

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Ken Rocha Collision LLC

FILE NO.: OCI-HW-15-83

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 555 Cranston Street in the city of Providence (the "Property"). The Property includes an auto body repair shop (the "Facility").
- (2) The Respondent operates the Facility.
- (3) On 20 July 2015, the DEM inspected the Facility. The inspection revealed the following:
 - (a) Hazardous waste (2 aerosol cans containing flammable gas and liquid, 1 quart of a corrosive bleach liquid and 2 quarts of used oil) in a solid waste dumpster located behind the Facility;
 - (b) 12 containers equal to or less than 1-gallon each holding chemical materials located in a flammable cabinet in the Vehicle Storage Area (the "Cabinet Containers");
 - (c) 5 satellite containers holding ignitable hazardous waste (paint and related waste) located in the Paint Mix Room (a 50-gallon container, a 1-gallon container and three 5-gallon containers). None of the containers were labeled, and the 50-gallon container and the 1-gallon container were open;
 - (d) Nine 5-gallon 180 day containers stored outdoors under a pile of scrap metal behind the Facility holding hazardous waste (paint thinner). None of the containers were labeled and marked with accumulation dates. The containers were stored less than 3 feet between rows, and 1 container was open; and

- (e) The names and numbers of the Facility's emergency coordinators and the number for the local fire department, the national response center and the DEM were not posted.
- (4) During the inspection the DEM was provided with the following information:
 - (a) Kyle Rocha manages the hazardous waste at the Facility;
 - (b) The Cabinet Containers were left by a prior tenant, and Mr. Rocha did not know whether the containers were product or waste;
 - (c) No written logs for weekly container inspections were available; and
 - (d) No hazardous waste contingency plan was available.
- (5) The DEM reviewed its records and determined that the Respondent failed to notify the DEM of its regulated waste activity and failed to submit a list of agents authorized by the company to sign hazardous waste manifests.
- (6) On 29 July 2015, the Respondent shipped 2 drums holding hazardous waste from the Facility to a licensed disposal facility.
- (7) Based upon a review of all information available, the DEM believes that the Respondent is a conditionally exempt small quantity generator at the Facility.
- (8) As of the date of this Notice of Violation (“NOV”), the Respondent has failed to demonstrate that it has fully corrected the noncompliance identified in Sections B (3), B (4) and B (5) 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 7B2 and 40 CFR 270.1(b)** – requiring the disposal of hazardous waste at a permitted facility.
- (2) **DEM’s Hazardous Waste Regulation 15.2H and 15.4G** - prohibiting used oil generators from shipping used oil using an unlicensed transporter to a facility that has not notified the DEM of its used oil activity.
- (3) **DEM’s Hazardous Waste Regulation 5.3** – requiring that a hazardous waste generator determine if the waste generated onsite meets the definition of a hazardous waste.

- (4) **DEM's Hazardous Waste Regulation 5.9A and 5.15D.2** – requiring that a hazardous waste generator label all satellite containers holding hazardous waste with the words “Hazardous Waste” and other words identifying the contents of the container.
- (5) **DEM's Hazardous Waste Regulation 5.15B.1** – requiring that a hazardous waste generator mark containers holding hazardous waste with the date upon which the waste first began to accumulate.
- (6) **DEM's Hazardous Waste Regulation 5.15D.1** – requiring that a hazardous waste generator label each container holding hazardous waste with the words “Hazardous Waste”, the chemical or common name of the waste, and the name, address, and EPA identification number ("EPA ID") of the generating facility.
- (7) **DEM's Hazardous Waste Regulation 5.9D and 5.15B.2** – requiring that a hazardous waste generator keep containers holding hazardous waste closed except when adding or removing waste.
- (8) **DEM's Hazardous Waste Regulation 5.10** - requiring that a hazardous waste generator maintain a minimum of 3 feet of space between rows of containers to allow for the unobstructed movement of personnel, fire protection equipment, spill control equipment and decontamination equipment.
- (9) **DEM's Hazardous Waste Regulation 5.15B.7** – requiring that a hazardous waste generator conduct weekly inspections of container storage areas looking for leaking containers and signs of deterioration by corrosion or other factors and maintain documentation of the inspection of each hazardous waste storage area.
- (10) **DEM's Hazardous Waste Regulation 5.15H.1** – requiring that a hazardous waste generator either prepare a hazardous waste contingency plan **OR** designate an emergency coordinator, post the name and telephone number for the emergency coordinator, post the telephone numbers for the local fire department, the DEM, the National Response Center and the companies environmental contractor near all phones.
- (11) **DEM's Hazardous Waste Regulation 5.4** – requiring that a hazardous waste generator apply for and obtain an EPA ID prior to storing or shipping hazardous waste offsite.
- (12) **DEM's Hazardous Waste Regulation 5.7** – 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 to the solid waste dumpster. All hazardous waste must be transported to a licensed disposal facility.
- (2) **IMMEDIATELY upon receipt of the NOV**, cease and desist the disposal of used oil to the solid waste dumpster. All used oil must be shipped using a licensed transporter to a facility that has notified the DEM of its used oil activity.
- (3) **Within 30 days of receipt of the NOV:**
 - (a) Collect representative samples from the Cabinet Containers and submit the samples to a laboratory for analysis to determine if the waste meets the definition of hazardous waste in accordance with the requirements of DEM's Hazardous Waste Regulation 5.3 and submit a copy of the test results to the DEM's Office of Compliance & Inspection ("OC&I") **OR IMMEDIATELY** begin managing the containers as hazardous waste;
 - (b) Label all satellite containers holding hazardous waste with the words "Hazardous Waste" and other words identifying the contents of the container;
 - (c) Label all containers holding hazardous waste with the words "Hazardous Waste", the chemical or common name of the waste and the name, address and EPA ID of the generating facility;
 - (d) Mark all containers holding hazardous waste with the date upon which the hazardous waste first began to accumulate;
 - (e) Close and keep closed all containers holding hazardous waste except when adding or removing waste;
 - (f) Begin conducting weekly inspections 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;
 - (g) Provide a minimum of 3 feet of space between rows of containers to allow for the unobstructed movement of personnel and emergency equipment;

- (h) Develop and maintain a hazardous waste contingency plan for the Facility that includes all of the applicable information contained in the DEM's Hazardous Waste Regulations 5.13J and submit a copy to the OC&I **OR** designate 1 employee to act as an emergency coordinator, post the name and phone numbers for the emergency coordinator, the local fire department, the DEM, the National Response Center and the company's environmental contractor near all phones in the Facility; and conspicuously mark the location of all fire and spill control equipment;
- (i) Submit a completed EPA Form 8700-12 to the OC&I to obtain an EPA ID; and
- (j) Submit the names and signatures of all agents authorized to sign the uniform hazardous waste manifests 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:

\$42,748

- (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 the NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if the Director determines that reasonable efforts have been made to comply promptly with the 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 the NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
One Capitol Hill, 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:

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

(3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.

(4) Each respondent must file a separate and timely request for an administrative hearing before the DEM's Administrative Adjudication Division as to each violation alleged in the written NOV.

- (5) If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then the NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-71.1-2(21)(i) and (vi) and 42-17.6-4(b) and (c).
- (6) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
- (7) The NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Tricia Quest at the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey Tyrrell of the DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 7407.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section F above.

FOR THE DIRECTOR

By: _____
David E. Chopy, Chief
DEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

I hereby certify that on the _____ day of _____
the within Notice of Violation was forwarded to:

Ken Rocha Collision, LLC
c/o Kenneth A. Rocha, Registered Agent
770 Potters Avenue
Providence, RI 02907

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, HAZARDOUS WASTE
 File No.: OCI-HW-15-83
 Respondent: Ken Rocha Collision, LLC

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) – Hazardous Waste Disposal	Type I (\$25,000 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500
C (2) – Used Oil Disposal	Type I (\$25,000 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500
C (3) – Determination	Type I (\$25,000 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500
C (4), (5) & (6) – Satellite Container Labeling, 180 Day Container Labeling & Accumulation Date	Type I (\$25,000 Max. Penalty)*	Minor Moderate	\$2,500 \$6,250	1 violation (Satellite Labeling) 2 violations (Labeling & Accumulation Date)	\$15,000
C (7) – Open Containers	Type I (\$25,000 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500
C (8) & (9) – Container Inspections & Aisle Space	Type I (\$25,000 Max. Penalty)*	Minor	\$6,250	1 violation (Container Inspections)	\$6,250
	Type II (\$12,500 Max. Penalty)*	Minor	\$2,500	1 violation (Aisle Space)	\$2,500
C (10) –Contingency Plan	Type I (\$25,000 Max. Penalty)*	Moderate	\$6,250	1 violation	\$6,250
C (11) – Notification	Type I (\$25,000 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500
SUB-TOTAL					\$42,500

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

ECONOMIC BENEFIT FROM NONCOMPLIANCE

COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT ARE IN COMPLIANCE. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:

- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR
- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.

<i>DESCRIPTION OF BENEFIT</i>	<i>CALCULATION</i>	AMOUNT																						
<p>Economic benefit of noncompliance identified by the DEM for the failure to complete a waste determination and the failure to develop a contingency plan.</p> <p>The expenses associated with completing a waste determination and developing a contingency plan were derived from the EPA "Estimating Costs for the Economic Benefits of RCRA Noncompliance", updated December 1997.</p> <p>The economic benefit was calculated by utilizing an EPA computer model entitled "BEN" that performs a detailed economic analysis. The dates, dollar amounts and values used in this analysis are as listed in this table.</p>	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">• Profit Status</td> <td>C-Corporation</td> </tr> <tr> <td>• Filing Status</td> <td>C-Corporation</td> </tr> <tr> <td>• Initial Capital Investment</td> <td>\$0</td> </tr> <tr> <td>• One-time Non-depreciable Expense</td> <td>\$823 – Waste Determination \$3,014 – Contingency Plan</td> </tr> <tr> <td>• Annual Expense</td> <td>\$0</td> </tr> <tr> <td>• First Month of Non-Compliance</td> <td>July 20, 2014</td> </tr> <tr> <td>• Compliance Date</td> <td>October 31, 2016</td> </tr> <tr> <td>• Penalty Due Date</td> <td>October 31, 2016</td> </tr> <tr> <td>• Useful Life of Pollution Control</td> <td>N/A</td> </tr> <tr> <td>• Equipment Annual Inflation Rate</td> <td>N/A</td> </tr> <tr> <td>• Discount/Compound Rate</td> <td>N/A</td> </tr> </table>	• Profit Status	C-Corporation	• Filing Status	C-Corporation	• Initial Capital Investment	\$0	• One-time Non-depreciable Expense	\$823 – Waste Determination \$3,014 – Contingency Plan	• Annual Expense	\$0	• First Month of Non-Compliance	July 20, 2014	• Compliance Date	October 31, 2016	• Penalty Due Date	October 31, 2016	• Useful Life of Pollution Control	N/A	• Equipment Annual Inflation Rate	N/A	• Discount/Compound Rate	N/A	\$248
• Profit Status	C-Corporation																							
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• Penalty Due Date	October 31, 2016																							
• Useful Life of Pollution Control	N/A																							
• Equipment Annual Inflation Rate	N/A																							
• Discount/Compound Rate	N/A																							
<i>SUB-TOTAL</i>		\$248																						

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 = \$42,748

PENALTY MATRIX WORKSHEET

CITATION: Hazardous Waste Disposal
 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 disposed of hazardous waste in a solid waste dumpster. 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 disposal of hazardous waste at an unlicensed facility may result in contamination of soil, surface and groundwater.
- (B) **Environmental conditions:** The containers of waste were stored outdoors in an area that was exposed to the precipitation and temperature fluctuations.
- (C) **Amount of the pollutant:** 2 aerosol cans and 1 quart of bleach.
- (D) **Toxicity or nature of the pollutant:** The aerosol cans contained ignitable liquids and gases and the quart container held a corrosive liquid bleach.
- (E) **Duration of the violation:** Full duration unknown; however, the company has been operating at this location for at least 1 year.
- (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 shipping the hazardous waste to a licensed disposal facility. The DEM has no information on what steps, if any, the Respondent took to mitigate the noncompliance. On 29 July 2015, the Respondent shipped 2 containers holding hazardous 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.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The Respondent submitted a Compliance Certification Checklist to the DEM on 11 November 2011 for an auto body repair facility located at 770 Potters Avenue certifying that the company shipped its hazardous waste to a properly licensed facility.

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 Disposal

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;"><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 disposed of used oil in a solid waste dumpster. State regulations require used oil generators to ensure that used oil generated at their facility is properly recycled or disposed of at a licensed facility. This requirement is the core element of the regulatory program because disposal of used oil at an unlicensed facility may result in contamination of soil, surface and groundwater.</p> <p>(B) Environmental conditions: The containers holding used oil were placed into a solid waste dumpster for disposal at a solid waste management facility that is not designed for the disposal of petroleum.</p> <p>(C) Amount of the pollutant: 2 quarts of used oil.</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: Full duration unknown; however, the company has been operating at this location for 1 year.</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 steps to prevent the noncompliance by properly recycling the used oil or sending it to a licensed and/or authorized facility. The DEM has no information on what steps, if any, the Respondent took to mitigate the noncompliance. On 29 July 2015, the Respondent shipped 2 containers holding hazardous 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.
- (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: 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;">TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<p><small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small></p>		
<p>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 wastes 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: The containers of waste were stored in a cabinet inside the facility.</p> <p>(C) Amount of the pollutant: 12 containers holding equal to or less than 1-gallon each.</p> <p>(D) Toxicity or nature of the pollutant: Unknown.</p> <p>(E) Duration of the violation: Full duration unknown - at least 1 year.</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 the noncompliance by properly determining if the subject wastes met the definition of hazardous waste. The DEM has no information on what steps, if any, the Respondent has taken to mitigate the noncompliance.
- (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
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	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 Labeling, 180 Day Container Labeling & Accumulation Date
 VIOLATION NO.: C (4), (5) & (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>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 containers and failed to completely label 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 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 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 extended certain time thresholds require the generator to obtain a hazardous waste storage permit.</p> <p>(B) Environmental conditions: The satellite containers were stored inside the facility and the 180 day containers were stored outdoors on pavement exposed to precipitation and temperature fluctuations.</p> <p>(C) Amount of the pollutant: Five satellite containers holding about 66 gallons and nine containers holding about 45 gallons.</p> <p>(D) Toxicity or nature of the pollutant: Auto body paint related wastes typically contain federally listed non-halogenated solvents including, but not limited to, xylene, acetone, ethyl benzene, methyl isobutyl ketone, toluene, methyl ethyl ketone, and isobutanol. Paint waste may also be identified as a characteristic hazardous waste based on ignitability and toxicity.</p> <p>(E) Duration of the violation: Unknown.</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 completely labeling and dating the containers holding hazardous waste. The DEM has no information on what steps, if any, the Respondent has taken to mitigate the noncompliance. On 29 July 2015, the Respondent shipped 2 drums holding hazardous 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:** The Respondent submitted a Compliance Certification Checklist to the DEM on 10 November 2011 for an auto body repair facility located at 770 Potters Avenue certifying that the company properly labeled and dated its containers.

MAJOR	<u> </u> X MODERATE	<u> </u> X 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 (180 Day Labeling & Accumulation Date)	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250 \$2,500 (Satellite Labeling)	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Open Containers

VIOLATION NO.: C (7)

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> <ul style="list-style-type: none"> (A) The extent to which the act or failure to act was out of compliance: The Respondent failed to keep closed containers holding hazardous waste. State regulations require generators to keep all containers holding hazardous waste closed. The requirement to keep containers holding waste closed is designed to prevent spills and releases of hazardous waste from resulting in harm to human health and the environment. (B) Environmental conditions: The satellite containers were stored inside the facility and containers were stored outdoors on pavement exposed to precipitation and temperature fluctuations. (C) Amount of the pollutant: One 50-gallon satellite container, one 1-gallon satellite container and one 5-gallon container. (D) Toxicity or nature of the pollutant: Auto body paint related wastes typically contain federally listed non-halogenated solvents including, but not limited to, xylene, ethyl benzene, acetone, methyl isobutyl ketone, toluene, methyl ethyl ketone, and isobutanol. Paint waste may also be identified as a characteristic hazardous waste based on ignitability and toxicity. (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 Respondents failed to take reasonable and appropriate steps to prevent the noncompliance. The DEM has no information on what steps, if any, the Respondent has taken to mitigate the noncompliance. On 29 July 2015, the Respondent shipped 2 drums holding hazardous 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.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The Respondent submitted a Compliance Certification Checklist to the DEM on 10 November 2011 for an auto body repair facility located at 770 Potters Avenue certifying that the company kept containers of waste closed when in storage.

<u> </u> MAJOR	<u> </u> 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 Inspections & Aisle Space

VIOLATION NO.: C (8) & (9)

TYPE		
<p><u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>X</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>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 conduct inspections of the container storage area on a weekly basis and failed to store containers with adequate aisle space. State regulations require generators to inspect areas in which hazardous waste is stored in containers and to store containers with a minimum of 3 feet of aisle space. 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. The requirement to store containers with adequate aisle space provides emergency responders and equipment access to waste storage areas.</p> <p>(B) Environmental conditions: The containers were stored outdoors on pavement exposed to precipitation and temperature fluctuations.</p> <p>(C) Amount of the pollutant: 45 gallons held in nine 5-gallon containers.</p> <p>(D) Toxicity or nature of the pollutant: Auto body paint related wastes typically contain federally listed non-halogenated solvents including, but not limited to, xylene, ethyl benzene, acetone, methyl isobutyl ketone, toluene, methyl ethyl ketone, and isobutanol. Paint waste may also be identified as a characteristic hazardous waste based on ignitability and toxicity.</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 completing weekly inspections and providing adequate aisle space between the containers. The DEM has no information on what steps, if any, the Respondent has taken to mitigate the noncompliance. On 29 July 2015, the Respondent shipped 2 drums holding hazardous 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:** The Respondent submitted a Compliance Certification Checklist to the DEM on 10 November 2011 for an auto body repair facility located at 770 Potters Avenue certifying that the company stored containers in compliance with the regulations.

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

PENALTY MATRIX WORKSHEET

CITATION: Contingency Plan

VIOLATION NO.: C (10)

TYPE		
<u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED: 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 develop a hazardous waste contingency plan. The DEM's regulations require generators to develop and maintain a complete contingency plan containing procedures to follow to minimize hazards posed to human health and the environment from fires, explosions or planned or unplanned releases involving hazardous waste. A contingency plan reduces the potential for injury of employees and/or response personnel that may be called upon for assistance during a fire, spill or release incident.</p> <p>(B) Environmental conditions: The satellite containers were stored inside the facility and the y containers were stored outdoors on pavement exposed to precipitation and temperature fluctuations.</p> <p>(C) Amount of the pollutant: Five satellite containers holding about 66 gallons and nine 5-gallon containers holding about 45 gallons.</p> <p>(D) Toxicity or nature of the pollutant: Auto body paint related wastes typically contain federally listed non-halogenated solvents including, but not limited to, xylene, ethyl benzene, acetone, methyl isobutyl ketone, toluene, methyl ethyl ketone, and isobutanol. Paint waste may also be identified as a characteristic hazardous waste based on ignitability and toxicity.</p> <p>(E) Duration of the violation: Full duration unknown - at least 2 years. The Respondent reportedly began operations 1 year before the 20 July 2015 inspection.</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 steps to prevent the noncompliance by failing to develop a contingency plan. The DEM has no information on what steps, if any, the Respondent has taken to mitigate the noncompliance.
- (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:** The Respondent submitted a Compliance Certification Checklist to the DEM on 10 November 2011 for an auto body repair facility located at 770 Potters Avenue certifying that the company had developed a contingency plan.

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: Notification
 VIOLATION NO.: C (11)

TYPE		
X TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>TYPE II</u> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>TYPE III</u> <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 submit a Notification of Regulated Waste Activity Form to the DEM for its operation at the facility. The DEM's regulations require generators to notify the DEM of waste generation activities prior to storing or shipping hazardous waste.
- (B) **Environmental conditions:** Considered, but not utilized for this calculation.
- (C) **Amount of the pollutant:** Five satellite containers holding about 66 gallons and nine 5-gallon containers holding about 45 gallons.
- (D) **Toxicity or nature of the pollutant:** Auto body paint related wastes typically contain federally listed non-halogenated solvents including, but not limited to, xylene, acetone, ethyl benzene, methyl isobutyl ketone, toluene, methyl ethyl ketone, isobutanol. Paint waste may also be identified as a characteristic hazardous waste based on flammability and toxicity.
- (E) **Duration of the violation:** Full duration unknown - at least 2 years. The Respondent reportedly began operations 1 year before the 20 July 2015 inspection.
- (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 or mitigate the noncompliance by notifying the DEM of its regulated waste activity.
- (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