

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Pease & Curren Incorporated

FILE NO.: OCI-HW-14-93

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 the DEM's jurisdiction.

B. Facts

- (1) The property is located at 75 Pennsylvania Avenue in the city of Warwick, Rhode Island (the "Property"). The Property includes a facility used for the processing and reclamation of precious metals from solid metal jewelry and related items (the "Facility").
- (2) The Respondent is registered with the DEM as a large 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 "Pease & Curren, Inc." with the U.S. Environmental Protection Agency ("EPA") identification number RID001200609.
- (3) On 5 September 2014, the DEM inspected the Facility. The inspection revealed the following:
 - (a) Five 55-gallon containers holding hazardous waste in the form of spent crucibles containing lead located at the Exterior 90 Day Storage Area;
 - (i) Two containers exceeded the 90 day storage time. One container was dated 27 August 2013, and the other container was dated 5 December 2013; and
 - (ii) None of the containers was properly labeled. The labels were missing the chemical or common name of the waste and/or the name, address and EPA identification number of the generator. In addition, two of the containers were missing accumulation start dates.

- (b) One satellite accumulation container holding hazardous waste in the form of spent crucibles containing lead located in the Lab Furnace Room that was open and had no label;
 - (c) Two 2-cubic yard containers holding scrubber filters containing lead located in the Warehouse (the "Warehouse Containers") that were not properly labeled. The labels were missing the name, address and EPA identification number of the generator;
 - (d) No weekly inspections of the Warehouse Containers were being performed;
 - (e) The concrete floor of the containment area for two 1,500-gallon tanks holding hazardous waste in the form of hydrochloric and nitric acid had cracks and gaps;
 - (f) Three boxes holding universal waste in the form of fluorescent light bulbs located in the Warehouse;
 - (i) None of the boxes were closed or labeled; and
 - (ii) Two of the boxes exceeded the 1 year storage time. One box was dated 2 April 2013, and the other box was dated 20 August 2013.
 - (g) Three 5-gallon containers holding used oil located in the Warehouse;
 - (i) None of the containers were labeled; and
 - (ii) Two containers were open.
 - (h) Hazardous waste training was not provided to the company president (Kimberly Michalik) who handles hazardous waste; and
 - (i) The hazardous waste contingency plan was not amended to address a change in the Facility's emergency coordinators.
- (4) As of the date of this Notice of Violation ("NOV"), the Respondent has failed to provide any documents to the DEM to demonstrate that it has addressed the noncompliance described in paragraph B.3 above.

C. Violation

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

- (1) **R.I. Gen. Laws Section 23-19.1-10, Hazardous Waste Regulations 5.13A and 7B.2, and 40 CFR 270.1(C)** – requiring a person to obtain a permit from the DEM prior to storing hazardous waste for greater than 90 days.

- (2) **DEM's Hazardous Waste Regulation 5.9A** – 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.
- (3) **DEM's Hazardous Waste Regulation 5.9D** – requiring that a hazardous waste generator keep containers holding hazardous waste closed except when adding or removing waste.
- (4) **DEM's Hazardous Waste Regulation 5.13F1** – requiring that a hazardous waste generator label each container, excluding satellite accumulation containers, holding hazardous waste with the words “Hazardous Waste”, the chemical or common name of the waste and the name, address and EPA identification number of the generator.
- (5) **DEM's Hazardous Waste Regulation 5.13B1** – requiring that a hazardous waste generator mark the side of all containers holding hazardous waste with the date upon which the waste first began to accumulate.
- (6) **DEM's Hazardous Waste Regulation 5.13B8** – 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 5.13C.5(b)** – requiring that a hazardous waste generator provide a secondary containment system for all tank systems built on a foundation or floor that is free of cracks or gaps and sealed or coated with a liquid tight compound.
- (8) **DEM's Hazardous Waste Regulation 13.5I and 40 CFR 273.14(e)** – requiring that a small quantity handler of universal waste properly label or mark the universal waste or the container(s) in which the waste is/are contained.
- (9) **DEM's Hazardous Waste Regulation 13.5H and 40 CFR 273.13(d)(1)** – requiring that a small quantity handler of universal waste keep containers of universal waste closed.
- (10) **DEM's Hazardous Waste Regulation 13.5 and 40 CFR 273.15(a)** – requiring that a small quantity handler of universal waste accumulate universal waste onsite for no longer than 1 year from the date the waste was generated or received from another handler.
- (11) **DEM's Hazardous Waste Regulation 15.4A3** – requiring a used oil generator to clearly mark containers holding used oil with the words “Used Oil”.
- (12) **DEM's Hazardous Waste Regulation 15.4A5** – requiring a used oil generator to keep containers holding used oil closed except when adding or removing used oil.

- (13) **DEM's Hazardous Waste Regulation 5.13I** – requiring that a hazardous waste generator provide training to company employees who handle and/or manage hazardous waste and provide employees with a review of the training on an annual basis.
- (14) **DEM's Hazardous Waste Regulation 5.13J7(d)** – requiring that a hazardous waste generator review and amend its contingency plan when the list of emergency coordinators changes.

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:

- (1) **IMMEDIATELY upon receipt of the NOV**, cease and desist the storage of hazardous waste, excluding satellite accumulation containers, for a period of time greater than 90 days.
- (2) **Within 30 days of receipt of the NOV:**
 - (a) Remove all hazardous waste from the Property that has been stored for greater than 90 days using a permitted hazardous waste transporter and ship the hazardous waste to a licensed Treatment, Storage and Disposal Facility (the "Designated Facility") and submit a copy of the uniform hazardous waste manifest signed by the Designated Facility to the DEM Office of Compliance & Inspection ("OC&I");
 - (b) Label all satellite accumulation containers holding hazardous waste with the words "Hazardous Waste" and other words identifying the contents of the container;
 - (c) Close and keep closed all containers holding hazardous waste except when adding or removing waste;
 - (d) Label all containers holding hazardous waste, excluding satellite accumulation containers, with the words "Hazardous Waste", the chemical or common name of the waste and the name address and EPA identification number of the generator;
 - (e) Mark all containers holding hazardous waste, excluding satellite accumulation containers, with the date upon which the hazardous waste first began to accumulate;
 - (f) Repair the cracks and gaps in the containment system for the above ground tanks holding hydrochloric and nitric acids using an appropriate sealant that is compatible with the hazardous waste to render the system liquid tight **OR** 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;

- (g) Begin conducting weekly inspections of all of the hazardous waste container storage areas 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 3 years;
- (h) Properly label and mark all universal waste or containers holding universal waste and keep containers of universal waste closed;
- (i) Ship all universal waste that has been stored onsite for greater than 1 year to another universal waste handler or to a treatment, storage and disposal facility and submit a copy of the bill of lading documenting the shipment to the OC&I;
- (j) Label all containers holding used oil with the words "Used Oil" and keep the containers closed except when adding or removing used oil;
- (k) 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 OC&I; and
- (l) 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 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:

\$33,901

- (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, cashiers check or money order made payable to the "General Treasury - Environmental Response Fund," and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.

- (3) Penalties assessed against the Respondent in this 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 this NOV.

F. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Paragraphs B through E above. All requests for hearing MUST:
 - (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);
 - (b) Be **RECEIVED** by the DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of 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'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 A. Hoefsmit, Esq.
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 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) Christina A. Hoefsmit 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:

Pease & Curren Incorporated
c/o Karen G. Delponte, Esq., Registered Agent
301 Promenade Street
Providence, RI 02908

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, HAZARDOUS WASTE
 File No.: OCI-HW-14-93
 Respondent: Pease & Curren Incorporated

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)- Storage Greater Than 90 Days Without Permit	Type I (\$ <u>25,000</u> Max. Penalty)*	Moderate	\$6,250	1 violation	\$6,250
C (2) & (3) – Satellite Container Management	Type I (\$ <u>25,000</u> Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500
C (4) & (5) – Container Labeling & Accumulation Date	Type I (\$ <u>25,000</u> Max. Penalty)*	Minor	\$2,500	2 violations	\$5,000
C (6) – Weekly Container Inspections	Type II (\$ <u>12,500</u> Max. Penalty)*	Minor	\$1,250	1 violation	\$1,250
C (7) – Secondary Containment for Tanks	Type I (\$ <u>25,000</u> Max. Penalty)*	Moderate	\$6,250	1 violation	\$6,250
C (8), (9) & (10) – Universal Waste Management	Type I (\$ <u>25,000</u> Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500
C (11) & (12) – Used Oil Management	Type I (\$ <u>25,000</u> Max. Penalty)*	Minor	\$2,500	2 violations	\$5,000
C (13) & (14) – Training & Contingency Plan	Type I (\$ <u>25,000</u> Max. Penalty)*	Minor	\$2,500	2 violations	\$5,000
SUB-TOTAL					\$33,750

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

ADMINISTRATIVE PENALTY SUMMARY (continued)

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 the DEM for storing hazardous waste for greater than 90 days and for failing to provide hazardous waste training to one employee. The expense associated with shipping the waste to a TSDF were obtained by contacting a local vendor. The expense associated with the cost of providing personnel with required training was 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 	C-Corporation	\$151	
	<ul style="list-style-type: none"> ▪ Filing Status 	C-Corporation		
	<ul style="list-style-type: none"> ▪ Initial Capital Investment 	\$0		
	<ul style="list-style-type: none"> ▪ One-time Non-depreciable Expense 	\$568 – Waste Shipment \$1,800 - Training		
	<ul style="list-style-type: none"> ▪ First Month of Noncompliance 	11/27/13 - Waste Shipment 12/13/12 - Training		
	<ul style="list-style-type: none"> ▪ Compliance Date 	28 February 2015		
	<ul style="list-style-type: none"> ▪ Penalty Due Date 	28 February 2015		
	<ul style="list-style-type: none"> ▪ Useful Life of Pollution Control 	N/A		
	<ul style="list-style-type: none"> ▪ Equipment Annual Inflation Rate 	N/A		
	<ul style="list-style-type: none"> ▪ Discount Compound Rate 	6.6% & 6.4%		
SUB-TOTAL			\$151	

COST RECOVERY

ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.

A review of the record in this matter has revealed that the 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.

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS= \$33,901

PENALTY MATRIX WORKSHEET

CITATION: Storage Greater Than 90 Days Without Permit

VIOLATION NO.: C (1)

TYPE		
<p><u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: The Respondent stored hazardous waste at the Facility for greater than 90 days without first obtaining a permit from the DEM. State regulations establish time limits allowing generators to temporarily store hazardous waste without obtaining a permit. A hazardous waste storage permit requires owners and operators of facilities designated to store and manage hazardous waste to install and maintain safety equipment to minimize the possibility of fires, explosions or unplanned releases involving the waste. The requirement to obtain a hazardous waste storage permit is a major component of the regulatory program.</p> <p>(B) Environmental conditions: The hazardous waste was stored outdoors in metal drums.</p> <p>(C) Amount of the pollutant: Two 55-gallon containers.</p> <p>(D) Toxicity or nature of the pollutant: The hazardous waste was a solid containing lead, which is a toxic metal.</p> <p>(E) Duration of the violation: One container had an accumulation start date of 27 August 2013 (376 days) and the other container had an accumulation start date of 15 December 2013 (277 days).</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to take reasonable and appropriate steps to prevent the violation by shipping the waste to a licensed facility.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for 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: Satellite Container Management
 VIOLATION NO.: C (2) & (3)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: The Respondent failed to label a satellite accumulation container and failed to keep the container closed. The requirement to label and keep containers holding hazardous waste closed are integral parts of the regulatory program because these requirements reduce the potential for an unplanned release of hazardous waste. Proper labeling of hazardous waste containers also 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: The container was stored indoors.</p> <p>(C) Amount of the pollutant: One 55-gallon container.</p> <p>(D) Toxicity or nature of the pollutant: The hazardous waste was a solid containing lead, which is a toxic metal.</p> <p>(E) Duration of the violation: Unknown.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to take reasonable and appropriate steps to prevent the violation by labeling the container and keeping it 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:** On 29 September 2010, the DEM issued a Letter of Non-Compliance to the Respondent for failing to label satellite accumulation containers.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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

PENALTY MATRIX WORKSHEET

CITATION: Container Labeling & Accumulation Date

VIOLATION NO.: C (4) & (5)

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

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

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondent failed to properly label containers holding 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 Respondent also failed to mark containers holding hazardous waste with the date upon which the waste first began to accumulate. The accumulation start date enables generators and regulatory authorities to track the amount of time hazardous waste is stored at a facility. This requirement is of significant concern to the regulatory program because it helps ensure that hazardous waste is not stored onsite for extended periods of time. Storage exceeding certain time thresholds requires the generator to obtain a hazardous waste storage permit.
- (B) **Environmental conditions:** Five containers holding spent crucibles containing lead were stored outdoors and two containers holding spent scrubber filters were stored indoors.
- (C) **Amount of the pollutant:** Five 55-gallon containers stored outdoors and two 2-cubic yard containers stored indoors.
- (D) **Toxicity or nature of the pollutant:** The hazardous waste was a solid containing lead, which is a toxic metal.
- (E) **Duration of the violation:** Unknown.
- (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 properly labeling and dating the containers holding hazardous waste. The Respondent did have incomplete hazardous waste labels on 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 29 September 2010, the DEM issued a Letter of Non-Compliance to the Respondent for failing to label and date containers holding hazardous waste.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violation and failed to take adequate steps to prevent the occurrence.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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

PENALTY MATRIX WORKSHEET

CITATION: Weekly Container Inspections

VIOLATION NO.: C (6)

TYPE		
<p>_____ TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>X 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
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondent failed to complete and document weekly inspections of the container storage area in the Warehouse. State regulations require generators to inspect areas in which hazardous waste is stored in containers and to maintain written logs documenting the results of the inspections. 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.
- (B) **Environmental conditions:** The containers were stored indoors in the Warehouse.
- (C) **Amount of the pollutant:** Two 2-cubic yard containers.
- (D) **Toxicity or nature of the pollutant:** The hazardous waste was a solid containing lead, which is a toxic metal.
- (E) **Duration of the violation:** Unknown.
- (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 steps to prevent the noncompliance by conducting the weekly inspections of 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:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violation.
- (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	\$1,250 to \$2,500 \$1,250	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Secondary Containment for Tanks
 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		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: The Respondent failed to provide a secondary containment system built on a foundation that is free of cracks or gaps and sealed or coated with a liquid tight compound for two 1,500 gallon tanks holding liquid hazardous waste. The regulations require generators to provide a functional secondary containment system for tanks holding liquid hazardous waste to provide a safeguard against unplanned releases of liquid waste. The tanks are capable of holding a significant volume of hazardous waste and the lack of a functioning secondary containment system represents a significant threat to the environment.</p> <p>(B) Environmental conditions: The hazardous waste tanks are stored indoors near the shipping area.</p> <p>(C) Amount of the pollutant: One tank was holding about 1,500 gallons, and the other tank was holding a small amount of waste.</p> <p>(D) Toxicity or nature of the pollutant: The wastes included hydrochloric and nitric acids, which are highly corrosive solutions that may react violently with water producing toxic fumes.</p> <p>(E) Duration of the violation: Unknown.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to take reasonable and appropriate steps to prevent the violation by maintaining the secondary containment system free of cracks or gaps.
- (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 29 September 2010, the DEM issued a Letter of Non-Compliance to the Respondent for failing to maintain a functional secondary containment system for tanks holding hazardous waste.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violation and failed to take adequate steps to prevent the occurrence.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	<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: Universal Waste Management
 VIOLATION NO.: C (8), (9) & (10)

TYPE		
<p>X TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>TYPE II</u> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>TYPE III</u> <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: Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: The Respondent failed to label and keep closed three boxes holding universal waste lamps. In addition, the Respondent stored two of the boxes for greater than one year. State and Federal regulations require a handler of universal waste to properly label universal waste, or the containers holding universal waste, and to keep containers holding universal waste closed while in storage onsite. The regulations also prohibit handlers from storing universal waste onsite for a period of time that exceeds one year without a permit.</p> <p>(B) Environmental conditions: Considered, but not utilized for this calculation.</p> <p>(C) Amount of the pollutant: Three boxes.</p> <p>(D) Toxicity or nature of the pollutant: Universal Waste lamps contain mercury, which is a known neurotoxin.</p> <p>(E) Duration of the violation: Unknown for violation regarding keeping boxes open. One box had an accumulation start date of 2 April 2013 (5 months longer than allowed), and the other box had an accumulation start date of 20 August 2013 (2 weeks longer than allowed).</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to take reasonable and appropriate steps to prevent or mitigate the noncompliance by properly labeling and keeping closed containers holding universal waste and by storing universal waste for greater than one year.
- (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 29 September 2010, the DEM issued a Letter of Non-Compliance to the Respondent for failing to label and close containers holding universal waste.
- (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 for this calculation.

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

PENALTY MATRIX WORKSHEET

CITATION: Used Oil Management

VIOLATION NO.: C (11) & (12)

TYPE		
<p><u> </u> X <u> </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: The Respondent failed to label containers holding used oil with the words "used oil" and to keep two of the containers closed. The requirements to label and keep closed containers holding used oil reduces the potential for mismanagement and/or unplanned releases of used oil. Proper labeling of 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: Three 5-gallon containers.</p> <p>(D) Toxicity or nature of the pollutant: Used oil is known to cause soil contamination when released to the environment and may contain constituents that are suspected human carcinogens.</p> <p>(E) Duration of the violation: Unknown.</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:** The Respondent did not take reasonable and appropriate steps to prevent the violation by labeling the containers and keeping the containers 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 for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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

PENALTY MATRIX WORKSHEET

CITATION: Training & Contingency Plan

VIOLATION NO.: C (13) & (14)

TYPE		
X 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's *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondent failed to provide hazardous waste management training to an employee who works with hazardous waste and failed to amend the company's contingency plan to address changes at the facility and in the regulations. State regulations require generators to provide hazardous waste training program to employees that manage hazardous waste within six months of their initial hiring date. 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. State regulations also require generators to review and update its contingency plan when the applicable regulations are revised or there is a change in the list of emergency coordinators.
- (B) **Environmental conditions:** Considered, but not utilized for this calculation.
- (C) **Amount of the pollutant:** Five 55-gallon containers, two 2-cubic yard containers and seven tanks holding a total of about 5,400 gallons of hazardous waste.
- (D) **Toxicity or nature of the pollutant:** The hazardous wastes included spent crucibles containing lead (a toxic metal), hydrochloric and nitric acid solutions, which are highly corrosive solutions and may react violently with water producing toxic fumes and a scrubber solution containing lead.
- (E) **Duration of the violation:** About 15 months for the hazardous waste training (Kimberly Michalik signed a manifest on 13 December 2012, but had not received hazardous waste training as of the date of the inspection). About 7 months for the contingency plan (the hazardous waste regulations were revised on 10 February 2014).
- (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 steps to prevent the noncompliance by training an employee and amending its 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 for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violation.
- (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