	Failure to repair the CMS within 15 days, failure to report the malfunction and failure to temporarily close the affected UST
VIOLATION NO.:	D   (3)

TYPE		
<p style="text-align: center;">___ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ <b>X</b> 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.

**FACTORS CONSIDERED:**

Taken from Part 1.10(A)(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:** At the time of inspection on 17 September 2018, the CMS was displaying a “sensor out” alarm for the leak sensor for the product pipeline for UST No. 004. Respondents failed to report the malfunction to DEM, repair or replace the leak sensor within 15 days or place UST No. 004 into temporary closure until it could be repaired. Malfunctions to leak monitoring devices require repair within 15 days or the USTs must be placed into temporary closure. Failure to comply reduces the likelihood of detecting or preventing a release from a UST system. The CMS operation and maintenance requirements are significant to the regulatory program
  
- (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. Upon information and belief, there are no drinking water supply wells proximate to the Facility. The Facility is located within the Pawtuxet River watershed.
  
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
  
- (4) **Toxicity or nature of the pollutant:** The volatile nature of gasoline presents both 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:** For the failure to repair the alarm, full duration unknown – at least 69 days. The alarm history stored by the CMS indicated that the sensor out alarm had been in effect since at least 15 August 2018. The sensor was not replaced until 23 October 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 immediately notifying DEM of the CMS malfunction and repairing or replacing the leak sensor within 15 days or by placing the UST No. 004 into temporary closure until it could be repaired. Respondents had the malfunctioning leak sensor replaced on 23 October 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 with the UST Regulations. As owner and operator of the Facility, Respondents had full control over the occurrence of the violations. The CMS operation and maintenance 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	<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>\$4,375</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 equip and operate the USTs with overfill prevention devices
VIOLATION NO.:	D (5)

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;">___ <b>X</b> ___ 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.

**FACTORS CONSIDERED:**

Taken from Part 1.10(A)(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 UST Nos. 002, 004 and 006 without overfill prevention devices. The UST Regulations required that all regulated USTs were to be equipped with overfill prevention before 1 January 1996. Overfill prevention is expressly required by the UST Regulations and is significant to the regulatory program. Failure to comply reduces the likelihood of preventing releases of the regulated substance to the environment and the resultant threats to 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. Upon information and belief, there are no drinking water supply wells proximate to the Facility. The Facility is located within the Pawtuxet River watershed.
  
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
  
- (4) **Toxicity or nature of the pollutant:** The volatile nature of gasoline presents both 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 – an inspection by CTS on 28 September 2017 revealed that the USTs were not equipped with overfill prevention devices. Respondents were aware of the noncompliance from at least 28 September 2017 through 5 October 2018, when the valves were installed.
  
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** It is unknown if Respondents took reasonable and appropriate steps to prevent the noncompliance, as the DEM has no knowledge if the valves were installed at the time Respondents acquired the Property and began operation of the Facility. Respondents did not take reasonable and appropriate steps to mitigate the noncompliance. Respondents were aware for 1 year that the USTs were not equipped with overfill prevention devices; however, the devices were not installed until on or about 5 October 2018 after the Respondents received the NIPD from DEM, which required that they do so.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondents for the failure to comply with the UST Regulations. As owner and operator of the Facility, Respondents had full control over the occurrence of the violation. The UST Regulations expressly require that all regulated USTs were to be equipped with overfill prevention before 1 January 1996.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The former owners notified DEM that the USTs were to be equipped with ball float vent valves when the USTs were installed in September 1997. It is unknown if the valves were installed and removed later or never installed.

<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 assign Class A, B and C UST facility operators, operating without at least one Class C operator on duty and failure to have a certified Class A or B UST facility operator perform monthly inspections
VIOLATION NOS.:	D   (8), (9), (10) & (11)

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.

**FACTORS CONSIDERED:**

Taken from Part 1.10(A)(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 assign ICC-certified Class A and B UST facility operators to the Facility after the previously-registered operator’s Rhode Island registration expired in February 2018. Respondents were unable to present written verification that they had trained and assigned Class C UST facility operators to the Facility. The Facility attendant on duty at the time of inspection was unable to present written verification that they had been trained as a Class C UST facility operator. The Class A/B UST facility operator’s monthly inspection checklists on file at the Facility did not identify the operator who performed the inspections (the names were missing or illegible). The UST Regulations prohibit the operation of UST facilities without trained and certified Class A, B and C UST facility operators. Failure to comply would presumably reduce the likelihood of preventing or detecting releases of the regulated substance.
  
- (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. Upon information and belief, there are no drinking water supply wells proximate to the Facility. The Facility is located within the Pawtuxet River watershed.
  
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
  
- (4) **Toxicity or nature of the pollutant:** The volatile nature of gasoline presents both 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:** Approximately 1 1/2 years – Respondents have been non-compliant with these rules since February 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 non-compliance:** Respondents failed to prevent the non-compliance by assigning and operating with trained and certified Class A, B and C UST facility operators. Respondents have yet to verify a return to compliance despite receiving the NIPD from DEM, which required that they do so.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondents for the failure to comply with the UST Regulations. As owners and operators of the Facility, Respondents had full control over the occurrence of the violations. The UST Regulations expressly require that UST facilities be operated by trained and certified Class A, B and C UST facility operators and that they be inspected monthly by certified Class A or B UST facility operators.
- (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	<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