

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: The Estate of Marjorie G. McGinnes,
M & C Associates, LLC, and
Clifford R. McGinnes, Jr.
(d/b/a "Ballards Service Center")**

FILE NO.: UST 2010-00720

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, ("R.I. Gen. Laws") you are hereby notified that the Director of the Department of Environmental Management (the "Director" of "DEM") has reasonable grounds to believe that the above named parties ("Respondents") have violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Administrative History

DEM issued informal notices to the Respondents on 1 September 2010, 7 September 2010 and 13 December 2010 for the violations. The Respondents have failed to comply with the notices.

C. Facts

- (1) The subject property is located at 596 Corn Neck Road in the town of New Shoreham, Rhode Island, Assessor's Plat 5, Lot 9 (the "Property").
- (2) The Property includes a gasoline service station (the "Facility").
- (3) The Estate of Marjorie G. McGinnes owns the Property.
- (4) M & C Associates, LLC and Clifford R. McGinnes, Jr. d/b/a "Ballards Service Center" operate the Facility.
- (5) Respondents are the owners and operators of underground storage tanks ("USTs" or "Tanks") that are located on the Property, which Tanks are used for the storage of petroleum products and which are subject to DEM's Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials, as amended (the "UST Regulations").
- (6) The Facility is registered with DEM in accordance with Section 6.00 of the UST Regulations and is identified as UST Facility No. 00720.

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

UST ID No.	Date Installed	Capacity	Product Stored
007	2 June 1997	500 gallons	Diesel Fuel
008	2 June 1997	500 gallons	No. 2 Fuel Oil
009	2 June 1997	10,000 gallons	Premium Gasoline
010	2 June 1997	10,000 gallons	Regular Gasoline

- (8) On 22 January 2010, DEM issued a letter to all registered UST owners/operators that required the owners/operators to inspect their facility and complete and submit to DEM a Compliance Certification Checklist, a Certification Statement form and any necessary Return to Compliance Plans (the “Compliance Certification Forms”).

- (9) On 3 August 2010, DEM inspected the Facility. The inspection revealed the following:

- (a) The sacrificial anode cathodic protection system for UST Nos. 007 and 008 was not tested in 2006 by a qualified cathodic protection tester. The system was tested in 2010 by a qualified cathodic protection tester.
- (b) Inventory control records were not compiled and maintained.
- (c) The *Veeder Root* continuous monitoring system (“CMS”) was not tested on a monthly basis.
- (d) The spill containment basins for UST Nos. 007, 008, 009 and 010 were not free of liquid.
- (e) The fill ports for UST Nos. 007 and 008 were not labeled to properly identify the products stored inside the tanks.
- (f) Evaluations of the groundwater monitoring wells were not performed from 2005 through 2010.

- (10) On 7 September 2010 DEM issued a written notice to The Estate of Majorie G. McGinnes and M & C Associates, LLC for failing to submit the Compliance Certification Forms (the “Compliance Certification Notice”). The Compliance Certification Notice required the Respondent to inspect the Facility and complete and submit the Compliance Certification Forms to DEM on or before 26 September 2010.

- (11) As of the date of this Notice of Violation (“NOV”), Respondents have failed to submit the Compliance Certification Forms to DEM or address the issues of noncompliance described in Section C(9) of the NOV.

D. Violation

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

- (1) **UST Regulations, Rule 8.03** – requiring UST owners/operators to inspect their facility and complete and submit the Compliance Certification Forms within the time frame specified by DEM.
- (2) **UST Regulations, Rule 8.07(B)(2)** – requiring the owner/operator to retain a qualified cathodic protection tester to test sacrificial anode cathodic protection systems every three years.
- (3) **UST Regulations, Rules 8.08(A)(2), 11.02 (B)(4) and 11.03** – requiring the owner/operator to compile and maintain inventory control records for USTs.
- (4) **UST Regulations, Rule 8.15(E)** – requiring the owner/operator to perform monthly testing of UST continuous monitoring systems.
- (5) **UST Regulations, Rule 8.16(A)(1)** – requiring the owner/operator to keep spill containment basins free of liquids.
- (6) **UST Regulations, Rule 8.18** – requiring the owner/operator to permanently label, or otherwise permanently mark, all fill pipes and/or fill box covers so that the product inside the tank is identified.
- (7) **UST Regulations, Rule 8.19(E)** – requiring the owner/operator to bail and evaluate the water in all groundwater monitoring wells for visual and olfactory evidence of free product no less than once per year.

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 submit the following to DEM **within thirty days of receipt of this NOV**:

- (1) Compliance Certification Forms in accordance with Rule 8.03 of the UST Regulations.
- (2) Written verification that you are now complying with the inventory control requirements for UST Nos. 007, 009 and 010, in accordance with Rules 8.08(A)(2) and 11.03 of the UST Regulations.

- (3) Written verification that you are now testing the CMS at least once per month to ensure that it is operating effectively, in accordance with Rule 8.15(E) of the UST Regulations.
- (4) Verification that the spill containment basins for UST Nos. 007, 008, 009 and 010 are presently clean and in good working order, in accordance with Rule 8.16(A)(1) of the UST Regulations.
- (5) Verification that the fill ports for UST Nos. 007 and 008 are labeled or otherwise permanently marked to identify the products stored inside the tanks in accordance with Rule 8.18 of the UST Regulations.
- (6) Written verification that a groundwater evaluation has been performed within the last year, in accordance with Rule 8.19(E) of the 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:

Twenty Thousand Six Hundred and Sixty-Four Dollars (\$20,664.00)

- (2) The proposed administrative penalty is calculated pursuant to the DEM Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the Director within twenty days of your receipt of this NOV. Payment shall be in the form of a certified 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 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 DEM's Administrative Adjudication Division, at the following address, within twenty 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
235 Promenade Street, 3RD Floor
Providence, RI 02908-5767

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **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 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:

Richard M. Bianculli Jr., 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 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 New Shoreham, 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 is or 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) Richard M. Bianculli Jr., Esq. 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:

The Estate of Marjorie G. McGinnes
c/o Clifford R. McGinnes, Sr., Administrator
P.O. Box 403
Block Island, RI 02807

M & C Associates, LLC
c/o Elliot Taubman, Esq., Registered Agent
P.O. Box 277
Block Island, RI 02807

Clifford R. McGinnes, Jr.
d/b/a Ballard's Service Center
P.O. Box 689
Block Island, RI 02807

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST

File No.: UST 2010-00720

Respondents: The Estate of Marjorie G. McGinnes, M & C Associates, LLC and Clifford R. McGinnes, Jr. d/b/a Ballards Service Center

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 submit ERP Compliance Certification Forms	Type II (\$12,500 Max. Penalty)*	Major	\$6,250	1 violation	\$6,250.00
D (2) – Failure to perform a cathodic protection test	Type II (\$12,500 Max. Penalty)*	Minor	\$1,500	1 violation	\$1,500.00
D (3) – Failure to compile and maintain inventory control records	Type II (\$12,500 Max. Penalty)*	Major	\$7,500	1 violation	\$7,500.00
D (4) – Failure to test the CMS on a monthly basis	Type II (\$12,500 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500.00
D (5) – Failure to perform groundwater evaluations	Type II (\$12,500 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500.00
SUB-TOTAL					\$20,250.00

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

ADMINISTRATIVE PENALTY SUMMARY (continued)

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.		
<i>DESCRIPTION OF BENEFIT</i>	<i>CALCULATION</i>	AMOUNT
Cost of cathodic protection testing	1 UST X 1 year = 1 missing test @ \$414.00 per test	\$414.00
SUB-TOTAL		\$ 414.00

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$20,664.00

PENALTY MATRIX WORKSHEET

CITATION: Failure to submit ERP Compliance Certification Forms
 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.		
<p>FACTORS CONSIDERED:</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: Respondents failed to submit completed Compliance Certification Forms to DEM. The UST Regulations require all UST owners/operators to certify their compliance with the UST Regulations by completing and submitting the Compliance Certification Forms within the time frame specified by DEM.</p> <p>(B) Environmental conditions: Not relevant.</p> <p>(C) Amount of the pollutant: Not relevant.</p> <p>(D) Toxicity or nature of the pollutant: The volatile nature of gasoline presents both a public health hazard (due to the potential inhalation of benzene) and a public safety hazard (due to the potential for explosion). Gasoline is capable of causing significant soil and groundwater contamination if released to the environment.</p> <p>(E) Duration of the violation: The Compliance Certification Forms were due on or before 26 September 2010.</p> <p>(F) Areal extent of the violation: Not relevant.</p> <p style="text-align: right;">(continued)</p>		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the non-compliance by submitting completed Compliance Certification Forms to DEM. Respondents have made no apparent attempt to mitigate the violation despite receiving an informal notice from DEM dated 7 September 2010.
- (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:** Respondents were previously cited by DEM for this same violation in Notices of Violation issued on 28 December 2005 and 19 February 2009. Respondents were also cited by DEM for violations of other UST Regulations in a Notice of Violation issued on 5 December 2003. Respondents have not complied with any of the Notices of Violation.
- (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:** Respondents had full control over the occurrence of the violation. DEM issued a letter to the UST owners/operators on 22 January 2010 requiring the owners/operators to comply with the ERP compliance certification rule and directing the owners/operators to the DEM website to obtain the necessary forms and workbooks. DEM issued an informal notice to the Respondents on 7 September 2010 requiring the Respondents to submit completed Compliance Certification Forms to DEM on or before 26 September 2010.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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

PENALTY MATRIX WORKSHEET

CITATION: Failure to perform a cathodic protection test
 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:** Respondents failed to procure the services of a qualified cathodic protection tester to perform a test of the sacrificial anode cathodic protection for UST Nos. 007 and 008 in 2006. Testing of such tanks is required to be performed at least once every three years to ensure that steel USTs are receiving adequate levels of protection. Failure to perform such testing could result in the premature degradation of such USTs.
- (B) **Environmental conditions:** The facility is located in a GAA groundwater classification zone and a sole source aquifer, which are groundwater resources located in wellhead protection areas for community water supply wells and portions of their recharge areas and in groundwater dependent areas (such as Block Island). The facility is located within 150 feet of a wetland area associated with Great Salt Pond.
- (C) **Amount of the pollutant:** Not relevant.
- (D) **Toxicity or nature of the pollutant:** The volatile nature of gasoline presents both a public health hazard (due to the potential inhalation of benzene) and a 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:** 4 years. The test should have been performed in 2006; however, the test was not performed until 2010.
- (F) **Areal extent of the violation:** Not relevant.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the non-compliance by performing a cathodic protection test in 2006. Respondents had a test performed on 7 June 2010 and reported that the tank was receiving adequate protection.
- (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:** Respondents were previously cited by DEM for violations of the UST Regulations in Notices of Violation issued on 5 December 2003, 28 December 2005 and 19 February 2009. The 2003 NOV cited Respondents for failure to comply with the cathodic protection system testing requirements. Respondents have not complied with any of the Notices of Violation.
- (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:** Respondents, as owners and operators of the facility, had full control over the occurrence of the violation. The UST Regulations expressly require that sacrificial anode cathodic protection systems be tested by qualified persons at least once every three years.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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 compile and maintain inventory control records

VIOLATION NO.: D (3)

TYPE		
<p style="text-align: center;">___ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u>X</u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<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: Respondents failed to compile and maintain inventory control records, consistent with the requirements of the UST Regulations, for UST Nos. 007, 009 and 010. Inventory control is an important required component of leak detection programs at UST facilities. Failure to perform inventory control in accordance with the UST Regulations would presumably reduce the likelihood of detecting a release from a UST system.</p> <p>(B) Environmental conditions: The facility is located in a GAA groundwater classification zone and a sole source aquifer, which are groundwater resources located in wellhead protection areas for community water supply wells and portions of their recharge areas and in groundwater dependent areas (such as Block Island). The facility is located within 150 feet of a wetland area associated with Great Salt Pond.</p> <p>(C) Amount of the pollutant: Not relevant.</p> <p>(D) Toxicity or nature of the pollutant: The volatile nature of gasoline presents both a public health hazard (due to the potential inhalation of benzene) and a 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.</p> <p>(E) Duration of the violation: 3 years. Respondents failed to compile and maintain inventory control records from August 2007 through August 2010.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the non-compliance by compiling and maintaining inventory control records for UST Nos. 007, 009 and 010. Respondents have made no attempt to mitigate the non-compliance despite receiving a Letter of Noncompliance from 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:** Respondents were previously cited by DEM for violations of the UST Regulations in Notices of Violation issued on 5 December 2003, 28 December 2005 and 19 February 2009. The 2003 NOV cited Respondents for failure to comply with the inventory control requirements. Respondents have not complied with any of the Notices of Violation.
- (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:** Respondents, as owners and operators of the facility, had full control over the occurrence of the violation. The UST Regulations expressly require that owners/operators compile and maintain inventory control records in accordance with prescribed methods.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

<u> X </u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500 \$7,500	\$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	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to test the CMS on monthly basis
 VIOLATION NO.: D (4)

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:** Respondents failed to test the CMS on a monthly basis to ensure that it was operating effectively. Failure to perform such testing could reduce the likelihood of detecting a release from a UST system.
- (B) **Environmental conditions:** The facility is located in a GAA groundwater classification zone and a sole source aquifer, which are groundwater resources located in wellhead protection areas for community water supply wells and portions of their recharge areas and in groundwater dependent areas (such as Block Island). The facility is located within 150 feet of a wetland area associated with Great Salt Pond.
- (C) **Amount of the pollutant:** Not relevant.
- (D) **Toxicity or nature of the pollutant:** The volatile nature of gasoline presents both a public health hazard (due to the potential inhalation of benzene) and a 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:** 3 years. Respondents failed to test the CMS from August 2007 through August 2010.
- (F) **Areal extent of the violation:** Not relevant.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the non-compliance by testing the CMS on a monthly basis. Respondents have made no attempt to mitigate the non-compliance despite receiving a Letter of Noncompliance from 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:** Respondents were previously cited by DEM for violations of the UST Regulations in Notices of Violation issued on 5 December 2003, 28 December 2005 and 19 February 2009. The 2003 NOV cited Respondents for failure to comply with the monthly CMS testing requirements. Respondents have not complied with any of the Notices of Violation.
- (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:** Respondents, as owners and operators of the facility, had full control over the occurrence of the violation. The UST Regulations expressly require that owners/operators test UST continuous monitoring systems on a monthly basis to ensure that they are operating effectively.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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 groundwater evaluations
 VIOLATION NO.: D (7)

TYPE		
____ 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.	____ 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:** Respondents failed to perform annual groundwater evaluations. UST owners/operators are required to bail the water in the groundwater monitoring wells at least once per year and evaluate for visual and olfactory evidence of free product. Failure to perform such evaluations would presumably reduce the likelihood of detecting a release from a UST system.
- (B) **Environmental conditions:** The facility is located in a GAA groundwater classification zone and a sole source aquifer, which are groundwater resources located in wellhead protection areas for community water supply wells and portions of their recharge areas and in groundwater dependent areas (such as Block Island). The facility is located within 150 feet of a wetland area associated with Great Salt Pond.
- (C) **Amount of the pollutant:** Not relevant.
- (D) **Toxicity or nature of the pollutant:** The volatile nature of gasoline presents both a public health hazard (due to the potential inhalation of benzene) and a 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:** 5 years. Respondents failed to perform groundwater evaluations from 2005 through 2010.
- (F) **Areal extent of the violation:** Not relevant.

(continued)

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the non-compliance by performing groundwater evaluations. Respondents have made no attempt to mitigate the non-compliance despite receiving a Letter of Noncompliance from 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:** Respondents were previously cited by DEM for violations of the UST Regulations in Notices of Violation issued on 5 December 2003, 28 December 2005 and 19 February 2009. Respondents have not complied with any of the Notices of Violation.
- (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:** Respondents, as owners and operators of the facility, had full control over the occurrence of the violation. The UST Regulations expressly require the performance of annual groundwater evaluations at UST facilities that have groundwater monitoring wells installed.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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