

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Kearney Realty, LLC

FILE NO.: UST 2014-20-01488

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 21 March 2014 the DEM issued an informal written notice by certified mail to the Respondent for the violations. The notice required specific actions to address the violations. On 25 March 2014 the notice was delivered to the Respondent. The Respondent failed to respond to or comply with the notice.

C. Facts

- (1) The property is located at 5682 Post Road, Assessor’s Plat 4, Lot 67-1 in the town of Charlestown, Rhode Island (the “Property”). The Property includes a convenience store and a motor fuel filling station (the “Facility”).
- (2) The Respondent owns the Property.
- (3) The Respondent operates the Facility.
- (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. 01488.

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

UST ID No.	Date Installed	Capacity	Product Stored
001	1983	8000 gallons	Gasoline
002	1983	8000 gallons	Gasoline
003	1983	8000 gallons	Gasoline
004	1983	8000 gallons	Diesel Fuel
005	1983	2000 gallons	Kerosene

(7) On 19 March 2014 the DEM inspected the Facility. The inspection revealed the following:

- (a) Written verification that the Respondent had inspected the impressed current cathodic protection system for the USTs at least once every 60 days during the time period of May 2011 through February 2014 was not available.
- (b) The most recent 0.2-gallon per hour leak test performed by the *Veeder Root TLS 350* continuous monitoring system (“CMS”) on UST No. 005 on 19 March 2014 was “invalid” due to a “low level test error”. Written verification that a valid 0.2 gallon per hour leak test had been performed on this UST within the last 30 days was not available.
- (c) Written verification that the line leak detectors for UST Nos. 001, 002, 003 and 004 had been tested by a qualified person during the year 2012 was not available.
- (d) Written verification that the dispenser shear valves for UST Nos. 001, 002, 003 and 004 had been tested for functionality during the year 2012 was not available.
- (e) The “alarm” status indicator lamp on the CMS console was malfunctioning at the time of inspection.
- (f) Written verification that the CMS had been certified/tested by a qualified person during the year 2012 was not available.
- (g) Groundwater evaluation reports for each of the years 2011, 2012 and 2013 were not available.
- (h) Written verification that any of the Facility personnel on duty at the time of inspection had been trained as Class C UST facility operators was not available.

- (i) Written verification that the designated Class A or Class B UST Facility operator (Paul Fazio) had conducted monthly on-site UST Facility inspections during each of the months of August 2012 through February 2014 was not available.
 - (j) Upon information and belief, the Respondent removed UST No. 005 from service after taking possession of the Facility in July 2011; however, it failed to submit written notification of a compliant temporary closure to the DEM's Office of Waste Management. At the time of inspection, the CMS was indicating that there was 210 gallons of product in the tank and that the fuel level was "invalid".
- (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 Sections C (7)(a), (b), (e), and (g) through (j) 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(C)** – requiring the owner/operator to inspect impressed current cathodic protection systems at least once every 60 days.
- (2) **DEM's UST Regulations, Rule 8.08(C)(2)** – requiring the owner/operator to utilize ATGs to perform 0.2-gallon per hour leak tests at least once per month.
- (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(A)** – pertaining to maintenance of UST continuous monitoring systems.
- (6) **DEM's UST Regulations, Rule 8.15(F)** – requiring annual testing of UST continuous monitoring systems.
- (7) **DEM's UST Regulations, Rule 8.19(E)** – requiring annual groundwater evaluations at facilities that have groundwater monitoring wells installed.
- (8) **DEM's UST Regulations, Rule 8.22(A)** – requiring all regulated UST facility owners/operators to have trained Class C UST facility operators assigned to their facility.
- (9) **DEM's UST Regulations, Rule 8.22(F)** – requiring the Class A or Class B UST

facility operators to perform monthly inspections of their facilities.

- (10) **DEM's UST Regulations, Rule 13.03** – pertaining to temporary closure of USTs.

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 60 days of receipt of the NOV**:

- (1) The designated Class A/B UST Facility operator shall henceforth inspect the impressed current cathodic protection system for the USTs at least once every 60 days in accordance with Rules 8.07(C) and 8.22(F) of the DEM's UST Regulations and document the results of those inspections in accordance with Rules 8.07(D) and 11.02(A)(8) and 11.02(B)(4) of the DEM's UST Regulations. Written verification of compliance shall be submitted to the DEM's Office of Compliance and Inspection ("OC&I").
- (2) Repair or replace the alarm status indicator lamp on the CMS console in accordance with Rule 8.15(B) of the DEM's UST Regulations. Written verification of compliance shall be submitted to the OC&I.
- (3) Perform a groundwater evaluation in accordance with Rule 8.19(E) of the DEM's UST Regulations and submit a copy of the evaluation report to the OC&I.
- (4) The designated Class A/B UST Facility operator shall train all Facility employees 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. Written verification of compliance shall be submitted to the OC&I.
- (5) The designated Class A/B UST facility operator shall henceforth inspect the Facility on a monthly basis in accordance with Rule 8.22(F) of the DEM's UST Regulations and document the results of those inspections on the requisite form (enclosed) in accordance with Rule 11.02(B)(4) of the DEM's UST Regulations.
- (6) Place UST No. 005 into temporary closure in accordance with Rule 13.03 of the DEM's UST Regulations and submit a completed application for temporary closure (enclosed) to the DEM - Office of Waste Management. 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:

Seven Thousand Two Hundred and Fifty Dollars (\$7,250)

- (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 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:
- Richard M. Bianculli Jr., 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 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 Charlestown, 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) Richard Bianculli 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:

Kearney Realty, LLC
c/o John Stockwell Payne, Registered Agent
46 Granite Street
Westerly, RI 02891

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST COMPLIANCE

File No.: UST 2014-20-01488

Respondent: Kearney Realty, LLC

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 at least once every 60 days	Type II <i>(\$12,500 Max. Penalty)*</i>	Minor	\$1,250	1 violation	\$1,250
D (3), D (4) and D (6) – Failure to test the line leak detectors, shear valves and CMS	Type II <i>(\$12,500 Max. Penalty)*</i>	Moderate	\$1,500	1 violation	\$1,500
D (7) – Failure to perform groundwater evaluations	Type II <i>(\$12,500 Max. Penalty)*</i>	Minor	\$1,250	1 violation	\$1,250
D (8) and D (9) – Failure to assign trained Class C UST facility operators to the facility and have the Class A/B operator perform monthly inspections	Type II <i>(\$12,500 Max. Penalty)*</i>	Minor	\$2,000	1 violation	\$2,000
D (10) – Failure to place UST No. 005 into a compliant temporary closure	Type II <i>(\$12,500 Max. Penalty)*</i>	Minor	\$1,250	1 violation	\$1,250
SUB-TOTAL					\$7,250

*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.

A review of the record in this matter has revealed that the Respondent has either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.

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 = \$7,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to test the cathodic protection for the USTs at least once every 60 days
 VIOLATION NO.: D (1)

TYPE		
<u> </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> X TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: The Respondent failed to inspect the impressed current cathodic protection system for the USTs at least once every 60 days. This requirement is of significant importance to the regulatory program. The USTs are constructed of single-walled steel with an impressed current cathodic protection system. Inspection is required at 60 day intervals to read and record the rectifier current and voltage outputs and ensure that the system continues to operate continuously to provide adequate corrosion protection. Failure to perform such testing could result in corrosion of the tanks and a release of petroleum product to the subsurface.</p> <p>(B) Environmental conditions: The facility is located in a GA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment. The facility is located in a wellhead protection area for non-community, transient water supply wells and within 1,300 feet of a wellhead protection area for a community water supply well (Shady Harbor Fire District). Residences and businesses in the vicinity rely on private drinking water wells. The facility is located in the Southwest Coastal Waters watershed.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: The volatile nature of gasoline presents both a potential public health hazard (due to potential inhalation of benzene) and a potential public safety hazard (due to the potential for explosion). Gasoline, diesel fuel and kerosene are capable of causing significant soil and groundwater contamination if released to the environment. Benzene, a component of gasoline, is a known carcinogen.</p> <p>(E) Duration of the violation: 33 months – July 2011 through March 2014.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** The Respondent failed to prevent the non-compliance and failed to mitigate the noncompliance despite receiving an informal 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 its failure to comply with the requirements set forth in Rule 8.07(C) 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 inspection of rectifiers for impressed current cathodic protection systems.
- (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

PENALTY MATRIX WORKSHEET

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

VIOLATION NOS.: D (3), D (4) and 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 have the line leak detectors, shear valves and CMS tested by a qualified person during the year 2012. Line leak detectors, shear valves and continuous monitoring systems are important, required 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 GA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment. The facility is located in a wellhead protection area for non-community, transient water supply wells and within 1,300 feet of a wellhead protection area for a community water supply well (Shady Harbor Fire District). Residences and businesses in the vicinity rely on private drinking water wells. The facility is located in the Southwest Coastal Waters 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, diesel fuel and kerosene are capable of causing significant soil and groundwater contamination if released to the environment. Benzene, a component of gasoline, is a known carcinogen.
- (E) **Duration of the violation:** 1 year – calendar year 2012.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to prevent the non-compliance. The Respondent had all of these devices tested in 2013 and reported 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 the Respondent 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 owner and operator of the facility, the Respondent had full control over the occurrence of the violations. The annual line leak detector, shear valve and 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	MODERATE	<u> X </u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500 \$1,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to perform annual groundwater evaluations

VIOLATION NO.: D (7)

TYPE		
<u> </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> X 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 perform annual groundwater evaluations during each of the years 2011, 2012 and 2013. Owners/operators of facilities that have groundwater monitoring wells installed are required to bail the wells at least once per year and evaluate the water for visual and olfactory evidence of free product. Failure to perform these evaluations would presumably reduce the likelihood of detecting a leak or release from the UST systems.
- (B) **Environmental conditions:** The facility is located in a GA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment. The facility is located in a wellhead protection area for non-community, transient water supply wells and within 1,300 feet of a wellhead protection area for a community water supply well (Shady Harbor Fire District). Residences and businesses in the vicinity rely on private drinking water wells. The facility is located in the Southwest Coastal Waters 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, diesel fuel and kerosene are capable of causing significant soil and groundwater contamination if released to the environment. Benzene, a component of gasoline, is a known carcinogen.
- (E) **Duration of the violation:** 3 years – calendar years 2011, 2012 and 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 noncompliance:** The Respondent failed to prevent the non-compliance and failed to mitigate the noncompliance despite receiving an informal 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 8.19(E) 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 groundwater evaluation requirements are clearly established in the DEM's UST Regulations.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	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

PENALTY MATRIX WORKSHEET

CITATION: Failure to assign trained Class C UST facility operators to the facility and have the Class A/B operator perform monthly inspections
 VIOLATION NOS.: D (8) and D (9)

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		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<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: The Respondent failed to assign trained Class C UST facility operators to the facility and have the Class A/B UST facility operator perform monthly on-site UST facility inspections and document the results of those inspections on the requisite form. Rule 8.22 of the DEM's UST Regulations requires all owners/operators of regulated UST facilities to have trained Class C UST facility operators assigned to their facilities and to compile a list of all of the Class C UST facility operators assigned to their facilities. 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. Rule 8.22 prohibits the operation of regulated UST facilities in the absence of trained and/or certified UST facility operators. The monthly inspections are an important component of the operator training requirements implemented in August 2012 and they are designed to ensure that the facility is being operated in compliance with the DEM's UST Regulations.</p> <p>(B) Environmental conditions: The facility is located in a GA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment. The facility is located in a wellhead protection area for non-community, transient water supply wells and within 1,300 feet of a wellhead protection area for a community water supply well (Shady Harbor Fire District). Residences and businesses in the vicinity rely on private drinking water wells. The facility is located in the Southwest Coastal Waters watershed.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: The volatile nature of gasoline presents both a potential public health hazard (due to potential inhalation of benzene) and a potential public safety hazard (due to the potential for explosion). Gasoline, diesel fuel and kerosene are capable of causing significant soil and groundwater contamination if released to the environment. Benzene, a component of gasoline, is a known carcinogen.</p> <p>(E) Duration of the violation: 20 months – August 2012 through March 2014.</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:** The Respondent failed to prevent the non-compliance and failed to mitigate the noncompliance despite receiving an informal 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	MODERATE	<u> X </u> MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500 \$2,000	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to place UST No. 005 into a compliant temporary closure
 VIOLATION NO.: D (10)

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		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<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: The Respondent failed to place UST No. 005 into a compliant temporary closure and notify the DEM of the temporary closure when it was removed from service in calendar year 2011. The temporary closure requirements are of significant importance to the regulatory program.</p> <p>(B) Environmental conditions: The facility is located in a GA groundwater classification zone, which are groundwater resources presumed to be suitable for drinking water use without treatment. The facility is located in a wellhead protection area for non-community, transient water supply wells and within 1,300 feet of a wellhead protection area for a community water supply well (Shady Harbor Fire District). Residences and businesses in the vicinity rely on private drinking water wells. The facility is located in the Southwest Coastal Waters watershed.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Kerosene is capable of causing significant soil and groundwater contamination if released to the environment.</p> <p>(E) Duration of the violation: Full duration unknown – at least 2 ½ years. Upon information and belief, UST No. 005 was removed from regular operation at some point during calendar year 2011.</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:** The Respondent failed to prevent the non-compliance and failed to mitigate the noncompliance despite receiving an informal 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 13.03 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 temporary closure requirements are clearly established in the DEM's UST Regulations.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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