

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Ravi Kumar d/b/a New England Farms Express, LLC **FILE NO.: OCI-UST-23-22-01065**

MEGA GAS LLC

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 Rhode Island Department of Environmental Management (“Director” of “RIDEM”) has reasonable grounds to believe that the above-named parties (“Respondents”) have violated certain statutes and/or administrative regulations under RIDEM's jurisdiction.

B. ADMINISTRATIVE HISTORY

On 19 June 2023, RIDEM issued a Notice of Intent to Enforce (“NIE”) by certified mail to Ravi Kumar for the alleged violations that are the subject of this Notice of Violation (“NOV”). The NIE required specific actions to correct the alleged violations. The NIE was delivered on 22 June 2023. On 18 July 2023, RIDEM issued a NIE by certified mail to MEGA GAS LLC for the alleged violations that are the subject of the NOV. The NIE required specific actions to correct the alleged violations. The NIE was delivered on 25 July 2023. As of the date of the NOV, Respondents have failed to respond to or comply with the NIE.

C. FACTS

- (1) The property is located at 414 and 422 Smithfield Avenue, Assessor’s Plat 77, Lots 799 and 821 in Providence, Rhode Island ("Property"). The Property includes a motor fuel storage and dispensing system and a convenience store (“Facility”).
- (2) New England Farms Express, LLC owns the Property.
- (3) The *Certificate of Organization/Registration* for New England Farms Express, LLC was revoked by the Rhode Island Secretary of State on 27 June 2017. Ravi Kumar is the last known Member and Resident Agent of the company.
- (4) MEGA GAS, LLC operates the Facility.

- (5) 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 Rhode Island’s *Rules and Regulations for Underground Storage Facilities Used for Regulated Substances and Hazardous Materials* (250-RICR-140-25-1) (“UST Rules”).
- (6) The Facility is registered with RIDEM and is identified as UST Facility No. 01065.
- (7) The USTs are registered with RIDEM as follows:

UST ID No.	Date Installed	Capacity	Product Stored
004	3 September 1992	6,000 gallons	Gasoline
007	3 September 1992	6,000 gallons	Gasoline
011	3 September 1992	8,000 gallons	Gasoline

- (8) UST Nos. 004, 007 and 011 are double walled.
- (9) On 5 October 2021, RIDEM was notified by Compliance Testing Services, Inc. (“CTS”) that the tank top sumps for UST Nos. 004, 007 and 011 and three of the dispenser sumps had failed tightness tests performed at the Facility on 5 October 2021.
- (10) On 15 September 2022, RIDEM inspected the Facility and identified the following issues of non-compliance with the UST Rules:
 - (a) MEGA GAS LLC had taken over as operator of the Facility; however, RIDEM was not notified.
 - (b) The spill containment basins for UST Nos. 004, 007 and 011 were holding liquid mixtures.
 - (c) The single-walled spill containment basins for UST Nos. 004, 007 and 011 were not tested for tightness by a RIDEM-licensed tightness tester (such testing was due before 13 October 2021).
 - (d) The USTs were in operation.
 - (e) Written verification that the Facility attendant on duty at the time of inspection had been trained as, at least, a Class C operator was not available. Upon information and belief, the Facility was being operated without any Class C operators on duty.
- (11) After subsequent investigation, RIDEM determined that MEGA GAS LLC was the new operator of the Facility.

- (12) On 25 August 2023, RIDEM received an *Application for the Repair or Modification of a UST System*, which was submitted by Cyn Environmental Services (“CES”) on behalf of MEGA GAS LLC. In the application, CES proposed repairs and modifications for the sumps and the installation of new spill containment basins.
- (12) On 12 September 2023, RIDEM inspected the Facility and observed that the UST systems were in operation and gasoline was being dispensed into customers’ vehicles.
- (13) A review of RIDEM’s file for the Facility revealed that RIDEM has not received written verification that Respondents had procured the services of a RIDEM-licensed tightness tester to test the interstitial spaces of UST Nos. 004, 007 and 011 for tightness during the year 2022. The most recent test on file with RIDEM was performed on 24 November 2020.
- (14) As of the date of the NOV, upon information and belief, Respondents have not corrected the noncompliance identified in sections C(10)(b) through C(10)(e), C (12), and C (13) above.

D. VIOLATION

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

- (1) **UST Rules, Part 1.7(P)(2)** – requiring UST system owners to report any changes in information contained on the original registration form to RIDEM, in writing, within 15 days of any such change.
- (2) **UST Rules, Part 1.10(F)(1)(c)** – requiring UST system owners/operators to procure the services of RIDEM-licensed tightness testers to test the interstitial spaces of double-walled USTs at 20 years of age and then at least once every 2 years thereafter.
- (3) **UST Rules, Part 1.10(N)(1)(a)** – requiring UST system owners/operators to keep spill containment basins free of water, product, liquid, or debris at all times.
- (4) **UST Rules, Part 1.10(N)(1)(b)** – requiring UST system owners/operators to procure the services of RIDEM-licensed tightness testers to test single-walled spill containment basins for tightness prior to 13 October 2021 and then at least once every 3 years thereafter.
- (5) **UST Rules, Part 1.10(N)(3)(d)(1)** – requiring UST system owners/operators to remove their USTs from service if an associated tank top or dispenser sump fails a tightness test.

- (6) **UST Rules, Part 1.10(U)(2)** – requiring UST system owners/operators to have trained Class C operators assigned to the facility.
- (7) **UST Rules, Part 1.10(U)(3)(e)** – requiring UST system owners/operators to maintain training logs for all the Class C operators assigned to the facility.
- (8) **UST Rules, Part 1.10(U)(4)(c)** – requiring UST system owners/operators to have at least 1 trained Class A, Class B or Class C operator present at the facility while substances regulated by the UST Rules are being dispensed by the facility.

E. ORDER

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

- (1) **IMMEDIATELY remove UST Nos. 004, 007 and 011 from service and cease and desist from dispensing fuel from the UST systems.**
- (2) **IMMEDIATELY** evacuate and clean the spill containment basins for UST Nos. 004, 007 and 011 in accordance with Part 1.10(N)(1)(a) of the UST Rules. All wastes removed from these basins shall be managed and disposed of in accordance with Part 1.7.3 of Rhode Island’s *Rules and Regulations for Hazardous Waste Management* (250-RICR-140-10-1). Written or photographic verification of compliance shall be submitted to RIDEM’s Office of Compliance & Inspection (“OC&I”).
- (3) **UST Nos. 004, 007 and 011 shall be kept out of service until** the deficient tank top and dispenser sumps have been repaired or replaced in full compliance with Part 1.10(N)(3)(d), Part 1.11 and Part 1.12 of the UST Rules. All repairs or tank system modifications require prior written notification to and approval by RIDEM’s Office of Land Revitalization and Sustainable Materials Management (“OLR&SMM”). If the UST systems are not repaired or modified within 1 year, permanently close the tanks in full compliance with Part 1.15 of the UST Rules.
- (4) **Within 7 days of receipt of the NOV**, submit to OLR&SMM a completed *Change of UST Facility Operator* form in accordance with Part 1.7(P)(2) of the UST Rules. The form is available on RIDEM’s website at <http://www.dem.ri.gov/online-services/applications-forms>.
- (5) **Within 30 days of receipt of the NOV**, procure the services of a RIDEM-licensed tightness tester to test the interstitial spaces of UST Nos. 004, 007 and 011 for tightness in accordance with Part 1.10(F)(1) and Part 1.10(H) of the UST Rules. Original copies of the report shall be submitted to OC&I and OLR&SMM in accordance with Part 1.10(H)(4) of the UST Rules.

- (6) **Within 30 days of receipt of the NOV**, procure the services of a RIDEM-licensed tightness tester to test the spill containment basins for UST Nos. 004, 007 and 011 for tightness in accordance with Part 1.10(N)(1)(b) and Part 1.10(H) of the UST Rules. Original copies of the report shall be submitted to OC&I and OLR&SMM in accordance with Part 1.10(H)(4) of the UST Rules.
- (7) **Within 30 days of receipt of the NOV**, either of the currently registered Class A/B operators (Stephen Calabrese or Ryan DoCouto) shall train or re-train all appropriate Facility employees and attendants as Class C operators and compile a written training log for the Class C operators that have been trained and assigned to the Facility, as per Part 1.10(U)(2), 1.10(U)(3)(e) and Part 1.10(U)(10)(c) of the UST Rules. A copy of the completed training log shall be submitted to OC&I. The Facility shall henceforth be operated only with at least 1 trained Class A, Class B, or Class C operator on duty while substances regulated by the UST Rules are being dispensed by the Facility, as per Part 1.10(U)(4)(c) of the UST Rules.

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:

\$14,875

- (2) The proposed administrative penalty is calculated pursuant to Rhode Island's *Rules and Regulations for Assessment of Administrative Penalties* (250-RICR-130-00-1) ("Penalty Rules") and must be paid to RIDEM within 30 days of your receipt of the NOV. Penalty payments shall be by one of two methods:
 - (a) By certified check, cashier's check, or money order made payable to the **General Treasury – Water and Air Protection Program** and forwarded to:

Administrator, RIDEM Office of Compliance and Inspection
235 Promenade Street, Suite 220
Providence, RI 02908-5767
 - (b) By wire transfer in accordance with instructions provided by RIDEM.
- (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 RIDEM 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 RIDEM's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections 0 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 RIDEM'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
RIDEM - 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).
- (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 Rhode Island's *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:

Maria I. Rice, Esquire
RIDEM - 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 RIDEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner regarding any violation set forth herein, then 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 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) Maria I. Rice of RIDEM's Office of Legal Services at (401) 222-6607, ext. 2772307 or at maria.rice@dem.ri.gov. All other inquiries should be directed to Tracey Tyrrell of RIDEM's Office of Compliance and Inspection at (401) 222-1360, ext. 2777407 or at tracey.tyrrell@dem.ri.gov.

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
RIDEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

Ravi Kumar d/b/a New England Farms Express, LLC
426 Medford Street
Somerville, MA 02145

MEGA GAS LLC
c/o Zaheer Akbar, Resident Agent
390 Broadway
Providence, RI 02909

MEGA GAS LLC
c/o Muhammad A. Saleem
188 Clearwater Circle
Ludlow, MA 01056

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: UST
 File No.: OCI-UST-23-22-01065
 Respondents: Ravi Kumar d/b/a New England Farms Express LLC and MEGA GAS LLC

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION NO. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D (1) – Failure to notify RIDEM of the change in operator	Type III <i>(\$6,250 Max. Penalty) *</i>	Minor	\$500	1 violation	\$500
D (2) – Failure to test the annular spaces of the USTs	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,750	1 violation	\$1,750
D (4) – Failure to test the spill containment basins	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,750	1 violation	\$1,750
D (5) – Operating the USTs with deficient sumps	Type II <i>(\$12,500 Max. Penalty) *</i>	Major	\$9,375	1 violation	\$9,375
D (6), (7) and (8) – Operator training	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,500	1 violation	\$1,500
SUB-TOTAL					\$14,875

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

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.

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 RIDEM 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 RULES = \$14,875

PENALTY MATRIX WORKSHEET

CITATION: Failure to notify RIDEM of the change in operator
 VIOLATION NO.: D (1)

TYPE		
<p style="text-align: center;"><u> </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;"><u> </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;"><u> X </u> TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Rules.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: RIDEM did not receive written notification from Respondents when MEGA GAS LLC took over operation of the Facility. Upon information and belief, Respondents failed to submit written notification of the change in Facility operator to RIDEM. Failure to comply withholds information important 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 USTs are in a GB groundwater classification zone, which are groundwater resources considered to be unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells in the vicinity. The Facility is within 450 feet of an environmental justice area, 1,200 feet of a groundwater reservoir, and 1,800 feet of Moshassuck River and its 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 public health hazard (due to the potential inhalation of benzene) and a public safety hazard (due to the potential for explosion). Gasoline can cause significant soil and groundwater contamination if released to the environment. Certain petroleum constituents are potentially harmful to human health and safety and the environment. (5) Duration of the violation: Unknown, as RIDEM did not receive written notification of the change in operator from Respondents. (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 submitting a completed *Change of UST Facility Operator* form to RIDEM within 15 days of the date that MEGA GAS LLC took over operation of the Facility. Respondents have made no apparent attempt to mitigate the noncompliance, despite receiving the NIE from RIDEM, 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 RIDEM, or any law which RIDEM 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:** Respondents, as owners and operators of the Facility, had full control over the occurrence of the violation. The UST Rules expressly require that UST facility owners/operators notify RIDEM, in writing, of any changes to information contained in the UST registration application, within 15 days of any such changes.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u> </u> MAJOR	<u> </u> MODERATE	<u> X </u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250 \$500

PENALTY MATRIX WORKSHEET

CITATION: Failure to test the annular spaces of the USTs
 VIOLATION NO.: D (2)

TYPE		
<p style="text-align: center;">___ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;">X TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;">___ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Rules.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: RIDEM has not received an interstitial space tightness test report for UST Nos. 004, 007 and 011 for the year 2022 from Respondents. Upon information and belief, Respondents did not have these required tests performed during the year 2022. The UST Rules require UST owners/operators to procure the services of a RIDEM-licensed tightness tester to test the interstitial spaces of USTs for tightness at 20 years of age and at least once every 2 years thereafter. These tightness tests are important, required components of leak prevention programs at regulated UST facilities. Failure to comply could allow a leaking UST to remain in use and result in a release of petroleum product to the subsurface. (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 USTs are in a GB groundwater classification zone, which are groundwater resources considered to be unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells in the vicinity. The Facility is within 450 feet of an environmental justice area, 1,200 feet of a groundwater reservoir, and 1,800 feet of Moshassuck River and its 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 public health hazard (due to the potential inhalation of benzene) and a public safety hazard (due to the potential for explosion). Gasoline can cause significant soil and groundwater contamination if released to the environment. Certain petroleum constituents are potentially harmful to human health and safety and the environment. (5) Duration of the violation: Approximately 10 months – Respondents were required to have the USTs tested before 24 November 2022. (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 testing the interstitial spaces of the USTs and submitting the test report to RIDEM. Respondents have made no apparent attempt to mitigate the alleged noncompliance, despite receiving the NIE from RIDEM, 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 RIDEM, or any law which RIDEM 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:** Respondents, as owners and operators of the Facility, had full control over the occurrence of the violation. Tightness testing of 20-year-old USTs at least once every 2 years is expressly required by the UST Rules.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u> </u> MAJOR	<u> </u> MODERATE	<u> X </u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500 \$1,750	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to test the spill containment basins
 VIOLATION NO.: 0 (4)

TYPE		
___ TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.	X 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 VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Part 1.10(A)(1)(b) of the Penalty Rules.

- (1) **The extent to which the act or failure to act was out of compliance:** Written verification that Respondents had procured the services of a RIDEM-licensed tightness tester to test the spill containment basins for UST Nos. 004, 007 and 011 for tightness during the year 2021 was not available at the time of inspection. RIDEM has not received an interstitial space tightness test report for these basins for the year 2021. Upon information and belief, Respondents failed to have the tightness tests performed. These tightness tests were required to be performed before 13 October 2021 and are important, required components of leak prevention programs at regulated UST facilities. Spill containment basins are designed to contain drips and spills of fuel during deliveries. Failure to comply could allow leaking spill containment basins to remain in use and result in adverse impacts 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 USTs are in a GB groundwater classification zone, which are groundwater resources considered to be unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells in the vicinity. The Facility is within 450 feet of an environmental justice area, 1,200 feet of a groundwater reservoir, and 1,800 feet of Moshassuck River and its 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. Certain petroleum constituents are potentially harmful to human health and safety and the environment.
- (5) **Duration of the violation:** Approximately 23 months – the spill containment basins were required to be tested for tightness before 13 October 2021.
- (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 testing the spill containment basins for tightness by a RIDEM-licensed tightness tester and submitting a copy of the test report to RIDEM. Respondents failed to mitigate the non-compliance, despite receiving the NIE from RIDEM, 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 RIDEM, or any law which RIDEM 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 their failure to comply with the spill containment basin tightness testing requirements set forth in the UST Rules. Tightness testing prior to 13 October 2021 is expressly required by the UST Rules. Respondents, as owners and operators of the Facility, had complete control over the occurrence of the violation.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	MODERATE	<u> X </u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500 \$1,750	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Operating the USTs with deficient sumps
 VIOLATION NO.: D (5)

TYPE		
___ TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.	X 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 VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Part 1.10(A)(1)(b) of the Penalty Rules.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents kept UST Nos. 004, 007 and 011 in operation even though all the tank top sumps and 3 of the dispenser sumps failed tightness tests that were performed on 5 October 2021. Keeping the UST systems in operation with defective tank top sumps and dispenser sumps increases the likelihood of a release of petroleum product to the subsurface.
- (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 USTs are in a GB groundwater classification zone, which are groundwater resources considered to be unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells in the vicinity. The Facility is within 450 feet of an environmental justice area, 1,200 feet of a groundwater reservoir, and 1,800 feet of Moshassuck River and its 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 public health hazard (due to the potential inhalation of benzene) and a public safety hazard (due to the potential for explosion). Gasoline can cause significant soil and groundwater contamination if released to the environment. Certain petroleum constituents are potentially harmful to human health and safety and the environment.
- (5) **Duration of the violation:** Approximately 22 months – Respondents were required to cease operating the UST systems by 27 November 2021.
- (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 repairing or replacing the failed components by 27 November 2021 or placing the UST systems into temporary closure until repairs could be made. Respondents have made no apparent attempt to mitigate the noncompliance, despite receiving the NIE from RIDEM, 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 RIDEM, or any law which RIDEM 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:** Respondents, as owners and operators of the Facility, had full control over the occurrence of the violation. The UST Rules expressly require that defective sumps be repaired or replaced within specified time frames and that the UST systems be placed into temporary closure if the defective components cannot be repaired or replaced as required.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u> X </u> MAJOR	_____ MODERATE	_____ MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500 \$9,375	\$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: Operator Training
 VIOLATION NOs.: D (6), (7) and (8)

TYPE		
<p style="text-align: center;">___ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;">X TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;">___ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Rules.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents failed to assign and operate with Class C operators. At the time of inspection, the Facility employee on duty was unable to present written verification that the employee had been trained as at least a Class C operator. Respondents failed to provide to RIDEM a list of all the Class C operators that had been trained and assigned to the Facility. The UST Rules 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 1 trained Class A, Class B, or Class C operator on duty while substances regulated by the UST Rules are being dispensed by the facility. The operator training requirements are significant to the regulatory program. Failure to comply would presumably reduce the likelihood of preventing and detecting releases from the UST systems. (2) Environmental conditions: The Facility is in a densely developed area with numerous potential vapor receptors, including commercial structures, residential structures, and underground utilities. The USTs are in a GB groundwater classification zone, which are groundwater resources considered to be unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells in the vicinity. The Facility is within 450 feet of an environmental justice area, 1,200 feet of a groundwater reservoir, and 1,800 feet of Moshassuck River and its 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 public health hazard (due to the potential inhalation of benzene) and a public safety hazard (due to the potential for explosion). Gasoline can cause significant soil and groundwater contamination if released to the environment. Certain petroleum constituents are potentially harmful to human health and safety and the environment. (5) Duration of the violation: Full duration unknown – at least approximately 12 months. (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 assigning trained Class C operators to the Facility and compiling a written training log in accordance with the UST Rules. Respondents have made no apparent attempt to mitigate the non-compliance, despite receiving the NIE from RIDEM, 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 RIDEM, or any law which RIDEM 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 Rules. As owners and operators of the Facility, Respondents had full control over the occurrence of the violations. The UST facility operator training requirements are clearly established in the UST Rules.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u> </u> MAJOR	<u> </u> MODERATE	<u> X </u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500 \$1,500	\$250 to \$1,250