

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Kevin Villeneuve

FILE NO.: OCI-HW-12-93

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 DEM's jurisdiction.

B. Facts

- (1) The subject property is located at 1452 Park Avenue in the city of Cranston, Rhode Island (the “Property”). The Property includes a business for automobile body repair (the “Facility”).
- (2) The Respondent owns the Property.
- (3) Auto Restorations Unlimited, Inc. d/b/a Maaco Auto Painting & Body Works (“Maaco”) operates the Facility.
- (4) The Rhode Island Secretary of State’s database lists Auto Restorations Unlimited, Inc. as an inactive corporation, having its principal place of business at 1452 Park Avenue in the city of Cranston, Rhode Island. The date of the Revocation Certificate was December 12, 2011. The record lists Kevin Villeneuve as the president of the corporation.
- (5) Maaco 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 “Maaco Auto Painting & Body Works” with the U. S. Environmental Protection Agency (“EPA”) identification number RID037104288.

- (6) On August 23, 2012, DEM inspected the Facility. The inspection revealed the following:
 - (a) One (1) 55-gallon satellite accumulation container holding liquid hazardous waste (paint thinner) located in the paint mix room that was not labeled and was not kept closed.
 - (b) Three (3) 55-gallon and three (3) 5-gallon storage containers holding liquid hazardous waste (paint thinner) located in the hazardous waste container ninety (90) day storage area (the "Storage Area") that were not labeled, marked with accumulation start dates and stored in a containment system.
 - (c) The last offsite shipment of hazardous waste occurred on March 16, 2010.
- (7) During the inspection the DEM inspector asked Armand Lapierre, manager for Maaco, if weekly inspections of the Storage Area were conducted. Mr. Lapierre stated that weekly inspections of the Storage Area were not conducted.
- (8) During the inspection the DEM inspector asked Mr. Lapierre to review the hazardous waste contingency plan and the training records for the Facility. Mr. Lapierre stated that there was no contingency plan and that no hazardous waste training has been provided to its employees.
- (9) Review of records maintained by the DEM revealed that the Respondent has not submitted to the DEM a list of agents authorized by the company to sign hazardous waste manifests.

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) **DEM's Hazardous Waste Regulation 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.
- (2) **DEM's Hazardous Waste Regulation 5.4A and 40 CFR 262.34(a)(3)** – requiring that a hazardous waste generator label each container, excluding satellite accumulation containers, holding hazardous waste with the words "Hazardous Waste", the name and address of the generating facility, the U.S. Department of Transportation shipping name, the EPA or Rhode Island waste code and the hazardous waste manifest number (prior to being shipped offsite).
- (3) **DEM's Hazardous Waste Regulation 5.2A and 40 CFR 262.34 (a)(2)** – 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 5.2A, 40 CFR 262.34(c)(1)(i) and 40 CFR 265.173(a)** – requiring that a hazardous waste generators keep containers holding hazardous waste closed except when adding or removing waste.
- (5) **DEM's Hazardous Waste Regulation 5.2A and 40 CFR 264.175** – requiring that a hazardous waste generator provide a containment system for all drums and containers holding liquid hazardous waste in storage onsite.
- (6) **DEM's Hazardous Waste Regulation 5.2 A, 40 CFR 262.34(a)(1)(i) and 40 CFR 265.174** – requiring that a hazardous waste generator conduct weekly inspections of container storage areas looking for leaking containers and signs of deterioration caused by corrosion or other factors and maintain documentation of the inspection of each hazardous waste storage area.
- (7) **DEM's Hazardous Waste Regulation 5.2 A, 40 CFR 262.34(a)(4) and 40 CFR 265.51** – 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.
- (8) **DEM's Hazardous Waste Regulation 5.9** – 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 **within sixty (60) days of receipt of the Notice of Violation (the “NOV”)**:

- (1) Label all satellite accumulation containers holding hazardous waste with the words “Hazardous Waste” and other words identifying the contents of the container.
- (2) Label all containers holding hazardous waste, excluding satellite accumulation containers, with the words “Hazardous Waste” the name and address of the generating facility, the U.S. Department of Transportation shipping name, the EPA or Rhode Island waste code and the hazardous waste manifest number (prior to being shipped offsite).
- (3) Mark all containers holding hazardous waste, excluding satellite accumulation containers, with the date upon which the hazardous waste first began to accumulate.
- (4) Close and keep closed all containers holding hazardous waste except when adding or removing waste.

- (5) Relocate all containers holding liquid hazardous waste, excluding satellite accumulation containers, to an area that has a containment system which is designed to contain spill and releases of the hazardous waste stored onsite.
- (6) Begin conducting weekly inspections of Storage Area looking for leaking containers and signs of deterioration caused by corrosion or other factors and maintain documentation onsite of the inspection of each hazardous waste storage area for a period of at least three (3) years.
- (7) Develop and maintain a hazardous waste contingency plan for the Facility that includes all of the applicable information contained in 40 CFR 265 Subpart D and submit a copy to the DEM's Office of Compliance & Inspection ("OC&I").
- (8) Provide hazardous waste management training to Facility personnel that manage/handle hazardous waste which is relevant to the positions in which they are employed and submit copies of the training program and attendance sheet to the DEM's OC&I.
- (9) Submit the names and signatures of all agents authorized to sign the uniform hazardous waste manifests to the DEM's OC&I.

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:

Thirty Five Thousand Five Hundred Fifty One Dollars (\$35,551.00)

- (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 thirty (30) days of your receipt of this 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 this 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 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 DEM's Administrative Adjudication Division, at the following address, within twenty (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 Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of 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

- (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 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) 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) Joseph J. LoBianco 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 F 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:

Kevin Villeneuve
1452 Park Avenue
Cranston, RI 02920

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, HAZARDOUS WASTE SECTION

File No.: OCI-HW-12-93

Respondent: Kevin Villeneuve

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), (2) & (3) – Pre Transport Requirements	Type I (\$ <u>25,000</u> Max. Penalty)*	Minor	\$2,500 (Satellite Labeling)	1 violation	\$15,000.00
	Type I (\$ <u>25,000</u> Max. Penalty)*	Moderate	\$ 6,250 (Labeling, Accumulation Date)	2 violations	
C (4) & (5) – Use and Management of Containers	Type I (\$ <u>25,000</u> Max. Penalty)*	Minor	\$2,500 (Open Container)	1 violation	\$8,750.00
		Moderate	\$6,250 (Containment)	1 violation	
C (6) - Use and Management of Containers	Type II (\$ <u>12,500</u> Max. Penalty)*	Moderate	\$2,500 (Inspections)	1 violation	\$2,500.00
C (7) – Contingency Plan	Type I (\$ <u>25,000</u> Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500.00
C (8) –General Facility Standards	Type II (\$ <u>12,500</u> Max. Penalty)*	Moderate	\$6,250 (Training)	1 violation	\$6,250.00
C (9) – Authorized Agents	Type III (\$ <u>6,250</u> Max. Penalty)*	Minor	\$250	1 violation	\$250.00
SUB-TOTAL					\$35,250.00

*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.

DESCRIPTION OF BENEFIT	CALCULATION		AMOUNT
<p>Economic Benefit of noncompliance identified by DEM for failing to store liquid hazardous waste in a containment system, for failing to develop a contingency plan and for failing to provide hazardous waste training to employees. The one-time non-depreciable expense associated with the installation of secondary containment was obtained by surveying local contractors and vendors. The expenses associated with the development of a contingency plan and providing personnel with required training were derived from the EPA "Estimating Costs for the Economic Benefits of RCRA Noncompliance", updated December 1997.</p> <p>The Economic Benefit gained by the instances of noncompliance was calculated by utilizing an EPA computer model entitled "BEN". The model calculates the economic gain of noncompliance by performing 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 ▪ Filing Status ▪ Initial Capital Investment ▪ One-time Non-depreciable expense ▪ First Month of Noncompliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	<p>C-Corporation</p> <p>C-Corporation</p> <p>\$0</p> <p>\$5,374.26</p> <p>8/23/12 (Containment)</p> <p>8/23/09 (Contingency Plan & Training)</p> <p>2/28/12</p> <p>2/28/12</p> <p>N/A</p> <p>N/A</p> <p>7.8%</p>	<p>\$301.00</p>
<i>SUB-TOTAL</i>			\$ 301.00

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$35,551 .00

PENALTY MATRIX WORKSHEET

CITATION: Pre-Transport Requirements-Satellite Labeling

VIOLATION NO.: C (1)

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>FACTORS CONSIDERED:</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: Respondent failed to label a satellite accumulation container holding hazardous 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.</p> <p>(B) Environmental conditions: Considered, but not utilized in this calculation.</p> <p>(C) Amount of the pollutant: One (1) 55-gallon container holding waste paint thinner. Based on the size of the container the total volume of hazardous waste could have potentially equaled fifty five (55) gallons.</p> <p>(D) Toxicity or nature of the pollutant: Waste paint thinner, which is a Federally listed hazardous waste and is a characteristic flammable waste.</p> <p>(E) Duration of the violation: Unknown. The last offsite shipment of hazardous waste, however, occurred approximately five hundred twenty five (525) days prior to the inspection by DEM on August 23, 2012.</p> <p>(F) Areal extent of the violation: Considered, but not utilized in this calculation.</p>		
(continued)		

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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 steps to prevent or mitigate the noncompliance by properly labeling the container.
- (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:** Considered, but not utilized in 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: Pre-Transport Requirements – Labeling & Accumulation Start Date
 VIOLATION NO.: C (2) & (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		
<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: Respondent failed to label and date storage containers holding hazardous waste. The requirement to label and date containers holding hazardous waste are integral parts of the regulatory program because these requirements reduce 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 requirement to mark containers holding hazardous waste with the accumulation date enables facility personnel and regulatory agencies to ensure compliance with the less than ninety (90) day accumulation time limit for hazardous waste storage.</p> <p>(B) Environmental conditions: Considered, but not utilized in this calculation.</p> <p>(C) Amount of the pollutant: Three (3) 55-gallon containers holding waste paint thinner and three (3) 5-gallon containers holding waste paint thinner. Based on the size of the containers the total volume of hazardous waste could have potentially equaled one hundred eighty (180) gallons.</p> <p>(D) Toxicity or nature of the pollutant: Waste paint thinner, which is a Federally listed hazardous waste and is a characteristic flammable waste.</p> <p>(E) Duration of the violation: Unknown. The last offsite shipment of hazardous waste, however, occurred approximately five hundred twenty five (525) days prior to the inspection by DEM on August 23, 2012.</p> <p>(F) Areal extent of the violation: Considered, but not utilized in this calculation.</p>		
(continued)		

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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 steps to prevent or mitigate the noncompliance by properly labeling and dating the containers that were stored onsite.
- (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:** Considered, but not utilized in this calculation.

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: Use & Management of Containers – Open Container

VIOLATION NO.: C (4)

TYPE		
<p><u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>____TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<p>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</p>		
<p>FACTORS CONSIDERED:</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: Respondent failed to keep a container holding hazardous waste closed. DEM 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.</p> <p>(B) Environmental conditions: Considered, but not utilized in this calculation.</p> <p>(C) Amount of the pollutant: One (1) 55-gallon container holding waste paint thinner. Based on the size of the container the total volume of hazardous waste could have potentially equaled fifty five (55) gallons.</p> <p>(D) Toxicity or nature of the pollutant: Waste paint thinner, which is a Federally listed hazardous waste and is a characteristic flammable waste.</p> <p>(E) Duration of the violation: Unknown. The last offsite shipment of hazardous waste, however, occurred approximately five hundred twenty five (525) days prior to the inspection by DEM on August 23, 2012.</p> <p>(F) Areal extent of the violation: Considered, but not utilized in this calculation.</p> <p style="text-align: right;">(continued)</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 steps to prevent or mitigate the noncompliance by keeping waste container closed.
- (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:** Considered, but not utilized in 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: Use & Management of Containers - Containment

VIOLATION NO.: C (5)

TYPE		
<u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	___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 <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 store containers holding liquid waste in a containment system. DEM regulations require generators to store accumulation containers holding liquid waste within a containment system. The requirement to store liquid waste within a containment system is designed to prevent spills and releases of hazardous waste from resulting in harm to human health and the environment.</p> <p>(B) Environmental conditions: Considered, but not utilized in this calculation.</p> <p>(C) Amount of the pollutant: Three (3) 55-gallon containers holding waste paint thinner and three (3) 5-gallon containers holding waste paint thinner. Based on the size of the containers the total volume of hazardous waste could have potentially equaled one hundred eighty (180) gallons.</p> <p>(D) Toxicity or nature of the pollutant: Waste paint thinner, which is a Federally listed hazardous waste and is a characteristic flammable waste.</p> <p>(E) Duration of the violation: Unknown. The last offsite shipment of hazardous waste, however, occurred approximately five hundred twenty five (525) days prior to the inspection by DEM on August 23, 2012.</p> <p>(F) Areal extent of the violation: Considered, but not utilized in this calculation.</p> <p style="text-align: right;">(continued)</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 steps to prevent or mitigate the noncompliance by storing liquid waste within a containment system.
- (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:** Considered, but not utilized in this calculation.

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: Use & Management of Containers – Inspections

VIOLATION NO.: C (6)

TYPE		
<p style="text-align: center;">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;">___TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<p><small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small></p>		
<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: Respondent failed to conduct inspections of the 90-day hazardous waste container storage area on a weekly basis. DEM regulations require generators to inspect areas in which hazardous waste is stored in containers onsite. The requirement for generators to inspect container storage areas enables generators to identify containers that have been damaged or deteriorated as a result of corrosion or other factors providing a safeguard against releases of hazardous waste.</p> <p>(B) Environmental conditions: Considered, but not utilized in this calculation.</p> <p>(C) Amount of the pollutant: Three (3) 55-gallon containers holding waste paint thinner and three (3) 5-gallon containers holding waste paint thinner. Based on the size of the containers the total volume of hazardous waste could have potentially equaled one hundred eighty (180) gallons.</p> <p>(D) Toxicity or nature of the pollutant: Waste paint thinner, which is a Federally listed hazardous waste and is a characteristic flammable waste.</p> <p>(E) Duration of the violation: Unknown. The last offsite shipment of hazardous waste, however, occurred approximately five hundred twenty five (525) days prior to the inspection by DEM on August 23, 2012.</p> <p>(F) Areal extent of the violation: Considered, but not utilized in this calculation.</p> <p style="text-align: right;">(continued)</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 steps to prevent or mitigate the noncompliance by conducting weekly container inspections while the waste was stored onsite.
- (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:** Considered, but not utilized in this calculation.

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

PENALTY MATRIX WORKSHEET

CITATION: Contingency Plan
 VIOLATION NO.: C (7)

TYPE		
<u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	___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 *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 a hazardous waste contingency plan. DEM and Federal regulations require generators to develop and maintain a contingency plan containing procedures to follow to minimize hazards posed to human health and the environment from fires, explosions or planned or unplanned releases involving hazardous waste. A contingency plan reduces the potential for injury of employees and/or response personnel that may be called upon for assistance during a fire, spill or release incident.
- (B) **Environmental conditions:** Considered, but not utilized in this calculation.
- (C) **Amount of the pollutant:** Four (4) 55-gallon containers holding waste paint thinner and three (3) 5-gallon containers holding waste paint thinner. Based on the size of the containers the total volume of hazardous waste could have potentially equaled two hundred thirty five (235) gallons.
- (D) **Toxicity or nature of the pollutant:** Waste paint thinner, which is a Federally listed hazardous waste and is a characteristic flammable waste.
- (E) **Duration of the violation:** At least three (3) years. Generators are required to maintain these records onsite for at least three (3) and no records were produced at the time of the inspection.
- (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 steps to prevent or mitigate the noncompliance by developing a contingency plan.
- (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:** Considered, but not utilized in 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: General Facility Standards - Training
 VIOLATION NO.: C (8)

TYPE		
TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	X TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	___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 *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 provide hazardous waste management training to Respondent's employees who work with hazardous waste. DEM and Federal regulations require generators to provide hazardous waste training that teaches employees to perform their duties in a manner that ensures compliance with the regulations. Hazardous waste management training helps ensure that the facility will be operated in compliance with the regulations and reduces the potential for spills or releases of hazardous waste by teaching employees proper waste handling practices.
- (B) **Environmental conditions:** Considered, but not utilized in this calculation.
- (C) **Amount of the pollutant:** Four (4) 55-gallon containers holding waste paint thinner and three (3) 5-gallon containers holding waste paint thinner. Based on the size of the containers the total volume of hazardous waste could have potentially equaled two hundred thirty five (235) gallons.
- (D) **Toxicity or nature of the pollutant:** Waste paint thinner, which is a Federally listed hazardous waste and is a characteristic flammable waste.
- (E) **Duration of the violation:** At least three (3) years. Generators are required to maintain these records onsite for at least three (3) and no records were produced at the time of the inspection.
- (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 steps to prevent or mitigate the noncompliance by providing hazardous waste training to its employees.
- (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:** Considered, but not utilized in this calculation.

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: Failure to Submit an Authorized Signers List

VIOLATION NO.: C (9)

TYPE		
<p>____ TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>____ TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>X</u> TYPE III <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>FACTORS CONSIDERED:</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: Respondent failed to submit to the DEM a list of employees who are authorized by the company to sign uniform hazardous waste manifests. DEM regulations require generators to submit a list of the names and signatures of employees who are authorized by the company to sign uniform hazardous waste manifests.</p> <p>(B) Environmental conditions: Considered, but not utilized in this calculation.</p> <p>(C) Amount of the pollutant: Considered, but not utilized in this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Waste paint thinner, which is a Federally listed hazardous waste and is a characteristic flammable waste.</p> <p>(E) Duration of the violation: Respondent submitted a biennial report on 1/19/94 indicating that hazardous waste was generated at the facility. Review of records maintained by DEM revealed that a list of agents authorized to sign manifests was not in the DEM's file.</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 or mitigate the noncompliance by submitting to the DEM a list of agents authorized to sign hazardous waste manifests as required by 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:** 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:** Considered, but not utilized in 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	\$250 to \$1,250 \$250