

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Ahmed Choudhry

FILE NO.: UST 2014-44-00609

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 the DEM’s jurisdiction.

B. Administrative History

On 10 June 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 16 June 2014 the notice was delivered to the Respondent. To date, the Respondent has failed to respond to or comply with the notice.

C. Facts

- (1) The property is located at 302 Broad Street, Assessor’s Plat 3, Lot 137 in the town of Cumberland, Rhode Island (the “Property”). The Property includes a convenience store and a motor fuel filling station and 4 groundwater monitoring wells (the “Facility”).
- (2) ASAD ALI, LLC owns the Property.
- (3) On 14 May 2014 the Rhode Island Secretary of State revoked the Certificate of Registration/Organization for ASAD ALI, LLC. The Respondent is the last known authorized person for the corporation.
- (4) Underground storage tanks (“USTs” or “tanks”) are installed on the Property that are used for storage of petroleum products and are subject to the DEM’s *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the “UST Regulations”).
- (5) The Facility is registered with the DEM and is identified as UST Facility No. 00609.

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

UST ID No.	Date Installed	Capacity	Product Stored
001	1981	10000 gallons	Gasoline
002	1981	10000 gallons	Gasoline
003	1981	10000 gallons	Diesel

(7) The USTs are single walled tanks with cathodic protection and interior liners.

(8) On 4 June 2014 the DEM inspected the Facility. The inspection revealed the following:

- (a) Written verification that the USTs had been tested for tightness by a DEM licensed tightness tester within the last 2 years was not available.
- (b) The “alarm” status indicator lamp on the *Veeder Root TLS 350* continuous monitoring system (“CMS”) console was not illuminating “red”.
- (c) The CMS was displaying a “fuel alarm” for the leak sensor deployed in the tank top sump for UST No. 001. Upon information and belief, the Respondent had not investigated the alarm.
- (d) The spill containment basins for the USTs and the tank top sump for UST No. 001 were holding liquids.
- (e) The fill ports for the USTs were not labeled to identify the products stored inside the tanks, and the Stage I vapor recovery ports were not labeled.
- (f) A groundwater evaluation report for the year 2013 was not available.
- (g) A list of all the Class C UST facility operators assigned to the Facility was not available. Upon information and belief, there were no trained Class C UST facility operators on duty.
- (h) Written verification that the designated Class A/B UST Facility operator (Ms. Bintaben Patel) had conducted inspections during each of the months of August 2012 through May 2014 was not available.

(9) 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 Section 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(C)(4)** – requiring periodic tightness testing of single-walled USTs every 2 years.
- (2) **DEM's UST Regulations, Rule 8.15(B)** – requiring the repair of malfunctioning leak monitoring devices within 15 days.
- (3) **DEM's UST Regulations, Rules 8.15(C) and 12.03** – requiring immediate investigation of release detection signals and alarms.
- (4) **DEM's UST Regulations, Rules 8.16 (A)(1) and (D)** – requiring that spill containment basins and sumps be kept free of liquid.
- (5) **DEM's UST Regulations, Rule 8.18** – requiring that UST fill ports be labeled to identify the product stored inside the tank.
- (6) **DEM's UST Regulations, Rule 8.19(E)** – requiring annual groundwater evaluations at UST facilities equipped with groundwater monitoring wells.
- (7) **DEM's UST Regulations, Rule 8.22** – requiring all regulated UST facility owners/operators to have trained and certified Class A, B and C UST facility operators assigned to the facility and on duty during all operating hours.
- (8) **DEM's UST Regulations, Rule 8.22(A)(7)** – requiring UST owners/operators to maintain a list of all of the Class C UST facility operators assigned to the facility.
- (9) **DEM's UST Regulations, Rule 8.22(F)** – requiring the registered Class A or Class B UST facility operator to conduct monthly on-site UST facility inspections and record the results of those inspections on the requisite form.

E. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), you are hereby ORDERED to complete the following remedial actions **within 60 days of receipt of the NOV**:

- (1) If available, submit copies of any tank tightness test reports for the USTs that document the results of any tests performed within the last 2 years. If the USTs have not been tested for tightness by a DEM-licensed tightness tester within the last 2 years, procure the services of a DEM-licensed tightness tester to perform such testing in accordance with Rules 8.08(C)(4) and 8.10 of the DEM's UST Regulations and

- submit a copy of the test report to the DEM-Office of Compliance and Inspection (“OC&I”). An original copy of the tightness test report shall also be submitted to the DEM-Office of Waste Management in accordance with Rule 8.10(D) of the DEM’s UST Regulations.
- (2) Repair or replace the “alarm” status indicator lamp on the CMS console in accordance with Rule 8.15(B) of the DEM’s UST Regulations. Written verification of compliance shall be submitted to the OC&I.
 - (3) Investigate the “fuel alarm” for the leak sensor deployed in the tank top sump for UST No. 001 in accordance with Rules 8.15(C) and 12.03 of the DEM’s UST Regulations. A written report detailing the outcome of the investigation and any remedial actions taken shall be submitted to the OC&I.
 - (4) Evacuate and clean the spill containment basins and tank top sumps for the USTs in accordance with Rules 8.16 (A)(1) and (D) of the DEM’s UST Regulations. All wastes removed from these basins and sumps shall be managed and disposed of in accordance with Rule 5.8 of the DEM’s *Rules and Regulations for Hazardous Waste Management*. Written or photographic verification of compliance shall be submitted to the OC&I.
 - (5) Label or otherwise permanently mark the fill ports for the USTs to identify the products stored inside the tanks in accordance with Rule 8.18 of the DEM’s UST Regulations. The Stage I vapor recovery ports shall be painted orange in accordance with API RP 1637. Written or photographic verification of compliance shall be submitted to the OC&I.
 - (6) If available, submit to the OC&I a copy of the groundwater evaluation report for 2013. If you have not performed an evaluation within the last year, perform a groundwater evaluation in accordance with Rule 8.19(E) of the DEM’s UST Regulations and submit a copy of the evaluation report to the OC&I.
 - (7) 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.
 - (8) Submit to the OC&I written verification that the registered Class A/B UST facility operator is now performing monthly on-site UST facility inspections (requisite form enclosed) in accordance with Rule 8.22(F) of the DEM’s UST Regulations.

F. Penalty

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

Nine Thousand Dollars (\$9,000)

- (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 DEM determines that reasonable efforts have been made to comply promptly with this NOV.

G. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through F above. All requests for hearing MUST:
- (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);
- (b) Be **RECEIVED** by the DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
One Capitol Hill, 2ND Floor
Providence, RI 02903

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

(d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Rule 7.00(b) of the DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters*.

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

Joseph J. LoBianco, Esquire
DEM - Office of Legal Services
235 Promenade Street, Suite 425
Providence, RI 02908-5767

(3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.

(4) Each respondent must file a separate and timely request for an administrative hearing before the DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then this NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (v) and 42-17.6-4(b) and (c).

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

(6) An original signed copy of this NOV is being forwarded to the town of Cumberland, 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:

Ahmed Choudhry
P.O. Box 126
Norwich, CT 06360

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY	
Program:	OFFICE OF COMPLIANCE AND INSPECTION, UST COMPLIANCE
File No.:	UST 2014-44-00609
Respondent:	Ahmed Choudhry

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D(1) – Failure to test the USTs for tightness	Type II (\$12,500 Max. Penalty)*	Minor	\$1,750	1 violation	\$1,750
D(3) – Failure to investigate and remedy the release detection signal	Type II (\$12,500 Max. Penalty)*	Minor	\$1,750	1 violation	\$1,750
D(6) – Failure to perform a groundwater evaluation	Type II (\$12,500 Max. Penalty)*	Moderate	\$2,500	1 violation	\$2,500
D(7) and D(8) – Failure to train and assign Class C UST facility operators to the facility and compile a list of same	Type II (\$12,500 Max. Penalty)*	Minor	\$1,500	1 violation	\$1,500
D(9) – Failure to perform UST facility operator's monthly inspections	Type II (\$12,500 Max. Penalty)*	Minor	\$1,500	1 violation	\$1,500
SUB-TOTAL					\$9,000

*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 NONCOMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.
<p>A review of the record in this matter has revealed that the Respondent has either enjoyed no significant identifiable benefit from the non-compliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot 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 = \$9,000

PENALTY MATRIX WORKSHEET

CITATION: Failure to have the USTs tested for tightness

VIOLATION NO.: D (1)

TYPE

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

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

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

DEVIATION FROM THE STANDARD

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

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM *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 procure the services of a DEM-licensed tightness tester to test the USTs for tightness. Periodic tightness testing of USTs is of significant importance to the regulatory program. Failure to comply would presumably reduce the likelihood of detecting leaks from the USTs.
- (B) **Environmental conditions:** The facility is located in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. The facility is located within 560 feet of a GAA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment, and which are located in groundwater reservoirs and portions of their recharge areas, wellhead protection areas for community water supply wells and groundwater dependent areas. The facility is located within 870 feet of a surface water protection area for a community water supply. The facility is located in a densely developed area with numerous potential vapor receptors including commercial structures, residential structures and underground utilities. The facility is located within the Blackstone 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 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:** 9 months. The most recent test was performed on 1 February 2012.
- (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 have the USTs tested for tightness. The Respondent failed to mitigate the non-compliance despite receiving the informal written notice from the DEM, which required that he 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 Respondent for the failure to comply immediately with the DEM's UST Regulations. As owner of the facility, the Respondent had full control over the occurrence of the violation. The DEM's UST Regulations expressly require periodic tightness testing 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 \$1,750	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION:	Failure to immediately investigate and rectify the release detection signals	
VIOLATION NO.:	D	(3)

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 investigate and rectify the release detection signal that was displayed by the CMS for the pressurized product pipeline for UST No. 001. The DEM's UST Regulations require immediate investigation of all such release detection signals. This particular alarm is commonly triggered by water intrusion; however, failure to investigate the alarm could result in a catastrophic release of the regulated substance to the environment.
- (B) **Environmental conditions:** The facility is located in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. The facility is located within 560 feet of a GAA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment, and which are located in groundwater reservoirs and portions of their recharge areas, wellhead protection areas for community water supply wells and groundwater dependent areas. The facility is located within 870 feet of a surface water protection area for a community water supply. The facility is located in a densely developed area with numerous potential vapor receptors including commercial structures, residential structures and underground utilities. The facility is located within the Blackstone 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 and diesel fuel are capable of causing significant soil and groundwater contamination if released to the environment. Benzene, a component of gasoline, is a known carcinogen.
- (E) **Duration of the violation:** Full duration unknown – at least 5 months. The DEM first became aware of the violation on 4 June 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 investigate and correct the release detection signal. The Respondent failed to mitigate the non-compliance despite receiving an informal written notice from the DEM, which required that he 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 Respondent for the failure to comply immediately with the requirements set forth in Rules 8.15(C) and 12.03 of the DEM's UST Regulations. As owner of the facility, the Respondent had full control over the occurrence of the violation. The release detection signal investigation requirements are clearly established in the DEM's UST Regulations.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	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 \$1,750	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to perform groundwater evaluations

VIOLATION NO.: D (6)

TYPE

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

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

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

DEVIATION FROM THE STANDARD

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

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM *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 perform an annual groundwater evaluation. These evaluations are a valuable part of leak detection programs at UST facilities. Failure to perform these evaluations would presumably reduce the likelihood of detecting a release from the UST system.
- (B) **Environmental conditions:** The facility is located in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. The facility is located within 560 feet of a GAA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment, and which are located in groundwater reservoirs and portions of their recharge areas, wellhead protection areas for community water supply wells and groundwater dependent areas. The facility is located within 870 feet of a surface water protection area for a community water supply. The facility is located in a densely developed area with numerous potential vapor receptors including commercial structures, residential structures and underground utilities. The facility is located within the Blackstone 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 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:** 22 months. The Respondent has not performed an evaluation since 27 January 2012.
- (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 perform an annual groundwater evaluation. The Respondent failed to mitigate the non-compliance despite receiving an informal written notice from the DEM, which required that he 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 cited by the DEM for this same violation in an informal written notice issued on 17 May 2012 for the UST facility he owns that is located at 1353 Park Avenue in Cranston.
- (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 8.19(E) of the DEM's UST Regulations. As owner of the facility, the Respondent had full control over the occurrence of the violation. The groundwater evaluation 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 \$2,500	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION:	Failure to train and assign Class C UST facility operators to the facility and compile a list of same
VIOLATION NOS.:	D (7) and (8)

TYPE		
<u> </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> X </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<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: The Respondent failed to assign trained Class C UST facility operators to the facility. The DEM's UST Regulations require all owners to have at least one Class C UST facility operator assigned to a facility and to compile and maintain on-site a list of the Class C operators. Rule 8.22 of the DEM's UST Regulations 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 GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. The facility is located within 560 feet of a GAA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment, and which are located in groundwater reservoirs and portions of their recharge areas, wellhead protection areas for community water supply wells and groundwater dependent areas. The facility is located within 870 feet of a surface water protection area for a community water supply. The facility is located in a densely developed area with numerous potential vapor receptors including commercial structures, residential structures and underground utilities. The facility is located within the Blackstone River 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 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: 27 months. The rule came into effect in 1 August 2012.</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 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 he 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 Respondent for the failure to comply immediately with the requirements set forth in Rule 8.22 of the DEM's UST Regulations. As owner 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

PENALTY MATRIX WORKSHEET

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

TYPE

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

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

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

DEVIATION FROM THE STANDARD

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

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM *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 have the Class A/B UST facility operator conduct monthly on-site UST facility inspections in accordance with DEM's UST Regulations. These monthly inspections are of significant importance to the regulatory program. Failure to perform these inspections and tests would presumably reduce the likelihood of preventing or detecting a leak or release from the UST systems.
- (B) **Environmental conditions:** The facility is located in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. The facility is located within 560 feet of a GAA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment, and which are located in groundwater reservoirs and portions of their recharge areas, wellhead protection areas for community water supply wells and groundwater dependent areas. The facility is located within 870 feet of a surface water protection area for a community water supply. The facility is located in a densely developed area with numerous potential vapor receptors including commercial structures, residential structures and underground utilities. The facility is located within the Blackstone 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 and diesel fuel are capable of causing significant soil and groundwater contamination if released to the environment. Benzene, a component of gasoline, is a known carcinogen.
- (E) **Duration of the violation:** Full duration unknown – at least 21 months. The rule came into effect on 1 August 2012.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

(continued)

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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 by having the Class A/B operator perform monthly inspections of the facility. The DEM has no information that the Respondent has mitigated the non-compliance.
- (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 Respondent for the failure to comply immediately with the requirements set forth in Rule 8.22(F) of the DEM's UST Regulations. As owner of the facility, the Respondent had full control over the occurrence of the violation. The monthly facility inspection requirements are clearly established in the DEM's UST Regulations.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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