

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: MARTINS ACQUISITIONS, LLC
MARTINS PETROLEUM, INC.**

FILE NO.: OCI-UST-19-39-00642

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 6 September 2019, DEM issued a Notice of Intent to Prohibit Delivery (“NIPD”) to Respondents by certified mail for the violations that are the subject of this Notice of Violation (“NOV”). The NIPD required specific actions to correct the violations. On 11 September 2019 and 12 September 2019, the NIPD was delivered to MARTINS PETROLEUM, INC. and MARTINS ACQUISITIONS, LLC, respectively. As of the date of the NOV, Respondents have failed to fully comply with the NIPD.

C. Facts

- (1) The property is located at 481 Warren Avenue, Assessor's Map 307, Block 36, Parcel 18 in East Providence, Rhode Island (the “Property”). The Property includes a motor fuel filling station and a convenience store (the "Facility").
- (2) MARTINS ACQUISITIONS, LLC owns the Property.
- (3) MARTINS PETROLEUM, INC. 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 *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials*.
- (5) The Facility is registered with DEM and is identified as UST Facility No. 00642.

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

UST ID No.	Date Installed	Capacity	Substance Stored
002	5 January 1994	10,000 gallons	Diesel
004	5 January 1994	15,000 gallons	Gasoline
006	5 January 1994	15,000 gallons	Gasoline

(7) The product pipelines for the USTs are double walled.

(8) On 28 August 2019, 18 November 2019 and 10 December 2019, DEM inspected the Facility. The inspections revealed the following:

- (a) Written verification that the interstitial spaces of the product pipelines for UST Nos. 002, 004 and 006 were tested for tightness by a DEM-licensed tightness tester during each of the years 2014, 2016 and 2018 was not available;
- (b) Written verification that the line leak detectors for UST Nos. 002, 004 and 006 were tested by a qualified person during the year 2018 was not available;
- (c) Written verification that the dispenser shear valves were tested by a qualified person during the year 2018 was not available;
- (d) Written verification that the continuous monitoring system (“CMS”) was certified/tested by a qualified person during each of the years 2017 and 2018 was not available;
- (e) One of the tank field observation wells was not labeled;
- (f) A training log for all the Class C UST facility operators that had been trained and assigned to the Facility was not available. At the time of the inspection, no records were available to show that the Facility attendant on duty had been trained as at least a Class C UST facility operator;
- (g) Written verification that the registered Class A/B UST facility operator, Mr. Eric Martins, had performed monthly on-site UST facility inspections during the time period of December 2016 through November 2019 was not available; and
- (h) Upon information and belief, UST No. 002 was removed from service in or about May 2019, after the diesel dispenser was damaged by a vehicle collision. Respondents failed to notify DEM that the tank had been removed from service and failed to obtain the approval of DEM for a temporary closure.

- (9) DEM reviewed a report submitted by Compliance Testing Services, Inc. (“CTS”) on testing performed by CTS at the Facility on 29 April 2020. The report did not include testing of the interstitial spaces of the product pipelines for UST Nos. 002, 004 and 006.
- (10) As of the date of the NOV, Respondents have not demonstrated compliance with the findings described in subsections C(8) and C(9) above.

D. Violation

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

- (1) ***Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials [effective 26 April 2011 to 20 November 2018]***
 - (a) **Rule 8.09(A)(2)** – requiring the owner/operator to retain a licensed tester to perform tightness testing of the interstitial spaces of double-walled product pipelines at 20 years of age and every 2 years thereafter.
 - (b) **Rule 8.11** – requiring annual testing of line leak detectors by a qualified person.
 - (c) **Rule 8.12** – requiring annual testing of dispenser shear valves.
 - (d) **Rule 8.15(F)** – requiring that UST continuous monitoring systems be inspected and tested by qualified persons on an annual basis.
 - (e) **Rule 8.19(A)** – requiring that groundwater monitoring and tank field observation wells be labeled and secured against tampering.
 - (f) **Rule 8.22(A)** – requiring UST owners/operators to have trained Class C UST facility operators assigned to the facility.
 - (g) **Rule 8.22(A)(7)** – requiring owners/operators to maintain training logs for all the Class C UST facility operators assigned to the facility.
 - (h) **Rule 8.22(F)** – requiring the registered, certified Class A or B UST facility operator to perform monthly on-site UST facility inspections and to document those inspections on the requisite form.
 - (i) **Rule 13.02(A)** – prohibiting abandonment of USTs.
 - (j) **Rule 13.02(C)** – prohibiting the temporary closure of USTs without notification to and approval by DEM.

- (k) **Rule 13.05** – requiring the owner/operator that has removed any UST from operation for more than 180 days and have not been granted an extension of temporary closure by DEM or who have abandoned any UST or who desire to permanently close a UST to comply with the procedures for permanent closure that are set forth in the regulations.
- (2) ***Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Material (250-RICR-140-25-1) [effective 20 November 2018 to Current] (the “UST Regulations”)***
- (a) **Part 1.10(G)(2)(b)** – requiring the owner/operator to retain a licensed tester to perform tightness testing of the interstitial spaces of double-walled product pipelines at 20 years of age and every 2 years thereafter.
 - (b) **Part 1.10(I)(1)** – requiring annual testing of line leak detectors by a qualified person.
 - (c) **Part 1.10(J)(1)** – requiring annual testing of dispenser shear valves.
 - (d) **Part 1.10(M)(7), Part 1.10(M)(8) and Part 1.10(M)(9)** – requiring that UST continuous monitoring systems be inspected and tested by qualified persons on an annual basis.
 - (e) **Part 1.10(Q)(1)(a)** – requiring that groundwater monitoring and tank field observation wells be labeled and secured against tampering.
 - (f) **Part 1.10(U)(2)** – requiring UST owners/operators to have trained Class C UST facility operators assigned to the facility.
 - (g) **Part 1.10(U)(3)(e)** – requiring owners/operators to maintain training logs for all the Class C UST facility operators assigned to the facility.
 - (h) **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 facility operator to perform monthly on-site UST facility inspections and to document those inspections on the requisite form.
 - (i) **Part 1.15(B)(1)** – prohibiting abandonment of USTs.
 - (j) **Part 1.15(B)(3)** – prohibiting the temporary closure of USTs without notification to and approval by DEM.
 - (k) **Part 1.15(D)** – requiring the owner/operator that has removed any UST from operation for more than 180 days and have not been granted an extension of temporary closure by DEM or who have abandoned any UST or who desire to permanently close a UST to comply with the procedures for permanent closure that are set forth in the regulations.

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 45 days of receipt of the NOV**:

- (1) Procure the services of a DEM-licensed tightness tester to test the interstitial spaces of the product pipelines for UST Nos. 002, 004 and 006 for tightness in accordance with Part 1.10(G)(2)(b)(1) and Part 1.10(H) of the UST Regulations and submit a copy of the tightness test report to DEM's Office of Compliance and Inspection ("OC&I"). An original copy of the tightness test report shall also be submitted to DEM's Office of Land Reclamation and Sustainable Material Management ("LRSMM") in accordance with Part 1.10(H)(4) of the UST Regulations. If such testing cannot be completed within 45 days, then UST Nos. 002, 004 and 006 shall be evacuated to 1 inch or less of liquid (by a qualified contractor) and Respondents shall submit a completed *Underground Storage Tank Temporary Closure Application* to LRSMM, as per Part 1.15(C) of the UST Regulations, and complete all further actions specified by LRSMM necessary to comply with the UST Regulations. Written verification of compliance shall be submitted to OC&I.
- (2) The deficient tank field observation well shall be labeled in accordance with Part 1.10(Q)(1)(a) of the UST Regulations. Written and/or photographic verification of compliance shall be submitted to OC&I.
- (3) The registered, ICC-certified Class A/B UST facility operator shall train all appropriate Facility employees and attendants as (at least) 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)(e) and Part 1.10(U)(4) of the UST Regulations and submit a copy of the completed training log to 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.
- (4) The registered Class A/B UST facility operator shall henceforth perform the monthly facility inspections required in Part 1.10(U)(5)(k), Part 1.10(U)(6)(g) and Part 1.10(U)(9) of the UST Regulations. Written verification of a return to compliance shall be submitted to OC&I.

- (5) In accordance with Part 1.12 of the UST Regulations, procure the services of a qualified person to repair or replace the diesel dispenser so that UST No. 002 may be returned to service. The primary and secondary product pipelines shall be tested for tightness by a DEM-licensed tightness tester in accordance with Part 1.10(G) and Part 1.10(H) of the UST Regulations prior to putting the UST system back into service. If the diesel dispenser cannot be repaired or replaced within 45 days, then UST No. 002 shall be evacuated to 1 inch or less of liquid (by a qualified contractor) and Respondents shall submit a completed *Underground Storage Tank Temporary Closure Application* to LRSMM, as per Part 1.15(C) of the UST Regulations, and complete all further actions specified by LRSMM necessary to comply with the UST Regulations.. 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:

\$13,271

- (2) The proposed administrative penalty is calculated pursuant to the *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* [effective 31 December 2001 to Current] (the “Penalty Regulations”) 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” 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 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 DEM 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 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 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 *Rules and Regulations for the Administrative Adjudication Division (250-RICR-10-00-1)* [effective 27 November 2014 to Current].
- (2) A copy of each request for hearing must also be forwarded to:

Joseph LoBianco, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before 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 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 East 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) Joseph LoBianco of DEM's Office of Legal Services at (401) 222-6607 or at joseph.lobianco@dem.ri.gov. All other inquiries should be directed to Tracey Tyrrell of DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 77407 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
DEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

MARTINS ACQUISITIONS, LLC
c/o Joseph F. Martins, Resident Agent
478 Dover Avenue
East Providence, RI 02915

MARTINS PETROLEUM, INC.
c/o Joseph F. Martins, Registered Agent
2371 Pawtucket Avenue
East Providence, RI 02914

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST

File No.: OCI-UST-19-39-00642

Respondents: MARTINS ACQUISITIONS, LLC and MARTINS PETROLEUM, 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 (1)(a) and D (2)(a) – Pipeline tightness testing	Type II <i>(\$12,500 Max. Penalty) *</i>	Moderate	\$4,500	1 violation	\$4,500
D (1)(b), (c) and (d) and D (2)(b)(c) and (d) – Annual leak detection/prevention equipment testing	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,500	1 violation	\$1,500
D (1)(f), (g) and (h) and D (2)(f), (g) and (h) – Operator training	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$2,500	1 violation	\$2,500
D (1)(i), (j) and (k) and D (2)(i), (j) and (k) – Abandonment	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$2,500	1 violation	\$2,500
SUB-TOTAL					\$11,000

*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.			
DESCRIPTION OF BENEFIT	CALCULATION		AMOUNT
<p>Failing to test the secondary pipelines for tightness in 2014. The economic benefit of non-compliance 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"> ▪ Profit Status ▪ Filing Status ▪ Initial Capital Investment ▪ One-time Non-depreciable Expense ▪ First Month of Non-compliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	<p>C Corp.</p> <p>\$510</p> <p>January 2014</p> <p>1 April 2021</p> <p>15 March 2021</p> <p>7.6%</p>	<p>\$467</p>
<p>Failing to test the secondary pipelines for tightness in 2016. The economic benefit of non-compliance 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"> ▪ Profit Status ▪ Filing Status ▪ Initial Capital Investment ▪ One-time Non-depreciable Expense ▪ First Month of Non-compliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	<p>C Corp.</p> <p>\$510</p> <p>January 2016</p> <p>1 April 2021</p> <p>15 March 2021</p> <p>7.5%</p>	<p>\$384</p>

ADMINISTRATIVE PENALTY SUMMARY (continued)

<p>Failing to test the secondary pipelines for tightness in 2018 and failing to test the line leak detectors and tank monitor. The economic benefit of non-compliance 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"> ▪ Profit Status ▪ Filing Status ▪ Initial Capital Investment ▪ One-time Non-depreciable Expense ▪ First Month of Non-compliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	<p>C. Corp.</p> <p>\$1,190</p> <p>January 2018</p> <p>1 April 2021</p> <p>15 March 2021</p> <p>7.8%</p>	<p>\$1,022</p>
<p>Failing to test the secondary pipelines for tightness in 2020. The economic benefit of non-compliance 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"> ▪ Profit Status ▪ Filing Status ▪ Initial Capital Investment ▪ One-time Non-depreciable Expense ▪ First Month of Non-compliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	<p>C. Corp.</p> <p>\$510</p> <p>January 2020</p> <p>1 April 2021</p> <p>15 March 2021</p> <p>7.6%</p>	<p>\$398</p>
<p><i>SUB-TOTAL</i></p>			<p>\$2,271</p>

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 = \$13,271

PENALTY MATRIX WORKSHEET

CITATION: Pipeline tightness testing

VIOLATION NO.: D (1)(a) and D (2)(a)

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 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 Regulations.</p> <p>(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 test the secondary product pipelines for tightness. Pipeline tightness testing is an important, required component of leak detection programs at UST facilities. Such testing is required every 2 years when the double-walled piping reaches 20 years of age. Upon information and belief, Respondents have never had the secondary piping tested for tightness. Failure to comply would presumably reduce the likelihood of preventing releases of petroleum product from the pipelines.</p> <p>(2) Environmental conditions: The Facility is in a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. The Facility is in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells in the vicinity of the Facility. The Property is located in the Providence River watershed.</p> <p>(3) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(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. Certain petroleum constituents are potentially harmful to human health and safety and the environment.</p> <p>(5) Duration of the violation: Approximately 7 years – January 2014 through the present.</p> <p>(6) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		
(continued)		

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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 having the secondary pipelines tested. Respondents have yet to mitigate the non-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 their failure to comply with the UST Regulations. As owners and operators of the Facility, Respondents 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	<u> X </u> 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	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250 \$4,500	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Annual leak detection/prevention equipment testing
 VIOLATION NOs.: D (1)(b), (c) and (d) and D (2)(b), (c), and (d)

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.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</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 procure the services of a qualified technician to test the line leak detectors, shear valves and tank monitor. These devices are important, required components of leak detection/prevention programs at UST facilities. Testing is required to ensure that they are operating in conformance with the manufacturer’s performance standards. Failure to comply would presumably reduce the likelihood of detecting or 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 commercial and residential structures and underground utilities. The Facility is in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells in the vicinity of the Facility. The Property is located in the Providence 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 and diesel fuel 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: 1 year for the line leak detectors and shear valves (for 2018) and 2 years for the tank monitor (for 2017 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 non-compliance:** Respondents failed to prevent the non-compliance by having the line leak detectors, shear valves and tank monitor tested. Respondents mitigated the noncompliance by having all of these devices tested in 2019 and 2020.
- (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 their failure to comply with the UST Regulations. As owners and operators of the Facility, Respondents had complete control over the occurrence of the violations.
- (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 \$1,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Operator training

VIOLATION NOs.: D (1)(f), (g) and (h) and D (2)(f), (g) and (h)

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 Regulations.</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 train and assign Class C UST facility operators to the Facility. Respondents failed to have the registered, certified Class A/B UST facility operator inspect the Facility on a monthly basis and document the results of the inspections on the requisite checklist. The UST Regulations require that UST owners/operators have trained and certified UST facility operators assigned to their facilities, that at least one Class C UST facility operator be on duty during all hours of operation and that the Class A/B UST facility operators inspect the facilities on a monthly basis. Failure to comply would presumably increase the likelihood of a release of the regulated substance to the environment and in increased threats to public health and safety. (2) Environmental conditions: The Facility is in a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. The Facility is in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells in the vicinity of the Facility. The Property is located in the Providence 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 and diesel fuel 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 4 years – Respondents have been non-compliant with these requirements since at least December 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 non-compliance:** Respondents failed to prevent the non-compliance by assigning trained Class C UST facility operators to the Facility, ensuring that the Facility was operated with at least one Class C UST facility operator on duty during all hours of operation and by ensuring that the registered Class A/B UST facility operator inspected the Facility on a monthly basis. Respondents have yet to mitigate the non-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 their failure to comply with the UST Regulations. As owners and operators of the Facility, Respondents had complete control over the occurrence of the violations.
- (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: Abandonment

VIOLATION NOs.: D (1)(i), (j) and (k) and D (2)(i), (j) and (k)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> 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.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents removed UST No. 002 from service (after its dispenser was damaged in an accident) and then failed to notify DEM and obtain DEM’s approval for a temporary closure. UST No. 002 has yet to be returned to service and its inactivity now meets the definition of abandonment. Abandonment of USTs is prohibited by the UST Regulations. (2) Environmental conditions: The Facility is in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells in the vicinity of the Facility. The Property is located in the Providence River watershed. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: Diesel fuel 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 21 months – Respondents have been non-compliant with these requirements since May 2019. (6) Areal extent of the violation: Considered, but not utilized for this calculation. <p style="text-align: right;">(continued)</p>		

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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 immediately notifying DEM that UST No. 002 had been removed from service and obtain DEM's approval for a temporary closure. Respondents have yet to mitigate the non-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 their failure to comply with the UST Regulations. As owners and operators of the Facility, Respondents had complete control over the occurrence of the violations.
- (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 \$2,500	\$1,250 to \$2,500	\$250 to \$1,250