

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Northland Environmental, LLC**

**FILE NO.: 2011-58-HW**

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 facility is located at 275 Allens Avenue in the city of Providence, Rhode Island (the “Facility”).
- (2) On December 1, 2007, the DEM issued a permit to the Respondent to operate a Treatment, Storage and Disposal 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”) (the “Permit”).
- (3) The Permit requires the Respondent to:
  - (a) Maintain a minimum two (2) foot aisle space between rows of waste containers stored at the Facility;
  - (b) Properly operate and maintain all facilities and systems of treatment and control that are installed or used to achieve compliance with the conditions of the permit;
  - (c) Inspect drum labels prior to acceptance at the Facility;
  - (d) Assign and attach a tracking number to a container prior to moving it to the storage area;
  - (e) Properly manage emergency equipment; and
  - (f) Test and maintain equipment.

- (4) On September 23, 2011 DEM inspected the Facility. The inspection revealed the following:
- (a) Failure to maintain a minimum of two (2) feet of aisle space between the containers holding hazardous waste in one row in the west half of Building #4 – General Storage Area.
  - (b) Failure to properly label one (1) 55-gallon black drum holding “drum bottoms” located in the west side of Building #4. The label was painted over rendering it illegible.
  - (c) Failure to label the following containers:
    - (i) One (1) 5-gallon white plastic container holding an unknown waste located in the Oxidizer and Organic Peroxide Storage Area;
    - (ii) Four (4) 1-cubic yard boxes holding spent aerosol cans, one (1) 55-gallon blue drum marked with tracking number PRO-39857 holding unknown waste, and one (1) 55-gallon drum holding dichlorobenzene and camphor, all located in the Lower Warehouse – General Storage Area;
    - (iii) One (1) 55-gallon blue drum, A2673-010, located in the Lower Warehouse – Acid Storage Room; and
    - (iv) One (1) 5-gallon white plastic container holding unknown waste located in the southwest section of the Lower Warehouse – General Storage Area. The exterior of the container was covered with a dark oily substance.
  - (d) Failure to mark the following containers with a unique identification (tracking) number prior to storing the containers at the Facility:
    - (i) One (1) 55-gallon black drum holding a flammable hazardous waste, in the form of a xylene and paraffin wax, located in the west half of Building #4 – Flammable Storage Cut-off Room.
    - (ii) One (1) roll off container identified by manifest number 00488630FLE located in the Roll Off Storage Area 252-A.
    - (iii) One (1) 55-gallon yellow drum holding ammonium persulfate, one (1) 5-gallon white plastic container holding an unknown waste and one (1) 15-gallon container identified by manifest number 00492783FLE all located in the Oxidizer and Organic Peroxide Storage Area.

- (iv) Four (4) 1-cubic yard containers holding hazardous waste located in the Lower Warehouse – General Storage Area.
  - (v) Two (2) 1-cubic yard boxes, one holding spent lead filters identified by manifest number 008049158FLE, and the other containing waste pesticide UN2588, located in the Upper Warehouse.
  - (vi) One (1) 55-gallon black steel drum identified by manifest number 004182017FLE and one (1) 55-gallon blue plastic drum holding sulfuric acid located in the Lower Warehouse – Acid Storage Room.
  - (vii) One (1) five (5) gallon white plastic container holding unknown waste located in the southwest section of the Lower Warehouse – General Storage Area. The exterior of the container was covered with a dark oily substance
- (e) Failure to mark three (3) 1-cubic yard containers located in the Lower Warehouse – General Storage Area holding flammable hazardous waste generated by Respondent with an accumulation start date.
  - (f) Failure to maintain a fire extinguisher located in the Lab Pack Consolidation Area as indicated by the lack of a service tag to verify the device was certified on an annual basis.
  - (g) Failure to label two (2) loose cathode ray tubes as universal waste located in the Upper Warehouse.

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 Regulations 7.0B and 40 CFR 270.4** – failing to comply with a permit constitutes noncompliance with Federal and State hazardous waste statutes and regulations.
- (2) **DEM's Hazardous Waste Regulation 8.1A and 40 CFR 264.35** – requiring the owner or operator to maintain aisle space to allow for the unobstructed movement of personnel and emergency response equipment to any area of the facility.
- (3) **DEM's Hazardous Waste Regulation 5.4A and 8.1A.40** – requiring owners, operators and generators to label the side of containers holding hazardous waste with the words “hazardous waste”, the generator’s name and address, the Environmental Protection Agency (“EPA”) or Rhode Island waste number and a unique ID (tracking) number.

- (4) **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.
- (5) **DEM's Hazardous Waste Regulation 8.1A and 40 CFR 264.33** – requiring owners or operators to test and maintain all facility communication and alarm systems, fire protection equipment, spill control and decontamination equipment as required to assure proper operation in time of emergency.
- (6) **DEM's Hazardous Waste Regulation 13.5N.1.(1)** – requiring that a large quantity handler of universal waste properly label or mark the universal waste or the container(s) in which the waste is stored.

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 thirty (30) days of receipt of the Notice of Violation (the “NOV”)**:

- (1) Provide two (2) foot aisle space between the containers holding hazardous waste in the west half of Building #4 – General Storage Area as required in the Permit.
- (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 (for waste generated at the Facility), the EPA or Rhode Island waste number and the unique ID number (which has the ability to link to the manifest number).
- (3) Mark all containers holding hazardous waste, excluding satellite accumulation containers, with the date upon which the hazardous waste first began to accumulate.
- (4) Have all fire protection equipment tested to assure proper operation in time of emergency.

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:

**Sixteen Thousand Two Hundred and Fifty Dollars (\$16,250.00)**

- (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 twenty (20) 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 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, 2<sup>ND</sup> 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:

Susan Forcier, Esquire  
DEM - Office of Legal Services  
235 Promenade Street, 4<sup>TH</sup> 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) Susan Forcier 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

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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:

Northland Environmental, LLC  
c/o Corporation Service Company, Registered Agent  
222 Jefferson Boulevard, Suite 220  
Warwick, RI 02888

by Certified Mail.

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## ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, HAZARDOUS WASTE

File No.: 2011-58-HW

Respondent: Northland Environmental, LLC

<b>GRAVITY OF VIOLATION</b>					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
C (1) and (2) – Aisle Space	Type I (\$ <u>25,000</u> Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500.00
C (1), (3), (4) and (6) – Labeling, Tracking Number and Accumulation Start Date	Type I (\$ <u>25,000</u> Max. Penalty)*	Moderate	\$12,500	1 violation	\$12,500.00
C (1) and (5) – Preparedness and Prevention	Type II (\$ <u>12,500</u> Max. Penalty)*	Minor	\$1,250	1 violation	\$1,250.00
<b>SUB-TOTAL</b>					<b>\$16,250.00</b>

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

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$16,250.00**



**PENALTY MATRIX WORKSHEET**

CITATION: Aisle Space  
 VIOLATION NO.: C (1) and (2)

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

**DEVIATION FROM THE STANDARD**  
 THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

**FACTORS CONSIDERED:**

Taken from Section 10 (a) (2) of the DEM *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 maintain adequate aisle space in one section of the General Storage Area located in the west Half of Building #4. State and Federal regulations require operators to arrange containers holding hazardous waste with sufficient aisle space between the containers to allow for the free flow of emergency response personnel and equipment. The requirement to provide aisle space between containers holding hazardous waste improves the ability of emergency response personnel to manage spills and/or releases of hazardous waste by allowing them access to all of the containers in the storage area. Aisle space also enables facility and regulatory personnel to gain access to inspect containers holding hazardous waste to ensure compliance with management requirements.
- (B) **Environmental conditions:** Considered, but not utilized for this calculation.
- (C) **Amount of the pollutant:** At the time of the inspection the DEM inspectors observed three (3) 55-gal containers holding hazardous waste that were stored on a pallet that blocked an aisle.
- (D) **Toxicity or nature of the pollutant:** Considered, but not utilized for this calculation.
- (E) **Duration of the violation:** Considered, but not utilized for this calculation.
- (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 maintaining adequate aisle space.
- (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 March 15, 2012, the EPA issued an administrative complaint to the Respondent for alleged violations that were identified during inspections of the Facility in July 2009, which included the failure to maintain adequate aisle space in three (3) locations.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<b>MAJOR</b>	<b>MODERATE</b>	<u>  <b>X</b>  </u> <b>MINOR</b>
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 25,000		<b>TYPE I</b>	TYPE II	TYPE III
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	<b>MODERATE</b>	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250 <b>\$2,500</b>	\$1,250 to \$2,500	\$250 to \$1,250

# PENALTY MATRIX WORKSHEET

CITATION: Labeling, Tracking Number and Accumulation Start Date

VIOLATION NO.: C (1), (3), (4) and (6)

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		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b>FACTORS CONSIDERED:</b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent failed to label and mark with an accumulation start date containers holding hazardous waste in storage at the facility. Respondent also failed to mark certain containers with a unique identification (tracking) number prior to storing the containers at the facility. 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 accumulation time limits contained within the permit. The Respondent's permit requires Respondent to mark every container with a unique identification number upon receipt that is associated with the hazardous waste manifest for each shipment.</p> <p>(B) <b>Environmental conditions:</b> Considered, but not utilized for this calculation.</p> <p>(C) <b>Amount of the pollutant:</b> At the time of the inspection the DEM inspectors observed four (4) 55- gallon, two (2) 5-gallon containers and four (4) 1-cubic yard containers that were not properly labeled and five (5) 55-gallon containers, one (1) 15-gallon containers, one (1) roll off container and six (6) 1-cubic yard containers that were labeled but not marked with a tracking number. In addition, DEM inspectors observed that three (3) of the 1-cubic yard containers were not marked with an accumulation start date.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> The containers that were not properly labeled and were not marked with a tracking number or an accumulation start date were located in areas designated for the storage of Oxidizer and Organic Peroxide wastes, Acid wastes and Flammable wastes.</p> <p>(E) <b>Duration of the violation:</b> Considered, but not utilized for this calculation.</p> <p>(F) <b>Areal extent of the violation:</b> 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 properly labeling and dating the containers.
- (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 March 15, 2012, the EPA issued an administrative complaint to the Respondent for alleged violations that were identified during inspections of the Facility in July 2009, which included the failure to label containers and failure to mark a roll off container with an accumulation start date.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<b>MAJOR</b>	<u>  <b>X</b>  </u> <b>MODERATE</b>	<b>MINOR</b>
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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
	<b>MODERATE</b>	\$6,250 to \$12,500 <b>\$12,500</b>	\$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: Preparedness and Prevention

VIOLATION NO.: C (1) and (5)

<b>TYPE</b>		
<p style="text-align: center;"><u>      </u> <b>TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><b>X</b> <b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u>      </u> <b>TYPE III</b></p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent failed to test and maintain fire protection equipment to assure its proper operation during an emergency. State and Federal regulations require facility operators to install and maintain emergency equipment of appropriate amount and type to enable personnel to safely respond to fire, spills and other emergencies.</p> <p>(B) <b>Environmental conditions:</b> On September 23, 2011 DEM inspectors observed a fire extinguisher that was missing an inspection tag. The fire extinguisher was located near the Lab Pack Consolidation area in which flammable wastes are handled and repackaged for offsite shipment.</p> <p>(C) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Respondent handles various hazardous wastes in this area including, but not limited to, flammable, corrosive, reactive and listed wastes.</p> <p>(E) <b>Duration of the violation:</b> Considered, but not utilized for this calculation.</p> <p>(F) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</p> <p style="text-align: right; margin-top: 20px;">(continued)</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 maintaining a fire extinguisher.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<b>MAJOR</b>	<b>MODERATE</b>	<u>  <b>X</b>  </u> <b>MINOR</b>
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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	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	<b>MODERATE</b>	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250	\$1,250 to \$2,500 <b>\$1,250</b>	\$250 to \$1,250