

**STATE OF CONNECTICUT  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**



**OFFICE OF ADJUDICATIONS**

**IN THE MATTER OF** : **UNDERGROUND STORAGE  
TANK ENFORCEMENT**

**GAS MAN** : **DECEMBER 22, 2010**  
**Facility ID No. 83-1440**

**FINAL DECISION**

**JURISDICTION**

Subdivision (2) of §22a-449(g) provides:

“Not later than two business days after placing a notice or disabling device on a nonresidential underground storage tank system pursuant to subdivision (1) of this subsection, the commissioner shall provide the owner or operator of the affected underground storage tank system with an opportunity for a hearing. Any such hearing shall be limited to whether the violation upon which the commissioner took action under subdivision (1) of this subsection occurred and whether such violation is continuing.”

**FINDINGS OF FACT**

1. This hearing was held on December 22, 2010 in the Russell Room, 79 Elm Street in Hartford. The following persons were present: Mohammad Malik, for Gas Man, Site ID # 83-1440 (facility); and Lori Saliby, Philip Wilde, and Omar Tyson (staff) for the Department of Environmental Protection (DEP) Storage Tank Enforcement Unit. DEP offered four exhibits: the Notice of Disabled UST Systems (DEP-1), the UST Compliance Inspection Checklist (DEP-2), a Notice of Disabled UST Systems dated August 5, 2008 (DEP-3), and a letter from Sheri Hardman, LEP to Lori Saliby dated September 28, 2009 re: Site 83-1440 (DEP-4). These documents are all admitted into evidence.


2. The Department disabled (“red tagged”) the underground fuel storage tanks and associated dispensers at the facility on August 5, 2008. The red tags issued at this time were never administratively removed by the DEP after a determination of

compliance and they remain in effect. These original tags were physically removed in order to permit testing and site upgrades intended to bring the site into compliance. The facility is not permitted to dispense fuel because the original tags are still in effect. (Exs. DEP-3 and 4; test. 12/22/10, L. Saliby).<sup>1</sup>

3. The DEP conducted an unannounced compliance inspection on December 20, 2010 during which it noted that the facility lacked an overfill device. (Ex. DEP-2; test. 12/22/10, O. Tyson). The respondent does not contest that these violations occurred and that it was out of compliance with relevant regulations (Regs., Conn. State Agencies §§22a-449(d)-1; 22a-449(d)-101 through 22a-449(d)-113). The respondent reports and the DEP acknowledged that a compliant overfill device may have been installed at the facility on December 21, 2010. The DEP has not confirmed the installation of this device through a field inspection. (Exs. DEP-1 and 2; test. 12/22/10, M. Malik, L. Saliby and O. Tyson).

### ***CONCLUSION***

There was probable cause to support and sustain the enforcement action taken on December 20, 2010 by the DEP with regard to the tanks at the facility. After confirmation by the DEP through a field inspection, red tags numbered 265, 157, 264, 271, 158, 166, and 262 should be removed if the required overfill device was installed and is compliant with applicable regulations. Any such removal of the red tags issued on December 20, 2010 as a result of staff's inspection of the recently installed overfill device will not impact the effectiveness of the red tags originally issued to the facility on August 5, 2008.

  
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Kenneth M. Collette, Hearing Officer

<sup>1</sup> All references to testimony are from the hearing held on December 22, 2010 at DEP Headquarters in Hartford. The recording of this hearing is on file with the Office of Adjudications and is the official record of this proceeding.

APPENDIX A

Service List

**FINAL DECISION**  
***In the Matter of Gas Man***

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PARTY

Gas Man  
28 Broad Street  
Middletown, CT 06492

REPRESENTED BY

Mohammad Malik, Owner

Department of Environmental Protection

UST Enforcement  
79 Elm Street  
Hartford, CT 06106

Lori Saliby  
Omar Tyson  
Philip Wilde