

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Viola T. Manfredi

**FILE NOs.: OCI-SW-15-42 and
OCI-SW-15-68**

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, ("R.I. Gen. Laws") you are hereby notified that the Director of the Department of Environmental Management (the "Director" of "DEM") has reasonable grounds to believe that the above-named party ("Respondent") has violated certain statutes and/or administrative regulations under the DEM's jurisdiction.

B. Administrative History

On 6 August 2015 and 25 January 2016, the DEM issued a Notice of Intent to Enforce ("NIE") to Respondent for the violations that are the subject of this Notice of Violation ("NOV"). The NIEs required specific actions to correct the violations. In response to the NIEs, meetings were held between the DEM and the Respondent's agents. Inspections by the DEM revealed that some of the violations were corrected; however, as of the date of the NOV, Respondent has failed to fully comply with the NIEs.

C. Facts

- (1) The property is located at 77 Dunns Corner Bradford Road, Assessor's Plat 92, Lot 1 in the town of Westerly (the "Property").
- (2) The Property is 123 acres.
- (3) Respondent owns the Property.
- (4) On 8 June 2015, the DEM inspected the Property. The inspection revealed the following:
 - (a) Approximately 1,165 cubic yards of solid waste (in the form of tree waste, brush, processed wood, adulterated wood, plastic waste, gypsum wallboard, insulation, paint cans, window blinds, a radio, used furniture, painted wooden shingles, used tires, household refuse, vehicle parts, plastic containers, a steel tank and other mixed solid waste) was either deposited on the land or partially-buried in the easternmost and westernmost portions of the Property;

- (b) Landfilling had taken place with solid waste and co-mingled soil; and
 - (c) Partially buried solid waste was observed in multiple locations.
- (5) On 2 December 2015, the DEM inspected the Property. The inspection revealed the following:
- (a) Approximately 20 cubic yards of solid waste (in the form of brush) deposited on the land in the easternmost portion of the Property;
 - (b) Approximately 1,584 cubic yards of solid waste (in the form of tree wood, brush, wood chips, scrap lumber, cardboard and approximately 541 used tires) deposited on the land in the middle and westernmost portions of the Property;
 - (c) A 55-gallon steel container, a 55-gallon plastic container and 3 other various-sized containers that were holding apparent mixtures of used oil and water (the “Oil Containers”) stored atop an uncovered concrete slab in the westernmost portion of the Property (the “Concrete Slab”); and
 - (d) Oil spilled on the Concrete Slab.
- (6) On 14 December 2016, the DEM inspected the Property. The inspection revealed the following:
- (a) Approximately 330 cubic yards of solid waste (in the form of used vehicle tires, metal waste, wood chips, logs, brush, processed wood, a truck in a state of disrepair, used appliances, steel drums, plastic waste, used furniture, wooden pallets, used farm equipment, 3 pickup trucks in states of disrepair and other mixed solid waste) deposited on the land in the middle and westernmost portions of the Property;
 - (b) Approximately 325 cubic yards of tree wood, brush, and wood chips that was previously identified as solid waste on 2 December 2015 in the middle and westernmost portions of the Property was composted; and
 - (c) Some of the wood chips were brought to the Property from off site.
- (7) The DEM has not issued a license or approval to Respondent to operate a solid waste management facility or composting facility on the Property
- (8) As of the date of the NOV, Respondent has failed to demonstrate compliance with the findings described in Sections B(4), (5) and (6) above.

D. Violation

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

- (1) **R.I. Gen. Laws Section 23-18.9-5** – prohibiting the disposal of solid waste at other than a licensed solid waste management facility.
- (2) **R.I. Gen. Laws Section 23-18.9-8** – prohibiting the operation of a solid waste management facility or a composting facility unless a license is obtained from the DEM.
- (3) **DEM’s Rules and Regulations for Hazardous Waste Management (the “Hazardous Waste Regulations”), Rule 15.4(A)** – pertaining to container storage requirements for generators of used oil.
- (4) **DEM’s Oil Pollution Control Regulations (the “OPC Regulations”), Rule 6(a)** – prohibiting the release of oil to the land.

E. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), you are hereby ORDERED to complete all of the following remedial actions:

- (1) **Within 30 days of receipt of the NOV**, remove the Oil Containers for disposal or recycling at a licensed hazardous waste management facility or oil recycling facility in full compliance with Rules 5.3 and 15.4(G) of the DEM’s Hazardous Waste Regulations. Written verification of compliance shall be submitted to the DEM’s Office of Compliance and Inspection (“OC&I”).
- (2) **Within 30 days of receipt of the NOV**, remove the oil contaminated soil in the area of the Concrete Slab and containerize and ship the soil off-site for proper disposal or recycling at a licensed hazardous waste management facility, solid waste management facility or oil recycling facility in full compliance with Rule 15.4(D) of the DEM’s Hazardous Waste Regulations and Sections 12 and 13 of the DEM’s OPC Regulations. Written verification of compliance shall be submitted to the OC&I.
- (3) **Within 30 days of receipt of the NOV**, excavate exploratory test pits in the westernmost portion of the Property in the areas where the DEM observed buried and partially-buried solid waste. The OC&I must be present to witness the excavation. If the exploratory test pit excavations reveal evidence of the presence of hazardous materials or petroleum wastes, within 90 days of completion of the excavations conduct a site investigation (“SI”) pursuant to Rule 4.02 of the DEM’s *Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases* (the “Remediation Regulations”) and Rule 12(e) of the DEM’s OPC Regulations and submit a Site Investigation Report (“SIR”) in full compliance with Section 7.00 of the DEM’s Remediation Regulations and Rule 12(e) of the DEM’s OPC Regulations. The SI and SIR shall be performed by qualified environmental consultant.

- (4) **Within 60 days of receipt of the NOV**, remove all solid waste from the Property. The solid waste in question shall not be burned. All solid waste removed from the Property shall be disposed of at a licensed solid waste management facility or composting facility. All used vehicle tires removed from the Property shall be sent to a licensed rubber tire recycling facility.
- (5) **Within 10 days of completion of the solid waste removal**, submit to the OC&I written verification that the solid waste has been disposed at a licensed solid waste management facility or recycling facility.

F. Penalty

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:

\$15,000

- (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 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.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if the DEM determines that reasonable efforts have been made to comply promptly with the NOV.

G. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through F above. All requests for hearing MUST:
 - (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);

- (b) Be **RECEIVED** by the DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of 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:

Christina Hoefsmid, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before the DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then 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).
- (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) An original signed copy of the NOV is being forwarded to the town of Westerly to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and Section 23-18.9-13, as is or as amended.
- (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) Christina Hoefsmit at the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey D'Amadio 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 G 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:

Viola T. Manfredi
c/o Margaret Lenihan Steele, Esq.
163 Main Street
Westerly, RI 02891

by Certified Mail. _____



ADMINISTRATIVE PENALTY SUMMARY	
Program:	OFFICE OF COMPLIANCE AND INSPECTION, SOLID WASTE
File Nos.:	OCI-SW-15-42 and OCI-SW-15-68
Respondent:	Viola T. Manfredi

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D(1) – Disposal of Solid Waste	Type I (\$25,000 Max. Penalty)*	Minor	\$6,250	1 violation	\$6,250
D(2) – Operation of a Solid Waste Management Facility	Type I (\$25,000 Max. Penalty)*	Minor	\$6,250	1 violation	\$6,250
D(3) and D(4) – Storage/Release of Oil	Type I (\$25,000 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500
SUB-TOTAL					\$15,000

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

ECONOMIC BENEFIT FROM NON-COMPLIANCE
<p>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:</p> <ul style="list-style-type: none"> - THERE IS NO IDENTIFIABLE BENEFIT FROM NON-COMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED.
<p>A review of the record in this matter has revealed that Respondent has either enjoyed no identifiable benefit from the non-compliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.</p>

COST RECOVERY
<p>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.</p>
<p>A review of the record in this matter has revealed that DEM has not incurred any additional or extraordinary costs during the investigation, enforcement and resolution of this enforcement action (excluding non-overtime personnel costs), for which the State is not otherwise reimbursed.</p>

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS= \$15,000

PENALTY MATRIX WORKSHEET

CITATION: Disposal of Solid Waste

VIOLATION NO.: D | (1)

TYPE

 X **TYPE I**
DIRECTLY related to protecting health, safety, welfare or environment.

 TYPE II
INDIRECTLY related to protecting health, safety, welfare or environment.

 TYPE III
INCIDENTAL 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 disposed of or allowed for the disposal of solid waste on the Property. Prohibiting the disposal of solid waste at other than a licensed solid waste management facility is of prime importance to the regulatory program. Unlawful disposal of solid waste bypasses the public health and safety and environmental safeguards obtained by limiting disposal of solid waste to compliantly operated solid waste management facilities.
- (B) **Environmental conditions:** The Property is located within 500 feet of a wellhead protection area for a community water supply well. The northern portion of the Property is located in a GAA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment and which are located in groundwater reservoirs and portions of their recharge areas, wellhead protection areas for community water supply wells and groundwater dependent areas. The remainder of the Property is located in a GA groundwater classification zone. The northern portion of the Property is located in a recharge area for a community water supply well. The Property lies above a portion of a sole source aquifer for the population of southern Rhode Island. The Property is located within the Tomaquag Brook/Pawcatuck River watershed. A significant percentage of the Property is comprised of regulated freshwater wetlands.
- (C) **Amount of the pollutant:** The 14 December 2016 inspection revealed approximately 330 cubic yards of solid waste on the Property. Previous inspections revealed as much as 1,604 cubic yards of solid waste.
- (D) **Toxicity or nature of the pollutant:** Much of the solid waste in question is combustible. The solid waste stockpiles and used tire stockpiles provide harborage for rodents and vectors such as mosquitoes.
- (E) **Duration of the violation:** Full duration unknown – at least 1½ years. The DEM first observed the solid waste on the Property on 8 June 2015.
- (F) **Areal extent of the violation:** Unknown. The Property is comprised of 123 acres and solid waste was observed in several different areas of the Property.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** Respondent did not take reasonable and appropriate steps to prevent the non-compliance as evidenced by the presence of significant quantities of solid waste on the Property. Respondent has failed to fully mitigate the non-compliance despite receiving the NIEs from the DEM, which required that she do so.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondent for the failure to comply with the requirements set forth in Rhode Island's refuse disposal statute. Upon information and belief, the solid waste in question was deposited on the Property by Respondent's relatives; however, Respondent, as owner of the Property, had control over the occurrence of the alleged violation. Disposal of solid waste at other than a licensed solid waste management facility is expressly prohibited by State law.
- (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 \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Operation of a Solid Waste Management Facility

VIOLATION NO.: D (2)

TYPE

 X **TYPE I**
DIRECTLY related to protecting health, safety, welfare or environment.

 TYPE II
INDIRECTLY related to protecting health, safety, welfare or environment.

 TYPE III
INCIDENTAL 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 allowed for the operation of a solid waste management facility on the Property without a license from the DEM. Prohibiting the establishment, ownership and operation of unlicensed solid waste management facilities is of primary importance to the regulatory program. The unlawful operation of solid waste management facilities bypasses the public health and safety and environmental safeguards obtained by regulating the operation of solid waste management facilities and limiting the disposal of solid waste to compliantly operated solid waste management facilities.
- (B) **Environmental conditions:** The Property is located within 500 feet of a wellhead protection area for a community water supply well. The northern portion of the Property is located in a GAA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment and which are located in groundwater reservoirs and portions of their recharge areas, wellhead protection areas for community water supply wells and groundwater dependent areas. The remainder of the Property is located in a GA groundwater classification zone. The northern portion of the Property is located in a recharge area for a community water supply well. The Property lies above a portion of a sole source aquifer for the population of southern Rhode Island. The Property is located within the Tomaquag Brook/Pawcatuck River watershed. A significant percentage of the Property is comprised of regulated freshwater wetlands.
- (C) **Amount of the pollutant:** The 14 December 2016 inspection revealed approximately 330 cubic yards of solid waste on the Property. Previous inspections revealed as much as 1,604 cubic yards of solid waste.
- (D) **Toxicity or nature of the pollutant:** Much of the solid waste in question is combustible. The solid waste stockpiles and used tire stockpiles provide harborage for rodents and vectors such as mosquitoes.
- (E) **Duration of the violation:** Full duration unknown – at least 1½ years. The DEM first observed the solid waste on the Property on 8 June 2015.
- (F) **Areal extent of the violation:** Unknown. The Property is comprised of 123 acres and solid waste was observed in several different areas of the Property.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** Respondent failed to prevent the non-compliance by obtaining a license to operate a solid waste management facility from the DEM. Respondent has failed to fully mitigate the non-compliance despite receiving the NIEs from the DEM, which required that she do so.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondent for the failure to comply with the requirements set forth in Rhode Island's refuse disposal statute. Upon information and belief, the solid waste activities in question were conducted by Respondent's relatives; however, Respondent, as owner of the Property, had control over the occurrence of the alleged violation. The operation of a solid waste management facility without the approval of DEM is expressly prohibited by State law.
- (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 \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Storage/Release Of Oil

VIOLATION NOS.: D (3) and (4)

TYPE

 X **TYPE I**
DIRECTLY related to protecting health, safety, welfare or environment.

 TYPE II
INDIRECTLY related to protecting health, safety, welfare or environment.

 TYPE III
INCIDENTAL 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 allowed for the storage of oil in unlabeled and uncovered containers in an unsheltered location atop a concrete slab and the release of oil to the land. Proper management of used oil and preventing the release of oil to the land is of prime importance to the regulatory program.
- (B) **Environmental conditions:** The Property is located within 500 feet of a wellhead protection area for a community water supply well. The northern portion of the Property is located in a GAA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment and which are located in groundwater reservoirs and portions of their recharge areas, wellhead protection areas for community water supply wells and groundwater dependent areas. The remainder of the Property is located in a GA groundwater classification zone. The northern portion of the Property is located in a recharge area for a community water supply well. The Property lies above a portion of a sole source aquifer for the population of southern Rhode Island. The Property is located within the Tomaquag Brook/Pawcatuck River watershed. A significant percentage of the Property is comprised of regulated freshwater wetlands.
- (C) **Amount of the pollutant:** The 2 December 2015 inspection revealed 5 containers holding oil/water with an approximate combined storage capacity of 140 gallons.
- (D) **Toxicity or nature of the pollutant:** Used oil may cause significant contamination of the land and waters of the State if released to the environment. A small amount of oil may cause widespread groundwater contamination and cause deleterious impacts to drinking water resources. Used oil is known to sometimes have regulated concentrations of hazardous contaminants.
- (E) **Duration of the violation:** Full duration unknown –at least 1 year. The DEM first observed the oil containers on 2 December 2015.
- (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 non-compliance:** Respondent failed to prevent the non-compliance by ensuring that the oil was stored in labeled, closed containers in a sheltered location. The DEM has no knowledge of what steps, if any, Respondent has taken to mitigate the non-compliance.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondent for the failure to comply with the requirements set forth in the DEM's Hazardous Waste Regulations and the DEM's OPC Regulations. Upon information and belief, the oil was stored on the Property by Respondent's relatives; however, Respondent, as owner of the Property, had 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 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