

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Kenneth A. Rocha d/b/a
 Ken Rocha Auto Body, Inc.**

FILE NO.: OCI-HW-16-31

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. Facts

- (1) The property is located at 770 Potters Avenue in the city of Providence (the "Property").
- (2) Ferranti Collision Center LLC ("Ferranti Collision") currently operates an auto body business on the Property (the "Current Facility").
- (3) Ken Rocha Auto Body, Inc. ("Rocha Auto Body") previously operated an auto body repair business on the Property (the "Former Facility").
- (4) Rocha Auto Body was 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 "Rocha Ken Auto Body, Inc." with the U.S. Environmental Protection Agency ("EPA") identification number RID987475761.
- (5) On 22 September 1999, the Rhode Island Secretary of State revoked the Certificate of Registration/Organization for Rocha Auto Body. Kenneth A. Rocha is the last known president of the corporation.

- (6) On 3 February 2016, the DEM inspected the Property (the "February 3rd Inspection"). The inspection revealed the following:
 - (a) Eight 55-gallon containers, one 30-gallon container, twenty one 5-gallon containers, one 1-quart container and one 1-pint container, all located in a storage yard (collectively, the "Containers");
 - (b) Each of the Containers was holding liquid or other material;
 - (c) The Containers were not labeled or marked with an accumulation date; and
 - (d) 3 of the Containers were open (one 55-gallon, one 30-gallon and one 5-gallon).
- (7) During the February 3rd Inspection, the owner of Ferranti Collision, Anthony Ferranti, stated that the Containers were not from his business and were left by Rocha Auto Body.
- (8) On 17 February 2016, the DEM inspected the Property (the "February 17th Inspection") and collected samples of liquid from 8 of the Containers (four of the 55-gallon containers and four of the 5-gallon containers (the "Sampled Containers"). The inspection also revealed the following:
 - (a) None of the Containers were labeled or marked with an accumulation date;
 - (b) Some of the Containers were marked with product labels indicating that they once held "lacquer thinner";
 - (c) The Containers were stored outdoors in 2 areas with less than 3 feet of space between rows; and
 - (d) 1 of the Sampled Containers (a 55-gallon container) had an odor similar to gasoline (the "Gasoline Container"), and the other 7 Sampled Containers had an odor similar to lacquer thinner (the "Other Containers").
- (9) During the February 17th Inspection, the DEM was provided with the following information:
 - (a) Mr. Ferranti stated that the Containers were present when his business commenced operations in January 2014;
 - (b) Kenneth A. Rocha stated that he had called a transporter, Safety Kleen, in the Fall 2015 and requested that the Containers be removed from the Property and that he was waiting for Safety Kleen to get back to him;

- (c) Kyle Rocha, who identified himself as the contact for the Property, stated that he is working with Jeffrey Branco at Safety Kleen to remove the Containers; and
 - (d) Kyle Rocha would not answer the DEM inspector's questions whether the Containers were left on the Property by Rocha Auto Body and if the Containers were stored at the Property for 2 years since Ferranti Collision began operating its business.
- (10) On 29 February 2016, the DEM received a report of the analytical results of the samples collected during the February 17th Inspection. The DEM's review of the report revealed that:
- (a) Each of the Sampled Containers held liquid that met the definition of hazardous waste based on the characteristic of ignitability;
 - (b) The liquid in the Gasoline Container also met the definition of hazardous waste based on the characteristic of toxicity for benzene; and
 - (c) The liquid in 6 of the Other Containers also met the definition of listed hazardous waste for solvents.
- (11) On 14 March 2016, the DEM received electronic correspondence from Mr. Branco that included manifests that were prepared by Safety Kleen of the hazardous waste that was removed from the Property. The review of the manifests revealed that 5 drums of hazardous waste, in the form of paint related waste, were removed from the Property.
- (12) Mr. Branco stated that Safety Kleen did not remove any gasoline because the Respondent decided to use the gasoline for his trucks.
- (13) On 2 August 2016, the DEM inspected the Property. The inspection revealed that none of the Containers were present.
- (14) The Respondent did not receive a permit from the DEM to store hazardous waste onsite for greater than 180 days.

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, DEM's Hazardous Waste Regulations 7B2 and 5.14A and 40 CFR 270.1(b)** – requiring a small quantity hazardous waste generator to obtain a permit from the DEM prior to storing hazardous waste for greater than 180 days.

- (2) **DEM's Hazardous Waste Regulation 5.14D.1** – requiring that a hazardous waste generator label each container, excluding satellite accumulation containers, holding hazardous waste with the words “Hazardous Waste”, the chemical or common name of the waste, the name, address, and the EPA identification number of the generating facility.
- (3) **DEM's Hazardous Waste Regulation 5.14B.1** – requiring that a hazardous waste generator mark containers holding hazardous waste with the date upon which the waste first began to accumulate.
- (4) **DEM's Hazardous Waste Regulation 5.14B.2** – requiring that a hazardous waste generator keep containers holding hazardous waste closed except when adding or removing waste.
- (5) **DEM's Hazardous Waste Regulation 5.10** - requiring that a hazardous waste generator maintain adequate aisle space of no less than 3 feet between rows in the facility to allow for the unobstructed movement of personnel, fire protection equipment, spill control equipment and decontamination equipment.

D. 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:

\$34,870

- (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 Notice of Violation (“NOV”). Payment shall be in the form of a certified check, cashiers 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 the 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.

E. 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 D 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, 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:

Tricia Quest, 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.

- (5) 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 42-71.1-2(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) 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 E above.

FOR THE DIRECTOR

By: _____
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:

Kenneth A. Rocha
d/b/a Ken Rocha Auto Body, Inc.
25 East Hill Drive
Cranston, RI 02920-3707

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, HAZARDOUS WASTE

File No.: OCI-HW-16-31

Respondent: Kenneth A. Rocha d/b/a Ken Rocha 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) – Hazardous Waste Storage Over 180 days	Type I (\$25,000 Max. Penalty)*	Major	\$12,500	1 violation	\$12,500
C (2) & (3) – Container Labeling and Accumulation Date	Type I (\$25,000 Max. Penalty)*	Moderate	\$6,250	2 violations	\$12,500
C (4) – Open Containers	Type I (\$25,000 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500
C (5) – Aisle Space	Type II (\$12,500 Max. Penalty)*	Moderate	\$6,250	1 violation	\$6,250
SUB-TOTAL					\$33,750

*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 the DEM for storing hazardous waste for greater than 180 days.</p> <p>The one-time non-depreciable expense associated with the failure to dispose of the wastes at a licensed facility was obtained from the Respondent's contractor.</p> <p>The economic benefit was calculated by utilizing 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>	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">• Profit Status</td> <td>C-Corporation</td> </tr> <tr> <td>• Filing Status</td> <td>C-Corporation</td> </tr> <tr> <td>• Initial Capital Investment</td> <td>\$0</td> </tr> <tr> <td>• One-time Non-depreciable Expense</td> <td>\$3,381</td> </tr> <tr> <td>• Annual Expense</td> <td>\$0</td> </tr> <tr> <td>• First Month of Non-Compliance</td> <td>June 1, 2014</td> </tr> <tr> <td>• Compliance Date</td> <td>March 12, 2016</td> </tr> <tr> <td>• Penalty Due Date</td> <td>October 31, 2016</td> </tr> <tr> <td>• Useful Life of Pollution Control</td> <td>N/A</td> </tr> <tr> <td>• Equipment Annual Inflation Rate</td> <td>N/A</td> </tr> <tr> <td>• Discount/Compound Rate</td> <td>N/A</td> </tr> </table>	• Profit Status	C-Corporation	• Filing Status	C-Corporation	• Initial Capital Investment	\$0	• One-time Non-depreciable Expense	\$3,381	• Annual Expense	\$0	• First Month of Non-Compliance	June 1, 2014	• Compliance Date	March 12, 2016	• Penalty Due Date	October 31, 2016	• Useful Life of Pollution Control	N/A	• Equipment Annual Inflation Rate	N/A	• Discount/Compound Rate	N/A	\$171
• Profit Status	C-Corporation																							
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• Useful Life of Pollution Control	N/A																							
• Equipment Annual Inflation Rate	N/A																							
• Discount/Compound Rate	N/A																							
<i>SUB-TOTAL</i>		\$171																						

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.

DESCRIPTION OF COST	CALCULATION OF ACTUAL COST INCURRED	AMOUNT
Flashpoint Analysis EPA Method D-93	8 samples @ \$28 per sample	\$224
Volatile Organic Analysis (VOA) EPA Method 8260	8 samples @ \$75 per sample	\$600
TCLP VOA EPA Method 1311/8260	1 sample @ \$125 per sample	\$125
<i>SUB-TOTAL</i>		\$949

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$34,870

PENALTY MATRIX WORKSHEET

CITATION: Hazardous Waste Storage Over 180 Days
 VIOLATION NO.: C (1)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </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.		
<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 stored hazardous waste onsite for over 180 days without first obtaining a permit. The DEM's regulations authorize small quantity generators to store hazardous onsite for less than 180 days without obtaining a permit. The requirement to obtain a permit is a core element of the regulatory program because a licensed facility has protocols and specialized equipment for the safe long term storage, treatment and disposal of hazardous waste.</p> <p>(B) Environmental conditions: The containers of waste were stored outdoors in an area that was exposed to the precipitation and temperature fluctuations.</p> <p>(C) Amount of the pollutant: Eight 55-gallon containers, one 30-gallon container, twenty 5-gallon containers, one quart container and one pint container.</p> <p>(D) Toxicity or nature of the pollutant: The containers held ignitable and toxic hazardous wastes which had an average flashpoint of 73°F. The containers also held federally listed solvents including, but not limited to, acetone, ethylbenzene, methylene chloride, toluene, xylene and benzene. Benzene is a known human carcinogen.</p> <p>(E) Duration of the violation: About 2 years. The current operator began in January 2014 and stated the containers were left by the Respondent. The containers were removed in March 2016.</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 take reasonable steps to prevent the noncompliance by shipping the hazardous waste to a licensed disposal facility. To mitigate the noncompliance, on 12 March 2016, the Respondent shipped 5 containers holding hazardous waste to a licensed facility.
- (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:** On 3 February 1994, the DEM issued a letter of deficiency to the Respondent for storing hazardous waste onsite for greater than 90 days.
- (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:** The 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:** The Respondent submitted a Compliance Certification Checklist to the DEM on 10 November 2011 for this facility certifying that the company properly managed its hazardous waste and shipped it to a properly licensed facility.

<u>X</u> MAJOR	MODERATE	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	\$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	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Container Labeling and Accumulation Date
 VIOLATION NO.: C (2) & (3)

TYPE		
<u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </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 label 180 day containers holding hazardous waste. The DEM's regulations require generators to label containers holding hazardous waste. The requirement to label containers is an integral part of the regulatory program because it reduces the potential for mismanagement of hazardous waste. Proper labeling 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 Respondent also failed to mark 180 day containers with the date upon which the waste first began to accumulate. The accumulation start date enables generators and regulatory authorities to track the amount of time hazardous waste is stored at a facility. This requirement is of significant concern to the regulatory program because it helps ensure that hazardous waste is not stored onsite for extended periods of time. Storage for greater than 180 days requires small generator generators to obtain a hazardous waste storage permit.
- (B) **Environmental conditions:** The containers of waste were stored outdoors in an area that was exposed to the precipitation and temperature fluctuations.
- (C) **Amount of the pollutant:** Eight 55-gallon containers, one 30-gallon container, twenty 5-gallon containers, one quart container and one pint container.
- (D) **Toxicity or nature of the pollutant:** The containers held ignitable and toxic hazardous wastes which had an average flashpoint of 73°F. The containers also held federally listed solvents including, but not limited to, acetone, ethylbenzene, methylene chloride, toluene, xylene and benzene. Benzene is a known human carcinogen.
- (E) **Duration of the violation:** About 2 years. The current operator began in January 2014 and stated the containers were left by the Respondent. The containers were removed in March 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:** The Respondent failed to take reasonable and appropriate steps to prevent the violation by completely labeling and dating the containers holding hazardous waste. To mitigate the noncompliance, on 12 March 2016, the Respondent shipped 5 containers holding hazardous waste to a licensed facility.
- (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:** The 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:** The Respondent submitted a Compliance Certification Checklist to the DEM on 11 November 2011 for this facility certifying that the company properly labeled and dated its containers while in storage.

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

PENALTY MATRIX WORKSHEET

CITATION: Open Containers
 VIOLATION NO.: C (4)

TYPE		
<u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </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 close 3 containers holding hazardous waste in the form of paint related wastes. The DEM's regulations require generators to keep all containers holding hazardous waste closed. The requirement to keep containers holding waste closed is designed to prevent spills and releases of hazardous waste from resulting in harm to human health and the environment.
- (B) **Environmental conditions:** The containers of waste were stored outdoors in an area that was exposed to the precipitation and temperature fluctuations.
- (C) **Amount of the pollutant:** One 55-gallon container, one 30-gallon container and one 5-gallon container.
- (D) **Toxicity or nature of the pollutant:** The containers held ignitable and toxic hazardous wastes which had an average flashpoint of 73°F. The containers also held federally listed solvents including, but not limited to, acetone, ethylbenzene, methylene chloride, toluene, and xylene.
- (E) **Duration of the violation:** Full duration unknown - at least 2 weeks. The DEM inspector observed the containers open at the initial inspection on 3 February 2016. The containers were still open at the inspection on 17 February 2016.
- (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:** The Respondents failed to take reasonable and appropriate steps to prevent the noncompliance by keeping the containers closed. To mitigate the noncompliance, on 12 March 2016, the Respondent shipped 5 containers holding hazardous waste to a licensed facility.
- (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:** The 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:** The Respondent submitted a Compliance Certification Checklist to the DEM on 11 November 2011 for this facility certifying that the company keeps containers of waste closed while in storage.

<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: Aisle Space

VIOLATION NO.: C (5)

TYPE		
<u> </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> X </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<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 store containers holding hazardous waste with adequate aisle space. The DEM's regulations require generators to store containers with a minimum of 3 feet of aisle space. The requirement to store containers with adequate aisle space provides emergency responders and equipment access to waste storage areas. Aisle space also allows facility and regulatory personnel access to the containers for inspection purposes.</p> <p>(B) Environmental conditions: The containers of waste were stored outdoors in an area that was exposed to the precipitation and temperature fluctuations.</p> <p>(C) Amount of the pollutant: Eight 55-gallon containers, one 30-gallon container, twenty 5-gallon containers, one quart container and one pint container.</p> <p>(D) Toxicity or nature of the pollutant: The containers held ignitable and toxic hazardous wastes which had an average flashpoint of 73°F. The containers also held federally listed solvents including, but not limited to, acetone, ethylbenzene, methylene chloride, toluene, xylene and benzene. Benzene is a known human carcinogen.</p> <p>(E) Duration of the violation: Full duration unknown - at least 2 weeks. The DEM inspector observed the containers with inadequate aisle space at the initial inspection on 3 February 2016. The containers still had inadequate aisle space at the inspection on 17 February 2016.</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:** The Respondent failed to take reasonable and appropriate steps to prevent the violation by providing adequate aisle space between the storage containers holding hazardous waste. To mitigate the noncompliance, on 12 March 2016, the Respondent shipped 5 containers holding hazardous waste to a licensed facility.
- (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:** The 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:** The Respondent submitted a Compliance Certification Checklist to the DEM on 11 November 2011 for this facility certifying that the company stored containers in compliance with the regulations.

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