

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Warwick Cove Marina, Inc.

FILE NO.: OCI-UST-18-76-01414

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 party (“Respondent”) has violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Administrative History

On 4 June 2018, DEM issued a Notice of Intent to Enforce (“NIE”) to Respondent by certified mail for the violations that are the subject of this Notice of Violation (“NOV”). The NIE required Respondent to take specific actions to correct the violations. On 11 June 2018, the NIE was delivered to Respondent. As of the date of the NOV, Respondent has failed to fully comply with the remedial requirements set forth by DEM in the NIE.

C. Facts

- (1) The subject property is located at 22 Seminole Street, Assessor’s Plat 376, Lot 248 in the City of Warwick, Rhode Island (the Property”). The Property includes a marina and a motor fuel storage and dispensing system (the “Facility”).
- (2) Respondent owns the Property.
- (3) Respondent operates the Facility.
- (4) Underground storage tanks (“USTs” or “tanks”) are installed 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. 01414.

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

UST ID No.	Date Installed	Capacity	Product Stored
006	25 August 1999	4,000 gallons	Diesel
007	25 August 1999	4,000 gallons	Gasoline
008	25 August 1999	4,000 gallons	Gasoline
009	25 August 1999	4,000 gallons	Gasoline
010	25 August 1999	4,000 gallons	Empty
011	25 August 1999	4,000 gallons	Empty

(7) By letter dated 14 June 1999 (the “June Letter”), DEM notified Respondent that its plan to install new USTs was approved with certain conditions. Among those conditions was the requirement to replace the dispenser piping on the fuel dock no later than 21 June 2001.

(8) On 31 May 2018, DEM inspected the Facility. The inspection revealed the following:

(a) The dispenser shear valves were not anchored to the fuel dock in conformance with the manufacturer’s instructions and the applicable National Codes of Practice set forth in Appendix B of the UST Regulations;

(b) The product pipeline transition sump was holding liquid;

(c) The registered Class A/B UST facility operator’s (Mr. John H. Williams) Rhode Island registration and certification expired in December 2013 (as he was initially certified in December 2012 by the State of Maine), and he was not certified by the *International Code Council* (“ICC”);

(d) Written verification that a registered, certified Class A or B UST operator had performed monthly on-site Facility inspections during the last 3 years was not available;

(e) The dispenser piping on the fuel dock was not replaced, and the product dispensers were not equipped with containment sumps, as was required by the June Letter; and

(f) UST No. 009 was no longer in use; however, Respondent had neither sought, nor obtained the permission of DEM to place the tank into temporary closure in accordance with Rule 13.03 [recently amended to Part 1.15(C)(4)] of the UST Regulations.

(9) Mr. John H. Williams was re-certified by the ICC as a Class A and Class B UST operator 23 June 2018 and registered with DEM as the Class A and Class B operator of the Facility.

- (10) On 26 March 2019, Mr. Williams submitted written verification that he had been performing the monthly inspections required of the Class A or B UST facility operator since June 2018.
- (11) Upon information and belief, Respondent operated the Facility from January 2014 through May 2018 without having a registered, ICC-certified Class A and Class B UST operator assigned to the Facility.
- (12) Respondent is ineligible for the Rhode Island UST Financial Responsibility Fund because of the remaining issues of non-compliance set forth in subsection C(8) above and has failed to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the UST systems.
- (13) As of the date of the NOV, Respondent has yet to demonstrate that the remaining issues of non-compliance set forth in subsection C(8) above have been rectified in accordance with DEM's requirements.

D. Violation

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

- (1) **UST Regulations, Rules 7.03 and 7.04 [recently amended to Part 1.8(C) and Part 1.8(D)]** – requiring UST system owners to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the UST systems.
- (2) **UST Regulations, Rule 8.02(A) [recently amended to Part 1.10(B)(1)]** – requiring that UST systems be installed, operated and maintained in accordance with the national codes of practice set forth in the UST Regulations.
- (3) **UST Regulations, Rule 8.12 [recently amended to Part 1.10(J)(1)]** – requiring that shear valves be securely anchored and installed in accordance with the manufacturer's requirements.
- (4) **UST Regulations, Rule 8.16(D) [recently amended to Part 1.10(N)(3)(c)]** – requiring that sumps be kept free of liquids and debris at all times.
- (5) **UST Regulations, Rule 8.22(A) [recently amended to Part 1.10(U)(2) and Part 1.10(U)(4)]** – requiring owners/operators to have trained and certified Class A and B UST operators assigned to the facility at all times.
- (6) **UST Regulations, Rule 8.22(F) [recently amended to Part 1.10(U)(5)(k), Part 1.10(U)(6)(g) and Part 1.10(U)(9)]** – requiring the registered, certified Class A or B UST operator to perform monthly on-site UST facility inspections and to document those inspections on the requisite form.

- (7) **UST Regulations, Rules 9.14(D) and 9.14(E) [recently amended to Part 1.11(M)(4) and Part 1.11(M)(5)]** – requiring that all new and replacement UST systems be equipped with liquid-tight, under-dispenser containment.
- (8) **UST Regulations, Rule 13.03 [recently amended to Part 1.15(C)]** – pertaining to temporary closure of USTs.

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) Submit a completed, updated *Underground Storage Tank Registration Form* to DEM's Office of Waste Management ("OWM") A copy of the updated Form shall be submitted to DEM's Office of Compliance and Inspection ("OC&I") in accordance with Part 1.7(P)(2) of the UST Regulations.
- (2) Submit to the OC&I written verification that you are now in compliance with the financial responsibility requirements set forth in Part 1.8(B) of the UST Regulations.
- (3) Procure the services of a qualified person to install under-dispenser containment sumps for all product dispensers and to secure all the dispenser shear valves in accordance with the manufacturer's instructions and in accordance with Part 1.10(B)(1), Part 1.10(J)(1), Part 1.11(M)(4) and Part 1.11(M)(5) of the UST Regulations. Written verification of compliance shall be submitted to OC&I.
- (4) Evacuate and clean the transition sump in accordance with Part 1.10(N)(3)(c) of the UST Regulations. All wastes removed from these 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 OC&I.
- (5) In accordance with Part 1.15(C) of the UST Regulations, submit a completed *Underground Storage Tank Temporary Closure Application* to OWM and, upon their review and approval, place UST No. 008 into a compliant temporary closure. Written verification of compliance shall be submitted to 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:

\$10,000

- (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 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 DEM's Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against Respondent 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 DEM'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 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 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:

Joseph J. LoBianco, 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 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) Joseph J. LoBianco of DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey Tyrrell of 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:

Warwick Cove Marina, Inc.
c/o John H. Williams, Registered Agent
22 Seminole Street
Warwick, RI 02889-9717

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY	
Program:	OFFICE OF COMPLIANCE AND INSPECTION, UST
File No.:	OCI-UST-18-76-01414
Respondent:	Warwick Cove Marina, Inc.

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION NO. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D(2) and (4) – Failure to ensure that the shear valves were properly installed and secured to the fuel dock	Type II <i>(\$12,500 Max. Penalty)*</i>	Minor	\$2,500	1 violation	\$2,500
D(6) – Failure to assign and operate with ICC-certified Class A and B UST facility operators	Type II <i>(\$12,500 Max. Penalty)*</i>	Minor	\$2,500	1 violation	\$2,500
D(7) – Failure to have an ICC-certified Class A or B UST Facility Operator Perform Monthly Inspections	Type II <i>(\$12,500 Max. Penalty)*</i>	Minor	\$1,250	1 violation	\$1,250
D(8) – Failure to install under-dispenser containment sumps	Type II <i>(\$12,500 Max. Penalty)*</i>	Minor	\$2,500	1 violation	\$2,500
D(9) – Failure apply for and obtain DEM's approval for temporary closure	Type II <i>(\$12,500 Max. Penalty)*</i>	Minor	\$1,250	1 violation	\$1,250
SUB-TOTAL					\$10,000

*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 Respondent has either enjoyed no identifiable benefit from the noncompliance 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 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 = \$10,000

PENALTY MATRIX WORKSHEET

CITATION:	Failure to ensure that the shear valves were properly installed and secured to the fuel dock
VIOLATION NOS.:	D (2) and (4)

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

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent failed to ensure that the dispenser shear valves were properly secured to the surrounding substrate as per the manufacturer's instructions and the recognized National Codes of Practice. Shear valves are designed to shut off flow from a pressurized product pipeline if a dispenser is accidentally struck or involved in a fire. Failure to comply would presumably reduce the likelihood of preventing releases from the pressurized product pipelines and may result in a catastrophic release of gasoline or diesel fuel to the environment. The requirement to have properly installed and securely anchored shear valves is significant to the regulatory program.

- (2) **Environmental conditions:** The Facility is in a densely developed area with numerous potential vapor receptors including residential structures and underground utilities. The Facility is in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells proximate to the Facility. The product dispensers are installed on a dock built within Warwick Cove, an important estuarine habitat. The Facility is in the Greenwich Bay watershed and in an Environmental Justice Area.

- (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 and diesel fuel can cause significant soil, groundwater and surface water contamination if released to the environment. Petroleum products are toxic to marine organisms.

- (5) **Duration of the violation:** Respondent has been non-compliant with this rule since 21 June 2001, the deadline date for construction of the proposed new fuel dock. The penalty is being assessed for the non-compliance that has occurred since July 2016.

- (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:** Respondent failed to prevent the non-compliance by constructing a new fuel dock by 21 June 2001 and ensuring that the shear valves were securely anchored and installed in accordance with the manufacturer's instructions. Respondent has yet to mitigate the non-compliance, despite receiving the NIE from DEM, which required that it 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 Respondent for the failure to comply with the UST Regulations. As owner and operator of the Facility, Respondent had full control over the occurrence of the violation. The UST Regulations expressly require that shear valves be securely anchored and installed in accordance with the manufacturer's instructions and the recognized National Codes of Practice.
- (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 \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION:	Failure to assign and operate with ICC-certified Class A and B UST facility operators
VIOLATION NO.:	D (6)

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 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*

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent failed to assign and operate with Class A and B UST facility operators. Upon information and belief, the registered Class A and B UST facility operator's (Mr. John H. Williams) registration with DEM expired in December 2013 as he was initially certified by the State of Maine in December 2012. The UST Regulations expressly require all owners/operators of regulated UST facilities to have trained and certified Class A and B UST facility operators assigned to the facility and prohibit the operation of UST facilities without them.

- (2) **Environmental conditions:** The Facility is in a densely developed area with numerous potential vapor receptors including residential structures and underground utilities. The Facility is in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells proximate to the Facility. The UST systems are installed adjacent to and within Warwick Cove, an important estuarine habitat. The Facility is in the Greenwich Bay watershed and in an Environmental Justice Area.

- (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 and diesel fuel can cause significant soil and groundwater contamination if released to the environment. Petroleum products are toxic to marine organisms.

- (5) **Duration of the violation:** Respondent was non-compliant with these rules from January 2014 through May 2018. Respondent assigned Mr. Williams as the Class A/B UST facility operator in June 2018 after he attained ICC certification. The penalty is being assessed for the non-compliance that occurred from July 2016 through May 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:** Respondent failed to prevent the non-compliance by assigning and registering ICC-certified Class A and B UST facility operators to the Facility. Respondent assigned and registered Mr. Williams as the Class A/B UST facility operator in June 2018 to mitigate the non-compliance.
- (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 Respondent for the failure to comply with all the UST Regulations. As owner and operator of the Facility, Respondent had full control over the occurrence of the violations. The UST facility operator training 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.

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 \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION:	Failure to have an ICC-certified Class A or B UST Facility Operator Perform Monthly Inspections
VIOLATION NO.:	D (7)

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 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*

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent failed to have a registered, ICC-certified Class A or B UST facility operator inspect the Facility monthly and document the inspections on the requisite form in accordance with the UST Regulations. These inspections are expressly required by the UST Regulations and are significant to the regulatory program. Failure to comply would presumably reduce the likelihood of preventing or detecting releases from the UST systems.
- (2) **Environmental conditions:** The Facility is in a densely developed area with numerous potential vapor receptors including residential structures and underground utilities. The Facility is in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells proximate to the Facility. The UST systems are installed adjacent to and within Warwick Cove, an important estuarine habitat. The Facility is in the Greenwich Bay watershed and in an Environmental Justice Area.
- (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 and diesel fuel can cause significant soil and groundwater contamination if released to the environment. Petroleum products are toxic to marine organisms.
- (5) **Duration of the violation:** Respondent has been non-compliant with this rule from at least July 2016 through June 2018. On 26 March 2019, Mr. John H. Williams submitted written verification that he had been performing the monthly inspections required of the Class A or B UST facility operator since 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:** Respondent failed to prevent the non-compliance by ensuring that a registered, ICC-certified Class A or B UST facility operator was performing the monthly inspections required by the UST Regulations. On 26 March 2019, Mr. Williams submitted written verification that he had been performing the monthly inspections required of the Class A or B UST facility operator since June 2018.
- (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 Respondent for the failure to comply with the UST Regulations. As owner and operator of the Facility, Respondent had full control over the occurrence of the violation. The Class A/B UST facility operator monthly inspection 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.

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 \$1,250	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION:	Failure to install under-dispenser containment sumps
VIOLATION NO.:	D (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 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*

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent failed to install under-dispenser containment sumps for all the dispensers in use at the Facility. Respondent was required by DEM to install the containment sumps before 21 June 2001 as a condition of the June Letter. Under-dispenser containment sumps are expressly required for all new installations and are significant to the regulatory program. Failure to comply would presumably reduce the likelihood of preventing releases of petroleum product to the environment.

- (2) **Environmental conditions:** The Facility is in a densely developed area with numerous potential vapor receptors including residential structures and underground utilities. The Facility is in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells proximate to the Facility. The UST systems are installed adjacent to and within Warwick Cove, an important estuarine habitat. The Facility is in the Greenwich Bay watershed and in an Environmental Justice Area.

- (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 and diesel fuel can cause significant soil and groundwater contamination if released to the environment. Petroleum products are toxic to marine organisms.

- (5) **Duration of the violation:** Respondent has been non-compliant with this rule since 22 June 2001. The penalty is being assessed for the non-compliance the has occurred since July 2016.

- (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:** Respondent failed to prevent the non-compliance by installing the proposed new fuel dock along with dispenser containment sumps before 21 June 2001. Respondent has yet to mitigate the non-compliance despite receiving the NIE from DEM, which required that it 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 Respondent for the failure to comply with the UST Regulations and the June Letter. As owner and operator of the Facility, Respondent had full control over the occurrence of the violation. The under-dispenser containment 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.

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 \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION:	Failure apply for and obtain DEM's approval for temporary closure
VIOLATION NO.:	D (9)

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 PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent removed UST No. 008 from service. Respondent failed to apply for and obtain the permission of DEM to place UST No. 008 into temporary closure. Removing USTs from service without prior written notification to and approval by DEM is prohibited by the UST Regulations. (2) Environmental conditions: The Facility is in a densely developed area with numerous potential vapor receptors including residential structures and underground utilities. The Facility is in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells proximate to the Facility. The UST systems are installed adjacent to and within Warwick Cove, an important estuarine habitat. The Facility is in the Greenwich Bay watershed and in an Environmental Justice Area. (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 and diesel fuel can cause significant soil and groundwater contamination if released to the environment. Petroleum products are toxic to marine organisms. (5) Duration of the violation: Unknown. Upon information and belief, UST No. 008 was removed from service at some point between 18 July 2014 and 9 July 2015. (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:** Respondent failed to prevent the non-compliance by applying for and obtaining DEM's approval for the temporary closure of UST No. 008. Respondent has yet to mitigate the non-compliance despite receiving the NIE from DEM, which required that it 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 Respondent for the failure to comply with the UST Regulations. As owner and operator of the Facility, Respondent had full control over the occurrence of the violation. The UST temporary closure 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.

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 \$1,250	\$250 to \$1,250