

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: J & D'S WEST KINGSTON SERVICE, INC.

FILE NO.: UST 2014-7-00099

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 12 February 2014 the DEM issued an informal written notice to the Respondent for the violations. The notice was sent by certified mail and was delivered to the Respondent on 14 February 2014. Thus far, the Respondent has failed to fully comply with the notice.

C. Facts

- (1) The property is located at 3471 Kingstown Road, Assessor's Plat 22-4, Lot 46 in the town of South Kingstown. The Property includes a convenience store, a service station and a motor fuel filling station (the "Facility").
- (2) The Respondent owns the Property and operates the Facility.
- (3) 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").
- (4) The Facility is registered with the DEM and is identified as UST Facility No. 00099.
- (5) The USTs are registered with the DEM as follows:

UST ID No.	Date Installed	Capacity	Product Stored
001	1985	5000 gallons	Gasoline
002	1985	5000 gallons	Gasoline
003	1985	5000 gallons	Gasoline

- (6) The USTs are single walled tanks.

- (7) On 8 October 2013 and 16 June 2014 the DEM inspected the Facility. The inspections and subsequent review of records revealed the following:
- (a) The cathodic protection for the USTs was not tested in calendar year 2010;
 - (b) The USTs were not tested for tightness in calendar years 2009 and 2011;
 - (c) The line leak detectors for the USTs were not tested in calendar years 2008, 2009, 2010, 2011, 2012, 2013 and 2014;
 - (d) The dispenser shear valves were not tested in calendar years 2012, 2013 and 2014;
 - (e) The *Veeder Root TLS 300* continuous monitoring system (“CMS”) was not tested in calendar years 2008, 2009, 2010, 2011, 2012, 2013 and 2014; and
 - (f) Written verification that trained and/or certified Class A, Class B and Class C UST facility operators had been assigned to the Facility was not available.
- (8) As of the date of this Notice of Violation (“NOV”), the Respondent has failed to comply with the DEM’s UST Regulations as 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 regulations:

- (1) **DEM’s UST Regulations, Rule 8.07(B)(2)** – requiring that sacrificial anode cathodic protection systems be tested by a qualified cathodic protection tester at least once every three years.
- (2) **DEM’s UST Regulations, Rule 8.08(B)(4)** – requiring periodic tightness testing of single-walled USTs every 2 years for USTs that have been installed for more than 20 years.
- (3) **DEM’s UST Regulations, Rule 8.11** – requiring annual testing of line leak detectors.
- (4) **DEM’s UST Regulations, Rule 8.12** – requiring annual testing of shear valves.
- (5) **DEM’s UST Regulations, Rule 8.15(F)** – requiring annual testing of UST continuous monitoring systems.

- (6) **DEM's UST Regulations, Rule 8.22** – requiring all regulated UST facility owners/operators to have trained and certified Class A, Class B and Class C UST facility operators assigned to their facility and on duty at the facility during all operating hours.

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) Procure the services of a qualified person to test the line leak detectors and shear valves for the USTs in accordance with Rules 8.11 and 8.12 of the DEM's UST Regulations (this should include an inspection of the functionality of the ball float vent valve overfill protection) and submit the results of the inspection to the DEM's Office of Compliance and Inspection ("OC&I").
- (2) Procure the services of a qualified person to test and certify the CMS for the USTs in accordance with Rule 8.15(F) of the DEM's UST Regulations and submit the results of the testing to the OC&I.
- (3) Assign at least one trained and ICC-certified Class A UST facility operator and at least one trained and ICC-certified Class B UST facility operator to the Facility in accordance with Rule 8.22 of the DEM's UST Regulations.
- (4) The Class A and/or Class B UST facility operators shall train all other Facility employees who operate the USTs as Class C UST facility operators and compile a written list of Class C UST facility operators that have been trained and assigned to the Facility, as per Rules 8.22 (A) and (D) of the DEM's UST Regulations.
- (5) Complete a *Certified UST Facility Operators Registration Form* in accordance with Rule 8.22(A)(4) of the DEM's UST Regulations and submit the form to the DEM – Office of Waste Management along with copies of the Class A and Class B UST facility operators' examination certificates. Copies of the form and certificates shall also be submitted to the OC&I.

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 and Twenty-One Dollars (\$20,021)

- (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 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 South Kingstown, 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:

J & D's WEST KINGSTON SERVICE, INC.
c/o Michael A. Ursillo, Esq., Registered Agent
2 Williams Street
Providence, RI 02903

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY	
<i>Program:</i>	<i>OFFICE OF COMPLIANCE AND INSPECTION, UST COMPLIANCE</i>
<i>File No.:</i>	<i>UST 2014-7-00099</i>
<i>Respondent:</i>	<i>J & D's WEST KINGSTON SERVICE, INC.</i>

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D (1) – Failure to test the cathodic protection for the USTs	Type II <i>(\$12,500 Max. Penalty)*</i>	Moderate	\$2,500	1 violation	\$2,500
D (2) – Failure to test the USTs for tightness	Type II <i>(\$12,500 Max. Penalty)*</i>	Moderate	\$3,000	1 violation	\$3,000
D (3) and D (4) – Failure to test the line leak detectors and shear valves	Type II <i>(\$12,500 Max. Penalty)*</i>	Moderate	\$3,500	1 violation	\$3,500
D (5) – Failure to test the continuous monitoring system	Type II <i>(\$12,500 Max. Penalty)*</i>	Moderate	\$3,500	1 violation	\$3,500
D (6) – Failure to assign trained and certified UST facility operators to the facility and operating the facility without trained or certified UST facility operators on duty	Type II <i>(\$12,500 Max. Penalty)*</i>	Moderate	\$5,000	1 violation	\$5,000
<i>SUB-TOTAL</i>					\$17,500

*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
Avoidance of cathodic protection testing in 2010	The economic benefit was calculated using an EPA economic model called "BEN". The estimated cost for the test is \$414.	\$49
Avoidance of tank tightness testing in 2009 and 2011	The economic benefit was calculated using an EPA economic model called "BEN". The estimated cost for the test is \$1,317.	\$345
Avoidance of line leak detector and tank monitor testing from 2008 through 2014	The economic benefit was calculated using an EPA economic model called "BEN". The estimated cost for the test is \$465.	\$2,127
<i>SUB-TOTAL</i>		\$2,521

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 = \$20,021

PENALTY MATRIX WORKSHEET

CITATION: Failure to test the cathodic protection for the USTs

VIOLATION NO.: D (1)

TYPE

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

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

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

DEVIATION FROM THE STANDARD

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

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondent failed to procure the services of a qualified cathodic protection tester to perform a survey of the cathodic protection for the USTs. This requirement is of importance to the regulatory program. The USTs are constructed of single-walled steel and the sacrificial anodes provide corrosion protection. Testing is required at three-year intervals to ensure that the anodes continue to provide adequate corrosion protection. Failure to perform such testing could result in a release of gasoline to the subsurface.
- (B) **Environmental conditions:** The facility is located in a GAA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment and which are located in groundwater reservoirs and portions of their recharge areas, wellhead protection areas for community water supply wells and groundwater dependent areas. The facility is located in a wellhead protection area for drinking water supply wells belonging to the Kingston Water District. Residences and businesses in the vicinity rely on private drinking water wells. The facility is located within 1,100 feet of the Chipuxet River. The facility is located in the Chipuxet 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:** 3 ¼ years. The Respondent was required to perform a cathodic protection survey by 12 June 2010; however, the survey was not performed until 18 October 2013.
- (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 procure the services of a qualified cathodic protection tester to perform a survey of the cathodic protection for the USTs. The Respondent had a survey performed on 18 October 2013, which indicated that the USTs were not receiving adequate levels of protection. The Respondent had the system upgraded on or about 24 June 2014.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** The Respondent was previously cited by the DEM for this same violation in an informal written notice issued on 26 December 2006.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to the Respondent for the failure to comply with the requirements set forth in Rule 8.07(B)(2) of the DEM's UST Regulations. As owner and operator of the facility, the Respondent had full control over the occurrence of the violation. The DEM's UST Regulations expressly require periodic testing of corrosion protection.
- (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 test the USTs for tightness

VIOLATION NO.: D (2)

TYPE

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

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

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

DEVIATION FROM THE STANDARD

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

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondent failed to procure the services of a DEM-licensed tightness tester to test the USTs for tightness. Tank tightness testing 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.
- (B) **Environmental conditions:** The facility is located in a GAA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment and which are located in groundwater reservoirs and portions of their recharge areas, wellhead protection areas for community water supply wells and groundwater dependent areas. The facility is located in a wellhead protection area for drinking water supply wells belonging to the Kingston Water District. Residences and businesses in the vicinity rely on private drinking water wells. The facility is located within 1,100 feet of the Chipuxet River. The facility is located in the Chipuxet 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:** 5 years. No tightness tests were performed during the time period of May 2007 through March 2014. After the April 2007 test, the Respondent should have had the tanks tested in calendar years 2009, 2011 and 2013; however, they were not tested until April 2014.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** The Respondent failed to have the USTs tested for tightness. The Respondent had the USTs tested for tightness on 18 April 2014 in an effort to mitigate the violations, and the report indicated that the USTs met the criteria for passing.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** The Respondent was previously cited by the DEM for this same violation in an informal written notice issued on 26 December 2006.
- (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 8.08(B)(4) of the DEM's UST Regulations. As owner and operator of the facility, the Respondent had full control over the occurrence of the violation. The tank tightness testing 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 \$3,000	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to test the line leak detectors and shear valves

VIOLATION NOS.: D (3) and (4)

TYPE

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

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

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

DEVIATION FROM THE STANDARD

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

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondent failed to have the line leak detectors tested by a qualified person and failed to test the dispenser shear valves. Line leak detectors and shear valves are important components of leak prevention/detection and fire safety programs at UST facilities. Annual functionality testing is required to determine whether they are functioning in accordance with the manufacturer's performance standards. Failure to perform these tests would presumably reduce the likelihood of detecting or preventing a leak or release from the UST systems.
- (B) **Environmental conditions:** The facility is located in a GAA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment and which are located in groundwater reservoirs and portions of their recharge areas, wellhead protection areas for community water supply wells and groundwater dependent areas. The facility is located in a wellhead protection area for drinking water supply wells belonging to the Kingston Water District. Residences and businesses in the vicinity rely on private drinking water wells. The facility is located within 1,100 feet of the Chipuxet River. The facility is located in the Chipuxet 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:** 8 ½ years. No testing has been performed from April 2008 through present.
- (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 test the line leak detectors and the shear valves and has failed to mitigate 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:** The Respondent was previously cited by the DEM for this same violation in an informal written notice issued on 26 December 2006.
- (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 8.11 and 8.12 of the DEM's UST Regulations. As owner and operator of the facility, the Respondent had full control over the occurrence of the violations. The annual line leak detector and shear valve testing 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 \$3,500	\$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 test the continuous monitoring system

VIOLATION NO.: D (5)

TYPE

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

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

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

DEVIATION FROM THE STANDARD

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

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondent failed to have the CMS tested by a qualified person. UST continuous monitoring systems are important, required components of leak prevention/detection programs at UST facilities. Annual functionality testing is required to determine whether they are functioning in accordance with the manufacturer's performance standards. Failure to perform these inspections and tests would presumably reduce the likelihood of detecting or preventing a leak or release from the UST systems.
- (B) **Environmental conditions:** The facility is located in a GAA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment and which are located in groundwater reservoirs and portions of their recharge areas, wellhead protection areas for community water supply wells and groundwater dependent areas. The facility is located in a wellhead protection area for drinking water supply wells belonging to the Kingston Water District. Residences and businesses in the vicinity rely on private drinking water wells. The facility is located within 1,100 feet of the Chipuxet River. The facility is located in the Chipuxet 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:** 8 ½ years. No testing has been performed from April 2008 through present.
- (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 test the CMS and has failed to mitigate 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:** The Respondent was previously cited by the DEM for this same violation in an informal written notice issued on 26 December 2006.
- (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 8.15(F) of the DEM's UST Regulations. As owner and operator of the facility, the Respondent had full control over the occurrence of the violations. The annual CMS testing 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 \$3,500	\$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 assign trained and certified UST facility operators to the facility and operating the facility without trained or certified UST facility operators on duty
VIOLATION NO.:	D (6)

TYPE		
<u> </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> X </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.

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

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondent failed to assign trained and/or certified UST facility operators to the facility and submit a completed *Certified UST Facility Operators Registration Form* to the DEM. Rule 8.22 of the DEM's UST Regulations requires all regulated UST facilities to have trained and certified UST facility operators assigned to their facilities. This requirement is of importance to the regulatory program. Non-compliance with this rule precludes the environmental and public safety safeguards and assurances obtained by properly training and certifying the facility operators. Rule 8.22 prohibits the operation of regulated UST facilities in the absence of trained and/or certified UST facility operators.
- (B) **Environmental conditions:** The facility is located in a GAA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment and which are located in groundwater reservoirs and portions of their recharge areas, wellhead protection areas for community water supply wells and groundwater dependent areas. The facility is located in a wellhead protection area for drinking water supply wells belonging to the Kingston Water District. Residences and businesses in the vicinity rely on private drinking water wells. The facility is located within 1,100 feet of the Chipuxet River. The facility is located in the Chipuxet 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:** 2 ¼ years – August 2012 to present.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

(continued)

(continued from the previous page)

- (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 assigning at least one Class A, one Class B and one Class C UST facility operator to the facility on or before 1 August 2012 and has yet to mitigate the non-compliance despite receiving a written notice from the DEM, which required that it do so.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** 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 and operator of the facility, the Respondent had full control over the occurrence of the violations. The operator training requirements are clearly established in the DEM's UST Regulations.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	<u> X </u> MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250 \$5,000	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250