

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Imad E. Melhem  
GNI West Warwick, Inc.**

**FILE NO.: UST 2017-60-01263**

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 25 April 2017 and 18 August 2017, the DEM issued informal written notices to one or both Respondents for the violations that are the subject of this Notice of Violation (“NOV”). The notices required specific actions to correct the violations. The notices were delivered to Respondents on 28 April 2017 and 23 August 2017, respectively. As of the date of the NOV, Respondents have failed to comply with the notices.

C. Facts

- (1) The property is located at 929 Providence Street, Assessor’s Plat 39, Lot 213 in the Town of West Warwick, Rhode Island (the “Property”). The Property includes a motor fuel storage and dispensing system and a motor vehicle service station (the “Facility”).
- (2) 929 Providence Street, LLC (“929 LLC”) owns the Property.
- (3) On 21 April 2014, the Rhode Island Secretary of State revoked the Certificate of Registration/Organization for 929 LLC. Imad E. Melhem is the last known authorized person for the corporation.
- (4) GNI West Warwick, Inc. operates the Facility.
- (5) Underground storage tanks (“USTs” or “tanks”) are located on the Property, which tanks are used for storage of petroleum products and which are subject to the DEM’s *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the “UST Regulations”).

- (6) The Facility is registered with the DEM and is identified as UST Facility No. 01263.
- (7) The USTs are registered with the DEM for the Facility as follows:

UST ID No.	Date Installed	Capacity	Product Stored
005	22 October 1993	500 gallons	Heating Oil
012	22 October 1993	10,000 gallons	Gasoline
013	22 October 1993	10,000 gallons	Gasoline
014	22 October 1993	500 gallons	Waste Oil

- (8) The USTs are double walled tanks.
- (9) On 30 December 2015, the DEM inspected the Facility. The inspection revealed that the interstitial spaces of the USTs and the interstitial spaces of the product pipelines for UST Nos. 012 and 013 were not tested for tightness in 2015.
- (10) On or about 19 April 2017, the DEM received a report prepared by NEXTEST. The report stated the following tests failed (collectively, the “Failed Tests”):
  - (a) An interstitial space tightness test that was performed on 19 April 2017 for UST No. 014 failed; and
  - (b) A tightness test that was performed on 19 April 2017 for the secondary product pipelines for UST Nos. 012 and 013 failed.
- (11) As of the date of the NOV, Respondents have failed to:
  - (a) Submit to the DEM a release characterization report of the failed tightness tests;
  - (b) Retest the interstitial space of UST No. 014;
  - (c) Repair the secondary pipelines for UST Nos. 012 and 013; and
  - (d) Empty the contents of UST Nos. 012, 013 and 014 and apply for and obtain the DEM’s permission to place the USTs into temporary closure; and
- (12) As of the date of the NOV, Respondents owe \$440 of registration fees and late fees (the “Fees”).

D. Violation

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

- (1) **DEM's UST Regulations, Rules 6.10, 6.12 and 6.13** – requiring UST owners/operators to pay UST registration fees and late fees assessed by the DEM.
- (2) **DEM's UST Regulations, Rule 8.08(A)(3)** – requiring tightness testing of the interstitial spaces of double-walled USTs at 20 years of age and every 2 years thereafter.
- (3) **DEM's UST Regulations, Rule 8.09(A)(2)(a)** – requiring tightness testing of secondary product pipelines at 20 years of age and every 2 years thereafter.
- (4) **DEM' UST Regulations, Rules 8.08(A)(3)(f), 8.09(A)(2)(f) and 12.07** – requiring the submittal of a release characterization report to the DEM within 7 days of a failed tightness test.
- (5) **DEM's UST Regulations, Rule 8.08(A)(3)(g)** – requiring that the contents of USTs be removed after a failed tightness test or if the tanks are not re-tested within 3 days of a failed tightness test.
- (6) **DEM's UST Regulations, Rule 8.09(A)(2)(g)** – requiring that failed secondary pipelines be repaired within 30 days if tests of the primary pipelines indicate that they are tight and requiring that the pipelines be taken out of service if the required repairs are not completed.

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:

- (1) **Within 7 days of receipt of the NOV**, submit a release characterization report to the DEM - Office of Waste Management (“OWM”) for the Failed Tests in accordance with Rules 8.08(A)(3)(f), 8.09(A)(2)(f) and 12.07 of the DEM's UST Regulations.
- (2) **Within 10 days of receipt of the NOV**, procure the services of a qualified contractor to evacuate the contents of the USTs, place the tanks into temporary closure in full compliance with Rule 13.03 of the DEM's UST Regulations, and complete and submit an *Underground Storage Tank Temporary Closure Application* to the OWM. Respondents are required to obtain the DEM's written approval for a compliant temporary closure (the “Temporary Closure Approval”).

- (3) **Within 10 days of receipt of the NOV**, submit payment to the DEM for the Fees in accordance with Rules 6.10, 6.12 and 6.13 of the DEM's UST Regulations.
- (4) **Within 180 days of receiving the Temporary Closure Approval**, comply with either option outlined below:
  - (a) Procure the services of a qualified contractor to repair UST No. 014 and the secondary product pipelines for UST Nos. 012 and 013 in full compliance with Rules 8.09(A)(2)(g) and 10.00 of the DEM's UST Regulations. Prior written notification to and approval by the DEM is required for any proposed repairs of the tank and product pipelines. Prior to putting the USTs back into operation, the interstitial spaces of the USTs and pipelines shall be tested for tightness by a DEM-licensed tightness tester in full compliance with Rules 8.08(A)(3), 8.09(A)(2) and 8.10 of the DEM's UST Regulations and written approval is obtained from the OWM;

OR

- (b) Submit a completed *Permanent Closure Application for Underground Storage Tanks* for the USTs to the OWM and, with OWM's approval, complete the permanent closure of the USTs in full compliance with Section 13.00 of the DEM's UST Regulations.
  1. Within 30 days of the removal of the USTs, submit to the OWM a *Closure Assessment Report* that has been prepared by an environmental consultant in accordance with Section 13.11 of the DEM's UST Regulations, the *UST Closure Assessment Guidelines*, October 1998, and Section 13 of the DEM's *Oil Pollution Control Regulations*.
  2. Within 30 days of the removal of the USTs, remove and properly dispose of any contaminated soil encountered during the tank closure and, within 10 days of the soil disposal, submit documentation of disposal to the OWM in accordance with Section 13 of the DEM's *Oil Pollution Control Regulations*.
  3. Based on the information in the *Closure Assessment Report*, the OWM may require that a site investigation be performed by an environmental consultant and that a *Site Investigation Report* ("SIR") be submitted in accordance with Rules 12.08, 12.09, and 12.10 of the DEM's UST Regulations and within a time frame specified by the DEM. If the OWM requires a SIR, complete the SIR as ordered. Based on the information in the SIR, the OWM may require submittal of a *Corrective Action Plan* ("CAP") within a time frame specified by the OWM and in accordance with Rules 12.12 through 12.18 of the DEM's UST Regulations. The CAP shall be implemented in accordance with an *Order of Approval* issued by the OWM.

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:

**\$8,250**

- (2) The proposed administrative penalty is calculated pursuant to the DEM's *Rules and Regulations for Assessment of Administrative Penalties*, as amended, and must be paid to the DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a certified check, cashier's check or money order made payable to the "General Treasury - Water & Air Protection Program Account" and shall be forwarded to the DEM 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 the Director determines that reasonable efforts have been made to comply promptly with the NOV.

G. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the 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 the 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  
One Capitol Hill, 2<sup>ND</sup> Floor  
Providence, RI 02903

- (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 DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters*.
- (2) A copy of each request for hearing must also be forwarded to:
- Tricia Quest, Esquire  
DEM - Office of Legal Services  
235 Promenade Street, 4<sup>TH</sup> 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 the 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 Town of West Warwick, Rhode Island wherein the Property is located, to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and Section 42-17.1-2 (31), as amended.
- (7) The NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Tricia Quest of the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey Tyrrell of the DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 7407.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section G above.

FOR THE DIRECTOR

By: \_\_\_\_\_  
David E. Chopy, Chief  
Office of Compliance and Inspection

Dated: \_\_\_\_\_

CERTIFICATION

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

Imad E. Melhem  
143 Bartlett Drive  
Warwick, RI 02886

GNI West Warwick, Inc.  
c/o Anthony M. Gallone, Jr., Esq., Registered Agent  
33 College Hill Road, Building 15C  
Warwick, RI 02886

by Certified Mail.

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<b>ADMINISTRATIVE PENALTY SUMMARY</b>	
Program:	OFFICE OF COMPLIANCE AND INSPECTION, UST
File No.:	UST 2017-60-01263
Respondents:	Imad E. Melhem and GNI West Warwick, Inc.

<b>GRAVITY OF VIOLATION</b>					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION NO. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D (2) and (3) – Testing	Type II (\$12,500 Max. Penalty) *	Minor	\$1,750	1 violation	\$1,750
D (4) – Release Characterization Report	Type II (\$12,500 Max. Penalty) *	Minor	\$1,500	1 violation	\$1,500
D (5) and (6) – Tank Repair Or Temporary Closure	Type II (\$12,500 Max. Penalty) *	Moderate	\$5,000	1 violation	\$5,000
<b>SUB-TOTAL</b>					<b>\$8,250</b>

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

<b>ECONOMIC BENEFIT FROM NONCOMPLIANCE</b>
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 NONCOMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.
A review of the record in this matter has revealed that Respondents have either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.

<b>COST RECOVERY</b>
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 the 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 = \$8,250**

**PENALTY MATRIX WORKSHEET**

CITATION:	Testing
VIOLATION NOS.:	D (2) and (3)

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

**FACTORS CONSIDERED:**

Taken from Part 1.10A.1.b of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **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 interstitial spaces of the USTs and the interstitial spaces of the product pipelines for UST Nos. 012 and 013 for tightness. Biennial tightness testing of the double-walled USTs and pipelines is of importance to the regulatory program. These tests, which are required after the tanks and pipelines reach 20 years of age, verify whether the outer walls of the tanks and pipelines are capable of containing releases from the inner walls of the tanks and pipelines. Failure to comply could allow compromised or faulty tanks and pipelines to remain in use and result in a release of petroleum product to the environment.
- (B) **Environmental conditions:** The Facility is located in a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. The Facility is located in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. The Facility is located in the Pawtuxet River watershed and within 220 feet of wetlands associated with the river.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **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 waste oil can cause significant soil and groundwater contamination if released to the environment.
- (E) **Duration of the violation:** Approximately 4 years – 22 October 2013 to the present. The penalty is being assessed for the non-compliance that occurred from 22 October 2015 until April 2017.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the non-compliance by having the interstitial spaces of the tanks and product pipelines tested for tightness in 2015. Respondents had the interstitial spaces of the tanks and pipelines tested in April and June 2017; however, UST No. 014 and the pipelines for UST Nos. 012 and 013 failed the tests. As of the date of the NOV, Respondents had yet to complete repairs of the tank and pipelines or place the USTs into a compliant temporary closure.
- (H) **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.
- (I) **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 requirements set forth in Rules 8.08(A)(3) and 8.09(A)(2) of the DEM's UST Regulations. As owners and operators of the Facility, Respondents had full control over the occurrence of the violations. The tank and product pipeline interstitial space tightness testing requirements are clearly established in the DEM's UST Regulations.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<b>MAJOR</b>	<b>MODERATE</b>	<u>  X  </u> <b>MINOR</b>
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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	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	<b>MODERATE</b>	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250	\$1,250 to \$2,500 <b>\$1,750</b>	\$250 to \$1,250

<b>PENALTY MATRIX WORKSHEET</b>		
CITATION:	Release Characterization Report	
VIOLATION NO.:	D	(4)

<b>TYPE</b>		
<u>      </u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>  <b>X</b>  </u> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE III</b> <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 1.10A.1.b of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** Respondents failed to submit a release characterization report to the DEM of the failed tests. The DEM relies on and uses these reports to assess the threat posed by USTs that are found deficient during tightness tests. Failure to comply deprives the DEM of the information it needs to act accordingly. Release characterization reporting is of importance to the regulatory program.
- (B) **Environmental conditions:** The Facility is located in a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. The Facility is located in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. The Facility is located in the Pawtuxet River watershed and within 220 feet of wetlands associated with the river.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **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 waste oil can cause significant soil and groundwater contamination if released to the environment.
- (E) **Duration of the violation:** Approximately 7 months – 26 April 2017 to the present.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the non-compliance by submitting a release characterization report to the DEM of the test failures. Respondents have taken no apparent steps to mitigate the non-compliance, despite receiving several written notices, which required that they do so.
- (H) **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.
- (I) **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 requirements set forth in Rules 8.08(A)(3)(f), 8.09(A)(2)(f), 12.04(C) and 12.07 of the DEM's UST Regulations. As owners and operators of the Facility, Respondents had full control over the occurrence of the violation. The release characterization reporting requirements are clearly established in the DEM's UST Regulations.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<b>MAJOR</b>	<b>MODERATE</b>	<u>  <b>X</b>  </u> <b>MINOR</b>
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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	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	<b>MODERATE</b>	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250	\$1,250 to \$2,500 <b>\$1,500</b>	\$250 to \$1,250

<b>PENALTY MATRIX WORKSHEET</b>		
CITATION:	Tank Repair Or Temporary Closure	
VIOLATION NOS.:	D	(5) and (6)

<b>TYPE</b>		
<u>      </u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>  <b>X</b>  </u> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE III</b> <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 1.10A.1.b of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** Respondents failed to complete repairs of the deficient tank and secondary pipelines or place the USTs into temporary closure. Operating USTs and pressurized product pipelines without compliant secondary containment presents a threat to the environment and public health and safety. The protocols set forth in the DEM's UST Regulations for responding to a tightness test failure are of importance to the regulatory program.
- (B) **Environmental conditions:** The Facility is located in a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. The Facility is located in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. The Facility is located in the Pawtuxet River watershed and within 220 feet of wetlands associated with the river.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **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 waste oil can cause significant soil and groundwater contamination if released to the environment.
- (E) **Duration of the violation:** Approximately 7 months – 26 April 2017 to the present.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the non-compliance by performing required follow-up testing, repairing the deficient tank and pipelines or placing the USTs into a compliant temporary closure immediately following the failed tests. Respondents have taken no steps to mitigate the non-compliance, despite receiving informal written notices from the DEM, which required that they do so.
- (H) **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.
- (I) **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 immediately with the requirements set forth in Rules 8.08(A)(3)(g), 8.09(A)(2)(g) of the DEM's UST Regulations. As owners and operators of the Facility, Respondents had full control over the occurrence of the violation. The required actions for tightness test failures are clearly established in the DEM's UST Regulations.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<b>MAJOR</b>	<u>  <b>X</b>  </u> <b>MODERATE</b>	<b>MINOR</b>
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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
	<b>MODERATE</b>	\$6,250 to \$12,500	\$2,500 to \$6,250 <b>\$5,000</b>	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250