

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Senesco Marine, LLC

FILE NO.: OCI-HW-14-89

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 10 MacNaught Street in the town of North Kingstown, Rhode Island (the “Property”). The Property includes a facility used for the manufacture and maintenance of double hulled barges, tugboats and other marine vessels (the “Facility”).
- (2) The Respondent is registered with the DEM as a large quantity hazardous waste generator at the Facility pursuant to the DEM's *Rules and Regulations for Hazardous Waste Management* (the “Hazardous Waste Regulations”) and pursuant to Title 40 of the Code of Federal Regulations (“40 CFR”) under the name of “SENE스코 Marine” with the U.S. Environmental Protection Agency identification number RIR000506063.
- (3) On 28 August 2014, the DEM inspected the Facility. The inspection revealed the following:
  - (a) Three satellite accumulation containers:
    - (i) One 55-gallon container holding hazardous waste in the form of spent lead shot located in the Pangborne Area that was unlabeled;
    - (ii) One 55-gallon container holding PCB ballasts located in the Electrical Shop - West Yard that was unlabeled; and
    - (iii) One 4 foot long cardboard box holding hazardous waste in the form of broken fluorescent light bulbs containing mercury located in the Electrical Shop - West Yard that was open and unlabeled;

- (b) One 4 foot long cardboard box holding universal waste fluorescent light bulbs located in the Electrical Shop-West Yard that was not marked with an accumulation start date and was open (the "Universal Bulb Container");
  - (c) Three 55-gallon containers holding used oil or used oil filters:
    - (i) One container located in the Maintenance Shop-West Yard holding used oil filters was unlabeled and open;
    - (ii) One container located in Mechanics Shop-West Yard holding used oil was not properly labeled with the words "Used Oil" (the "Unlabeled Oil Container"); and
    - (iii) One container located in the Mechanics Shop-West Yard holding used oil filters was open (the "Open Oil Container");
  - (d) The contingency plan dated 12 March 2012 was not amended to document that the secondary emergency coordinator listed in the plan is no longer employed at the company;
  - (e) No annual review of hazardous waste training was provided to 6 employees who handle hazardous waste at the Facility; and
  - (f) A revised list of agents who are authorized to sign hazardous waste manifests was not submitted to the DEM. The most recent list on file with the DEM is dated 13 March 2012 and includes 3 employees who are no longer employed at the company.
- (4) During the inspection on 28 August 2014, the Respondent took the following actions:
- (a) Marked the Universal Bulb Container with an accumulation start date and closed the container;
  - (b) Closed the Open Oil Container; and
  - (c) Properly labeled the Unlabeled Oil Container.
- (5) On 25 September 2014, the Respondent submitted electronic correspondence to the DEM that documented that it provided its employees with an annual review of the hazardous waste training.
- (6) As of the date of this Notice of Violation ("NOV"), the Respondent has failed to provide any documents to the DEM to demonstrate that it has addressed the remaining issues of noncompliance described in paragraph B.3 above

C. Violation

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

- (1) **DEM's Hazardous Waste Regulation 5.9A** – requiring that a hazardous waste generator label all satellite accumulation containers holding hazardous waste with the words “Hazardous Waste” and other words identifying the contents of the container.
- (2) **DEM's Hazardous Waste Regulation 5.9D** – requiring that a hazardous waste generator keep all containers holding hazardous waste closed except when adding or removing waste.
- (3) **DEM's Hazardous Waste Regulation 13.5 and 40 CFR 273.15(c)** – requiring that a small quantity handler of universal waste track the length of time the universal waste is accumulated onsite.
- (4) **DEM's Hazardous Waste Regulation 13.5H and 40 CFR 273.13(d)(1)** – requiring that a small quantity handler of universal waste keep containers holding universal waste closed.
- (5) **DEM's Hazardous Waste Regulation 15.4A.3** – requiring that a used oil generator label all containers holding used oil with the words “used oil”.
- (6) **DEM's Hazardous Waste Regulation 15.4A.5** – requiring that a used oil generator keep all containers holding used oil closed except when adding or removing used oil.
- (7) **DEM's Hazardous Waste Regulation 5.13J7(d)** – requiring that a hazardous waste generator review and amend the contingency plan as necessary when the list of emergency coordinators changes.
- (8) **DEM's Hazardous Waste Regulation 5.13I** – requiring that a hazardous waste generator provide training to company employees who handle and/or manage hazardous waste and provide employees with a review of the training on an annual basis.
- (9) **DEM's Hazardous Waste Regulation 5.7** – requiring that a hazardous waste generator submit to the DEM an amended a list of agents who are authorized to sign hazardous waste manifests in the event of a reduction or gain of personnel.

D. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), you are hereby ORDERED to **within 30 days of receipt of the NOV:**

- (1) Label all satellite accumulation containers holding hazardous waste with the words "Hazardous Waste" and other words identifying the contents of the container;
- (2) Close and keep closed all containers holding hazardous waste except when adding or removing waste;
- (3) Track the accumulation time of all containers holding universal waste and keep the containers closed;
- (4) Label and close all containers holding used oil;
- (5) Amend the Facility's hazardous waste contingency plan to update the list of emergency coordinators and submit a copy to the DEM Office of Compliance & Inspection ("OC&I"); and
- (6) 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:

**\$20,000**

- (2) The proposed administrative penalty is calculated pursuant to the DEM's *Rules and Regulations for Assessment of Administrative Penalties*, as amended, and must be paid to the DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a certified check, cashiers check or money order made payable to the "General Treasury - Environmental Response Fund," and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against the Respondent in this NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in

the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if the DEM determines that reasonable efforts have been made to comply promptly with this NOV.

F. Right to Administrative Hearing

(1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Paragraphs B through E above. All requests for hearing **MUST**:

- (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);
- (b) Be **RECEIVED** by the DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk  
DEM - Administrative Adjudication Division  
One Capitol Hill, 2<sup>ND</sup> Floor  
Providence, RI 02903

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
- (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Rule 7.00(b) of the DEM'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:

Joseph J. LoBianco, Esquire  
DEM - Office of Legal Services  
235 Promenade Street, 4<sup>TH</sup> Floor  
Providence, RI 02908-5767

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

(4) Each respondent must file a separate and timely request for an administrative hearing before the DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then this NOV shall automatically become a Final Compliance Order

enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (v) and 42-17.6-4(b) and (c).

- (5) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) This NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

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

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

FOR THE DIRECTOR

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

Date: \_\_\_\_\_

CERTIFICATION

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

Senesco Marine, LLC  
c/o Corporation Service Company, Registered Agent  
222 Jefferson Boulevard, Suite 200  
Warwick, RI 02888

by Certified Mail.

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## ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, HAZARDOUS WASTE  
 File No.: OCI-HW-14-89  
 Respondent: Senesco Marine, LLC

<b>GRAVITY OF VIOLATION</b>					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
C (1) & (2) - Satellite Container Management	Type I (\$ <u>25,000</u> Max. Penalty)*	Minor	\$2,500	2 violations	\$5,000
C (3) & (4) – Universal Waste Management	Type I (\$ <u>25,000</u> Max. Penalty)*	Minor	\$2,500	2 violations	\$5,000
C (5) & (6) – Used Oil Management	Type I (\$ <u>25,000</u> Max. Penalty)*	Minor	\$2,500	2 violations	\$5,000
C (7) & (8) – Contingency Plan & Training	Type I (\$ <u>25,000</u> Max. Penalty)*	Minor	\$2,500	2 violations	\$5,000
<b>SUB-TOTAL</b>					<b>\$20,000</b>

\*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.

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



**ADMINISTRATIVE PENALTY SUMMARY** *(continued)*

**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 = \$20,000**

**PENALTY MATRIX WORKSHEET**

CITATION: Satellite Container Management

VIOLATION NO.: C (1) & (2)

<b>TYPE</b>		
<p style="text-align: center;"><u><b>X</b></u> <b>TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">____ <b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">____ <b>TYPE III</b></p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b>FACTORS CONSIDERED:</b></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) <b>The extent to which the act or failure to act was out of compliance:</b> The Respondent failed to label satellite accumulation containers and failed to keep the containers closed. The requirement to label and keep containers holding hazardous waste closed are an integral parts of the regulatory program because these requirement reduce the potential for an unplanned release of hazardous waste. Proper labeling of hazardous waste containers also provides important information regarding the chemical properties of the waste for emergency responders who may be called to a facility during a fire, spill or release.</p> <p>(B) <b>Environmental conditions:</b> All of the containers were stored indoors.</p> <p>(C) <b>Amount of the pollutant:</b> Two 55-gallon containers and one cardboard box.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> One 55-gallon container held spent shot containing lead (a toxic metal), the second 55-gallon container held ballasts containing PCBs (demonstrated to cause cancer) and the cardboard box held 6 broken fluorescent light bulbs containing mercury (a known neurotoxin).</p> <p>(E) <b>Duration of the violation:</b> Unknown.</p> <p>(F) <b>Areal extent of the violation:</b> 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 labeling the containers and keeping the containers closed.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** On 15 May 2012, the DEM issued a Letter of Non-Compliance to the Respondent for several violations including the failure to label satellite accumulation containers.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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

**PENALTY MATRIX WORKSHEET**

CITATION: Universal Waste Management

VIOLATION NO.: C (3) & (4)

<b>TYPE</b>		
<p style="text-align: center;"><u><b>X</b></u> <b>TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ <b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ <b>TYPE III</b></p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b>FACTORS CONSIDERED:</b></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) <b>The extent to which the act or failure to act was out of compliance:</b> The Respondent failed to track the length of time a container of universal waste lamps was stored onsite and failed to keep the container closed. State and Federal regulations require a handler of universal waste to track the length of time universal waste is accumulated onsite and to keep containers holding universal waste closed while in storage onsite. The requirement to track accumulation time enables facility personnel and regulatory agencies to ensure the universal waste is not stored onsite for greater than one year.</p> <p>(B) <b>Environmental conditions:</b> Considered, but not utilized for this calculation.</p> <p>(C) <b>Amount of the pollutant:</b> One cardboard container that was not labeled or kept closed.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Universal waste lamps contain mercury, which is a known neurotoxin.</p> <p>(E) <b>Duration of the violation:</b> Unknown.</p> <p>(F) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</p> <p style="text-align: right; margin-top: 20px;">(continued)</p>		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to take reasonable and appropriate steps to prevent or mitigate the noncompliance by properly tracking the accumulation time and keeping the container closed. The Respondent mitigated the noncompliance during the inspection on 28 August 2014 by marking the container with an accumulation start date and closing the container.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** On 15 May 2012, the DEM issued a Letter of Non-Compliance to Respondent for failing to track the accumulation storage time and keeping containers holding universal waste closed.
- (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.

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

**PENALTY MATRIX WORKSHEET**

CITATION: Used Oil Management

VIOLATION NO.: C (5) & (6)

<b>TYPE</b>		
<p style="text-align: center;"><b><u>X</u> TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><b>TYPE III</b></p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
<p><small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small></p>		
<p><b>FACTORS CONSIDERED:</b></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"> <li>(A) <b>The extent to which the act or failure to act was out of compliance:</b> The Respondent failed to label at all or properly label containers holding used oil with the words "used oil" and to keep the containers closed. The requirements to label and keep closed containers holding used oil reduce the potential for mismanagement and/or unplanned releases of used oil. Proper labeling of containers provides important information regarding the chemical properties of the waste for emergency responders who may be called to a facility during a fire, spill or release.</li> <li>(B) <b>Environmental conditions:</b> Considered, but not utilized in this calculation.</li> <li>(C) <b>Amount of the pollutant:</b> Three 55-gallon containers holding used oil or used oil filters.</li> <li>(D) <b>Toxicity or nature of the pollutant:</b> Used oil is known to cause soil contamination when released to the environment and may contain constituents that are suspected human carcinogens.</li> <li>(E) <b>Duration of the violation:</b> Unknown.</li> <li>(F) <b>Areal extent of the violation:</b> Considered, but not utilized in this calculation.</li> </ul> <p style="text-align: right;">(continued)</p>		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent did not take reasonable and appropriate steps to prevent the violation by labeling or properly labeling the containers and keeping the containers closed. The Respondent mitigated the noncompliance during the inspection on 28 August 2014 by properly labeling one of the containers and closing one of the containers.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** On 15 May 2012, the DEM issued a Letter of Non-Compliance to the Respondent for failing to label containers holding used oil.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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

## PENALTY MATRIX WORKSHEET

CITATION: Contingency Plan & Training

VIOLATION NO.: C (7) & (8)

TYPE		
<b>X</b> 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><b>FACTORS CONSIDERED:</b></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) <b>The extent to which the act or failure to act was out of compliance:</b> The Respondent failed to amend the company's contingency plan to address changes at the facility and failed to provide annual hazardous waste management training to employees who work with hazardous waste. State regulations require generators to review and update a contingency plan when there is a change in the list of emergency coordinators. State regulations also require generators to provide an annual review of the hazardous waste training program to 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) <b>Environmental conditions:</b> Considered, but not utilized for this calculation.</p> <p>(C) <b>Amount of the pollutant:</b> Two 55-gallon containers and one cardboard box holding hazardous waste and one cardboard box holding universal waste.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> The hazardous waste included spent shot containing lead (a toxic metal), ballasts containing PCBs (demonstrated to cause cancer) and broken fluorescent light bulbs containing mercury (a known neurotoxin).</p> <p>(E) <b>Duration of the violation:</b> Unknown for the contingency plan and one year for the annual training.</p> <p>(F) <b>Areal extent of the violation:</b> 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 amending its contingency plan and providing annual training to its employees. The Respondent mitigated the noncompliance by providing an annual review of the hazardous waste training to its employees on 24 September 2014.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** On May 15, 2012, the DEM issued a Letter of Non-Compliance to the Respondent for failing to amend its contingency plan and failing to provide annual training to its employees.
- (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.

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