

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Joanne Realty LLC  
GOLD STAR GAS, CORP**

**FILE NO.: UST 2016-7-03029**

**NOTICE OF VIOLATION**

**A. Introduction**

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

**B. Administrative History**

On 23 February 2016, the DEM issued a Notice of Intent to Enforce (“NIE”) to Respondents for numerous violations, and among those are the violations that are the subject of this Notice of Violation (“NOV”). The NIE required specific actions to correct the violations. On 15 March 2016, 8 April 2016 and 22 April 2016, the DEM received reports in response to the NIE. On 6 May 2016, the DEM sent electronic correspondence to GOLD STAR GAS, CORP, which notified the company that the reports were deficient and set forth the required actions to correct the deficiencies. On 27 June 2016, the DEM received documents that demonstrated that several of the deficiencies were corrected. As of the date of the NOV, Respondents have failed to fully comply with the NIE.

**C. Facts**

- (1) The property is located at 342 Manton Avenue, Assessor’s Plat 63, Lot 568, in the city of Providence (the “Property”). The Property includes a motor fuel storage and dispensing system and a convenience store (the “Facility”).
- (2) Joanne Realty LLC owns the Property.
- (3) GOLD STAR GAS, CORP operates the Facility. The company began operating the Facility on or about 1 February 2014.
- (4) Underground storage tanks (“USTs” or “tanks”) are located on the Property, which tanks are used for storage of petroleum products and which are subject to the DEM’s *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the “UST Regulations”).

- (5) The Facility is registered with the DEM and is identified as UST Facility No. 03029.
- (6) The USTs are double walled and are registered with the DEM for the Facility as follows:

UST ID No.	Date Installed	Capacity	Product Stored
007	31 January 1996	5,000 gallons	Gasoline
008	31 January 1996	5,000 gallons	Gasoline

- (7) On 19 February 2016, 16 June 2016 and 12 January 2017, the DEM inspected the Facility. The inspections revealed the following:
- (a) Written verification that the line leak detectors and shear valves for the USTs were tested by qualified persons during the year 2015 was not available;
  - (b) Written verification that the continuous monitoring system (“CMS”) had been certified/tested by a qualified person during the year 2015 was not available;
  - (c) Groundwater evaluation reports for each of the years 2014, 2015 and 2016 were not available;
  - (d) Written verification that the Facility attendant on duty at the time of the inspections had been trained as, at least, a Class C operator was not available. A list of all of the trained Class C operators that had been assigned to the Facility was not available. The Facility was being operated without at least one trained Class C operator on duty; and
  - (e) The monthly Facility inspections were being performed by Nameer Jajou and Collette Geha, who are not International Code Council (“ICC”) certified Rhode Island Class A/B operators.
- (8) As of the date of the NOV, Respondents have failed to demonstrate compliance with the findings 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 8.11** - requiring annual testing of line leak detectors by qualified persons.
- (2) **DEM’s UST Regulations, Rule 8.12** - requiring annual testing of dispenser shear valves.

- (3) **DEM's UST Regulations, Rule 8.15(F)** - requiring that a CMS be inspected and tested by qualified persons on an annual basis.
- (4) **DEM's UST Regulations, Rule 8.19(E)** - requiring annual groundwater evaluations at UST facilities that are equipped with groundwater monitoring wells.
- (5) **DEM's UST Regulations, Rule 8.22(A)** - requiring UST owners and operators to have trained Class C operators assigned to their facilities.
- (6) **DEM's UST Regulations, Rule 8.22(A)(7)** - requiring UST owners and operators to maintain lists of all of the trained Class C operators that have been assigned to their facilities.
- (7) **DEM's UST Regulations, Rule 8.22(D)(1)** - requiring UST owners and operators to have at least one trained Class C operator on duty at their facilities during all operating hours.
- (8) **DEM's UST Regulations, Rule 8.22(F)** - requiring the registered, ICC-certified, Class A/B operator to perform monthly on-site facility inspections and to document 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) 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 DEM's Office of Compliance and Inspection ("OC&I") **OR** in lieu of performing annual groundwater evaluations, abandon the groundwater monitoring wells on the Property in accordance with Section 8 of Appendix 1 of the DEM's *Groundwater Quality Rules* and submit written verification of compliance with the DEM's *Groundwater Quality Rules* to the OC&I.
- (2) Train all appropriate Facility employees as (at least) Class C operators and compile a written training log (form enclosed) for all of the Class C operators that have been trained and assigned to the Facility, as per Rules 8.22 (A) and (D) of the DEM's UST Regulations. Written verification of compliance shall be submitted to the OC&I.
- (3) The registered and ICC-certified Class A/B operator (Toufic Sarkis) shall hereafter perform monthly on-site UST Facility inspections and document the results of those inspections on the requisite form in accordance with Rules 8.15(E), 8.22(F) and 11.02(B)(4) of the DEM's UST Regulations. Written verification of compliance shall 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:

**\$6,158**

- (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 the NOV. Payment shall be in the form of a certified check, cashier's 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 the NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if the Director determines that reasonable efforts have been made to comply promptly with the 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 the 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, 4<sup>TH</sup> 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:

Tricia Quest, 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 the 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 (vi) and 42-17.6-4(b) and (c).

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

(6) The original NOV has been forwarded to the city of Providence, 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) Tricia Quest at the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey Tyrrell of the DEM's 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

By: \_\_\_\_\_  
David E. Chopy, Chief  
DEM Office of Compliance and Inspection

Dated: \_\_\_\_\_

CERTIFICATION

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_  
the within Notice of Violation was forwarded to:

Joanne Realty LLC  
c/o Colette Geha, Registered Agent  
342 Manton Avenue  
Providence, RI 02909

GOLD STAR GAS, CORP  
c/o Nameer Jajou, Registered Agent  
342 Manton Avenue  
Providence, RI 02909

by Certified Mail.

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<b>ADMINISTRATIVE PENALTY SUMMARY</b>	
Program:	OFFICE OF COMPLIANCE AND INSPECTION, UST COMPLIANCE
File No.:	UST 2016-7-03029
Respondents:	Joanne Realty LLC and GOLD STAR GAS, CORP

<b>GRAVITY OF VIOLATION</b>					
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), (2) and (3) – Failure to Test Leak Monitoring Devices	Type II (\$12,500 Max. Penalty)*	Minor	\$1,500	1 violation	\$1,500
D(4) – Failure to Perform Groundwater Evaluations	Type II (\$12,500 Max. Penalty)*	Minor	\$1,250	1 violation	\$1,250
D (5), (6) and (7) – Failure to Comply with Class C Operator Requirements	Type II (\$12,500 Max. Penalty)*	Minor	\$1,500	1 violation	\$1,500
D (8) – Failure to Have Class A/B Operator Perform Monthly Inspections	Type II (\$12,500 Max. Penalty)*	Minor	\$1,500	1 violation	\$1,500
<b>SUB-TOTAL</b>					<b>\$5,750</b>

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

**ADMINISTRATIVE PENALTY SUMMARY (continued)**

<b>ECONOMIC BENEFIT FROM NONCOMPLIANCE</b>		
<p><b>COSTS OF COMPLIANCE, EQUIPMENT, O&amp;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:</b></p> <ul style="list-style-type: none"> <li>- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR</li> <li>- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.</li> </ul>		
<b>DESCRIPTION OF BENEFIT</b>	<b>CALCULATION</b>	<b>AMOUNT</b>
<p>The economic benefit of noncompliance by failing to have the line leak detectors and CMS tested in 2015. The economic benefit of noncompliance was determined by using an EPA computer model entitled "BEN" that performs a detailed economic analysis. The dates, dollar amounts and values used in this analysis are listed in this table.</p>	<p>2 line leak detector tests @ \$96 per test and 1 CMS test @ \$273 per test</p>	<p>\$408</p>
<b>SUB-TOTAL</b>		<p>\$408</p>

<b>COST RECOVERY</b>
<p><b>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.</b></p>
<p>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.</p>

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$6,158**



**PENALTY MATRIX WORKSHEET**

CITATION:	Failure to Test Leak Monitoring Devices
VIOLATION NOS.:	D (1), (2) and (3)

<b>TYPE</b>		
<u>      </u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>  <b>X</b>  </u> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE III</b> <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:** Respondents failed to have the line leak detectors, shear valves and tank monitor for the USTs tested by a qualified person during the year 2015. Annual testing of these devices is required to ensure that they are functioning in accordance with the manufacturer's specifications. Failure to comply could allow defective equipment to remain in use and reduce the likelihood of detecting or preventing releases of petroleum products.
- (B) **Environmental conditions:** The Facility is located in a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. The Facility is located in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. There are no known drinking water supply wells proximate to the Facility. The facility is located within 650 feet of the Woonasquatucket River and within its 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.
- (E) **Duration of the violation:** 1 year - 2015.
- (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:** Respondents failed to prevent the non-compliance by having the line leak detectors, shear valves and tank monitor tested during the year 2015. These devices were tested on 22 February 2016, and the DEM received reports that the devices 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:** 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 Respondents for the failure to comply immediately with the requirements set forth in Rules 8.11, 8.12 and 8.15(F) of the DEM's UST Regulations. As owners and operators of the Facility, Respondents had full control over the occurrence of the violations. The leak detection device annual 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.

<b>MAJOR</b>	<b>MODERATE</b>	<u>  <b>X</b>  </u> <b>MINOR</b>
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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	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	<b>MODERATE</b>	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250	\$1,250 to \$2,500 <b>\$1,500</b>	\$250 to \$1,250

**PENALTY MATRIX WORKSHEET**

CITATION:	Failure to Perform Groundwater Evaluations
VIOLATION NO.:	D (4)

<b>TYPE</b>		
<u>      </u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>  <b>X</b>  </u> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE III</b> <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:** Respondents failed to perform groundwater evaluations at the Facility during each of the years 2014, 2015 and 2016. Such evaluations are expressly required to be performed at UST facilities that have groundwater monitoring wells installed. Failure to perform these evaluations would presumably reduce the likelihood of detecting a release from the USTs.
- (B) **Environmental conditions:** The Facility is located in a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. The Facility is located in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. There are no known drinking water supply wells proximate to the Facility. The Facility is located within 650 feet of the Woonasquatucket River and within its 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.
- (E) **Duration of the violation:** 3 years – 2014, 2015 and 2016.
- (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 2014, 2015 and 2016 and maintain the evaluation reports at the Facility. GOLD STAR GAS, CORP stated that it complied with this rule for these years in the letter received by the DEM on 8 April 2016; however, the DEM has not received written verification of 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 Respondents for the failure to comply immediately with the requirements set forth in Rule 8.19(E) of the DEM's UST Regulations. As owners and operators of the Facility, Respondents had full control over the occurrence of the violation. The annual 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.

<b>MAJOR</b>	<b>MODERATE</b>	<u>  <b>X</b>  </u> <b>MINOR</b>
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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	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	<b>MODERATE</b>	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250	\$1,250 to \$2,500 <b>\$1,250</b>	\$250 to \$1,250

**PENALTY MATRIX WORKSHEET**

CITATION:	Failure to Comply with Class C Operator Requirements
VIOLATION NOS.:	D (5), (6) and (7)

<b>TYPE</b>		
<u>      </u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>  <b>X</b>  </u> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE III</b> <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:** Failure to assign any trained Class C operators to the Facility and maintain a training log for the Class C operators. Rule 8.22 of the DEM's UST Regulations requires all regulated UST facilities to have trained Class C operators assigned to a Facility. This requirement is of significant 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. The Facility operator was unable to present written verification that he had been trained as at least a Class C operator. The DEM's UST Regulations expressly prohibit the operation of UST facilities without at least 1 trained Class C operator on duty during all operating hours.
- (B) **Environmental conditions:** The Facility is located in a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. The Facility is located in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. There are no known drinking water supply wells proximate to the Facility. The Facility is located within 650 feet of the Woonasquatucket River and within its 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 the potential inhalation of benzene) and a public safety hazard (due to the potential for explosion). Gasoline is capable of causing significant soil and groundwater contamination if released to the environment.
- (E) **Duration of the violation:** Approximately 4 years for the Class C operators (1 August 2012 to the present). The requirement to have a Class C operator came into effect on 1 August 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:** Respondents failed to assign trained Class C operators to the Facility and have been operating the Facility without at least one trained Class C operator on duty. Respondents have yet to submit a copy of their training log for all of the trained Class C operators that have been assigned to the Facility despite receiving written notice from the DEM, which required that they do so. Upon information and belief, Respondents continue to operate the Facility without and trained UST facility operators on duty.
- (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:** Respondents, as owners and operators of the Facility, had full control over the occurrence of the violation. The DEM issued multiple written notices of the requirement to comply with Rule 8.22 of the DEM's UST Regulations. The requirement to assign trained Class C operators to regulated UST facilities is 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.

<b>MAJOR</b>	<b>MODERATE</b>	<u>  <b>X</b>  </u> <b>MINOR</b>
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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	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	<b>MODERATE</b>	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250	\$1,250 to \$2,500 <b>\$1,500</b>	\$250 to \$1,250

<b>PENALTY MATRIX WORKSHEET</b>		
CITATION:	Failure to Have Class A/B Operator Perform Monthly Inspections	
VIOLATION NO.:	D	(8)

<b>TYPE</b>		
<u>      </u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>  <b>X</b>  </u> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE III</b> <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:** Respondents failed to have an ICC-certified RI Class A/B 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 with a registered, ICC-certified Class A/B operator would presumably reduce the likelihood of preventing or detecting a leak or release from the USTs.
- (B) **Environmental conditions:** The Facility is located in a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. The Facility is located in a GB groundwater classification zone, which are groundwater resources presumed to be unsuitable for drinking water use without treatment. There are no known drinking water supply wells proximate to the Facility. The Facility is located within 650 feet of the Woonasquatucket River and within its 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.
- (E) **Duration of the violation:** Approximately 2 ½ years - April 2014 through the present. The Facility was inspected in March 2014 by the DEM, and the inspection revealed that the Facility was in compliance at that time.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the non-compliance by having a registered, ICC-certified Class A/B operator perform monthly inspections of the Facility. GOLD STAR GAS, CORP stated that it complied with this rule in the letter received by the DEM on 8 April 2016; however, the DEM has not received written verification of compliance. The 12 January 2017 inspection revealed that the monthly inspections were still being performed by a person who is not an ICC-certified RI Class A/B operator.
- (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 Respondents for the failure to comply immediately with the requirements set forth in Rule 8.22(F) of the DEM's UST Regulations. As owners and operators of the Facility, Respondents 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.

<b>MAJOR</b>	<b>MODERATE</b>	<u>  X  </u> <b>MINOR</b>
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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	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	<b>MODERATE</b>	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250	\$1,250 to \$2,500 <b>\$1,500</b>	\$250 to \$1,250