

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Haji Ahmad
Mary DeAngelis
Steven R. DeAngelis
Rocco De Angelis
Linda Napoletano**

FILE NO.: UST 2012-00761

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 an informal written notice to Haji Ahmad on 13 April 2012 for the violations. A copy of the notice was sent to Steven R. DeAngelis. The notice required specific actions to correct the violations. Thus far, the Respondents have failed to fully comply with the notice.

C. Facts

- (1) The subject property is located at 54 Newport Avenue, Assessor’s Plat 40, Lot 1005 in the city of Pawtucket, Rhode Island (the “Property”).
- (2) The Property includes a convenience store and underground storage tanks (“USTs”) used for storage of petroleum products (the “Facility”).
- (3) Mary DeAngelis, Steven R. DeAngelis, Linda Napoletano and Rocco R. DeAngelis own the Property.
- (4) Newport Express LLC operates the Facility and operated the Facility during the time of the violations alleged in the NOV.
- (5) The Rhode Island Secretary of State’s corporations database lists Newport Express LLC as an active corporation, having its principal place of business at the Facility. The date of organization is 8 February 2012. The record lists Haji Ahmad as a member of the corporation.

(6) The Facility is registered with DEM in accordance with Section 6.00 of the DEM's Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials (the "UST Regulations") and is identified as UST Facility No. 00761.

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

UST ID No.	Date Installed	Capacity	Product Stored
004	17 August 2000	12,000 gallons	Regular Gasoline
005	17 August 2000	8,000 gallons	Premium Gasoline

(8) On 10 April 2012, DEM inspected the Facility. The inspection revealed the following:

- (a) The line leak detectors for the USTs were not tested by a qualified person in 2010 and 2011.
- (b) The dispenser shear valves for the USTs were not tested in 2010 and 2011.
- (c) The *Veeder Root TLS 350* continuous monitoring system ("CMS") was not tested on a monthly basis from April 2009 through April 2012.
- (d) The CMS was not certified/tested by a qualified person in 2010 and 2011.
- (e) The three groundwater monitoring wells were not evaluated in 2009, 2010 and 2011.

(9) On 8 May 2012, DEM received a copy of a test report that was prepared by Compliance Testing Services, Inc. ("CTS") on behalf of Mr. Ahmad. The report revealed that CTS tested the line leak detectors, shear valves and tank monitor for the USTs on 23 April 2012.

(10) As of the date of this Notice of Violation ("NOV"), the Respondents have failed to demonstrate that the CMS is being tested on a monthly basis and that the groundwater evaluations are being performed.

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) **DEM's UST Regulations, Rule 8.11** – requiring the owner/operator to procure the services of a qualified person to annually test line leak detectors.
- (2) **DEM's UST Regulations, Rule 8.12** – requiring annual testing of shear valves.

- (3) **DEM's UST Regulations, Rule 8.15(E)** – requiring the owner/operator to perform monthly testing of CMSs.
- (4) **DEM's UST Regulations, Rule 8.15(F)** – requiring the owner/operator to retain a qualified person annually to inspect, calibrate, and test CMSs.
- (5) **DEM's UST Regulations, Rule 8.19(E)** – requiring annual groundwater evaluations that have groundwater monitoring wells in place.

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 **within sixty (60) days of receipt of this NOV**:

- (1) Submit written verification that the CMS is being tested on a monthly basis and that a record of such is being maintained, in accordance with Rules 8.15(E) and 11.02(B)(3) of the UST Regulations.
- (2) Abandon the three groundwater monitoring wells in accordance with Section 8 of Appendix 1 of the DEM's *Rules and Regulations for Groundwater Quality* **OR** demonstrate to the satisfaction of DEM that the wells are necessary and evaluate the wells 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:

Five Thousand Five Hundred and Twelve Dollars (\$5,512.00)

- (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 DEM within twenty (20) 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 Respondents in this NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties

and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if the DEM determines that reasonable efforts have been made to comply promptly with this NOV.

G. Right to Administrative Hearing

(1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through F above. All requests for hearing MUST:

- (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);
- (b) Be **RECEIVED** by DEM's Administrative Adjudication Division, at the following address, within twenty (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 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, 4TH Floor
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 city of Pawtucket, 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 D'Amadio 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:

Haji Ahmad
54 Newport Avenue
Pawtucket, RI 02861

Mary DeAngelis
2 St. Josephs Way
Hope Valley, RI 02832

Steven R. DeAngelis
2 St. Josephs Way
Hope Valley, RI 02832

Rocco De Angelis
2 St. Josephs Way
Hope Valley, RI 02832

Linda Napoletano
2 St. Josephs Way
Hope Valley, RI 02832

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST

File No.: UST 2012 – 00761

Respondents: Haji Ahmad, Mary DeAngelis, Steven R. DeAngelis, Rocco DeAngelis, and Linda Napoletano

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) and (2) – Failure to test the line leak detectors and shear valves	Type II (\$ <u>12,500</u> Max. Penalty)*	Minor	\$1,500	1 violation	\$1,500.00
D (3) and (4) – Failure to test the CMS on a monthly and annual basis	Type II (\$ <u>12,500</u> Max. Penalty)*	Minor	\$1,750	1 violation	\$1,750.00
D (5) – Failure to perform annual groundwater evaluations	Type II (\$ <u>12,500</u> Max. Penalty)*	Minor	\$1,250	1 violation	\$1,250.00
SUB-TOTAL					\$4,500.00

*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>	<i>AMOUNT</i>
Annual testing of line leak detectors	Two USTs X 2 years = 4 missed tests @95.00 per test	\$ 380.00
Annual testing of the CMS	One CMS X 2 years = 2 missed tests @ \$316.00 per test	\$ 632.00
<i>SUB-TOTAL</i>		\$1,012.00

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$5,512.00

PENALTY MATRIX WORKSHEET

CITATION: Failure to test line leak detectors and shear valves

VIOLATION NOS.: D (1) and (2)

TYPE		
<p>____ TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>X</u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>____ TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<p>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</p>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondents failed to procure the services of a qualified person to test the line leak detectors for the USTs during each of the years 2010 and 2011 and failed to test the dispenser shear valves during each of the years 2010 and 2011. Annual functionality testing is required to ensure effective operation. Line leak detectors and shear valves are important, required components of release prevention and fire safety programs at UST facilities. Line leak detectors are designed to detect a catastrophic leak from a pressurized pipeline and reduce flow to lessen the severity of the release. Shear valves are designed to shut off flow from pressurized pipelines in the event that a dispenser is accidentally dislodged from its base. A malfunctioning line leak detector or shear valve could allow for a catastrophic release of petroleum product.</p> <p>(B) Environmental conditions: The facility is located in a densely developed area with numerous potential vapor receptors including residential structures, commercial structures and underground utilities. The facility is located in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells in the vicinity. The facility is located in the Ten Mile 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 public health hazard (due to 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. Certain gasoline constituents are potentially harmful to human health and safety and the environment.</p> <p>(E) Duration of the violation: 2 years.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		
<p>(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 testing the line leak detectors and shear valves in 2010 and 2011. Mr. Ahmad had these devices tested on 23 April 2012 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:** Respondents were previously cited by DEM for a violation of the UST Regulations in a Notice of Intent to Enforce that was issued on 7 September 2010.
- (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 control over the occurrence of the violations. The UST Regulations expressly require annual functionality testing for line leak detectors and shear valves.
- (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 test the CMS on a monthly and annual basis

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

TYPE		
<p style="text-align: center;"><u> </u> 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;"><u> </u> 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 test the CMS on a monthly basis during the time period of April 2009 through April 2012 and failed to procure the services of a qualified person to certify/test the CMS during each of the years 2010 and 2011. Continuous monitoring systems are important, required components of release detection programs at UST facilities. Monthly and annual testing is required to ensure effective operation. Failure to test and maintain a CMS 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 densely developed area with numerous potential vapor receptors including residential structures, commercial structures and underground utilities. The facility is located in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells in the vicinity. The facility is located in the Ten Mile 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 public health hazard (due to 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. Certain gasoline constituents are potentially harmful to human health and safety and the environment.</p> <p>(E) Duration of the violation: At least 3 years for the monthly CMS testing rule and 2 years for the annual testing rule.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		
(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 testing the CMS on a monthly basis during the time period of April 2009 through April 2012 and by procuring the services of a qualified person to certify/test the CMS during each of the years 2010 and 2011. Mr. Ahmad had the CMS certified/tested on 23 April 2012 to mitigate that violation. Respondents have yet to mitigate the non-compliance regarding monthly testing despite receiving a *Letter of Non-Compliance* from DEM on 13 April 2012, 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 a violation of the UST Regulations in a Notice of Intent to Enforce that was issued on 7 September 2010.
- (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 control over the occurrence of the violations. The UST Regulations expressly require monthly and annual testing for CMSs.
- (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 annual groundwater evaluations
 VIOLATION NO.: D (5)

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 perform groundwater evaluations during each of the years 2009, 2010 and 2011. Owners/operators are required to bail groundwater monitoring wells on an annual basis and check the groundwater for visual and olfactory evidence of free petroleum product. These evaluations provide supplementary method of leak detection for UST systems.
- (B) **Environmental conditions:** The facility is located in a densely developed area with numerous potential vapor receptors including residential structures, commercial structures and underground utilities. The facility is located in a GB groundwater classification zone, which are groundwater resources designated as unsuitable for drinking water use without treatment. Upon information and belief, there are no drinking water supply wells in the vicinity. The facility is located in the Ten Mile 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 public health hazard (due to 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. Certain gasoline constituents are potentially harmful to human health and safety and the environment.
- (E) **Duration of the violation:** 3 years.
- (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:** Respondents failed to prevent the non-compliance by performing groundwater evaluations during each of the years 2009, 2010 and 2011. Respondents have yet to mitigate the non-compliance despite receiving a *Letter of Non-Compliance* from DEM on 13 April 2012, 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 a violation of the UST Regulations in a Notice of Intent to Enforce that was issued on 7 September 2010.
- (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 control over the occurrence of the violations. The requirements for annual groundwater evaluations are clearly established in the UST Regulations. By letter dated 13 March 2003, DEM had required the previous facility operator, Cumberland Farms, Inc., to abandon all of the groundwater monitoring wells installed on the property; however, they failed to do so. As long as the wells remain in place, annual groundwater evaluations are required.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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