

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF COMPLIANCE & INSPECTION**

IN RE: Cote's Auto Body, Inc

FILE NO.: OCI-HW-15-81

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") have violated certain statutes and/or administrative regulations under the DEM's jurisdiction.

B. Facts

- (1) The property is located at 716 Saint Paul Street in the town of North Smithfield (the "Property"). The Property includes a facility that is engaged in automobile body repair (the "Facility").
- (2) Respondent operates the Facility.
- (3) Respondent is registered with the DEM as a small quantity hazardous waste generator at the Facility pursuant to the DEM's *Rules and Regulations for Hazardous Waste Management* (the "Hazardous Waste Regulations") and pursuant to Title 40 of the Code of Federal Regulations ("40 CFR") under the name of "Cote's Auto Body, Inc" with the U. S. Environmental Protection Agency ("EPA") identification number RI5000010181.
- (4) On 15 July 2015, the DEM inspected the Facility. The inspection revealed the following:
 - (a) One pint container and one half-pint container holding paint waste (the "Containers") deposited in the solid waste dumpster located in the Facility parking lot (the "Dumpster");
 - (b) One quart satellite container located in the Paint Mix Room that held hazardous waste in the form of liquid waste paint that was full and not labeled; and
 - (c) One fire extinguisher located in the Main Auto Repair area that was last inspected in October 2013.

- (5) The DEM inspector spoke with Mike Cote, who identified himself as the owner of the company, at the time of the inspection. Mr. Cote provided the following information:
 - (a) No waste determination had been made for the spent paint thinner and the excess paint generated at the Facility;
 - (b) No hazardous waste generated at the Facility has been shipped offsite to a licensed disposal facility. Spent paint thinner and excess paint is air dried and discarded in the Dumpster;
 - (c) Universal waste in the form of expired fluorescent light bulbs are routinely disposed in the Dumpster; and
 - (d) No hazardous waste manifests, authorized signers list or contingency plan had been generated or submitted to the DEM.
- (6) On 16 July 2015, the DEM collected samples from the Containers and analyzed the samples for flash point and volatile organic compounds ("VOCs"). The analytical results revealed that one of the Containers held both characteristic and listed hazardous waste.
- (7) On 18 August 2015, Respondent submitted a contingency plan and an authorized signers list in accordance with the DEM's Hazardous Waste Regulations.
- (8) The DEM has not issued a permit authorizing the treatment or disposal of hazardous waste at the Facility.

C. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) **R.I. Gen. Laws Section 23-19.1-10 and DEM's Hazardous Waste Regulations 7.0(B) (1) and 40 CFR 270.1(b)** – requiring a person to obtain a permit from the DEM prior to treating or disposing of hazardous waste.
- (2) **DEM's Hazardous Waste Regulations 5.3 and 40 CFR 262.11** – requiring that a hazardous waste generator determine if the waste generated onsite meets the definition of a hazardous waste.
- (3) **DEM's Hazardous Waste Regulations 5.4C and 40 CFR 262.34(c)(1)(ii)** – requiring that a hazardous waste generator label all satellite accumulation containers holding hazardous waste with the words "Hazardous Waste" and other words identifying the contents of the container.

- (4) **DEM's Hazardous Waste Regulations 5.14I** – prohibiting a hazardous waste generator from sending hazardous waste from the property where it is generated on-site, without preparing a manifest to accompany the waste.
- (5) **DEM's Hazardous Waste Regulation 5.14H** – requiring that a hazardous waste generator prepare and maintain a contingency plan designed to minimize hazards to human health or the environment from fires, explosions or unplanned releases of hazardous waste or constituents to the air, soil or surface water.
- (6) **DEM's Hazardous Waste Regulations 5.2A, 40 CFR 262.34(a)(4) and 40 CFR 265.33** – requiring that a hazardous waste generator test and maintain all fire protection equipment to assure its proper operation in time of an emergency.
- (7) **DEM's Hazardous Waste Regulation 5.7** – requiring that a hazardous waste generator submit to the DEM a list of agents authorized by the company to sign uniform hazardous waste manifests for shipments of hazardous waste.

D. 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 **IMMEDIATELY upon receipt of the NOV and thereafter**, manage all hazardous waste generated at the Facility in accordance with the DEM's Hazardous Waste Regulations, including but not limited to:

- (1) Complete waste determinations for all waste generated to determine if the wastes are hazardous;
- (2) Complete hazardous waste manifests for all hazardous waste shipped offsite and ship all hazardous waste generated at the Facility to a licensed treatment, storage and disposal facility;
- (3) Label all satellite accumulation containers holding hazardous waste with the words "Hazardous Waste" and other words identifying the contents of the container; and
- (4) Ensure all fire protection equipment is maintained.

E. 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:

\$23,016

- (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 Director 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 - Environmental Response Fund," 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 Respondent 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.

F. 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 Paragraphs B through E 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, 4TH Floor
Providence, RI 02903
 - (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
 - (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Rule 7.00(b) of the DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters*.

- (2) A copy of each request for hearing must also be forwarded to:

Joseph J. LoBianco, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767

- (4) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (5) 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).
- (6) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
- (7) The 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'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 F 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:

Cote's Auto Body, Inc.
c/o Kenneth J. Perrone, Registered Agent
43 Broad Street, 3RD Floor
Westerly, RI 02891

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, HAZARDOUS WASTE

File No.: OCI-HW-15-81

Respondent: Cote's Auto Body, Inc.

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	
C (1) and (4) – Unauthorized Treatment/Disposal of Hazardous Waste and Shipping Hazardous Waste without a Manifest	Type I <i>(\$25,000 Max. Penalty)*</i>	Major	\$12,500	1 violation (Unauthorized Treatment/ Disposal)	\$12,500
		Moderate	\$2,500	1 violation (Shipping without Manifest)	\$2,500
C (2) – Determination	Type I <i>(\$25,000 Max. Penalty)*</i>	Minor	\$2,500	1 violation	\$2,500
C (3) – Satellite Container Labeling	Type I <i>(\$25,000 Max. Penalty)*</i>	Minor	\$2,500	1 violation	\$2,500
C (5) and (6) – Contingency Plan and Fire Extinguisher	Type II <i>(\$25,000 Max. Penalty)*</i>	Minor	\$1,250	1 violation (Contingency Plan)	\$1,250
		Minor	\$1,250	1 violation (Fire Extinguisher)	\$1,250
SUB-TOTAL					\$22,500

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

ECONOMIC BENEFIT FROM NONCOMPLIANCE

COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT ARE IN COMPLIANCE. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:

- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR
- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.

<i>DESCRIPTION OF BENEFIT</i>	<i>CALCULATION</i>	AMOUNT
<p>Economic benefit of noncompliance identified by DEM for disposing of hazardous waste at an unlicensed facility, for failing to engage a licensed transporter to remove hazardous waste from the facility and for failing to develop a contingency plan.</p> <p>The one-time non-depreciable expenses associated with the failure to dispose of the wastes at a licensed facility was estimated based on the minimum of one quart container of paint waste. The expenses associated with the disposal were obtained by contacting local vendors. The expenses associated with the development of a contingency plan were derived from the EPA "Estimating Costs for the Economic Benefits of RCRA Noncompliance", updated December 1997.</p> <p>The economic benefit gained was calculated by utilizing an EPA computer model entitled "BEN" which performs a detailed economic analysis. The dates, dollar amounts and values used in this analysis are as listed in this table.</p>	<ul style="list-style-type: none"> • Profit Status C-Corporation • Filing Status C-Corporation • Initial Capital Investment \$0 • One-time Non-depreciable Expense \$410 • Annual Expense \$0 • First Month of Non-Compliance July 2000 • Compliance Date January 2016 • Penalty Due Date January, 2016 • Useful Life of Pollution Control N/A • Equipment Annual Inflation Rate N/A • Discount/Compound Rate 8.6% 	\$516
<i>SUB-TOTAL</i>		\$516

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$23,016

PENALTY MATRIX WORKSHEET

CITATION: Unauthorized Treatment/Disposal of Hazardous Waste and Shipping Hazardous Waste without a Manifest

VIOLATION NO.: C (1) and (4)

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

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:** Respondent treated and disposed of hazardous waste (in the form of automotive waste paint). State and Federal regulations require generators to ensure that hazardous waste is properly disposed of at a licensed facility. This requirement is the core element of the regulatory program because a licensed facility has protocols and specialized equipment for the safe treatment and disposal of hazardous waste. Disposal of hazardous waste at an unlicensed facility may result in contamination released to the environment.
- (B) **Environmental conditions:** Liquid waste paint was allowed to dry and then the containers were disposed outside in a solid waste dumpster in the parking lot at the Facility.
- (C) **Amount of the pollutant:** One pint container and one half pint container holding paint waste were removed from the solid waste dumpster.
- (D) **Toxicity or nature of the pollutant:** The containers of paint waste removed from the solid waste dumpster were analyzed. The analysis from the laboratory revealed that the pint container of paint waste was determined to be both a characteristic and a listed hazardous waste. Auto body paint related wastes typically contain federally listed non-halogenated solvents including, but not limited to, xylene, acetone, methyl isobutyl ketone, toluene, methyl ethyl ketone, and isobutanol. Paint waste may also be identified as a characteristic hazardous waste based on flammability and toxicity.
- (E) **Duration of the violation:** Full duration unknown - approximately 15 years. Review of the DEM's records revealed that Respondent did not ship any hazardous waste under a hazardous waste manifest to a licensed treatment, storage and disposal facility from the time Respondent began operating the Facility.
- (F) **Areal extent of the violation:** Considered, but not utilized in this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the violation by properly disposing of hazardous waste.
- (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 in 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:** Respondent had complete control over the occurrence of the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized in this calculation.

<u> </u> MAJOR	<u> </u> MODERATE	<u> </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 \$12,500 (Unauthorized Treatment/Disposal)	\$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 \$2,500 (Shipping without Manifest)	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Determination

VIOLATION NO.: C (2)

TYPE		
<p style="text-align: center;"><u>X</u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">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'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: Respondent failed to complete a waste determination on paint waste prior to disposing of it in a solid waste dumpster. State and Federal regulations require generators of waste to determine if the waste meets the definition of a hazardous waste. The failure to properly characterize waste may result in the mismanagement of hazardous waste and in this case led to the improper disposal of hazardous waste.</p> <p>(B) Environmental conditions: Liquid waste paint was allowed to dry and the subject containers were disposed outside in a solid waste dumpster in the parking lot at the Facility.</p> <p>(C) Amount of the pollutant: One pint container and one half pint container holding paint waste were removed from the solid waste dumpster.</p> <p>(D) Toxicity or nature of the pollutant: The containers of paint waste removed from the solid waste dumpster were analyzed. The analysis from the laboratory revealed that the pint container of paint waste was determined to be both a characteristic and a listed hazardous waste. Auto body paint related wastes typically contain federally listed non-halogenated solvents including, but not limited to, xylene, acetone, methyl isobutyl ketone, toluene, methyl ethyl ketone, and isobutanol. Paint waste may also be identified as a characteristic hazardous waste based on flammability and toxicity.</p> <p>(E) Duration of the violation: Full duration unknown. Respondent has operated the facility for approximately 15 years. During that time, no records were provided indicating that waste generated at the Facility was properly determined to be hazardous waste.</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 noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the violation by completing a waste determination prior to disposing of hazardous waste in a solid waste dumpster.
- (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:** Respondent had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (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 \$2,500	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Satellite Container Labeling
 VIOLATION NO.: C (3)

TYPE		
<p style="text-align: center;"><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> </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>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: Respondent failed to label a satellite accumulation container holding hazardous waste (paint waste). The requirement to label containers holding hazardous waste is an integral part of the regulatory program because this requirement reduces the potential for mismanagement of hazardous waste. Proper labeling of hazardous waste containers provides important information regarding the chemical properties of the waste for emergency responders who may be called to a facility during a fire, spill or release. The DEM's regulations require generators to keep all containers holding hazardous waste closed.</p> <p>(B) Environmental conditions: Considered, but not utilized in this calculation.</p> <p>(C) Amount of the pollutant: One full satellite container holding approximately 1 quart of hazardous waste (paint waste).</p> <p>(D) Toxicity or nature of the pollutant: Auto body paint related wastes typically contain federally listed non-halogenated solvents including, but not limited to, xylene, acetone, methyl isobutyl ketone, toluene, methyl ethyl ketone, and isobutanol. Paint waste may also be identified as a characteristic hazardous waste based on flammability and toxicity.</p> <p>(E) Duration of the violation: Unknown.</p> <p>(F) Areal extent of the violation: Considered, but not utilized in this calculation.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance. Respondent has not notified the DEM that it has complied with this regulation.
- (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 in 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:** Respondent had complete control over the occurrence of the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized in this calculation.

<u> </u> MAJOR	<u> </u> 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 \$2,500	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Contingency Plan and Fire Extinguisher
 VIOLATION NO.: C (5) and (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:** Respondent failed to develop and maintain a hazardous waste contingency plan for the Facility. State and Federal regulations require small quantity generators to develop a contingency plan or designate an emergency response coordinator and to post contact numbers near all phones in the hazardous waste storage areas. A contingency plan reduces the potential for injury of employees working at the facility and/or response personnel that may be called upon for assistance during a fire, spill or release incident at the facility. Respondent also failed to ensure that a fire extinguisher at the Facility was inspected on an annual basis. Generators of hazardous waste must equip their facilities with fire control equipment of adequate type and volume to enable emergency personnel to respond to an incident at the facility. State regulations require that fire protection equipment be tested and maintained as required by the generator to ensure its proper operation at the time of emergency.
- (B) **Environmental conditions:** Considered, but not used for this calculation.
- (C) **Amount of the pollutant:** Considered, but not used for this calculation.
- (D) **Toxicity or nature of the pollutant:** Auto body paint related wastes typically contain federally listed non-halogenated solvents including, but not limited to, xylene, acetone, methyl isobutyl ketone, toluene, methyl ethyl ketone, isobutanol. Paint waste may also be identified as a characteristic hazardous waste based on flammability and toxicity. Used oil is known to cause soil contamination when released to the environment and may contain constituents that are suspected human carcinogens.
- (E) **Duration of the violation:** Respondent has operated the Facility without a contingency plan for approximately 15 years. Respondent last had the fire extinguisher certified in October 2013.
- (F) **Areal extent of the violation:** Considered, but not used for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance. To mitigate the noncompliance, Respondent submitted a completed contingency plan on August 18, 2015. Respondent has not notified the DEM that it has had the fire extinguisher inspected.
- (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 used 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:** Respondent had complete control over the occurrence of the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not used 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