

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: PRESCRIPTION COMPOUNDING
SPECIALISTS OF RHODE ISLAND, INC.**

FILE NO.: OCI-HW-13-119

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 1145 Reservoir Avenue in the city of Cranston, Rhode Island (the "Property"). The Property includes a facility used for the compounding and mixing of pharmaceuticals for prescriptions (the "Facility").
- (2) The Respondent operates the Facility.
- (3) On 26 November 2013, the DEM inspected the Facility. The inspection revealed the following:
 - (a) Three satellite accumulation containers ("Containers") holding hazardous waste in the form of potassium hydroxide, sodium hydroxide and phenol solution located in the laboratory that were not labeled with the words "Hazardous Waste";
 - (b) No hazardous waste determination of the waste held in the Containers was completed;
 - (c) The hazardous waste observed in the Containers is routinely generated (the "Routinely Generated Hazardous Waste");
 - (d) The Routinely Generated Hazardous Waste was shipped from the Facility to an unlicensed facility; and
 - (e) The Routinely Generated Hazardous Waste was shipped from the Facility without a manifest.

- (4) A review of manifest records maintained by the DEM revealed that the Respondent has not completed and submitted to the DEM any hazardous waste manifests for shipments of hazardous waste from the Facility.
- (5) A review of the DEM's file revealed that a list of agents authorized by the Respondent to sign hazardous manifests was not on file with the DEM.
- (6) The Respondent has not submitted a RCRA Subtitle C Site Identification Form to the DEM for its hazardous waste generator activity at the Facility.
- (7) As of the date of this Notice of Violation ("NOV"), the Respondent has failed to demonstrate compliance with the DEM's *Rules and Regulations for Hazardous Waste Management* (the "Hazardous Waste Regulations") for the issues described 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, DEM's Hazardous Waste Regulations 7.0(B)(2) and Title 40 of the Code of Federal Regulations ("40 CFR") 270.1(b)** – prohibiting the disposal of hazardous waste at an unlicensed facility.
- (2) **DEM's Hazardous Waste Regulations 5.3 and 40 CFR 262.20** – requiring that a hazardous waste generator complete a manifest to accompany each shipment of hazardous waste.
- (3) **DEM's Hazardous Waste Regulations 5.8 and 40 CFR 262.11** – requiring that a hazardous waste generator determine if the waste generated onsite meets the definition of a hazardous waste.
- (4) **DEM's Hazardous Waste Regulations 5.4C and 40 CFR 262.34(c)(1)(ii)** – requiring that a hazardous waste generator label all satellite accumulation containers holding hazardous waste with the words "Hazardous Waste" and other words identifying the contents of the container.
- (5) **DEM's Hazardous Waste Regulations 5.1 and 40 CFR 262.12** – requiring that a hazardous waste generator apply for and obtain an Environmental Protection Agency ("EPA") identification number prior to shipping hazardous waste offsite.
- (6) **DEM's Hazardous Waste Regulations 5.9** – requiring that a hazardous waste generator submit to the DEM a list of agents authorized by the company to sign uniform hazardous waste manifests for shipments of hazardous waste.

D. Order

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

- (1) **IMMEDIATELY upon receipt of the NOV**, cease and desist the disposal of hazardous waste at an unlicensed facility.
- (2) **Within 30 days of receipt of the NOV:**
 - (a) Complete a waste determination on all chemical wastes in storage at the Facility in accordance with the requirements of the DEM's Hazardous Waste Regulations 5.8 and submit a copy of the determination to the DEM Office of Compliance & Inspection ("OC&I"). In the event that any waste is determined to meet the definition of a hazardous waste, **IMMEDIATELY** begin managing the waste in accordance with the applicable requirements of the DEM's Hazardous Waste Regulations;
 - (b) Label all satellite accumulation containers holding hazardous waste with the words "Hazardous Waste" and other words identifying the contents of the container;
 - (c) Submit a completed RCRA Subtitle C Site Identification Form to the OC&I to obtain an EPA identification number; and
 - (d) Submit the names and signatures of all agents authorized to sign the uniform hazardous waste manifests to the OC&I.
- (3) Complete a hazardous waste manifest for each and every offsite shipment of hazardous waste from the Facility.

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:

\$16,250

- (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 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 DEM 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 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:

PRESCRIPTION COMPOUNDING SPECIALISTS OF
RHODE ISLAND, INC.
c/o AnnMarie T. Arvanites, Registered Agent
950 Reservoir Avenue, Suite 1
Cranston, RI 02910

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, HAZARDOUS WASTE

File No.: OCI-HW-13-119

Respondent: Prescription Compounding Specialists of Rhode Island, Inc.

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
C (1) - Disposal of Hazardous Waste at an Unlicensed Facility	Type I (\$25,000 Max. Penalty)*	Moderate	\$ 6,250	1 violation	\$6,250
C (2) – Improper Shipment of Hazardous Waste	Type I (\$25,000 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500
C (3) - Hazardous Waste Determination	Type I (\$25,000 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500
C (4) & (5) – Satellite Container Management	Type I (\$25,000 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500
C (6) – Notification of Regulated Activity	Type I (\$25,000 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500
SUB-TOTAL					\$16,250

*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.

A review of the record in this matter has revealed that the Respondent has either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted can not be quantified.

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 = \$16,250

PENALTY MATRIX WORKSHEET

CITATION: Disposal of Hazardous Waste at an Unlicensed Facility
 VIOLATION NO.: C (1)

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

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

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 shipped hazardous waste offsite to a facility that was not licensed to receive hazardous waste. State and Federal regulations require generators to ensure that hazardous waste generated at their facility is properly disposed of at a licensed facility. This requirement is the core element of the regulatory program because a licensed facility has protocols and specialized equipment for the safe treatment and disposal of hazardous waste. Disposal of hazardous waste at an unlicensed facility may result in contamination of soil, surface and groundwater.
- (B) **Environmental conditions:** Considered, but not utilized for this calculation.
- (C) **Amount of the pollutant:** Unknown.
- (D) **Toxicity or nature of the pollutant:** At the time of the inspection, the Respondent was storing potassium hydroxide, sodium hydroxide and a phenol solution all of which are corrosive chemicals.
- (E) **Duration of the violation:** Full duration unknown; however, the company has been operating at this location for several years.
- (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 and/or mitigate the noncompliance by shipping the hazardous waste to an unlicensed 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.
- (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: Improper Shipment of Hazardous Waste

VIOLATION NO.: C (2)

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>FACTORS CONSIDERED:</p> <p>Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: The Respondent failed to complete a manifest prior to shipping hazardous waste offsite. State and Federal regulations require generators to complete a manifest prior to shipping hazardous waste offsite. The manifest is required to provide the “cradle to grave” tracking for all shipments of hazardous waste.</p> <p>(B) Environmental conditions: Considered, but not utilized in this calculation.</p> <p>(C) Amount of the pollutant: Unknown.</p> <p>(D) Toxicity or nature of the pollutant: At the time of the inspection, the Respondent was storing potassium hydroxide, sodium hydroxide and a phenol solution all of which are corrosive chemicals.</p> <p>(E) Duration of the violation: Full duration unknown; however, the company has been operating at this location for several years.</p> <p>(F) Areal extent of the violation: Considered, but not utilized in 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 completing a manifest. The Respondent mitigated the violation to some extent by using a company that was authorized to transport medical waste.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized in this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violation 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 in this calculation.

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

PENALTY MATRIX WORKSHEET

CITATION: Hazardous Waste Determination

VIOLATION NO.: C (3)

TYPE		
<p style="text-align: center;"><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> </u> TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: The Respondent failed to properly characterize solid waste in the form of unused chemical products. State and Federal regulations require generators of waste to determine if their waste meets the definition of a hazardous waste. The failure to properly characterize waste may result in the mismanagement of hazardous waste and in this case led to the improper disposal of hazardous waste.</p> <p>(B) Environmental conditions: Considered, but not utilized for this calculation.</p> <p>(C) Amount of the pollutant: Less than 1 gallon.</p> <p>(D) Toxicity or nature of the pollutant: At the time of the inspection, the Respondent was storing potassium hydroxide, sodium hydroxide and a phenol solution all of which are corrosive chemicals.</p> <p>(E) Duration of the violation: Unknown.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for 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 failed to take reasonable steps to prevent and/or mitigate the noncompliance by properly determining if the wastes met the definition of hazardous waste.
- (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

PENALTY MATRIX WORKSHEET

CITATION: Satellite Container Management

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.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: The Respondent failed to label satellite accumulation containers holding hazardous waste. The requirement to label containers holding hazardous waste is an integral part of the regulatory program because this requirement reduces the potential for mismanagement of waste. Proper labeling of waste containers provides important information regarding the chemical properties of the waste for emergency responders who may be called to a facility during a fire, spill or release.</p> <p>(B) Environmental conditions: Considered, but not utilized in this calculation.</p> <p>(C) Amount of the pollutant: Less than 1 gallon.</p> <p>(D) Toxicity or nature of the pollutant: At the time of the inspection, the Respondent was storing potassium hydroxide, sodium hydroxide and a phenol solution all of which are corrosive chemicals in a container that was not labeled or closed.</p> <p>(E) Duration of the violation: Unknown.</p> <p>(F) Areal extent of the violation: Considered, but not utilized in this calculation.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to take reasonable and appropriate steps to prevent the violation by properly labeling and keeping closed the container holding hazardous waste.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized in this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violation 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 in this calculation.

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

PENALTY MATRIX WORKSHEET

CITATION: Notification of Regulated Activity

VIOLATION NO.: C (6)

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 notify DEM of its regulated waste activity and failed to obtain an EPA identification number prior to storing and shipping hazardous waste. State and Federal regulations require generators to apply for and obtain an EPA identification number prior to storing or shipping hazardous waste offsite. The EPA identification number enables generators and regulatory agencies to track shipments of hazardous waste to ensure proper management and disposal.
- (B) **Environmental conditions:** Considered, but not utilized in this calculation.
- (C) **Amount of the pollutant:** Less than 1 gallon.
- (D) **Toxicity or nature of the pollutant:** At the time of the inspection, the Respondent was storing potassium hydroxide, sodium hydroxide and a phenol solution all of which are corrosive chemicals.
- (E) **Duration of the violation:** Full duration unknown; however, the company has been operating at this location for several years.
- (F) **Areal extent of the violation:** Considered, but not utilized in this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to take reasonable and appropriate steps to prevent the violation by applying for an EPA identification number.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized in this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violation 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 in this calculation.

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