

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Cambridge Petroleum Corporation
Newbury Enterprises, LLC
Souad Tashian Trust**

FILE NO.: UST 2014-52-00850

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 the DEM's jurisdiction.

B. Administrative History

On 3 July 2014 the DEM issued an informal written notice to the Respondents by certified mail for the violations. The notice required specific actions to correct the violations. On 8 July 2014 the notice was delivered to each Respondent. On 16 July 2014 the DEM received a letter from Joe Yammine of Newbury Enterprises, LLC, in which he informed the DEM of his intention to comply with the notice. Thus far, the Respondents have failed to comply with the notice.

C. Facts

- (1) The property is located at 3333 South County Trail, Assessor’s Plat 18, Lot 40 in the town of East Greenwich, Rhode Island (the “Property”). The Property includes a convenience store and a motor fuel filling station (the “Facility”).
- (2) Underground storage tanks (“USTs” or “tanks”) are installed on the Property, which are used for storage of petroleum products and are subject to the DEM’s *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the “UST Regulations”).
- (3) Souad Tashian Trust owns the Property.
- (4) Newbury Enterprises, LLC operates the Facility
- (5) Cambridge Petroleum Corporation owns the USTs.
- (6) The Facility is registered with the DEM and is identified as UST Facility No. 00850.

(7) The USTs are registered with the DEM as follows:

UST ID No.	Date Installed	Capacity	Product Stored
006	11 July 1989	5000 gallons	Gasoline
007	10 July 1989	2000 gallons	Gasoline
008	10 July 1989	5000 gallons	Gasoline
009	19 December 2011	4000 gallons	Gasoline
010	19 December 2011	6000 gallons	Diesel

(8) On 26 February 2014 the DEM inspected the Facility. The inspection revealed the following:

- (a) Written verification that the sacrificial anode cathodic protection for UST Nos. 006, 007 and 008 had been tested by a qualified cathodic protection tester within the last 3 years was not available.
- (b) The leak sensors deployed in the tank top sumps for the USTs were not mounted and positioned in accordance with the manufacturer's specifications.
- (c) The "power" status indicator lamp on the *Veeder Root TLS 350* continuous monitoring system ("CMS") console was not illuminated.
- (d) The CMS was displaying "fuel alarms" for the leak sensors deployed in the tank top sumps for UST Nos. 009 and 010. Upon information and belief, the Respondents have failed to investigate the alarms.
- (e) The spill containment basins and tank top sumps for the USTs and the Nos. 1/2 and 5/6 dispenser sumps were all holding liquids.
- (f) The fill ports for the USTs were not labeled to identify the products stored inside the tanks.
- (g) A list of all the Class C UST facility operators assigned to the Facility was not available. Upon information and belief, there were no trained and/or certified UST facility operators on duty.
- (h) Written verification that any of the designated Class A/B UST facility operators (Christopher Tenney, Stephen Hall or Michael Ghossoub) had conducted on-site UST facility inspections during each of the months of August 2012 through January 2014 was not available.

(9) As of the date of this Notice of Violation ("NOV"), the Respondents have failed to comply with the DEM's UST Regulations for the issues described in Section C (8) above.

D. Violation

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

- (1) **DEM's UST Regulations, Rule 8.07(B)(2)** – requiring periodic testing of sacrificial anode cathodic protection.
- (2) **DEM's UST Regulations, Rule 8.15(A)** – requiring that leak monitoring devices be installed, operated and maintained in accordance with the manufacturer's specifications.
- (3) **DEM's UST Regulations, Rule 8.15(B)** – requiring the repair of malfunctioning leak monitoring devices within 15 days.
- (4) **DEM's UST Regulations, Rules 8.15(C) and 12.03** – requiring immediate investigation of release detection signals and alarms.
- (5) **DEM's UST Regulations, Rules 8.16 (A)(1) and (D)** – pertaining to the maintenance of spill containment basins and sumps.
- (6) **DEM's UST Regulations, Rule 8.18** – requiring that UST fill ports be labeled to identify the product stored inside the tank.
- (7) **DEM's UST Regulations, Rule 8.22** – requiring all regulated UST facility owners/operators to have trained and certified Class A, B and C UST facility operators assigned to their facility and on duty at the facility during all operating hours.
- (8) **DEM's UST Regulations, Rule 8.22(A)(7)** – requiring UST owners/operators to maintain a list of all of the Class C UST facility operators assigned to their facility.
- (9) **DEM's UST Regulations, Rule 8.22(F)** – requiring the registered Class A or Class B UST facility operator to conduct monthly on-site UST facility inspections and record the results of those 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 complete the following remedial actions **within 60 days of receipt of the NOV**:

- (1) If available, submit copies of any cathodic protection test reports for UST Nos. 006, 007 and 008 that document the results of any tests that may have been performed between July 2008 and February 2014. If the sacrificial anode cathodic protection for

- these tanks has not been tested by a qualified cathodic protection tester within the last 3 years, procure the services of a qualified cathodic protection tester to perform such testing in accordance with Rule 8.07(B) of the DEM's UST Regulations and submit a copy of the test report to the DEM-Office of Compliance and Inspection ("OC&I").
- (2) Remount the leak sensors deployed in the tank top sumps so that they are perpendicular to the sump floor and their low points are set at least 1 inch below the lowest conduit penetration, in accordance with Rules 8.09(A)(1) and 8.15(A) of the DEM's UST Regulations. Written or photographic verification of compliance shall be submitted to the OC&I.
 - (3) Repair or replace the "power" status indicator lamp on the CMS console in accordance with Rule 8.15(B) of the DEM's UST Regulations. Written verification of compliance shall be submitted to the OC&I.
 - (4) Investigate the "fuel alarms" for the leak sensors deployed in the tank top sumps for UST Nos. 009 and 010 in accordance with Rules 8.15(C) and 12.03 of the DEM's UST Regulations. A written report detailing the outcome of the investigation and any remedial actions taken shall be submitted to the OC&I.
 - (5) Evacuate and clean the spill containment basins and tank top sumps for the USTs and the dispenser sumps in accordance with Rules 8.16 (A)(1) and (D) of the DEM's UST Regulations. All wastes removed from these basins and sumps shall be managed and disposed of in accordance with Rule 5.8 of the DEM's *Rules and Regulations for Hazardous Waste Management*. Written or photographic verification of compliance shall be submitted to the OC&I.
 - (6) Label or otherwise permanently mark the fill ports for the USTs to identify the products stored inside the tanks in accordance with Rule 8.18 of the DEM's UST Regulations. Written or photographic verification of compliance shall be submitted to the OC&I.
 - (7) Submit to the OC&I written verification that at least 1 trained Class C UST facility operator is assigned to the Facility in accordance with Rule 8.22 of the DEM's UST Regulations.
 - (8) Operate the Facility with at least 1 trained Class C UST facility operator on duty during all operating hours, as per Rule 8.22 of the DEM's UST Regulations.
 - (9) Submit to the OC&I written verification that 1 or more of the registered Class A or Class B UST facility operators are now performing monthly on-site UST facility inspections (requisite form enclosed) in accordance with Rule 8.22(F) of the DEM's UST Regulations.

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:

Sixteen Thousand Two Hundred and Fifty Dollars (\$16,250)

- (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 this NOV. Payment shall be in the form of a certified check, cashiers 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 the Respondents in this 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 DEM determines that reasonable efforts have been made to comply promptly with this 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 this 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, 2ND 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 Rule 7.00(b) of the DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters*.

(2) A copy of each request for hearing must also be forwarded to:

Joseph J. LoBianco, Esquire
DEM - 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 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 with regard to 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 (v) and 42-17.6-4(b) and (c).

(5) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.

(6) An original signed copy of this NOV is being forwarded to the town of East Greenwich, 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) This NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Joseph J. LoBianco at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey Tyrrell of the DEM 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

David E. Chopy, Chief
DEM Office of Compliance and Inspection

Date: _____

CERTIFICATION

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

Cambridge Petroleum Corporation
c/o CT Corporation System, Registered Agent
450 Veterans Memorial Parkway, Suite 7A
East Providence, RI 02914

Newbury Enterprises, LLC
c/o Joe Yammine, Registered Agent
3333 South County Trail
East Greenwich, RI 02818

The Souad Tashian Trust
c/o Anoush N. Taraksian, Trustee
100 Midvale Avenue
Cranston, RI 02920-6204

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY	
<i>Program:</i>	<i>OFFICE OF COMPLIANCE AND INSPECTION, UST COMPLIANCE</i>
<i>File No.:</i>	<i>UST 2014-52-00850</i>
<i>Respondents:</i>	<i>Cambridge Petroleum Corporation, Newbury Enterprises, LLC and Souad Tashian Trust</i>

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D(1) – Failure to test the cathodic protection	Type II (\$12,500 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500
D(2) and D(3) – Failure to properly operate and maintain the CMS	Type II (\$12,500 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500
D(4) – Failure to investigate and remedy the release detection signals	Type II (\$12,500 Max. Penalty)*	Moderate	\$6,250	1 violation	\$6,250
D(7) and D(8) – Failure to train and assign Class C UST facility operators to the facility and compile a list of same	Type II (\$12,500 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500
D(9) – Failure to perform monthly inspections	Type II (\$12,500 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500
SUB-TOTAL					\$16,250

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

ADMINISTRATIVE PENALTY SUMMARY *(continued)*

ECONOMIC BENEFIT FROM NON-COMPLIANCE

COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT ARE IN COMPLIANCE. 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 the Respondents have either enjoyed no significant identifiable benefit from the non-compliance alleged in this enforcement action or that the amount of economic benefit that may have resulted can not be quantified.

COST RECOVERY

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

A review of the record in this matter has revealed that 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 = \$16,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to test the cathodic protection

VIOLATION NO.: D (1)

TYPE

 TYPE I
DIRECTLY related to protecting health, safety, welfare or environment.

 X **TYPE II**
INDIRECTLY related to protecting health, safety, welfare or environment.

 TYPE III
INCIDENTAL to protecting health, safety, welfare or environment.

DEVIATION FROM THE STANDARD

THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) 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:** The Respondents failed to procure the services of a qualified cathodic protection tester to test the sacrificial anode cathodic protection for UST Nos. 006, 007 and 008 during calendar year 2012. Periodic testing of UST corrosion protection systems is of importance to the regulatory program. Failure to comply could result in corrosion of steel USTs and a release of the regulated substance to the environment.
- (B) **Environmental conditions:** The facility is located in a GAA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment, and which are located in groundwater reservoirs and portions of their recharge areas, wellhead protection areas for community water supply wells and groundwater dependent areas. The facility is located within 1,250 feet of a transient, non-community water supply wellhead protection area (Allie's Donuts) and within 3,000 feet of a wellhead protection area for a community drinking water supply (town of North Kingstown). The facility is located in a developed area with potential vapor receptors including commercial structures and underground utilities. The facility is located within the Hunt River watershed and within 400 feet of 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 diesel fuel are capable of causing significant soil and groundwater contamination if released to the environment. Benzene, a component of gasoline, is a known carcinogen.
- (E) **Duration of the violation:** Upon information and belief, the cathodic protection for these USTs has not been tested since 18 May 2009. Testing is required at least once every 3 years.
- (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 non-compliance:** The Respondents failed to have the cathodic protection system tested within the last 3 years and failed to mitigate the non-compliance despite receiving an informal written notice 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 the Respondents for the failure to comply with the requirements set forth in DEM's informal notice dated 3 July 2014. As owners and operators of the facility, the Respondents had full control over the occurrence of the violation. The DEM's UST Regulations expressly require periodic testing of UST cathodic protection systems.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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

PENALTY MATRIX WORKSHEET

CITATION: Failure to properly operate and maintain the CMS

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

TYPE

 TYPE I
DIRECTLY related to protecting health, safety, welfare or environment.

 X **TYPE II**
INDIRECTLY related to protecting health, safety, welfare or environment.

 TYPE III
INCIDENTAL to protecting health, safety, welfare or environment.

DEVIATION FROM THE STANDARD

THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) 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:** The Respondents failed to deploy the leak sensors for the product pipelines for the USTs in accordance with the manufacturer's specifications. Compliant operation and maintenance of UST continuous monitoring systems is of importance to the regulatory program. Failure to comply may result in a failure to detect a release of the regulated substance from the UST systems.
- (B) **Environmental conditions:** The facility is located in a GAA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment, and which are located in groundwater reservoirs and portions of their recharge areas, wellhead protection areas for community water supply wells and groundwater dependent areas. The facility is located within 1,250 feet of a transient, non-community water supply wellhead protection area (Allie's Donuts) and within 3,000 feet of a wellhead protection area for a community drinking water supply (town of North Kingstown). The facility is located in a developed area with potential vapor receptors including commercial structures and underground utilities. The facility is located within the Hunt River watershed and within 400 feet of 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 diesel fuel are capable of causing significant soil and groundwater contamination if released to the environment. Benzene, a component of gasoline, is a known carcinogen.
- (E) **Duration of the violation:** Full duration unknown – at least 9 months. The non-compliance was first observed by the DEM on 26 February 2014.
- (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:** The Respondents failed to operate and maintain the CMS and failed to mitigate the non-compliance despite receiving an informal written notice from the DEM, which required that 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 the Respondents for the failure to comply immediately with the requirements set forth in Rule 8.15 of the DEM's UST Regulations. As owners and operators of the facility, the Respondents had full control over the occurrence of the violation. The standards for operating and maintaining continuous monitoring systems 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.

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

PENALTY MATRIX WORKSHEET

CITATION: Failure to investigate and remedy the release detection signals

VIOLATION NO.: D (4)

TYPE

 TYPE I
DIRECTLY related to protecting health, safety, welfare or environment.

 X **TYPE II**
INDIRECTLY related to protecting health, safety, welfare or environment.

 TYPE III
INCIDENTAL to protecting health, safety, welfare or environment.

DEVIATION FROM THE STANDARD

THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) 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:** The Respondents failed to investigate and remedy the release detection signals that were being displayed by the CMS for the pressurized product pipelines for UST Nos. 009 and 010. The DEM's UST Regulations require immediate investigation of all such release detection signals. Failure to comply could result in a catastrophic release of the regulated substance to the environment.
- (B) **Environmental conditions:** The facility is located in a GAA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment, and which are located in groundwater reservoirs and portions of their recharge areas, wellhead protection areas for community water supply wells and groundwater dependent areas. The facility is located within 1,250 feet of a transient, non-community water supply wellhead protection area (Allie's Donuts) and within 3,000 feet of a wellhead protection area for a community drinking water supply (town of North Kingstown). The facility is located in a developed area with potential vapor receptors including commercial structures and underground utilities. The Facility is located within the Hunt River watershed and within 400 feet of 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 diesel fuel are capable of causing significant soil and groundwater contamination if released to the environment. Benzene, a component of gasoline, is a known carcinogen.
- (E) **Duration of the violation:** Full duration unknown – at least 11 months. The DEM first became aware of the violation on 26 February 2014.
- (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:** The Respondents failed to investigate and remedy the release detection signals and failed to mitigate the non-compliance despite receiving an informal written notice 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:** Newbury Enterprises, LLC was previously cited by the DEM for this same violation in an informal notice dated 15 April 2011.
- (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 the Respondents for the failure to comply immediately with the requirements set forth in Rules 8.15(C) and 12.03 of the DEM's UST Regulations. As owners and operators of the facility, the Respondents had full control over the occurrence of the violations. The release detection signal investigation 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.

MAJOR	<u> X </u> MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250 \$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 train and assign Class C UST facility operators to the facility and compile a list of same
VIOLATION NOS.:	D (7) and (8)

TYPE		
<u> </u> 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.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.

DEVIATION FROM THE STANDARD
 THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) 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:** The Respondents failed to assign trained Class C UST facility operators to the facility. At the time of the 26 February 2014 inspection, the Respondents were unable to demonstrate that the UST facility operator on duty had been trained as a Class C UST facility operator. Rule 8.22(A) of the DEM's UST Regulations requires all owners/operators to have at least 1 Class C UST facility operator assigned to a facility and to compile and maintain on-site a list of the Class C operators. Rule 8.22 prohibits the operation of regulated UST facilities in the absence of trained and/or certified UST facility operators.
- (B) **Environmental conditions:** The facility is located in a GAA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment, and which are located in groundwater reservoirs and portions of their recharge areas, wellhead protection areas for community water supply wells and groundwater dependent areas. The facility is located within 1,250 feet of a transient, non-community water supply wellhead protection area (Allie's Donuts) and within 3,000 feet of a wellhead protection area for a community drinking water supply (town of North Kingstown). The facility is located in a developed area with potential vapor receptors including commercial structures and underground utilities. The facility is located within the Hunt River watershed and within 400 feet of 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 diesel fuel are capable of causing significant soil and groundwater contamination if released to the environment. Benzene, a component of gasoline, is a known carcinogen.
- (E) **Duration of the violation:** Full duration unknown – at least 19 months (August 2012 through February 2014).
- (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:** The Respondents failed to train its employees and assign at least 1 Class C UST facility operator to the facility on or before 1 August 2012. The Respondents have yet to mitigate the non-compliance despite receiving an informal written notice 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 the Respondents for the failure to comply immediately with the requirements set forth in Rule 8.22 of the DEM's UST Regulations. As owners and operators of the facility, the Respondents had full control over the occurrence of the violations. The operator training 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.

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

PENALTY MATRIX WORKSHEET

CITATION: Failure to perform monthly inspections
 VIOLATION NO.: D (9)

TYPE

 TYPE I
DIRECTLY related to protecting health, safety, welfare or environment.

 X **TYPE II**
INDIRECTLY related to protecting health, safety, welfare or environment.

 TYPE III
INCIDENTAL to protecting health, safety, welfare or environment.

DEVIATION FROM THE STANDARD

THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) 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:** The Respondents failed to have the Class A/B UST facility operator conduct monthly on-site UST facility inspections in accordance with the DEM's UST Regulations. These monthly inspections are of significant importance to the regulatory program. Failure to perform these inspections and tests would presumably reduce the likelihood of detecting a leak or release from the UST systems.
- (B) **Environmental conditions:** The facility is located in a GAA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment, and which are located in groundwater reservoirs and portions of their recharge areas, wellhead protection areas for community water supply wells and groundwater dependent areas. The facility is located within 1,250 feet of a transient, non-community water supply wellhead protection area (Allie's Donuts) and within 3,000 feet of a wellhead protection area for a community drinking water supply (town of North Kingstown). The facility is located in a developed area with potential vapor receptors including commercial structures and underground utilities. The facility is located within the Hunt River watershed and within 400 feet of 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 diesel fuel are capable of causing significant soil and groundwater contamination if released to the environment. Benzene, a component of gasoline, is a known carcinogen.
- (E) **Duration of the violation:** Full duration unknown – at least 18 months (August 2012 through January 2014).
- (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:** The Respondents failed to have the Class A/B operator perform monthly inspections of the facility and failed to mitigate the non-compliance despite receiving an informal written notice 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 the Respondents for the failure to comply immediately with the requirements set forth in Rule 8.22(F) of the DEM's UST Regulations. As owners and operators of the facility, the Respondents had full control over the occurrence of the violation. The monthly facility inspection 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.

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