

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Belmont Road Realty Trust  
Shahid 3 LLC**

**FILE NO.: OCI-UST-22-24-01509**

**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 12 October 2021, RIDEM issued a *Letter of Non-Compliance* (“LNC”) to Rehan Shahid for some of the alleged violations that are the subject of this *Notice of Violation* (“NOV”). The LNC required specific actions to correct the alleged violations. On 18 October 2022, RIDEM issued a *Notice of Intent to Enforce* (“NIE”) to Respondents for the alleged violations that are the subject of the NOV. The NIE required specific actions to correct the alleged violations. The NIE was delivered to Respondents on 20 October 2022 and 24 October 2022, respectively. As of the date of the NOV, Respondents have failed to fully comply with the LNC and NIE.

**C. FACTS**

- (1) The property is located at 139 Legris Avenue, Assessor's Plat 15, Lots 8 and 9 in West Warwick, Rhode Island (“Property”). The Property includes a motor fuel filling station and a convenience store (“Facility”).
- (2) Belmont Road Realty Trust owns the Property.
- (3) Shahid 3 LLC is the lessee and operates the Facility.
- (4) Underground storage tanks (“USTs” or “tanks”) are located on the Property, which tanks are used for storage of petroleum products and which are subject to Rhode Island’s *Rules and Regulations for Underground Storage Facilities Used for Regulated Substances and Hazardous Materials* (250-RICR-140-25-1) (“UST Regulations”).
- (5) The Facility is registered with RIDEM and is identified as UST Facility No. 01509.

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

UST ID No.	Date Installed	Capacity	Product Stored
006	1 February 1990	10,000 gallons	Gasoline
007	1 February 1990	10,000 gallons	Gasoline
008	1 February 1990	10,000 gallons	Gasoline

(7) The USTs are double walled.

(8) On 7 October 2021, RIDEM inspected the Facility. The inspection revealed the following:

- (a) Failure to procure the services of a RIDEM-licensed tightness tester to test the interstitial spaces of UST Nos. 006, 007 and 008 during the year 2021.
- (b) Failure to procure the services of a qualified person to test the interstitial spaces of the product pipelines for UST Nos. 006/007 and 008 during the year 2021.
- (c) New double-walled spill containment basins were installed for UST Nos. 006, 007 and 008 (“New Basins”).
- (d) The interstitial space monitoring gauge for the spill containment basin for UST No. 006 was missing.

(9) On 12 October 2021, RIDEM received a *Standardized Hydrostatic Tightness Testing Form* for the Facility, which was submitted by Compliance Testing Services, Inc. (“CTS”). CTS reported that all the tank top sumps and three of the four dispenser sumps for UST Nos. 006, 007 and 008 had failed tightness tests performed on 1 October 2021.

(10) By letter dated 28 October 2021, RIDEM issued a letter to Shahid 3 LLC by regular mail informing the company that the deficient tank top and dispenser sumps (“Sumps”) required repair and, if within 30 days no repairs were made or a variance obtained from RIDEM, the USTs must be taken out of service until the necessary repairs could be completed in accordance with the UST Regulations.

(11) On 6 December 2022, RIDEM inspected the Facility and observed that the UST systems were still in operation. Persons were observed to be dispensing gasoline that was stored in UST Nos. 006, 007 and 008.

(12) Respondents failed to notify RIDEM that they installed the New Basins.

(13) Respondents failed to submit written verification that the New Basins and the primary walls of UST Nos. 006, 007 and 008 had been tested for tightness by a RIDEM-licensed tightness tester shortly after the installation.

- (14) Respondents failed to submit a variance request to RIDEM to operate the USTs.
- (15) As of the date of the NOV, Respondents have failed to repair the Sumps.
- (16) As of the date of the NOV, Respondents have failed to fully comply with the LNC and NIE.

D. VIOLATION

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

- (1) **UST Regulations, Part 1.10(F)(1)(c)** – requiring tightness testing of the interstitial spaces of double walled USTs by a RIDEM-licensed tightness tester at 20 years of age and then once every 2 years thereafter.
- (2) **UST Regulations, Part 1.10(G)(2)(b)** – requiring tightness testing of the interstitial spaces of double walled product pipelines by a RIDEM-licensed tightness tester at 20 years of age and then once every 2 years thereafter.
- (3) **UST Regulations, Part 1.10(N)(1)(a)** – requiring that spill containment basins be properly maintained and in good condition.
- (4) **UST Regulations, Part 1.10(N)(1)(c)** – requiring continuous or periodic monitoring of the interstitial or annular space of double walled spill containment basins.
- (5) **UST Regulations, 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.
- (6) **UST Regulations, Part 1.11(L)(1)(f)** – requiring tightness testing of newly installed spill containment basins.
- (7) **UST Regulations, Part 1.12(A)(1)** – prohibiting the modification of UST systems without appropriate notification to and/or approval by RIDEM.
- (8) **UST Regulations, 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. 006, 007 and 008 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. 006, 007 and 008 shall be kept out of service until** the tank top and dispenser sumps have been repaired or replaced in full compliance with Part 1.10(N)(3)(d) and Part 1.12 of the UST Regulations. Any repairs or tank system modifications require prior written notification to and approval by RIDEM's Office of Land Revitalization and Sustainable Materials Management ("OLR&SMM"). If the UST systems are not repaired or modified within 1 year, the UST systems shall be permanently closed in full compliance with Part 1.15 of the UST Regulations.
- (3) **Within 7 days of receipt of the NOV,** procure the services of a qualified person to replace the interstitial space monitoring gauge for the spill containment basin for UST No. 006 in accordance with Parts 1.10(N)(1)(a) and (c) of the UST Regulations.
- (4) **After the tank top and dispenser sumps are repaired or replaced AND before the UST systems are returned to operation:**
  - (a) Procure the services of a RIDEM-licensed tightness tester to test the interstitial spaces of UST Nos. 006, 007 and 008 for tightness in accordance with Part 1.10(F)(1)(c) and Part 1.10(H) of the UST Regulations. Original copies of the tightness test report shall be submitted to OC&I and OLR&SMM in accordance with Part 1.10(H)(4) of the UST Regulations.
  - (b) Procure the services of a RIDEM-licensed tightness tester to test the interstitial spaces of the product pipelines for UST Nos. 006/007 and 008 for tightness in accordance with Part 1.10(G)(2)(b) and Part 1.10(H) of the UST Regulations. Original copies of the tightness test report shall be submitted to OC&I and OLR&SMM in accordance with Part 1.10(H)(4) of the UST Regulations.
  - (c) Procure the services of a RIDEM-licensed tightness tester to test the primary walls of UST Nos. 006, 007 and 008 in accordance with Part 1.12(D)(1)(f) and Part 1.10(H) of the UST Regulations. Original copies of the tightness test report shall be submitted to OC&I and OLR&SMM in accordance with Part 1.12(D)(1)(f) and Part 1.10(H)(4) of the UST Regulations.

- (d) Procure the services of a RIDEM-licensed tightness tester to test the New Basins for tightness in accordance with Part 1.11(L)(1)(f) and Part 1.10(H) of the UST Regulations. Original copies of the tightness test report shall be submitted to OC&I and OLR&SMM in accordance with Part 1.10(H)(4) of the UST Regulations.
- (e) 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 installation of the New Basins). The tightness test reports referenced in subsections (c) and (d) above shall be submitted along with the form. A copy of the completed form shall also be submitted to OC&I.

F. PENALTY

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:

**\$13,983**

- (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, 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 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 this 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) Jenna Giguere of RIDEM's Office of Legal Services at (401) 222-6607 ext. 2772306 or at [jenna.giguere@dem.ri.gov](mailto: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](mailto: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:

Belmont Road Realty Trust  
c/o James H. Castle, Trustee  
261 Ledyard Street  
New London, CT 06320

Belmont Road Realty Trust  
c/o Aaron I. Cutler, Trustee  
261 Ledyard Street  
New London, CT 06320

Shahid 3 LLC  
c/o Muhammad Shahid, Resident Agent  
139 Legris Avenue  
West Warwick, RI 02893

by Certified Mail.

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# ADMINISTRATIVE PENALTY SUMMARY

Program: UST

File No.: OCI-UST-22-24-01509

Respondents: Belmont Road Trust Realty and Shahid 3 LLC

<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 (1) – Failure to test the tank interstitial spaces for tightness	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,750	1 violation	\$1,750
D (2) – Failure to test the product pipeline interstitial spaces for tightness	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,500	1 violation	\$1,500
D (3) and D (4) – Failure to compliantly maintain a spill containment basin and monitor its interstitial space	Type II <i>(\$12,500 Max. Penalty) *</i>	Minor	\$1,250	1 violation	\$1,250
D (5) – 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 (6), D (7) and D (8) – Failure to notify and obtain the approval of RIDEM for the installation of the New Basins and subsequently test the New Basins and the primary walls of the USTs for tightness	Type II <i>(\$12,500 Max. Penalty) *</i>	Moderate	\$2,500	1 violation	\$2,500
<b>SUB-TOTAL</b>					<b>\$13,250</b>

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

## ADMINISTRATIVE PENALTY SUMMARY (continued)

<b>ECONOMIC BENEFIT FROM NON-COMPLIANCE</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 NON-COMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED.			
<b>DESCRIPTION OF BENEFIT</b>	<b>CALCULATION</b>		<b>AMOUNT</b>
Avoiding the cost of having the tanks and pipelines tested for tightness by a licensed tester during the year 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.	<ul style="list-style-type: none"> <li>▪ Profit Status</li> <li>▪ Filing Status</li> <li>▪ Initial Capital Investment</li> <li>▪ One-time Non-depreciable Expense</li> <li>▪ First Month of Non-compliance</li> <li>▪ Compliance Date</li> <li>▪ Penalty Due Date</li> <li>▪ Useful Life of Pollution Control</li> <li>▪ Equipment Annual Inflation Rate</li> <li>▪ Discount Compound Rate</li> </ul>	For profit, other than a C Corp.  \$1,102  September 2021 5/1/2023 4/1/2023  7.4%	
<b><i>SUB-TOTAL</i></b>			<b>\$733</b>

<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 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 = \$13,983**

# PENALTY MATRIX WORKSHEET

CITATION: Failure to test the tank interstitial spaces for tightness

VIOLATION NO.: D (1)

<b>TYPE</b>		
<p style="text-align: center;">___ <b>TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><b>X</b> <b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ <b>TYPE III</b></p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Rules.</p> <ol style="list-style-type: none"> <li>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondents failed to procure the services of a RIDEM-licensed tightness tester to test the interstitial spaces of UST Nos. 006, 007 and 008 for tightness during the year 2021. These tightness tests are important, required components of leak detection programs at regulated UST facilities. Failure to comply could allow a leaking tank to remain in use and result in adverse impacts to public health and safety and the environment.</li> <li>(2) <b>Environmental conditions:</b> The Facility is in a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. The UST system is in a GB groundwater classification zone, but within 40 feet of a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. The Facility is within 675 feet of Pawtuxet River and lies within its watershed. The USTs are within 500 feet of a freshwater wetland.</li> <li>(3) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> 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. Benzene, a component of gasoline, is a known carcinogen.</li> <li>(5) <b>Duration of the violation:</b> 16 months. The tanks were required to be tested on or before 3 September 2021.</li> <li>(6) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</li> </ol>		

(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 non-compliance and have failed to mitigate the non-compliance despite receiving written notices 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 UST Regulations. Periodic tightness testing of the interstitial spaces of double-walled USTs is expressly required by the UST Regulations. Respondents, as owners and operators 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.

<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>\$1,750</b>	\$250 to \$1,250

# PENALTY MATRIX WORKSHEET

CITATION: Failure to test the product pipeline interstitial spaces 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;"><u>X</u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Rules.</p>		
<p>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondents failed to procure the services of a RIDEM-licensed tightness tester to test the interstitial spaces of the product pipelines for UST Nos. 006/007 and 008 for tightness during the year 2021. These tightness tests are important, required components of leak detection programs at regulated UST facilities. Failure to comply could allow a leaking tank to remain in use and result in adverse impacts to public health and safety and the environment.</p>		
<p>(2) <b>Environmental conditions:</b> The Facility is in a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. The UST system is in a GB groundwater classification zone, but within 40 feet of a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. The Facility is within 675 feet of Pawtuxet River and lies within its watershed. The USTs are within 500 feet of a freshwater wetland.</p>		
<p>(3) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</p>		
<p>(4) <b>Toxicity or nature of the pollutant:</b> 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. Benzene, a component of gasoline, is a known carcinogen.</p>		
<p>(5) <b>Duration of the violation:</b> 16 months. The pipelines were required to be tested on or before 3 September 2021.</p>		
<p>(6) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</p>		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the non-compliance and have failed to mitigate the non-compliance despite receiving written notices 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 UST Regulations. Periodic tightness testing of the interstitial spaces of double-walled product pipelines is expressly required by the UST Regulations. Respondents, as owners and operators 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.

<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

# PENALTY MATRIX WORKSHEET

CITATION: Failure to compliantly maintain a spill containment basin and monitor its interstitial space for tightness  
 VIOLATION Nos.: D (3) and (4)

TYPE		
___ TYPE I	<u>X</u> TYPE II	___ TYPE III
<u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<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 compliantly maintain the spill containment basin for UST No. 006 and monitor the annular space of double-walled basin for tightness. RIDEM’s inspection revealed that the gauge utilized for monitoring the basin’s annular space was missing (as it had either been damaged or intentionally removed). The UST Regulations expressly require that these basins be maintained and operated in conformance with the manufacturer’s performance standards and the requirements of the UST Regulations. Failure to comply could allow a deficient basin 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 densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. The UST system is in a GB groundwater classification zone, but within 40 feet of a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. The Facility is within 675 feet of Pawtuxet River and lies within its watershed. The USTs are within 500 feet of a freshwater wetland.
- (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. Benzene, a component of gasoline, is a known carcinogen.
- (5) **Duration of the violation:** Unknown.
- (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 non-compliance and failed to mitigate the non-compliance despite receiving written notices 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 UST Regulations. Compliant maintenance of spill containment basins and continuous monitoring of the annular spaces are expressly required by the UST Regulations. Respondents, as owners and operators 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.

<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>\$1,250</b>	\$250 to \$1,250



# PENALTY MATRIX WORKSHEET

CITATION: Operating the USTs with deficient tank top and dispenser sumps  
 VIOLATION NO.: D (5)

TYPE		
<p style="text-align: center;">___ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u>X</u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Rules.</p> <ol style="list-style-type: none"> <li>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondents failed to take UST Nos. 006, 007 and 008 out of service and have continued to operate these USTs after the tank top and dispenser sumps had failed hydrostatic tightness testing. Operation of USTs with deficient tank top and dispenser sumps is prohibited by the UST Regulations (if the deficient sumps cannot be repaired or replaced within 30 days). These 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 likelihood of adverse impacts to public health and safety and the environment.</li> <li>(2) <b>Environmental conditions:</b> The Facility is in a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. The UST system is in a GB groundwater classification zone, but within 40 feet of a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. The Facility is within 675 feet of Pawtuxet River and lies within its watershed. The USTs are within 500 feet of a freshwater wetland.</li> <li>(3) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> 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. Benzene, a component of gasoline, is a known carcinogen.</li> <li>(5) <b>Duration of the violation:</b> 14 months. Respondents were required to repair or replace the sumps, or take the USTs out of service, on or before 1 November 2021.</li> <li>(6) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</li> </ol>		

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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 non-compliance and failed to mitigate the non-compliance despite receiving written notices 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 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 Regulations. The UST Regulations expressly require that deficient sumps be repaired or replaced within 30 days, or the associated USTs shall be removed from service. Respondents, as owners and operators 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>  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	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500 <b>\$6,250</b>	\$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 the installation of the New Basins and subsequently test the New Basins and the primary walls of the USTs for tightness

VIOLATION Nos.: D (6), D (7) and D (8)

<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>
<b>DEVIATION FROM THE STANDARD</b>		
<small>THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<b>FACTORS CONSIDERED:</b>		
Taken from Part 1.10(A)(1)(b) of the Penalty Rules.		
<p>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondents had new spill containment basins installed for UST Nos. 006, 007 and 008 without submitting a Spill Containment Basin Replacement Form to notify RIDEM and without procuring the services of a RIDEM-licensed tightness tester to subsequently test the New Basins and the primary walls of the USTs for tightness. Failure to comply withholds vital information from RIDEM and prevents RIDEM from assuring that the tank system modifications were made in conformance with the requirements of the UST Regulations and the applicable National Codes of Practice.</p> <p>(2) <b>Environmental conditions:</b> The Facility is in a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. The UST system is in a GB groundwater classification zone, but within 40 feet of a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. The Facility is within 675 feet of Pawtuxet River and lies within its watershed. The USTs are within 500 feet of a freshwater wetland.</p> <p>(3) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</p> <p>(4) <b>Toxicity or nature of the pollutant:</b> 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. Benzene, a component of gasoline, is a known carcinogen.</p> <p>(5) <b>Duration of the violation:</b> Unknown, as RIDEM was not notified as to when the work took place. The New Basins were installed between 16 July 2019 and 7 October 2021.</p> <p>(6) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</p>		
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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 non-compliance and failed to mitigate the non-compliance despite receiving written notices 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 UST Regulations. The UST Regulations expressly require that owners/operators notify and obtain the approval of RIDEM for UST system modifications. 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.

<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	<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 <b>\$2,500</b>	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250