

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: DIMAS REALTY, LLC
BMC PETROLEUM INC II**

FILE NO.: OCI-UST-22-20-01793

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 14 July 2022, RIDEM issued a *Notice of Intent to Enforce* (“NIE”) to Respondents by certified mail for the alleged violations that are the subject of this *Notice of Violation* (“NOV”). The NIE was delivered on 18 July 2022. The NIE required specific actions to correct the violations. As of the date of the NOV, Respondents have failed to fully comply with the NIE.

C. FACTS

- (1) The property is located at 135 Putnam Avenue, Assessor’s Plat 40, Lot 100, in Johnston, Rhode Island (“Property”). The Property includes a convenience store and a motor fuel storage and dispensing system (“Facility”).
- (2) DIMAS REALTY, LLC owns the Property.
- (3) BMC PETROLEUM INC II (“BMC”) 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 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”).
- (5) The Facility is registered with RIDEM and is identified as UST Facility No. 01793.

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

UST ID No.	Date Installed	Capacity	Product Stored
004	1 May 1985	3,000 gallons	Heating Oil
005	1 October 1996	10,000 gallons	Gasoline
006	1 October 1996	10,000 gallons	Gasoline

(7) On 7 October 2021, the dispenser and tank top sumps for UST Nos. 005 and 006 were tested for tightness by a RIDEM-licensed tightness tester. The No. 5/6 dispenser sump and the tank top sumps (collectively, “Sumps”) failed to meet the criteria for passing.

(8) The Sumps are single walled.

(9) By letter dated 2 November 2021, RIDEM notified BMC that if the Sumps could not be repaired or replaced within 30 days in accordance with the UST Rules (or RIDEM did not issue a temporary variance approval), then UST Nos. 005 and 006 were required to be placed into temporary closure in accordance with the UST Rules.

(10) By letter dated 8 February 2022, BMC requested a variance from RIDEM to continue operating UST Nos. 005 and 006 until the Sumps could be repaired or replaced.

(11) By letter dated 9 March 2022, RIDEM denied BMC’s variance request.

(12) On 6 July 2022, RIDEM inspected the Facility. The inspection and a review of RIDEM’s files for the Facility revealed the following:

(a) UST Nos. 005 and 006 were in operation, as evidenced by customers dispensing gasoline that was stored in the USTs.

(b) A new spill containment basin was installed for UST No. 006 (“SCB 6”). Upon information and belief, the basin was installed between 13 August 2019 and 7 October 2021.

(c) Upon information and belief, the Facility was being operated without at least 1 trained Class C Facility operator on duty.¹ Written verification that the Facility attendant on duty at the time of inspection had been trained as, at least, a Class C Facility operator was not available. A training log for all the Class C Facility operators assigned to the Facility was not available. The Facility attendant on duty was unable to demonstrate proficiency with the Class C Facility operator duties set forth in the UST Rules.

(d) The Facility attendant on duty was unable to present written verification that Respondents had provided an emergency response guidance document for the operators to use.

¹ Neither were the Class A or Class B Facility operators on site.

- (13) On 7 September 2022, RIDEM received a *Sump and Under-Dispenser Containment Repair Application* (“Application”) to address the failed Sumps that was submitted by Dependable Service Company, Inc. on behalf of Respondents.
- (14) By letter dated 27 September 2022, RIDEM approved the Application.
- (15) On 19 October 2022, RIDEM inspected the Facility and confirmed or observed the following:
- (a) UST Nos. 005 and 006 were in operation, as evidenced by customers dispensing gasoline that was stored in the USTs.
 - (b) SCB 6 is double walled.
 - (c) The spill containment basins for UST Nos. 004 and 005 and SCB 6 were holding mixtures of fuel and water.
- (16) As of the date of the NOV, upon information and belief, the repair work approved in the Application has yet to commence, and UST Nos. 005 and 006 remain in operation.
- (17) As of the date of the NOV, Respondents have not submitted written notification to RIDEM of the tank system modification for SCB 6 or that UST No. 006 has been tested for tightness.

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 1.10(B)(2)** – requiring owners/operators to provide an emergency response guidance document or posting to facility staff, with instructions for compliantly responding to alarms, releases, spills, and other abnormal events.
- (2) **UST Rules, Part 1.10(N)(1)(a)** – requiring that spill containment basins be kept free of water, product, liquid, or debris at all times.
- (3) **UST Rules, Part 1.10(N)(3)(d)(1)** – requiring that USTs be removed from service if an associated tank top or dispenser sump fails a tightness test and cannot be repaired or replaced within 30 days.
- (4) **UST Rules, Part 1.10(U)(3)(d) and Part 1.10(U)(3)(e)** – requiring that Class C UST facility operators be trained prior to assuming the responsibilities of a Class C UST facility operator and that owners/operators maintain a training log for all the Class C UST facility operators that have been trained and assigned to their facilities.
- (5) **UST Rules, Part 1.10(U)(4)(c)** – prohibiting the dispensing of fuel at UST facilities without the presence of at least 1 certified UST facility operator.

- (6) **UST Rules, Part 1.10(U)(2) and Part 1.10(U)(4)(a)** – requiring all UST facilities to have operators that are trained and certified according to the regulatory requirements and to continuously have one or more individuals designated at Class A, Class B and Class C UST facility operators.
- (7) **UST Rules, Part 1.12(A)(1)** – prohibiting the modification of UST systems without appropriate notification to and/or approval by RIDEM.
- (8) **UST Rules, Part 1.12(D)(1)(f)** – requiring tightness testing of the primary walls of USTs within 30 days of a tank system modification.

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. 005 and 006 from service and cease and desist from dispensing fuel from the UST systems.** Written verification of compliance shall be submitted to RIDEM’s Office of Compliance and Inspection (“OC&I”) within 7 days.
- (2) **UST Nos. 005 and 006 shall be kept out of service until the tank top sumps and dispenser sumps have been repaired or replaced** in accordance with the Application and in full compliance with Part 1.10(N)(3)(d) and Part 1.12 of the UST Rules. If the UST systems are not repaired, modified, or replaced within 1 year, permanently close the UST systems in full compliance with Part 1.15 of the UST Rules.
- (3) **IMMEDIATELY evacuate and clean the spill containment basins** for UST Nos. 004, 005 and SCB 6 in accordance with Part 1.10(N)(1)(a) of the UST Rules. All wastes removed from these basins shall be managed and recycled or 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 OC&I.
- (4) **Within 60 days of receipt of the NOV:**
 - (a) Procure the services of a RIDEM-licensed tightness tester to test the primary wall of UST No. 006 for tightness in accordance with Part 1.12(D)(1)(f) and Part 1.10(H) of the UST Rules. Original copies of the tightness test report shall be submitted to OC&I and RIDEM’s Office of Land Revitalization & Sustainable Materials Management (“OLR&SMM”) in accordance with Part 1.12(D)(1)(f) and Part 1.10(H)(4) of the UST Rules.
 - (b) Submit to OLR&SMM a completed *Spill Containment Basin Replacement* form and, if applicable, a written summary report prepared by a qualified environmental consultant (if a consultant was present during the spill containment basin replacement project). The tightness test report referenced above shall be submitted along with the form. A copy of the completed form shall also be submitted to OC&I.

- (c) One or both currently registered Class A/B Facility operators (Bassam Chebbo and Stephen Calabrese) shall train or re-train all appropriate Facility employees and attendants as Class C Facility operators and compile a written training log for the Class C 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)(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 C Facility operator on duty during all hours of operation, as per Part 1.10(U)(4)(c) of the UST Rules.
- (d) Prepare an emergency response guidance document or posting in accordance with Part 1.10(B)(2) of the UST Rules and submit a copy to OC&I for review. The document or posting shall be provided to all Facility employees and operators in accordance with Part 1.10(B)(2) and Part 1.10(U) 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:

\$11,250

- (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 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 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:

Jenna Giguere, Esquire
RIDEM - 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 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 Town of Johnston, 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, then you may contact (or if you are represented by an attorney, please have your attorney contact) Attorney Name of RIDEM's Office of Legal Services at (401) 222-6607 ext. 2772306 or at jenna.giguere@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:

DIMAS REALTY, LLC
c/o Bassam Chebbo, Resident Agent
905 Cranston Street
Cranston, RI 02920

BMC PETROLEUM INC II
c/o Bassam Chebbo, Registered Agent
905 Cranston Street
Cranston, RI 02920

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: UST
 File No.: OCI-UST-22-20-01793
 Respondents: DIMAS REALTY, LLC and BMC PETROLEUM INC II

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION NOS. & CITATIONS	APPLICATION OF MATRIX		PENALTY CALCULATIONS		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D (1), D (4), D (5) and D (6) – Failure to provide emergency response guidance to Facility staff and failure to operate the Facility with compliantly-trained Class C Facility operators	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$2,500	1 violation	\$2,500
D (3) – Operating the USTs with deficient tank top and dispenser sumps	Type II <i>(\$12,500 Max. Penalty) *</i>	Major	\$6,250	1 violation	\$6,250
D (7) and D (8) – Failure to notify and obtain the approval of RIDEM for the installation of a new spill containment basin and failure to subsequently test the UST for tightness	Type II <i>(\$12,500 Max. Penalty) *</i>	Moderate	\$2,500	1 violation	\$2,500
SUB-TOTAL					\$11,250

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

ADMINISTRATIVE PENALTY SUMMARY (continued)

ECONOMIC BENEFIT FROM NON-COMPLIANCE

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

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

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

COST RECOVERY

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

A review of the record in this matter has revealed that 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 REGULATIONS = \$11,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to provide emergency response guidance to Facility staff and failure to operate the Facility with compliantly trained Class C Facility operators
 VIOLATION NOs.: D (1), D (4), D (5) and D (6)

TYPE		
<p>___ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>X</u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>___ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<p>THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</p>		
<p>FACTORS CONSIDERED:</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 compliantly train Facility staff as Class C Facility operators, including emergency response procedures, and compile a training log for all the Class C Facility operators that had been trained and assigned to the Facility. UST facility operator training is an important, required component of release detection and prevention programs at UST facilities. Failure to compliantly train the Facility’s operators will presumably increase the likelihood of a release of petroleum products to the environment and the resultant threats to public health and safety. (2) Environmental conditions: The Facility is in a densely developed area with numerous potential vapor receptors including residential structures, commercial structures, and underground utilities. The Facility is in a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. The Facility is within a non-community water supply wellhead protection area. The Facility is within 1,000 feet of Woonasquatucket River and lies within 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 public health hazard (due to potential inhalation of benzene) and a public safety hazard (due to the potential for explosion). Gasoline may 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. Benzene, a component of gasoline, is a known human carcinogen. (5) Duration of the violation: Considered, but not utilized for this calculation. (6) Areal extent of the violation: Considered, but not utilized for this calculation. 		
<p>(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 compliantly training the Facility attendants as Class C Facility operators, providing instructions for responding to emergencies and releases and compiling a Class C Facility operator training log. Respondents have yet to mitigate the alleged non-compliance despite receiving notification of the requirements in the NIE.
- (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 immediately comply with the UST Rules. 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: Operating the USTs with deficient tank top and dispenser sumps
 VIOLATION NO.: D (3)

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

DEVIATION FROM THE STANDARD
 THE DEGREE TO WHICH A 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 failed to place UST Nos. 005 and 006 into a compliant temporary closure and have continued to operate these USTs despite the test failures of the Sumps. The Sumps are designed to contain releases if the pressurized product pipelines housed inside them develop leaks. Failure to comply reduces the likelihood of detecting or preventing releases of the regulated substances to the environment. Failure to comply increases the threat to groundwater resources and public health and safety.
- (2) **Environmental conditions:** The Facility is in a densely developed area with numerous potential vapor receptors including residential structures, commercial structures, and underground utilities. The Facility is in a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. The Facility is within a non-community water supply wellhead protection area. The Facility is within 1,000 feet of Woonasquatucket River and lies within 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 public health hazard (due to potential inhalation of benzene) and a public safety hazard (due to the potential for explosion). Gasoline may 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. Benzene, a component of gasoline, is a known human carcinogen.
- (5) **Duration of the violation:** Approximately 1 year – Respondents have been in violation since 7 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 non-compliance:** Respondents failed to prevent and/or mitigate the non-compliance by repairing/replacing the Sumps or by removing UST Nos. 005 and 006 from service. RIDEM notified Respondents that they were not eligible for a variance to continue operation of the UST systems. Respondents obtained RIDEM’s approval to complete the repairs on 27 September 2022; however, the work has yet to commence.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondents for the failure to comply with the UST Rules. 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.

<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 \$6,250	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to notify and obtain the approval of RIDEM for installation of new spill containment basins and failure to subsequently test the UST for tightness
 VIOLATION NOs.: D (7) and D (8)

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

DEVIATION FROM THE STANDARD
 THE DEGREE TO WHICH A 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 installed SCB 6 without submitting a spill containment basin replacement form to RIDEM and without procuring the services of a RIDEM-licensed tightness tester to subsequently test the primary wall of the UST for tightness. Respondents also failed to notify RIDEM whether a consultant was present to screen soils for contamination during the basin replacement project. Failure to comply withholds vital information from RIDEM and prohibits RIDEM from assuring that the tank system modifications were made in conformance with the requirements of the UST Rules.
- (2) **Environmental conditions:** The Facility is in a densely developed area with numerous potential vapor receptors including residential structures, commercial structures, and underground utilities. The Facility is in a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. The Facility is within a non-community water supply wellhead protection area. The Facility is within 1,000 feet of Woonasquatucket River and lies within 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 public health hazard (due to potential inhalation of benzene) and a public safety hazard (due to the potential for explosion). Gasoline may 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. Benzene, a component of gasoline, is a known human carcinogen.
- (5) **Duration of the violation:** Considered, but not utilized for this calculation.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** Respondents failed to prevent the non-compliance by submitting a spill containment basin replacement form to RIDEM along with a post-installation tightness test report. As of the date of this NOV, Respondents have yet 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 Respondents for the failure to immediately comply with the UST Rules. As owners and operators of the Facility, Respondents had complete control over the occurrence of the alleged 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	<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 \$2,500	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250