

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Earle's Service Station, Inc.

FILE NO.: UST 2014-14-02650

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 party ("Respondent") has violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Administrative History

On 7 March 2014 the DEM issued an informal written notice to the Respondent by certified mail for the violations. The notice required specific actions to correct the violations. On 17 March 2014 the Respondent received the notice. The Respondent has failed to comply with the notice.

C. Facts

- (1) The property is located at 35 Meeting House Lane, Assessor's Plat 20, Lot 14 in the town of Little Compton, Rhode Island (the "Property"). The Property includes a convenience store and a motor fuel filling station (the "Facility").
- (2) The Respondent owns the Property.
- (3) The Respondent operates the Facility.
- (4) The Property includes underground storage tanks ("USTs" or "tanks") that 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").
- (5) The Facility is registered with the DEM and is identified as UST Facility No. 02650.

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

UST ID No.	Date Installed	Capacity	Product Stored
002	15 June 1987	4000 gallons	Gasoline
003	15 June 1987	4000 gallons	Gasoline

(7) On 6 March 2014 the DEM inspected the Facility. The inspection revealed the following:

- (a) Written verification that the Respondent had utilized the *Veeder Root TLS 300C* automatic tank gauging system (“ATG”) to perform monthly 0.2-gallon per hour leak tests for the USTs during the time period of October 2013 through February 2014 was not available;
- (b) Inventory control records, consistent with the requirements of the DEM’s UST Regulations, for the USTs for the time period of August 2011 through March 2014 were not available;
- (c) Written verification that the ATG had been tested by the Respondent on a monthly basis to ensure effective operation during the time period of August 2011 through February 2014 was not available;
- (d) The spill containment basin for UST No. 002 was holding liquid at the time of inspection;
- (e) Written verification that the Facility operator on duty at the time of inspection had been trained as, at least, a Class C UST facility operator was not available;
- (f) A list of all the Class C UST Facility operators assigned to the Facility was not available at the time of inspection; and
- (g) Written verification that the registered Class A or Class B UST Facility operator (Bruce Elwell) had conducted on-site UST Facility inspections during each of the months of August 2012 through February 2014 was not available.

(8) As of the date of this Notice of Violation (“NOV”), the Respondent has failed to comply with the DEM’s UST Regulations for the issues described in paragraph C(7) 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 8.08(B)(2)** – requiring that ATGs be utilized to perform at least one 0.2-gallon per hour leak test per month for single-walled USTs.
- (2) **DEM's UST Regulations, Rules 8.08(B)(3) and 11.03** – requiring monthly inventory reconciliation and leak checks for UST systems.
- (3) **DEM's UST Regulations, Rule 8.15(E)** – requiring monthly testing of UST continuous monitoring systems by the owner/operator to ensure effective operation.
- (4) **DEM's UST Regulations, Rule 8.16(A)(1)** – pertaining to the maintenance of spill containment basins.
- (5) **DEM's UST Regulations, Rule 8.22** – requiring all regulated UST facility owners/operators to have trained and certified UST facility operators assigned to their facility and on duty at the facility during all operating hours.
- (6) **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.
- (7) **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) Use the ATG to perform 0.2-gallon per hour leak tests for the USTs at least once every 30 days and maintain records of such in accordance with Rules 8.08(B)(2) and 11.02(B)(2) of the DEM's UST Regulations. Written verification of a return to compliance shall be submitted to the DEM – Office of Compliance and Inspection (the "OC&I").
- (2) Submit to the OC&I written verification that you are now complying with the inventory control record keeping requirements for the USTs in accordance with Rules 8.08(B)(3) and 11.03 of the DEM's UST Regulations.
- (3) Test the CMS on a monthly basis in accordance with Rules 8.15(E) and 8.22(F) of the DEM's UST Regulations and document the results of those inspections in accordance with Rules 8.22(F) and 11.02(B)(3) of the DEM's UST Regulations. Written

verification of a return to compliance shall be submitted to the OC&I.

- (4) Evacuate and clean the spill containment basin for UST No. 002. All wastes removed from the basin 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.
- (5) Operate the Facility only in the presence of at least one trained and certified Class A, Class B or Class C UST facility operator in accordance with Rule 8.22 of the DEM's UST Regulations.
- (6) Submit to the OC&I written verification that at least one trained Class C UST facility operator is assigned to the Facility in accordance with Rule 8.22 of the DEM's UST Regulations. A written list of all of the Class C UST facility operators trained and assigned to the Facility shall be compiled and maintained at the Facility in accordance with Rule 8.22(A)(7) of the DEM's UST Regulations.
- (7) Submit to the OC&I written verification that the registered Class A/B UST Facility operator (Bruce Elwell) is now performing monthly on-site UST Facility inspections and recording the results of those inspections on the requisite form 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:

Nine Thousand Two Hundred and Fifty Dollars (\$9,250)

- (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 Respondent 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 Director 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 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 Little Compton, 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:

Earle's Service Station, Inc.
c/o Rebecca Elwell, Registered Agent
73 John Dyer Road
Little Compton, RI 02837

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST COMPLIANCE
 File No.: UST 2014-14-02650
 Respondent: Earle's Service Station, Inc.

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 perform monthly 0.2-gallon per hour leak tests	Type II (\$ <u>12,500</u> Max. Penalty)*	Minor	\$1,250	1 violation	\$1,250
D(2) – Failure to compile and maintain inventory reconciliation records	Type II (\$ <u>12,500</u> Max. Penalty)*	Moderate	\$5,000	1 violation	\$5,000
D (3) and D (7) – Failure to perform monthly tests/inspections	Type II (\$ <u>12,500</u> Max. Penalty)*	Minor	\$1,500	1 violation	\$1,500
D (5) and D (6) – Failure to train and assign Class C UST facility operators to the Facility and compile a list of same	Type II (\$ <u>12,500</u> Max. Penalty)*	Minor	\$1,500	1 violation	\$1,500
SUB-TOTAL					\$9,250

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

ECONOMIC BENEFIT FROM NONCOMPLIANCE

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

ADMINISTRATIVE PENALTY SUMMARY (continued)

COST RECOVERY

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

A review of the record in this matter has revealed that 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 = \$9,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to perform monthly 0.2 gallon per hour leak tests
 VIOLATION NO.: D (1)

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 *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondent failed to utilize the ATG to perform monthly 0.2 gallon per hour leak tests of the USTs. These leak tests are a required leak detection method for single-walled USTs. Failure to perform these tests would presumably reduce the likelihood of detecting a release from the USTs. This leak detection requirement is of significant importance to the regulatory program.
- (B) **Environmental conditions:** The facility is located in a GA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment. The facility is located in a wellhead protection area for a non-transient, non-community drinking water supply (Wilbur and McMahon School). Residences and businesses in the vicinity rely on private drinking water wells. The facility is located within 50 feet of freshwater wetlands. The facility is located within the Rhode Island Sound watershed.
- (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 is 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:** 5 months. October 2013 to 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 non-compliance:** The Respondent failed to prevent the non-compliance and failed to mitigate the non-compliance despite receiving an informal written notice from the DEM, which required that it 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:** The Respondent was previously cited by DEM for violations of the DEM's UST Regulations in an informal notice dated 12 December 2000, a formal notice dated 22 September 2004, an informal notice dated 16 September 2008, a formal notice dated 11 February 2009, an informal notice dated 17 September 2010 and an informal notice dated 15 November 2013.
- (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 Respondent for the failure to comply with the requirements set forth in DEM's informal notice dated 7 March 2014. As owner and operator of the facility, the Respondent had full control over the occurrence of the violation. The DEM's UST Regulations expressly require the performance of monthly 0.2-gallon per hour leak tests for single-walled USTs.
- (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 \$1,250	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to compile and maintain inventory reconciliation records
 VIOLATION NO.: D (2)

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 *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondent failed to compile and maintain inventory reconciliation records for the USTs. Inventory reconciliation is an important and required component of release detection programs at UST facilities. Failure to comply would presumably reduce the likelihood of detecting a release from a UST system. This leak detection requirement is of significant importance to the regulatory program.
- (B) **Environmental conditions:** The facility is located in a GA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment. The facility is located in a wellhead protection area for a non-transient, non-community drinking water supply (Wilbur and McMahon School). Residences and businesses in the vicinity rely on private drinking water wells. The facility is located within 50 feet of freshwater wetlands. The facility is located within the Rhode Island Sound watershed.
- (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 is 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:** 31 months. August 2011 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 Respondent failed to prevent the non-compliance and failed to mitigate the non-compliance despite receiving an informal written notice from the DEM, which required that it 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:** The Respondent was previously cited by DEM for violations of the DEM's UST Regulations in an informal notice dated 12 December 2000, a formal notice dated 22 September 2004, an informal notice dated 16 September 2008, a formal notice dated 11 February 2009, an informal notice dated 17 September 2010 and an informal notice dated 15 November 2013.
- (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 Respondent for the failure to comply immediately with the requirements set forth in the DEM's UST Regulations. As owner and operator of the facility, the Respondent had full control over the occurrence of the violation. The inventory reconciliation 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 \$5,000	\$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 perform monthly tests/inspections
 VIOLATION NOS.: D (3) and D (7)

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 *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondent failed to test the ATG on a monthly basis to ensure effective operation and failed to ensure that the Class A/B UST facility operator conducted monthly on-site UST facility inspections in accordance with the DEM's UST Regulations. These monthly inspections and tests 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 GA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment. The facility is located in a wellhead protection area for a non-transient, non-community drinking water supply (Wilbur and McMahon School). Residences and businesses in the vicinity rely on private drinking water wells. The Facility is located within 50 feet of freshwater wetlands. The facility is located within the Rhode Island Sound watershed.
- (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 is 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:** 31 months. August 2011 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 Respondent failed to prevent the non-compliance and failed to mitigate the non-compliance despite receiving an informal written notice from the DEM, which required that it 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:** The Respondent was previously cited by DEM for violations of the DEM's UST Regulations in an informal notice dated 12 December 2000, a formal notice dated 22 September 2004, an informal notice dated 16 September 2008, a formal notice dated 11 February 2009, an informal notice dated 17 September 2010 and an informal notice dated 15 November 2013.
- (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 Respondent for the failure to comply immediately with the requirements set forth in Rules 8.15(E) and 8.22(F) of the DEM's UST Regulations. As owner and operator of the facility, the Respondent had full control over the occurrence of the violations. The monthly CMS testing and 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 \$1,500	\$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 (5) and (6)

TYPE		
<p>____ TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>X</u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>____ TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<p>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</p>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: The Respondent failed to assign Class C UST facility operators to the facility. At the time of the 6 March 2014 inspection, the Respondent was 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 one Class C UST facility operator assigned to the 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.</p> <p>(B) Environmental conditions: The facility is located in a GA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment. The facility is located in a wellhead protection area for a non-transient, non-community drinking water supply (Wilbur and McMahon School). Residences and businesses in the vicinity rely on private drinking water wells. The facility is located within 50 feet of freshwater wetlands. The facility is located within the Rhode Island Sound watershed.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(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 is capable of causing significant soil and groundwater contamination if released to the environment. Benzene, a component of gasoline, is a known carcinogen.</p> <p>(E) Duration of the violation: 20 months. August 2012 through March 2014.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to train its employees and assign at least one Class C UST facility operator to the Facility on or before 1 August 2012. The Respondent has yet to mitigate the non-compliance despite receiving an informal written notice from the DEM, which required that it 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:** The Respondent was previously cited by DEM for violations of the DEM's UST Regulations in an informal notice dated 12 December 2000, a formal notice dated 22 September 2004, an informal notice dated 16 September 2008, a formal notice dated 11 February 2009, an informal notice dated 17 September 2010 and an informal notice dated 15 November 2013.
- (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 Respondent for the failure to comply immediately with the requirements set forth in Rule 8.22 of the DEM's UST Regulations. As owner and operator of the facility, the Respondent 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 \$1,500	\$250 to \$1,250