

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Schulz Boat Company, Inc.
Schulz Boat Company, LLC**

FILE NO.: 2009-73-HW

NOTICE OF VIOLATION

A. Introduction

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

B. Facts

- (1) The subject property is located at 19 Broad Common Road, Bristol, Rhode Island (the “Property”). The Property includes a facility that manufactures boats (the “Facility”).
- (2) Schulz Boat Company, Inc. (the “Company”) is registered with the DEM pursuant to the DEM Rules and Regulations for Hazardous Waste Management (the “Hazardous Waste Regulations”) as a small quantity hazardous waste generator and is assigned Environmental Protection Agency (“EPA”) Identification Number RI5 000 000 927.
- (3) Schulz Boat Company, Inc. and Schulz Boat Company, LLC (the “LLC”) are both listed as registered businesses with the Rhode Island Office of the Secretary of State with principal offices at the Property.
- (4) The Facility generates a waste solvent (acetone) that is a hazardous waste based on the characteristic of ignitibility with EPA Waste Number D001 and because acetone is a federally listed hazardous waste with EPA Waste Number F003.
- (5) The Facility generates a waste diesel fuel that is a hazardous waste based on the characteristic of ignitibility with Rhode Island Waste Number R003.
- (6) On July 23, 2009 DEM inspected the Facility accompanied by Walter Schulz and William Ramos, who identified themselves as the Company’s president and vice president, respectively.
- (7) During the July 23, 2009 inspection the DEM inspector observed one (1) fifty-five (55) gallon black steel drum and one (1) fifty-five (55) gallon white steel

drum in the ninety (90) day storage area in the rear exterior of the Property within a secondary containment area. Each drum held a waste solvent (acetone). The label on the black steel drum was marked with an accumulation start date of November 14, 2008 and the label on the white steel drum was marked with an accumulation start date of December 20, 2008. The label on each drum was marked with an incorrect EPA Identification Number (450564060) and was missing the proper U.S. Department of Transportation shipping name of the principal hazardous components of the waste.

- (8) During the July 23, 2009 inspection the DEM inspector observed one (1) fifty-five (55) gallon black steel drum in the satellite accumulation area in building #3. The drum held a waste solvent (acetone). The drum was not labeled with the words "hazardous waste" and other words to identify the contents of the drum.
- (9) During the July 23, 2009 inspection the DEM inspector observed one (1) fifty-five (55) gallon blue steel drum and one (1) fifty-five (55) gallon black steel drum in the ninety (90) day storage area in the rear exterior of the Property. The blue steel drum held a waste solvent (acetone) and the black steel drum held about two (2) gallons of waste diesel fuel. The drums were not labeled and did not have a secondary containment system. The black steel drum was not closed at the time of the inspection.
- (10) During the July 23, 2009 inspection the DEM inspector observed four (4) fifty-five (55) gallon steel drums on a pallet in the ninety (90) day storage area in the rear exterior of the Property. Each drum held spent solvent (acetone). The labels on each drum were missing the EPA Identification Number, the U.S. Department of Transportation shipping name of the principal hazardous waste components and the EPA Waste Number assigned to the waste. The labels on three (3) of the drums were missing the date upon which the waste first began to accumulate. The DEM inspector also observed that the drums did not have a secondary containment system. The DEM inspector observed two (2) additional fifty-five (55) gallon containers holding spent solvent that were not marked with accumulation start dates.
- (11) During the July 23, 2009 inspection the DEM inspector observed one (1) fifty-five (55) gallon black steel drum in the satellite accumulation area in building #1. The drum held a waste solvent (acetone). The drum was not closed at the time of the inspection and the label on the drum had no information.
- (12) During the July 23, 2009 inspection the DEM inspector asked Mr. Ramos to produce a copy of the hazardous waste contingency plan and hazardous waste personnel training records for review. Mr. Ramos stated that the company had not completed a contingency plan and had not provided hazardous waste management training to its employees.
- (13) During the July 23, 2009 inspection the DEM inspector reviewed the uniform hazardous waste manifests and identified the following errors:

- (a) Manifest number 000163839JJK dated October 16, 2007 listed the generator as “Shannon Yachts” for a shipment of two hundred seventy-five (275) gallons of waste acetone. The correct generator name is Schulz Boat Company, Inc.
- (b) Manifest number 002279902FLE dated January 14, 2009 listed a temporary generator EPA Identification Number RIP 401 253 244 for a shipment of one hundred sixty-five (165) gallons of waste acetone. The correct EPA Identification Number for Schulz Boat Company, Inc. is RI5 000 000 927.
- (14) During the July 23, 2009 inspection the DEM inspector asked Mr. Ramos to produce a copy of records pertaining to the weekly inspections of the ninety (90) day container storage area in the rear exterior of the Property for the last three (3) years. Mr. Ramos stated that the company did not conduct weekly inspections of the container storage area and was not able to produce written inspection logs for review by DEM.
- (15) During the July 23, 2009 inspection the DEM inspector observed one (1) spill control equipment kit located in the rear exterior of the Property that was empty. No other spill control equipment was present on the Property.
- (16) On July 31, 2009 DEM received a copy of uniform hazardous waste manifest number 002611251FLE dated July 29, 2009 for a shipment of three hundred eighty-five (385) gallons of waste acetone to Hebron, Ohio. The manifest listed the generator as Shultz Boat Company LLC. The manifest listed a temporary generator EPA Identification Number RIP 401 253 244.
- (17) As of the date of this Notice of Violation (“NOV”), the Respondents have failed to fully comply with the Hazardous Waste Regulations.

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) **Hazardous Waste Regulation 5.02 A and 40 CFR 262.34 (a)** – requiring that a hazardous waste generator store hazardous waste onsite for a period of time that does not exceed ninety (90) days
- (2) **Hazardous Waste Regulation 5.04A and 40 CFR 262.34(a)(3)** – requiring that a hazardous waste generator label each container, excluding satellite accumulation containers, holding hazardous waste with the words “Hazardous Waste”, the name and address of the generating facility, the U.S. Department of Transportation shipping name, the EPA or Rhode Island waste number and the hazardous waste manifest number (prior to being shipped offsite).
- (3) **Hazardous Waste Regulation 5.04C 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.

- (4) **Hazardous Waste Regulation 5.02A and 40 CFR 264.175** – requiring that a hazardous waste generator provide a containment system for all drums and containers holding liquid hazardous waste in storage onsite.
- (5) **Hazardous Waste Regulation 5.02A and 40 CFR 262.34 (a)(2)** – requiring that a hazardous waste generator mark containers holding hazardous waste with the date upon which the waste first began to accumulate.
- (6) **Hazardous Waste Regulation 5.02A, 40 CFR 262.34(a)(1)(i) and 40 CFR 265.173(a)** – requiring that a hazardous waste generator keep containers holding hazardous waste closed except when adding or removing waste.
- (7) **Hazardous Waste Regulation 5.02 A, 40 CFR 262.34(a)(4) and 40 CFR 265.51** – requiring that a hazardous waste generator prepare and maintain a contingency plan designed to minimize hazards to human health or the environment from fires, explosions or unplanned releases of hazardous waste or constituents to the air, soil or surface water.
- (8) **Hazardous Waste Regulation 5.02A, 40 CFR 262.34(a)(4) and 40 CFR 265.16** – 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.
- (9) **Hazardous Waste Regulation 5.03 C and 40 CFR 262.20(a)(1)** – requiring that the generator complete a manifest with the required information for each shipment of hazardous waste.
- (10) **Hazardous Waste Regulation 5.02A, 40 CFR 262.34(a)(1)(i) and 40 CFR 265.174** – 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.
- (11) **Hazardous Waste Regulation 5.02 A and 40 CFR 265.32** – requiring that a hazardous waste generator equip its facility with spill control equipment of sufficient type and quantity to respond to spills or unplanned releases of hazardous materials and 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** begin using the correct generator name (Schulz Boat Company Inc.) and generator EPA Identification Number (RI5 000 000 927) to complete each and every manifest for offsite shipments of hazardous waste.
- (2) **Within thirty (30) days of receipt of the NOV**, remove all hazardous waste from the Property that has been in storage onsite for greater than ninety (90) days using a permitted hazardous waste transporter and ship the hazardous waste to a licensed Treatment, Storage and Disposal Facility (the “Designated Facility”).
- (3) **Within thirty (30) days of receipt of the uniform hazardous waste manifest signed by the Designated Facility**, submit a copy of the manifest to the DEM.
- (4) **Within thirty (30) days of receipt of the NOV**, if not already accomplished, label all containers holding hazardous waste, excluding satellite accumulation containers, with the words “Hazardous Waste”, the name and address of the generating facility, the U.S. Department of Transportation shipping name, the EPA or Rhode Island waste number and the hazardous waste manifest number (prior to being shipped offsite).
- (5) **Within thirty (30) days of receipt of the NOV**, if not already accomplished, label all satellite accumulation containers holding hazardous waste with the words “Hazardous Waste” and other words identifying the contents of the container.
- (6) **Within thirty (30) days of receipt of the NOV**, if not already accomplished, 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.
- (7) **Within thirty (30) days of receipt of the NOV**, if not already accomplished, mark all containers holding hazardous waste, excluding satellite accumulation containers, with the date upon which the waste first began to accumulate.
- (8) **Within thirty (30) days of receipt of the NOV**, if not already accomplished, close and keep closed all containers holding hazardous waste except when adding or removing waste.
- (9) **Within thirty (30) days of receipt of the NOV**, if not already accomplished, prepare a hazardous waste contingency plan for the Facility that contains all of the applicable information contained in 40 CFR 265 Subpart D. **Within ten (10) days of completion of the plan**, submit a copy to the DEM.
- (10) **Within thirty (30) days of receipt of the NOV**, if not already accomplished, provide hazardous waste training to Facility personnel that manage/handle hazardous waste which is relevant to the positions in which they are employed. **Within ten (10) days of the completion of the training**, submit copies of the training program and attendance sheets to DEM.

- (11) **Within thirty (30) days of receipt of the NOV**, if not already accomplished, begin conducting weekly inspections of the areas where containers of hazardous waste are stored and maintain written inspection logs documenting the results of such inspections.
- (12) **Within thirty (30) days of receipt of the NOV**, equip the Facility with spill control equipment of sufficient type and quantity to respond to spills or unplanned releases of hazardous materials and waste.

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:

Sixty Thousand Dollars (\$60,000.00)

- (2) The proposed administrative penalty is calculated pursuant to the DEM Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the Director within twenty (20) days of your receipt of this NOV. Payment shall be in the form of a certified 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 respondents 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 Director 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 Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Paragraphs B through E above. All requests for hearing MUST:
 - (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b),

- (b) Be **RECEIVED** by DEM's Administrative Adjudication Division, at the following address, within twenty (20) days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
235 Promenade Street, 3RD Floor
Providence, RI 02908-5767

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
- (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Rule 7.00(b) of the DEM Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters.
- (2) A copy of each request for hearing must also be forwarded to:

Richard M. Bianculli Jr., 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 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) Richard M. Bianculli Jr. at the DEM Office of Legal Services at (401) 222-4700, extension 2023. 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:

Schulz Boat Company, Inc.
c/o Walter Schulz, Registered Agent
19 Broad Common Road
Bristol, RI 02809

Schulz Boat Company, LLC
c/o William Ramos, Registered Agent
19 Broad Common Road
Bristol, RI 02809

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, HAZARDOUS WASTE

File No.: 2009-73-HW

Respondents: Schulz Boat Company, Inc. and Schulz Boat Company, 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) – Storage for greater than ninety (90) days	Type I (\$ <u>25,000</u> Max. Penalty)*	Minor	\$6,250	1	\$6,250.00
C (2) – Unlabeled ninety (90) day containers	Type I (\$ <u>25,000</u> Max. Penalty)*	Minor	\$6,250	1	\$6,250.00
C (2) – Improperly labeled 90 day containers	Type II (\$ <u>12,500</u> Max. Penalty)*	Minor	\$2,500	1	\$2,500.00
C (3) – Unlabeled satellite containers	Type I (\$ <u>25,000</u> Max. Penalty)*	Minor	\$2,500	1	\$2,500.00
C (4) – Lack of secondary containment	Type I (\$ <u>25,000</u> Max. Penalty)*	Moderate	\$6,250	1	\$6,250.00
C (5) – Lack of accumulation start date	Type I (\$ <u>25,000</u> Max. Penalty)*	Minor	\$6,250	1	\$6,250.00
C (6) – Open containers	Type I (\$ <u>25,000</u> Max. Penalty)*	Minor	\$2,500	1	\$2,500.00
C (7) – Lack of contingency plan	Type I (\$ <u>25,000</u> Max. Penalty)*	Moderate	\$6,250	1	\$6,250.00
C (8) – Lack of training	Type I (\$ <u>25,000</u> Max. Penalty)*	Moderate	\$6,250	1	\$6,250.00

C (9) – Incorrect information on manifest	Type II (\$ <u>25,000</u> Max. Penalty)*	Moderate	\$2,500	1	\$2,500.00
C (10) – Failure to conduct weekly inspections of hazardous waste containers	Type II (\$ <u>12,500</u> Max. Penalty)*	Moderate	\$6,250	1	\$6,250.00
C (11) – Lack of spill control equipment	Type II (\$ <u>12,500</u> Max. Penalty)*	Moderate	\$6,250	1	\$6,250.00
<i>SUB-TOTAL</i>					\$60,000.00

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

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$60,000 .00

PENALTY MATRIX WORKSHEET

CITATION: Storage for greater than ninety (90) days

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.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Section 10 (a) (2) of the DEM <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: Respondents stored hazardous waste on the Property for a period of greater than ninety (90) days without first obtaining a permit. State and Federal Regulations require any person who constructs, operates or plans to operate a hazardous waste treatment, storage and disposal facility to obtain a permit from the State prior to conducting any activity at the site. The permit requirement, which is a core element of the regulatory program, enables the State to ensure the facility operators develop and follow waste management procedures to ensure that the facility will be operated safely minimizing the threat posed by such activities to human health and the environment.</p> <p>(B) Environmental conditions: Respondents were storing the containers of hazardous waste in the rear exterior of the Property.</p> <p>(C) Amount of the pollutant: Respondents stored two (2) fifty-five (55) gallon containers holding hazardous waste for a period of time that was greater than ninety (90) days. Based on the volume of the containers the total volume of hazardous waste could have potentially equaled one hundred ten (110) gallons.</p> <p>(D) Toxicity or nature of the pollutant: The waste stored in the two (2) containers was a characteristic flammable hazardous waste having EPA Waste Number D001 and a federally listed waste based on the presence of acetone having EPA Waste Number F003.</p> <p>(E) Duration of the violation: Respondents stored one (1) fifty-five (55) gallon container for two hundred fifty-one (251) days and one (1) fifty-five (55) gallon container for two hundred fifteen (215) days.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
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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 steps to prevent the violation. Schultz Boat Company LLC submitted a copy of a manifest to DEM on July 31, 2009 for a shipment of approximately three hundred eighty-five (385) gallons of hazardous waste for disposal, which may have included the two (2) fifty-five (55) gallon containers of waste acetone.
- (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:** DEM issued a Letter of Non-Compliance (LNC) to Schultz Boat Company, Inc. on April 25, 2001 for failing to comply with sections of the Hazardous Waste Regulations. Schultz Boat Company, Inc. took steps to return to compliance and DEM issued a Letter of Compliance on August 8, 2001.
- (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:** Respondents had complete control over the occurrence of the violation which was foreseeable since the subject containers were marked with accumulation start dates.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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

PENALTY MATRIX WORKSHEET

CITATION: *Unlabeled ninety (90) day containers*

VIOLATION NO.: C (2)

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 *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** Respondents failed to label two (2) fifty-five (55) gallon containers holding hazardous waste in storage onsite. State and Federal Regulations require generators to label all containers holding hazardous waste to ensure the safe handling and proper disposal of the waste. In the event a fire, spill or release occurs at a site emergency responders utilize information contained on hazardous waste labels when making decisions regarding the proper type of equipment to use and steps to take to control the incident. Unlabeled containers and drums present a greater risk to employees working at the site and to response personnel that may be called to assist during an incident.
- (B) **Environmental conditions:** Respondents were storing the two (2) unlabeled containers of hazardous waste in the rear exterior area of the Property.
- (C) **Amount of the pollutant:** One (1) of the containers held approximately two (2) gallons of waste diesel fuel. Based on the volume of the containers the total volume of hazardous waste could have potentially equaled fifty seven (57) gallons.
- (D) **Toxicity or nature of the pollutant:** The waste stored in one (1) of the containers was a characteristic Flammable Hazardous Waste having an EPA Waste Number of D001 and a Federally Listed waste based on the presence of acetone having and EPA Waste Number F003. The waste stored in the remaining container was a characteristic Flammable Hazardous Waste having an EPA Waste Number of D001.
- (E) **Duration of the violation:** The period of time that Respondents stored hazardous waste in the unlabeled containers is not known.
- (F) **Areal extent of the violation:** Not relevant.

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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 steps to prevent the violation. Schultz Boat Company LLC submitted a copy of a manifest to DEM on July 31, 2009 for a shipment of approximately three hundred eighty-five (385) gallons of hazardous waste for disposal, which may have included the fifty-five (55) gallon container of waste acetone. Schultz Boat Company, Inc submitted a copy of a manifest to DEM on August 14, 2009 for a shipment of approximately two hundred (200) gallons of petroleum oil for disposal, which may have included the fifty-five (55) gallon container of waste diesel fuel. Schultz Boat Company, Inc also submitted photographs to DEM on August 14, 2009 showing containers stored at the Facility with hazardous waste labels.
- (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:** DEM issued a Letter of Non-Compliance (LNC) to Schultz Boat Company, Inc. on April 25, 2001 for failing to comply with sections of the Hazardous Waste Regulations. Schultz Boat Company, Inc. took steps to return to compliance and DEM issued a Letter of Compliance on August 8, 2001.
- (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:** Respondents had complete control over the occurrence of the violation which was foreseeable since Respondents were cited in the LNC for failing to comply with the Hazardous Waste Regulations for labeling of containers.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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

PENALTY MATRIX WORKSHEET

CITATION: *Improperly labeled ninety (90) day containers*

VIOLATION NO.: C (2)

TYPE		
<p>___ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>X</u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>___ 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 <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: Respondents failed to properly and completely label six (6) fifty-five (55) gallon containers holding hazardous waste in storage onsite. State Regulations require generators to label all containers holding hazardous waste with the U.S. Department of Transportation shipping name of the waste, the generator's EPA identification number and the EPA Waste Number assigned to the waste while in storage onsite. During the July 23, 2009 inspection the DEM inspector observed five (5) containers with labels that were missing the USDOT shipping name of the waste, the generator's EPA identification number and the EPA Waste Number assigned to the subject waste and one (1) container that was missing the generator's EPA identification number.</p> <p>(B) Environmental conditions: Respondents were storing the six (6) containers of hazardous waste that were not properly labeled in the rear exterior of the Property without a containment system.</p> <p>(C) Amount of the pollutant: Respondents stored six (6) fifty-five (55) gallon containers holding hazardous waste that were not properly and completely labeled with all of the required information. Based on the volume of the containers the total volume of hazardous waste could have potentially equaled three hundred thirty (330) gallons.</p> <p>(D) Toxicity or nature of the pollutant: The waste stored in the six (6) containers was a characteristic Flammable Hazardous Waste having an EPA Waste Number of D001 and a Federally Listed waste based on the presence of acetone having and EPA Waste Number F003.</p> <p>(E) Duration of the violation: The period of time that Respondents stored hazardous waste in the containers that were not properly and completely labeled is not known.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
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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 steps to prevent the violation. Schultz Boat Company LLC submitted a copy of a manifest to DEM on July 31, 2009 for a shipment of approximately three hundred eighty-five (385) gallons of hazardous waste offsite for disposal which may have included the six (6) fifty-five (55) gallon containers of waste acetone. Schultz Boat Company, Inc submitted photographs to DEM on August 14, 2009 showing containers stored at the Facility with hazardous waste labels.
- (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:** DEM issued a Letter of Non-Compliance to Schultz Boat Company, Inc. on April 25, 2001 for failing to comply with sections of the Hazardous Waste Regulations. Schultz Boat Company, Inc. took steps to return to compliance and DEM issued a Letter of Compliance on August 8, 2001.
- (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:** Respondents had complete control over the occurrence of the violation which was foreseeable since Respondents were cited in the LNC for failing to comply with the Hazardous Waste Regulations for labeling of containers.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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 \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: *Unlabeled satellite containers*

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		
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 <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: Respondents failed to label two (2) fifty-five (55) gallon satellite accumulation containers holding hazardous waste. One (1) satellite container was located in Building #1 and the one (1) satellite container was located in Building #3. State and Federal Regulations require generators to label all containers holding hazardous waste to ensure the safe handling and proper disposal of the waste. In the event a fire, spill or release occurs at a site emergency responders utilize information contained on hazardous waste labels when making decisions regarding the proper type of equipment to use and steps to take to control the incident. Unlabeled containers and drums present a greater risk to employees working at the site and to response personnel that may be called to assist during an incident.</p> <p>(B) Environmental conditions: Not relevant.</p> <p>(C) Amount of the pollutant: One (1) of the containers held approximately two (2) gallons of waste diesel fuel. Based on the volume of the containers the total volume of hazardous waste could have potentially equaled fifty seven (57) gallons.</p> <p>(D) Toxicity or nature of the pollutant: The waste stored in one (1) of the satellite accumulation containers was a characteristic Flammable Hazardous Waste having an EPA Waste Number of D001 and a Federally Listed waste based on the presence of acetone having and EPA Waste Number F003. The waste stored in the other satellite accumulation container was a characteristic Flammable Hazardous Waste having an EPA Waste Number of D001.</p> <p>(E) Duration of the violation: The period of time that Respondents stored hazardous waste in the unlabeled containers is not known.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
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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 steps to prevent the violation. Schultz Boat Company LLC submitted a copy of a manifest to DEM on July 31, 2009 for a shipment of approximately three hundred eighty-five (385) gallons of hazardous waste for disposal, which may have included the fifty-five (55) gallon container of waste acetone. Schultz Boat Company, Inc submitted a copy of a manifest to DEM on August 14, 2009 for a shipment of approximately two hundred (200) gallons of petroleum oil for disposal, which may have included the fifty-five (55) gallon container of waste diesel fuel. Schultz Boat Company, Inc also submitted photographs to DEM on August 14, 2009 showing containers stored at the Facility with hazardous waste labels.
- (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:** DEM issued a Letter of Non-Compliance (LNC) to Schultz Boat Company, Inc. on April 25, 2001 for failing to comply with sections of the Hazardous Waste Regulations. Schultz Boat Company, Inc. took steps to return to compliance and DEM issued a Letter of Compliance on August 8, 2001.
- (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:** Respondents had complete control over the occurrence of the violation which was foreseeable since Respondents were cited in the LNC for failing to comply with the Hazardous Waste Regulations for labeling of containers.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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: *Lack of secondary containment*

VIOLATION NO.: C (4)

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.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Section 10 (a) (2) of the DEM <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: Respondents failed to store six (6) fifty-five (55) gallon containers holding liquid hazardous waste in an area with a containment system designed to contain spills and or releases of hazardous waste. State and Federal Regulations require generators to store containers holding liquid hazardous waste in an area with a containment system.</p> <p>(B) Environmental conditions: Respondents stored the six (6) containers of liquid hazardous waste in the rear exterior of the Property without a required containment system.</p> <p>(C) Amount of the pollutant: Respondents stored six (6) fifty-five (55) gallon containers holding liquid hazardous waste without a required containment system. One (1) of the containers held approximately two (2) gallons of waste diesel fuel. Based on the volume of the remaining containers the total volume of hazardous waste could have potentially equaled two hundred seventy-seven (277) gallons.</p> <p>(D) Toxicity or nature of the pollutant: The waste stored in five (5) of the containers was a characteristic flammable hazardous waste having EPA Waste Number D001 and a federally listed waste based on the presence of acetone having EPA Waste Number F003. The waste diesel fuel stored in the remaining container was a characteristic flammable hazardous waste having EPA Waste Number D001.</p> <p>(E) Duration of the violation: The period of time that Respondents stored liquid hazardous waste in containers without providing a containment system is not known.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
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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 steps to prevent the violation. Schultz Boat Company LLC submitted a copy of a manifest to DEM on July 31, 2009 for a shipment of approximately three hundred eighty-five (385) gallons of hazardous waste for disposal, which may have included the fifty-five (55) gallon containers of waste acetone. Schultz Boat Company, Inc submitted a copy of a manifest to DEM on August 14, 2009 for a shipment of approximately two hundred (200) gallons of petroleum oil for disposal, which may have included the fifty-five (55) gallon container of waste diesel fuel.
- (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:** DEM issued a Letter of Non-Compliance (LNC) to Schultz Boat Company, Inc. on April 25, 2001 for failing to comply with sections of the Hazardous Waste Regulations. Schultz Boat Company, Inc. took steps to return to compliance and DEM issued a Letter of Compliance on August 8, 2001.
- (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:** Respondents had complete control over the occurrence of the violation which was foreseeable since Respondents were made aware of the Hazardous Waste Regulations through the LNC.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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: *Lack of accumulation start date*

VIOLATION NO.: C (5)

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:</p> <p>Taken from Section 10 (a) (2) of the DEM <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: Respondents failed to mark five (5) containers holding hazardous waste with the date upon which the waste first began to accumulate onsite. State Regulations require generators to mark containers holding hazardous waste with an accumulation start date to ensure compliance with the less than ninety (90) day temporary storage limit.</p> <p>(B) Environmental conditions: Respondents stored the five (5) containers of hazardous waste that were not marked with an accumulation start date in the rear exterior of the Property.</p> <p>(C) Amount of the pollutant: Respondents stored four (4) fifty-five (55) gallon containers holding hazardous waste (waste acetone) that were not marked with an accumulation start date. Respondents also stored one (1) fifty-five gallon container (waste diesel fuel) holding approximately two (2) gallon of waste without an accumulation start date. Based on the volume of the containers the total volume of hazardous waste could have potentially equaled two hundred twenty-two (222) gallons.</p> <p>(D) Toxicity or nature of the pollutant: The waste stored in the two containers was a characteristic Flammable Hazardous Waste having an EPA Waste Number of D001 and a Federally Listed waste based on the presence of acetone having and EPA Waste Number F003. The waste diesel fuel stored in the remaining container was a characteristic Flammable Hazardous Waste having an EPA Waste Number of D001.</p> <p>(E) Duration of the violation: The period of time that Respondents stored hazardous waste in the containers that were not marked with accumulation start dates is not known.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
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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 steps to prevent the violation. Schultz Boat Company LLC submitted a copy of a manifest to DEM on July 31, 2009 for a shipment of approximately three hundred eighty-five (385) gallons of hazardous waste for disposal, which may have included the fifty-five (55) gallon containers of waste acetone. Schultz Boat Company, Inc submitted a copy of a manifest to DEM on August 14, 2009 for a shipment of approximately two hundred (200) gallons of petroleum oil for disposal, which may have included the fifty-five (55) gallon container of waste diesel fuel.
- (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:** DEM issued a Letter of Non-Compliance (LNC) to Schultz Boat Company, Inc. on April 25, 2001 for failing to comply with sections of the Hazardous Waste Regulations. Schultz Boat Company, Inc. took steps to return to compliance and DEM issued a Letter of Compliance on August 8, 2001.
- (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:** Respondents had complete control over the occurrence of the violation which was foreseeable since Respondents had marked three (3) containers holding hazardous waste with accumulation start dates.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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

PENALTY MATRIX WORKSHEET

CITATION: *Open containers*

VIOLATION NO.: C (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		
<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 <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: Respondents failed to close two (2) fifty-five (55) gallon containers holding hazardous waste in storage onsite. State and Federal Regulations require generators to keep all containers holding hazardous waste closed except when adding or removing waste to ensure the safe handling of the waste. The requirement to keep containers holding hazardous waste closed also reduces the potential for spills or releases to occur. Open containers and drums present a greater risk to employees working at the site and to response personnel that may be called to assist during a fire, spill or release incident at the facility.</p> <p>(B) Environmental conditions: One (1) container was located in the rear exterior of the Property and one (1) container was located in building #1 of the Facility.</p> <p>(C) Amount of the pollutant: One (1) container held approximately two (2) gallons of waste diesel fuel. Based on the volume of the containers the total volume of hazardous waste could have potentially equaled fifty-seven (57) gallons.</p> <p>(D) Toxicity or nature of the pollutant: The waste stored in one (1) of the containers was a characteristic flammable hazardous waste having EPA Waste Number D001 and a federally listed waste based on the presence of acetone having EPA Waste Number F003. The waste diesel fuel stored in the remaining container was a characteristic flammable hazardous waste having EPA Waste Number D001.</p> <p>(E) Duration of the violation: The period of time that Respondents stored hazardous waste in the open containers is not known.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
(continued)		

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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 steps to prevent the violation. Schultz Boat Company LLC submitted a copy of a manifest to DEM on July 31, 2009 for a shipment of approximately three hundred eighty-five (385) gallons of hazardous waste for disposal, which may have included the fifty-five (55) gallon container of waste acetone. Schultz Boat Company, Inc submitted a copy of a manifest to DEM on August 14, 2009 for a shipment of approximately two hundred (200) gallons of petroleum oil for disposal, which may have included the fifty-five (55) gallon container of waste diesel fuel.
- (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:** DEM issued a Letter of Non-Compliance (LNC) to Schultz Boat Company, Inc. on April 25, 2001 for failing to comply with sections of the Hazardous Waste Regulations. Schultz Boat Company, Inc. took steps to return to compliance and DEM issued a Letter of Compliance on August 8, 2001.
- (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:** Respondents had complete control over the occurrence of the violation which was foreseeable since Respondents were made aware of the Hazardous Waste Regulations through the LNC.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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: *Lack of contingency plan*

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		
<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 <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: Respondents failed to develop and maintain a hazardous waste contingency plan for the Facility. State and Federal Regulations require generators to develop and maintain a 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 working at the Facility and/or response personnel that may be called upon for assistance during a fire, spill or release incident at the Facility.</p> <p>(B) Environmental conditions: Respondents stored flammable hazardous waste in the rear exterior of the Property and several of the containers were not within a containment system.</p> <p>(C) Amount of the pollutant: At the time of the inspection Respondents were storing eight (8) fifty-five (55) gallon ninety (90) day containers and two (2) fifty-five (55) gallon satellite accumulation containers holding hazardous waste. One (1) of the ninety (90) day containers held approximately two (2) gallons of waste diesel fuel. Based on the volume of the containers the total volume of hazardous waste could have potentially equaled four hundred ninety-seven (497) gallons.</p> <p>(D) Toxicity or nature of the pollutant: The waste stored in nine (9) of the containers was a characteristic flammable hazardous waste having EPA Waste Number D001 and a federally listed waste based on the presence of acetone having and EPA Waste Number F003. The waste diesel fuel stored in the remaining container was a characteristic flammable hazardous waste having EPA Waste Number D001.</p> <p>(E) Duration of the violation: The period of time that Respondents stored hazardous waste in containers onsite without preparing a contingency plan is not known.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable and appropriate steps to prevent or mitigate the noncompliance by developing a 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:** DEM issued a Letter of Non-Compliance (LNC) to Schultz Boat Company, Inc. on April 25, 2001 for failing to comply with sections of the Hazardous Waste Regulations. Schultz Boat Company, Inc. took steps to return to compliance and DEM issued a Letter of Compliance on August 8, 2001.
- (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:** Respondents had complete control over the occurrence of the violation which was foreseeable since Respondents were made aware of the Hazardous Waste Regulations through the LNC.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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: Lack of training

VIOLATION NO.: C (8)

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 <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: Respondents failed to provide hazardous waste management training to employees who work with hazardous waste at the Facility. State and Federal Regulations require generators to develop a hazardous waste training program that teaches employees to perform their duties in a manner that ensures compliance with the regulations. Generators are required to provide this training to employees within six (6) months after the employment of the personnel and to provide an annual refresher of the training to their employees. 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.</p> <p>(B) Environmental conditions: Respondents stored flammable hazardous waste outdoors in the rear exterior of the Property and several of the containers were not within a containment system.</p> <p>(C) Amount of the pollutant: At the time of the inspection Respondents was storing eight (8) fifty-five (55) gallon ninety (90) day containers and two (2) fifty-five (55) gallon satellite accumulation containers holding hazardous waste. One (1) of the ninety (90) day containers held approximately two (2) gallons of waste diesel fuel. Based on the volume of the containers the total volume of hazardous waste could have potentially equaled four hundred ninety-seven (497) gallons.</p> <p>(D) Toxicity or nature of the pollutant: The waste acetone stored in several of the containers was a characteristic flammable hazardous waste having EPA Waste Number D001 and a federally listed waste based on the presence of acetone having EPA Waste Number F003. The waste diesel fuel stored in the remaining container was a characteristic flammable hazardous waste having EPA Waste Number D001.</p> <p>(E) Duration of the violation: The period of time that Respondents stored hazardous waste in containers onsite without providing employees with hazardous waste management training is not known.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable and appropriate steps to prevent or mitigate the noncompliance by providing its employees with hazardous waste management training.
- (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:** DEM issued a Letter of Non-Compliance (LNC) to Schultz Boat Company, Inc. on April 25, 2001 for failing to comply with sections of the Hazardous Waste Regulations. Schultz Boat Company, Inc. took steps to return to compliance and DEM issued a Letter of Compliance on August 8, 2001.
- (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:** Respondents had complete control over the occurrence of the violation which was foreseeable since Respondents were made aware of the Hazardous Waste Regulations through the LNC.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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: *Incorrect information on manifest*

VIOLATION NO.: C (9)

TYPE		
<p>___ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>X</u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>___ 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 <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: Respondents failed to properly complete manifests for three (3) shipments of hazardous waste offsite. State Regulations require generators to complete a manifest for every shipment of hazardous waste offsite and to certify the accuracy of the generator section of the manifest. Manifests for shipping hazardous waste provide the primary tracking system to ensure that the hazardous waste is shipped to a permitted facility for proper treatment and disposal. In the event of an incident during transportation, such as a motor vehicle accident, emergency responders use the information contained on the manifest to determine the proper course of action to mitigate the spill/release and to contact the party that is responsible for the subject waste.</p> <p>(B) Environmental conditions: Not relevant.</p> <p>(C) Amount of the pollutant: Respondents had three (3) shipments of waste acetone transported (two hundred seventy-five (275) gallons, one hundred sixty-five (165) gallons and three hundred eighty-five (385) gallons, respectively) with manifests containing incorrect information.</p> <p>(D) Toxicity or nature of the pollutant: The waste was a characteristic flammable hazardous waste having EPA Waste Number D001 and a federally listed waste based on the presence of acetone having EPA Waste Number F003.</p> <p>(E) Duration of the violation: The first shipment of hazardous waste that was sent offsite with a manifest containing incorrect information occurred on October 16, 2007.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable steps to prevent the noncompliance and failed to take reasonable steps to mitigate the violation. The Respondents sent a shipment of hazardous waste offsite using an incorrect EPA Identification Number, which occurred after the July 23, 2009 inspection of the Facility by DEM when the Respondents were informed of 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:** DEM issued a Letter of Non-Compliance (LNC) to Schultz Boat Company, Inc. on April 25, 2001 for failing to comply with sections of the Hazardous Waste Regulations. Schultz Boat Company, Inc. took steps to return to compliance and DEM issued a Letter of Compliance on August 8, 2001.
- (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:** Respondents had complete control over the occurrence of the violation which was foreseeable since Respondents were made aware of the Hazardous Waste Regulations through the LNC and as a result of the July 23, 2009 inspection of the Facility completed by DEM.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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	\$2,500 to \$6,250 \$2,500	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: *Failure to conduct weekly inspections of hazardous waste containers*

VIOLATION NO.: C (10)

TYPE		
<p style="text-align: center;">___ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u>X</u> 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		
<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 <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: Respondents failed to conduct inspections of the hazardous waste container storage area located at the rear exterior of the Property on a weekly basis. State Regulations require generators to inspect areas in which hazardous waste is stored in containers onsite 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.</p> <p>(B) Environmental conditions: Respondents stored flammable hazardous waste outdoors in the rear exterior of the Property and several of the containers were not within a containment system.</p> <p>(C) Amount of the pollutant: At the time of the inspection Respondents were storing eight (8) fifty-five (55) gallon ninety (90) day containers holding hazardous waste. One (1) of the ninety (90) day containers held approximately two (2) gallons of waste diesel fuel. Based on the volume of the containers the total volume of hazardous waste could have potentially equaled three hundred eighty seven (387) gallons.</p> <p>(D) Toxicity or nature of the pollutant: The waste acetone stored waste in several containers was a characteristic flammable hazardous waste having EPA Waste Number D001 and a federally listed waste based on the presence of acetone having EPA Waste Number F003. In addition, Respondents stored waste diesel fuel in one (1) fifty-five (55) gallon container that was a characteristic flammable hazardous waste having EPA Waste Number D001.</p> <p>(E) Duration of the violation: Respondents were unable to produce written records of the results of the inspection of the container storage area for the previous three (3) years as required by regulation.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable steps to prevent or mitigate the noncompliance by conducting the required inspections of the hazardous waste container storage area.
- (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:** DEM issued a Letter of Non-Compliance (LNC) to Schultz Boat Company, Inc. on April 25, 2001 for failing to comply with sections of the Hazardous Waste Regulations. Schultz Boat Company, Inc. took steps to return to compliance and DEM issued a Letter of Compliance on August 8, 2001.
- (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:** Respondents had complete control over the occurrence of the violation which was foreseeable since Respondents were made aware of the Hazardous Waste Regulations through the LNC.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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	\$2,500 to \$6,250 \$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: *Lack of spill control equipment*

VIOLATION NO.: C (11)

TYPE		
<p>___ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>X</u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>___ 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 <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: Respondents failed to acquire and maintain spill control equipment onsite. State Regulations require generators to maintain an adequate supply of spill control equipment, which is compatible with the hazardous waste stored onsite, so that the generator can safely respond to spills and releases of the waste. The requirement for generators to acquire and maintain spill control equipment provides a safeguard against impacts to the environment that may be caused by spills or releases of hazardous waste.</p> <p>(B) Environmental conditions: Respondents stored flammable hazardous waste outdoors in the rear exterior of the Property and several of the containers were not within a containment system.</p> <p>(C) Amount of the pollutant: At the time of the inspection Respondents were storing eight (8) fifty-five (55) gallon ninety (90) day containers and two (2) fifty-five (55) gallon satellite accumulation containers holding hazardous waste. One (1) of the ninety (90) day containers held approximately two (2) gallons of waste diesel fuel. Based on the volume of the containers the total volume of hazardous waste could have potentially equaled four hundred ninety-seven (497) gallons.</p> <p>(D) Toxicity or nature of the pollutant: The waste acetone stored in several containers was a characteristic flammable hazardous waste having EPA Waste Number D001 and a federally listed waste based on the presence of acetone having EPA Waste Number F003. In addition, Respondents stored waste diesel fuel in one (1) fifty-five (55) gallon container that was a characteristic flammable hazardous waste having EPA Waste Number D001.</p> <p>(E) Duration of the violation: The period of time that Respondents stored hazardous waste onsite without maintaining the required spill control equipment is not known.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable steps to prevent or mitigate the noncompliance by obtaining and maintaining the required spill control equipment at the Property. Schultz Boat Company, Inc submitted photographs to DEM on August 14, 2009 showing spill response kits stored at the 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:** DEM issued a Letter of Non-Compliance to Schultz Boat Company, Inc. on April 25, 2001 for failing to comply with sections of the Hazardous Waste Regulations. Schultz Boat Company, Inc. took steps to return to compliance and DEM issued a Letter of Compliance on August 8, 2001.
- (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:** Respondents had complete control over the occurrence of the violation which was foreseeable since Respondents were made aware of the Hazardous Waste Regulations through the LNC.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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	\$2,500 to \$6,250 \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250