

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Danish Rahat d/b/a DRSM Properties LLC FILE NO.: OCI-UST-23-53-03026
Danish Rahat d/b/a DRSM Mart LLC**

NOTICE OF VIOLATION

A. INTRODUCTION

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Rhode Island Department of Environmental Management (“Director” of “RIDEM”) has reasonable grounds to believe that the above-named parties (“Respondents”) have violated certain statutes and/or administrative regulations under RIDEM’s jurisdiction.

B. ADMINISTRATIVE HISTORY

On 13 June 2023, RIDEM issued a *Notice of Intent to Enforce* (“NIE”) by certified mail to Danish Rahat (“Rahat”) for the alleged violations that are the subject of this Notice of Violation (“NOV”). The NIE required specific actions to correct the alleged violations. The NIE was delivered on 17 June 2023. As of the date of the NOV, Rahat has failed to respond to or comply with the NIE.

C. FACTS

- (1) The property is located at 2701 Hartford Avenue, Assessor’s Plat 57, Lot 147 in Johnston, Rhode Island (“Property”). The Property includes a motor fuel storage and dispensing system and a convenience store (“Facility”).
- (2) DRSM Properties LLC owns the Property.
- (3) DRSM Mart LLC was incorporated on 2 February 2018. Upon information and belief, DRSM Mart LLC operated the Facility for some of the period relevant to the NOV.
- (4) On 11 September 2023 the *Certificates of Organization/Registration* for DRSM Properties LLC and DRSM Mart LLC were revoked by the Rhode Island Secretary of State. Rahat is the last known Member and Authorized Person for DRSM Properties LLC and DRSM Mart LLC.

- (5) Underground storage tanks (“USTs” or “tanks”) are located on the Property and are used for storage of petroleum products. The USTs are subject to Rhode Island’s *Rules and Regulations for Underground Storage Facilities Used for Regulated Substances and Hazardous Materials* (250-RICR-140-25-1) (“UST Rules”).
- (6) The Facility is registered with RIDEM and is identified as UST Facility No. 03026.
- (7) The USTs are registered with RIDEM as follows:

UST ID No.	Date Installed	Capacity	Product Stored
005	1 January 1998	9,000 gallons	Gasoline
006	1 January 1998	3,000 gallons	Gasoline

- (8) UST Nos. 005 and 006 and their product pipelines are double walled. The spill containment basins, tank top sumps, and dispenser sumps are single walled.
- (9) On 30 March 2023, RIDEM inspected the Facility. The inspection and subsequent file reviews revealed the following issues of non-compliance with the UST Rules:
 - (a) UST registration fees and late fees assessed to the Facility owner had not been paid to RIDEM.
 - (b) Written verification that the interstitial space of UST Nos. 005 and 006 had been tested for tightness by a RIDEM-licensed tightness tester during each of the years 2020 and 2022 was not available. Interstitial space tightness test reports for this UST for each of the years 2020 and 2022 have not been received by RIDEM.
 - (c) Written verification that the interstitial spaces of the product pipelines for UST Nos. 005 and 006 had been tested for tightness by a RIDEM-licensed tightness tester during the year 2022 was not available. Interstitial space tightness test reports for these product pipelines for the year 2022 have not been received by RIDEM.
 - (d) Written verification that the line leak detectors, shear valves, tank monitor and overflow prevention devices for UST Nos. 005 and 006 had been tested by a qualified technician during the year 2021 was not available. Test reports for these devices for the year 2021 have not been received by RIDEM.

- (e) Written verification that the single-walled spill containment basins for UST Nos. 005 and 006 had been tested for tightness by a RIDEM-licensed tightness tester before 13 October 2021 was not available. Tightness test reports for these spill containment basins have not been received by RIDEM.
 - (f) Written verification that the tank top sumps and dispenser sumps for UST Nos. 005 and 006 had been tested for tightness by a RIDEM-licensed tightness tester before 13 October 2021 was not available. Tightness reports for these sumps have not been received by RIDEM.
 - (g) The fill port for UST No. 006 was not labeled to identify the product stored inside the tank.
 - (h) The Facility attendant advised RIDEM's inspector that Stephen Calabrese was coming in each month to perform Facility inspections. Mr. Calabrese is not registered with RIDEM as a certified Class A or Class B operator as required in the UST Rules.
 - (i) Upon information and belief, the Facility was being operated without any trained Class C operators on duty. A training log for all the Class C operators assigned to the Facility was not available.
 - (j) Written verification that a certified Class A or B operator had inspected the Facility monthly and documented the results of the inspections on the requisite checklist from September 2020 through February 2023 was not available. The previous full compliance inspection was performed by RIDEM in August 2020; so, the inspector searched for checklists for September 2020 through February 2023.
- (10) In 2022 and 2023, the line leak detectors, shear valves, tank monitor, and overflow prevention devices for UST Nos. 005 and 006 were tested by a qualified technician, and it was reported to RIDEM that the equipment passed the tests.
- (11) As of the date of the NOV, upon information and belief, Respondents have not corrected the non-compliance identified above in Section C (9) (excluding subsection (d)).

D. VIOLATION

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

- (1) **UST Rules, Parts 1.7(J) and (M)** – requiring UST system owners to pay UST registration fees and late fees assessed by RIDEM.
- (2) **UST Rules, Part 1.10(F)(1)(c)** – requiring UST system owners/operators to procure the services of RIDEM-licensed tightness testers to test the interstitial spaces of double walled USTs at 20 years of age and then at least once every 2 years thereafter.
- (3) **UST Rules, Part 1.10(G)(2)(b)** – requiring UST system owners/operators to procure the services of RIDEM-licensed tightness testers to test the interstitial spaces of double walled product pipelines at 20 years of age and then at least once every 2 years thereafter.
- (4) **UST Rules, Part 1.10(I)** – requiring annual testing of line leak detectors by qualified persons.
- (5) **UST Rules, Part 1.10(J)** – requiring annual testing of shear valves.
- (6) **UST Rules, Parts 1.10(M)(7), Part 1.10(M)(8) and Part 1.10(M)(9)** – requiring annual testing of UST continuous monitoring systems by qualified persons.
- (7) **UST Rules, Part 1.10(N)(1)(b)** – requiring UST system owners/operators to procure the services of RIDEM-licensed tightness testers to test single-walled spill containment basins for tightness prior to 13 October 2021 and then at least once every 3 years thereafter.
- (8) **UST Rules, Part 1.10(N)(2)(b)** – requiring annual testing of overfill prevention devices by qualified persons.
- (9) **UST Rules, Part 1.10(N)(3)(d)** – requiring UST system owners/operators to procure the services of RIDEM-licensed tightness testers to test single-walled tank top sumps and dispenser sumps for tightness prior to 13 October 2021 and then at least once every 3 years thereafter.
- (10) **UST Rules, Part 1.10(P)** – requiring that UST fill ports be labeled to identify the product stored.
- (11) **UST Rules, Part 1.10(U)(2) and Part(U)(4)(a)** – requiring UST system owners/operators to continuously have trained Class C operators assigned to the facility.

- (12) **UST Rules, Part 1.10(U)(3)(b) and Part(U)(4)(b)** – requiring UST system owners/operators to register all the certified Class A and B operators with RIDEM.
- (13) **UST Rules, Part 1.10(U)(3)(e)** – requiring UST system owners/operators to maintain training logs for all the Class C operators assigned to the facility.
- (14) **UST Rules, Part 1.10(U)(4)(c)** – requiring UST system owners/operators to have at least 1 trained Class A, Class B or Class C operator present at the facility while substances regulated by the UST Rules are being dispensed at the facility.
- (15) **UST Rules, Part 1.10(U)(9)** – requiring UST system owners/operators to have certified Class A or Class B operators inspect the facility monthly and record the results of the inspections on the requisite form.

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** label or otherwise permanently mark the fill port for UST No. 006 to identify the product stored inside the tank, in accordance with Part 1.10(P) of the UST Rules. Written or photographic verification of compliance shall be submitted to OC&I.
- (2) **IMMEDIATELY** contact RIDEM’s Office of Land Revitalization & Sustainable Materials Management (“OLR&SMM”) to determine the balance owed on the UST registration and late fees and **within 10 days of receipt of the NOV** pay all past-due fees and submit written verification of compliance to OC&I.
- (3) **Within 60 days of receipt of the NOV:**
 - (a) Procure the services of a RIDEM-licensed tightness tester to test the interstitial space of UST No. 005/006 for tightness in accordance with Part 1.10(F)(1) and Part 1.10(H) of the UST Rules. Original copies of the report shall be submitted to OC&I and OLR&SMM in accordance with Part 1.10(H)(4) of the UST Rules.
 - (b) Procure the services of a RIDEM-licensed tightness tester to test the interstitial spaces of the product pipelines for UST Nos. 005 and 006 for tightness in accordance with Part 1.10(G)(2)(b) and Part 1.10(H) of the UST Rules. Original copies of the report shall be submitted to OC&I and OLR&SMM in accordance with Part 1.10(H)(4) of the UST Rules.

- (c) Procure the services of a RIDEM-licensed tightness tester to test the spill containment basins for UST Nos. 005 and 006 for tightness in accordance with Part 1.10(N)(1)(b) and Part 1.10(H) of the UST Rules. Original copies of the report shall be submitted to OC&I and OLR&SMM in accordance with Part 1.10(H)(4) of the UST Rules.
- (d) Procure the services of a RIDEM-licensed tightness tester to test the tank top sumps and dispenser sumps for UST Nos. 005 and 006 for tightness in accordance with Part 1.10(N)(3)(d) and Part 1.10(H) of the UST Rules. Original copies of the report shall be submitted to OC&I and OLR&SMM in accordance with Part 1.10(H)(4) of the UST Rules.
- (e) Complete a *Certified UST Facility Operators Registration Form* for each Class A or B UST operator assigned to the Facility, in accordance with Part 1.10(U)(3)(b) of the UST Rules and submit each form to OLR&SMM and OC&I along with copies of the Class A and Class B operators' examination certificates.
- (f) The Class A and/or Class B operators shall train all appropriate Facility employees as Class C operators and compile a written training log for all the Class C 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 A, B or C operator on duty while substances regulated by the UST Rules are being dispensed, as per Part 1.10(U)(4)(c) of the UST Rules.
- (g) The Class A and/or Class B operators shall henceforth perform the monthly Facility inspections in accordance with Part 1.10(U)(5)(k), Part 1.10(U)(6)(g) and Part 1.10(U)(9) of the UST Rules and document the results of those inspections on the requisite checklist. Submit written verification of a return to compliance 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:

\$13,636

- (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.

- (3) 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.
- (4) 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.
- (5) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if RIDEM determines that reasonable efforts have been made to comply promptly with the NOV.

G. RIGHT TO ADMINISTRATIVE HEARING

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before RIDEM's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections 0 through F above. All requests for hearing **MUST**:
- (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b).
 - (b) Be **RECEIVED** by RIDEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of the NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
RIDEM - Administrative Adjudication Division
235 Promenade Street, Room 350
Providence, RI 02908-5767
 - (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b).

- (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Part 1.7(B) of Rhode Island's Rules and Regulations for the Administrative Adjudication Division (250-RICR-10-00-1).
- (2) A copy of each request for hearing must also be forwarded to:
- Maria I. Rice, Esquire
RIDEM - Office of Legal Services
235 Promenade Street, Suite 425
Providence, RI 02908-5767
- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before RIDEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner regarding any violation set forth herein, then the NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (vi) and 42-17.6-4(b) and (c).
- (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) An original signed copy of the NOV is being forwarded to the Town of Johnston, Rhode Island, wherein the Property is located, to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and Section 42-17.1-2 (31), as amended.
- (7) The NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Maria Rice of RIDEM's Office of Legal Services at (401) 537-4189 or at maria.rice@dem.ri.gov. All other inquiries should be directed to Tracey Tyrrell of RIDEM's Office of Compliance and Inspection at (401) 537-4480 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:

Danish Rahat d/b/a DRSM Properties LLC
36 Cedar Creek Drive
Attleborough, MA 02703

Danish Rahat d/b/a DRSM Mart LLC
36 Cedar Creek Drive
Attleborough, MA 02703

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: UST
 File No.: OCI-UST-23-53-03026
 Respondents: Danish Rahat d/b/a DRSM Properties LLC and Danish Rahat d/b/a DRSM Mart LLC

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION NO. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D (2) – Failure to test the interstitial spaces of the USTs for tightness	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,250	1 violation	\$1,250
D (3) – Failure to test the interstitial spaces of the product pipelines for tightness	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,500	1 violation	\$1,500
D (4), D (5), D (6) and D (8) – Failure to test the line leak detectors, shear valves, tank monitor and overflow prevention	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,500	1 violation	\$1,500
D (7) – Failure to test the spill containment basins for tightness	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,500	1 violation	\$1,500
D (9) – Failure to test the tank top and dispenser sumps for tightness	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$2,000	1 violation	\$2,000
D (11), D (12), D (13), D (14) and D (15) – Operator training	Type II <i>(\$12,500 Max. Penalty) *</i>	Moderate	\$4,000	1 violation	\$4,000
SUB-TOTAL					\$11,750

*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>Avoiding the cost of tank and pipeline interstitial space tightness testing in 2022. 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 ▪ Annually Recurring Costs ▪ First Month of Non-Compliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	<p>For profit, other than a C Corp.</p> <p>\$594</p> <p>May 2022</p> <p>1 March 2024</p> <p>1 March 2024</p> <p>7.4%</p>	<p>\$422</p>
<p>Avoiding the cost of line leak detector testing, tank monitor testing, overfill prevention testing, spill containment basin tightness testing and sump tightness testing in 2021. 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 ▪ Annually Recurring Costs ▪ First Month of Non-Compliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	<p>For profit, other than a C Corp.</p> <p>\$2009</p> <p>June 2021</p> <p>1 March 2024</p> <p>1 March 2024</p> <p>7.4%</p>	<p>\$1,314</p>
<p>Avoiding the cost of tank interstitial space tightness testing 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 ▪ Annually Recurring Costs ▪ First Month of Non-Compliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	<p>For profit, other than a C Corp.</p> <p>\$254</p> <p>May 2020</p> <p>1 March 2024</p> <p>1 March 2024</p> <p>7.0%</p>	<p>\$150</p>

SUB-TOTAL	\$1,886
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ADMINISTRATIVE PENALTY SUMMARY (continued)

COST RECOVERY

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

A review of the record in this matter has revealed that RIDEM has not incurred any additional or extraordinary costs during the investigation, enforcement, and resolution of this enforcement action (excluding non-overtime personnel costs), for which the State is not otherwise reimbursed.

TOTAL PENALTY PROPOSED UNDER PENALTY RULES = \$13,636

PENALTY MATRIX WORKSHEET

CITATION: Failure to test the interstitial spaces of the UST for tightness
 VIOLATION NO.: D (2)

TYPE		
<p style="text-align: center;">___ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;">X TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;">___ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Rules.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: RIDEM has not received interstitial space tightness test reports for UST Nos. 005 and 006 for 2020 and 2022. Upon information and belief, Respondents did not have the tests performed. The UST Rules require UST owners/operators to procure the services of a RIDEM-licensed tightness tester to test the interstitial spaces of USTs for tightness at 20 years of age and at least once every 2 years thereafter. These tightness tests are important, required components of leak detection and prevention programs at regulated UST facilities. Failure to comply could allow a leaking UST to remain in use and result in a release of petroleum product to the subsurface. (2) Environmental conditions: The Facility is in a developed area with potential vapor receptors, including commercial structures, residential structures, and underground utilities. The USTs are in a GA groundwater classification zone, which are groundwater resources considered to be suitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells in the vicinity. The UST system is installed within 350 feet of regulated freshwater wetlands. The Facility is in Pocasset 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 public health hazard (due to the potential inhalation of benzene) and a public safety hazard (due to the potential for explosion). Gasoline can cause significant soil and groundwater contamination if released to the environment. Certain petroleum constituents are potentially harmful to human health and safety and the environment. (5) Duration of the violation: Approximately 3.5 years – Respondents were required to test the USTs before 15 May 2020. (6) Areal extent of the violation: Considered, but not utilized for this calculation. 		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the noncompliance by having the interstitial space of the USTs tested for tightness and submitting the test reports to RIDEM. Respondents have made no apparent attempt to mitigate the noncompliance, despite receiving the NIE from RIDEM, which required that they do so.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondents, as owner and operator of the Facility, had full control over the occurrence of the violation. Tightness testing of 20-year-old USTs at least once every 2 years is expressly required by the UST Rules.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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

PENALTY MATRIX WORKSHEET

CITATION: Failure to test the interstitial spaces of the product pipelines for tightness
 VIOLATION NO.: D (3)

TYPE		
<p style="text-align: center;">___ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;">X TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;">___ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Rules.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: RIDEM has not received an interstitial space tightness test report for the product pipelines for UST Nos. 005 and 006 for 2022. Upon information and belief, Respondents did not have this required test performed. The UST Rules require UST owners/operators to procure the services of a RIDEM-licensed tightness tester to test the interstitial spaces of product pipelines for tightness at 20 years of age and at least once every 2 years thereafter. These tightness tests are important, required components of leak detection and prevention programs at regulated UST facilities. Failure to comply could allow a leaking product pipeline to remain in use and result in a release of petroleum product to the subsurface. (2) Environmental conditions: The Facility is in a developed area with potential vapor receptors, including commercial structures, residential structures, and underground utilities. The USTs are in a GA groundwater classification zone, which are groundwater resources considered to be suitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells in the vicinity. The UST system is installed within 350 feet of regulated freshwater wetlands. The Facility is in Pocasset 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 public health hazard (due to the potential inhalation of benzene) and a public safety hazard (due to the potential for explosion). Gasoline can cause significant soil and groundwater contamination if released to the environment. Certain petroleum constituents are potentially harmful to human health and safety and the environment. (5) Duration of the violation: Approximately 1.5 years – Respondents were required to have the pipelines tested before 21 July 2022. (6) Areal extent of the violation: Considered, but not utilized for this calculation. 		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the noncompliance by having the interstitial spaces of the product pipelines tested for tightness and submitting the test report to RIDEM. Respondents have made no apparent attempt to mitigate the noncompliance, despite receiving the NIE from RIDEM, which required that they do so.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondents, as owner and operator of the Facility, had full control over the occurrence of the violation. Tightness testing of 20-year-old product pipelines at least once every 2 years is expressly required by the UST Rules.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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

PENALTY MATRIX WORKSHEET

CITATION: Failure to test line leak detectors, shear valves, tank monitor and overfill prevention
 VIOLATION NOs.: D (4), D (5), D (6), and 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;"><u>X</u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;">___ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<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: RIDEM has not received written verification that Respondents had the line leak detectors, shear valves, tank monitor and overfill prevention tested by a qualified person during 2021. Upon information and belief, these required tests were not performed. Periodic inspection and testing of this leak detection/prevention equipment is significant to the regulatory program. These tests verify whether the devices are functioning in accordance with the manufacturer’s specifications. Failure to comply would presumably reduce the likelihood of detecting and preventing releases from the UST systems. (2) Environmental conditions: The Facility is in a developed area with potential vapor receptors, including commercial structures, residential structures, and underground utilities. The USTs are in a GA groundwater classification zone, which are groundwater resources considered to be suitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells in the vicinity. The UST system is installed within 350 feet of regulated freshwater wetlands. The Facility is in Pocasset River watershed. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: The volatile nature of gasoline presents both a potential public health hazard (due to potential inhalation of benzene) and a potential public safety hazard (due to the potential for explosion). Gasoline can cause significant soil and groundwater contamination if released to the environment. (5) Duration of the violation: 1 year. (6) Areal extent of the violation: Considered, but not utilized for this calculation. 		
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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the noncompliance by having the line leak detectors, shear valves, tank monitor and overfill prevention tested during 2021. Respondents mitigated the noncompliance by having all these devices tested in 2022 and 2023, and the report submitted to RIDEM stated that they all met the criteria for passing.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondents for the failure to comply with the UST Rules. As owner and operator of the Facility, Respondents had full control over the occurrence of the violations. The leak detection/prevention equipment testing requirements are clearly established in the rules.
- (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: Failure to test the spill containment basins for tightness
 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 VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Rules.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Written verification that Respondents procured the services of a RIDEM-licensed tightness tester to test the spill containment basins for UST Nos. 005 and 006 for tightness during 2021 was not available. RIDEM has not received a tightness test report for these basins for 2021. Upon information and belief, Respondent failed to have the tightness tests performed. These tightness tests were required to be performed before 13 October 2021 and are important, required components of leak detection and prevention. Spill containment basins are designed to contain drips and spills of fuel during deliveries. Failure to comply could allow leaking spill containment basins to remain in use and result in adverse impacts to public health and safety and the environment. (2) Environmental conditions: The Facility is in a developed area with potential vapor receptors, including commercial structures, residential structures, and underground utilities. The USTs are in a GA groundwater classification zone, which are groundwater resources considered to be suitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells in the vicinity. The UST system is installed within 350 feet of regulated freshwater wetlands. The Facility is in Pocasset River watershed. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: The volatile nature of gasoline presents both a potential public health hazard (due to potential inhalation of benzene) and a potential public safety hazard (due to the potential for explosion). Gasoline can cause significant soil and groundwater contamination if released to the environment. Certain petroleum constituents are potentially harmful to human health and safety and the environment. (5) Duration of the violation: Approximately 27 months – the spill containment basins were required to be tested for tightness before 13 October 2021. (6) Areal extent of the violation: Considered, but not utilized for this calculation. 		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the noncompliance by having the spill containment basins for tested for tightness by a RIDEM-licensed tightness tester and submitting a copy of the test report to RIDEM. Respondents failed to mitigate the noncompliance, despite receiving the NIE from RIDEM, which required that they do so.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondents for the failure to comply with the spill containment basin tightness testing requirements set forth in the UST Rules. Tightness testing prior to 13 October 2021 is expressly required by the UST Rules. Respondents, as owner and operator of the Facility, had complete control over the occurrence of the violation.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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

PENALTY MATRIX WORKSHEET

CITATION: Failure to test the tank top and dispenser sumps for tightness
 VIOLATION NO.: D (9)

TYPE		
<p style="text-align: center;"><u> </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;"><u> X </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;"><u> </u> TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Rules.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Written verification that Respondents procured the services of a RIDEM-licensed tightness tester to test the tank top sumps and dispenser sumps for UST Nos. 005 and 006 for tightness in 2021 was not available. RIDEM has not received a tightness test report for these sumps for 2021. Upon information and belief, Respondents failed to have the tightness tests performed. These tightness tests were required to be performed before 13 October 2021 and are important, required components of leak detection and prevention. Tank top and dispenser containment sumps are designed to contain leaks from product pipelines. Failure to comply could allow deficient sumps to remain in use and result in adverse impacts to public health and safety and the environment. (2) Environmental conditions: The Facility is in a developed area with potential vapor receptors, including commercial structures, residential structures, and underground utilities. The USTs are in a GA groundwater classification zone, which are groundwater resources considered to be suitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells in the vicinity. The UST system is installed within 350 feet of regulated freshwater wetlands. The Facility is in Pocasset 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 public health hazard (due to the potential inhalation of benzene) and a public safety hazard (due to the potential for explosion). Gasoline can cause significant soil and groundwater contamination if released to the environment. Certain petroleum constituents are potentially harmful to human health and safety and the environment. (5) Duration of the violation: Approximately 27 months – Respondents were required to have the sumps tested for tightness before 13 October 2021. (6) Areal extent of the violation: Considered, but not utilized for this calculation. 		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the noncompliance by having the sumps tested for tightness by a RIDEM-licensed tightness tester and submitting a copy of the test report to RIDEM. Respondents have made no apparent attempt to mitigate the non-compliance, despite receiving the NIE from RIDEM, which required that they do so.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondents for the failure to comply with the containment sump tightness testing requirements set forth in the UST Rules. Tightness testing prior to 13 October 2021 is expressly required by the UST Rules. Respondents, as owner and operator of the Facility, had complete control over the occurrence of the violation.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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

PENALTY MATRIX WORKSHEET

CITATION: Operator training
 VIOLATION NOs.: D (11), D (12), D (13), D (14) and D (15)

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:** Stephen Calabrese, is performing inspections of the Facility, however, Respondents failed to register him with RIDEM as the certified Class A and B operator as required by the UST Rules. Respondents failed to provide to RIDEM a list of all the Class C operators trained and assigned to the Facility. The UST Rules expressly requires all owners/operators of regulated UST facilities to have trained and certified Class A, B and C operators assigned to the facility and prohibits the operation of UST facilities without at least 1 trained Class C operator on duty during all operating hours. Written verification that Mr. Calabrese or any other certified Class A or B operators had inspected the Facility monthly during the period of September 2020 through March 2023 was not available. The operator training requirements are significant to the regulatory program. Failure to comply would presumably reduce the likelihood of preventing and detecting releases from the UST systems.
- (2) **Environmental conditions:** The Facility is in a developed area with potential vapor receptors, including commercial structures, residential structures, and underground utilities. The USTs are in a GA groundwater classification zone, which are groundwater resources considered to be suitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells in the vicinity. The UST system is installed within 350 feet of regulated freshwater wetlands. The Facility is in Pocasset 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 public health hazard (due to the potential inhalation of benzene) and a public safety hazard (due to the potential for explosion). Gasoline can cause significant soil and groundwater contamination if released to the environment. Certain petroleum constituents are potentially harmful to human health and safety and the environment.
- (5) **Duration of the violation:** Full duration unknown – more than 3 years. Respondents have been unable to demonstrate compliance with the operator training requirements dating back to August 2020.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the noncompliance by registering new certified Class A and B operators for the Facility immediately after the previously registered operators ceased acting in those roles, by training all the Facility employees and attendants as, at least, Class C operators and by compiling a list of all of the trained Class C operators assigned to the Facility. RIDEM has no knowledge of what steps, if any, Respondents have taken to mitigate the noncompliance, despite receiving the NIE from RIDEM, which required that they do so.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondents for the failure to comply with the operator training requirements set forth in the UST Rules. As owner and operator of the Facility, Respondents had full control over the occurrence of the violations. The UST facility operator training requirements are clearly established in the UST Rules.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u> </u> MAJOR	<u> X </u> MODERATE	<u> </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 \$4,000	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250