

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Johnston Gas, Inc.
Joseph Najm
Josephine Najm**

FILE NO.: UST 2014-30-01679

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 18 June 2013 the DEM issued an informal written notice by regular mail to Joseph Najm and Johnston Gas, Inc. for the violations that pertain to groundwater monitoring. On 18 April 2014 the DEM issued an informal written notice by certified mail to the Respondents for the violations that pertain to operation of the facility, which was delivered on 22 April 2014. Each notice required specific actions to correct the violations. The Respondents failed to respond to or comply with either notice.

C. Facts

- (1) The property is located at 1209 Hartford Avenue, Assessor’s Plat 20, Lot 32 in the town of Johnston, Rhode Island (the “Property”). The Property includes a service station and a motor fuel filling station (the “Facility”).
- (2) Joseph Najm and Josephine Najm own the Property.
- (3) Johnston Gas, Inc. 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 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. 01679.
- (6) The USTs are registered with the DEM as follows:

UST ID No.	Date Installed	Capacity	Product Stored
005	29 December 1998	10,000 gallons	Gasoline
006	29 December 1998	6,000 gallons	Gasoline

- (7) On 16 July 2001 the DEM received a Site Investigation Report (“SIR”) for the Property dated 12 July 2001 that was prepared by Geisser Engineering Corporation on behalf of Joseph Najm. The SIR revealed that groundwater on the Property had levels of volatile organic compounds (“VOCs”) that exceeded the DEM’s groundwater quality standards.
- (8) On 7 January 2002 the DEM issued a letter by regular mail to Mr. Najm and Johnston Gas, Inc. requiring that they retain a qualified consultant and have the consultant sample the groundwater on the Property each quarter for VOCs and submit quarterly reports of the results of the analysis of the samples to the DEM (the “Quarterly Reports”).
- (9) On 22 January 2007 the DEM issued a letter by certified mail to Mr. Najm and Johnston Gas, Inc. The letter stated that the DEM has never received any of the Quarterly Reports. The letter was delivered on 23 January 2007.
- (10) On 26 June 2007 the DEM received a report dated 18 June 2007 that was prepared by Ransom Environmental Consultants, Inc. on behalf of Mr. Najm and Johnston Gas, Inc. The report included the results of the analysis of the groundwater on the Property for the 2nd quarter of 2007 (the “2007 Quarterly Report”).
- (11) On 16 April 2014 the DEM inspected the Facility. The inspection revealed the following:
- (a) Inventory reconciliation and leak check records, consistent with the requirements of the DEM’s UST Regulations, for the USTs for the time period of March 2013 through April 2014, were not available. Monthly summaries of product inputs and outputs were available; however, the owner/operator had not properly reconciled the book inventory with the physical inventory or performed the required leak check calculations; and
 - (b) Written verification that the designated Class A or Class B UST facility operator (Joseph Najm) had conducted monthly on-site UST facility inspections during each of the months of December 2013 through March 2014 was not available.

(12) As of the date of this Notice of Violation (“NOV”), the DEM has failed to receive any Quarterly Reports since the submission of the 2007 Quarterly Report.

(13) As of the date of this NOV, the Respondents have failed to comply with the DEM’s UST Regulations as described in Section C (11) above.

D. Violation

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

- (1) **DEM’s UST Regulations, Rules 8.08(A)(2) and 11.03** – requiring monthly inventory reconciliation and leak checks for UST systems.
- (2) **DEM’s UST Regulations, Rule 8.22(F)** – requiring the Class A or Class B UST facility operators to perform monthly inspections of their facilities.
- (3) **DEM’s UST Regulations, Rules 12.02 and 12.03** – requiring UST owners/operators to investigate leaks or releases from UST systems in accordance with the DEM’s requirements.

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) **By 30 September 2014 and continuing each quarter thereafter**, submit the Quarterly Reports to the DEM – Office of Waste Management.
- (2) **Within 60 days of receipt of this NOV**, submit to the DEM – Office of Compliance and Inspection written verification that you are now in full compliance with the inventory reconciliation and leak check requirements for the USTs, which are set forth in Rules 8.08(A)(2), 11.02(B)(5) and 11.03 of the DEM’s UST Regulations.
- (3) The designated Class A/B UST facility operator shall henceforth inspect the Facility on a monthly basis in accordance with Rule 8.22(F) of the DEM’s UST Regulations and document the results of those inspections on the requisite form in accordance with Rules 8.22(F) and 11.02(B)(4) 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:

Eight Thousand Seven Hundred and Fifty Dollars (\$8,750)

- (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 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 for 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 Johnston, 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:

Johnston Gas, Inc.
c/o Kenneth J. Macksoud, Esq., Registered Agent
One Turks Head Place, Suite 1440
Providence, RI 02903

Joseph Najm
735 Central Avenue
Johnston, RI 02919

Josephine Najm
735 Central Avenue
Johnston, RI 02919

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST COMPLIANCE

File No.: UST 2014-30-01679

Respondents: Johnston Gas, Inc., Joseph Najm and Josephine Najm

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 inventory reconciliation and leak checks	Type II (\$12,500 Max. Penalty)*	Minor	\$1,250	1 violation	\$1,250
D (2) – Failure to have the Class A/B UST facility operator perform monthly inspections	Type II (\$12,500 Max. Penalty)*	Minor	\$1,250	1 violation	\$1,250
D (3) – Failure to investigate a known release of petroleum product in accordance with the requirements of the DEM	Type I (\$25,000 Max. Penalty)*	Minor	\$6,250	1 violation	\$6,250
SUB-TOTAL					\$8,750

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

ECONOMIC BENEFIT FROM NON-COMPLIANCE
<p>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:</p> <ul style="list-style-type: none"> - THERE IS NO IDENTIFIABLE BENEFIT FROM NON-COMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.
<p>A review of the record in this matter has revealed that the respondents have either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted can not be quantified.</p>

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 = \$8,750

PENALTY MATRIX WORKSHEET

CITATION: Failure to perform inventory reconciliation and leak checks
 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 Respondents failed to compile and maintain inventory reconciliation and leak check 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 densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. 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 within 550 feet of a freshwater stream wetland. The facility is located in the Pocasset River 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:** Approximately 1 year.
- (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 prevent the non-compliance and have made no apparent attempt to mitigate the violation despite receiving a letter of non-compliance 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 rules 8.11, 8.12 and 8.15(F) of the DEM's UST Regulations. As owner and operator of the facility, the Respondents had full control over the occurrence of the violations.
- (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 have the Class A/B UST facility operator perform monthly inspections
 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 Respondents failed to have the Class A/B UST facility operator perform monthly on-site UST facility inspections and document the results of those inspections on the requisite form. These monthly inspections are an important component of the operator training requirements implemented in August 2012 and are designed to ensure that the facility is being operated in compliance with the DEM's UST Regulations.
- (B) **Environmental conditions:** The facility is located in a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. The facility is located in a GA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment. The facility is located within 550 feet of a freshwater stream wetland. The Facility is located in the Pocasset River 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.

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- (E) **Duration of the violation:** 4 months.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.
- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondents failed to prevent the non-compliance and have made no apparent attempt to mitigate the violation despite receiving a letter of non-compliance 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 operator training requirements are clearly established in the 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 \$1,250	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to investigate a known release of petroleum product in accordance with the requirements of the DEM

VIOLATION NOS.: D (3)

TYPE		
<p><u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>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		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<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 Respondents failed to submit quarterly groundwater reports as required by the DEM. This requirement is of importance to the regulatory program. Failure to comply prevents the DEM from obtaining the information it needs to meet its public health and safety and environmental protection mandates.</p> <p>(B) Environmental conditions: The facility is located in a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. The facility is located in a GA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment. The facility is located within 550 feet of a freshwater stream wetland. The facility is located in the Pocasset River watershed.</p> <p>(C) Amount of the pollutant: The SIR revealed concentrations of benzene at 65 ppb and 59 ppb and MTBE at 4,100 ppb and 4,300 ppb in MW-1 and MW-2. The most recent sampling event in June 2007 revealed concentrations of benzene at 8.1 ppb and 12.1 ppb in two of the tank field observation wells. The DEM's GA groundwater quality objective for benzene is 5 ppb and MTBE is 40 ppb.</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 style="text-align: right;">(continued)</p>		

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- (E) **Duration of the violation:** 12 ½ years. The DEM first notified Joseph Najm in a letter dated 7 January 2002 of the requirement to perform quarterly groundwater sampling, yet the DEM has only received one quarterly report during this time period (in June 2007) and the samples were not obtained from the groundwater monitoring wells. The penalty is being assessed for the non-compliance that has occurred since August 2004.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.
- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** The Respondents failed to perform quarterly groundwater sampling and analysis as required by the DEM. Mr. Najm and Johnston Gas, Inc. have been issued numerous letters by 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 rules 12.02 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 violation. The release 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	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 \$6,250	\$1,250 to \$2,500	\$250 to \$1,250