

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE:           Symmetry International, Inc.  
                  Lance Industries, Inc.**

**FILE NO.: 2010-66-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.    Administrative History

The DEM informed the Respondents of the violations during inspections in May 2010, January 2011, March 2011 and August 2011 and in letters issued in August 2010, October 2010, and February 2011. During each inspection and in each letter the DEM advised the Respondents of the specific actions required to correct the violations. The Respondents failed to comply.

C.    Facts

- (1)    The subject property is located at 55 Industrial Circle in the town of Lincoln, Rhode Island (the “Property”). The Property includes a building that is used for the fabrication, design, manufacture, marketing and distribution of foam products (the “Facility”).
- (2)    The Facility is operated by Symmetry International, Inc.
- (3)    Symmetry International, Inc. is a division of Lance Industries, Inc.
- (4)    The Respondents are registered with the DEM as a small 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 “Symmetry Products Division of Lance Industries” with the U. S. Environmental Protection Agency identification number RIR000509075.

- (5) On August 2, 2011 the DEM conducted an inspection of the Facility. The inspection revealed the following:
- (a) Fifty-six (56) 55-gallon containers, sixty-four (64) 5-gallon containers, twenty-eight (28) 1-gallon containers and one (1) 30-gallon container (collectively, the “Containers”) stored inside the Facility;
  - (b) The Containers were identified by Steven Lancia, the president of Symmetry Products, and/or Anthony Chernasky, the plant manager for Symmetry Products, as holding chemical wastes;
  - (c) The Containers held flammable liquids including waste paints, lacquer thinner, resins, epoxies and coating solutions;
  - (d) Eleven (11) of the Containers were labeled as “hazardous waste, paints” and marked with an accumulation start date of March 30, 2011; and
  - (e) The Respondents had not determined whether the waste held in the Containers was hazardous waste.
- (6) As of the date of this Notice of Violation (“NOV”), the Respondents have failed to determine whether the waste held in the Containers is hazardous waste.

D. 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 5.8 and 40 CFR 262.11** - requiring that a hazardous waste generator determine if the waste generated onsite meets the definition of a hazardous waste.

E. 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 sixty (60) days of receipt of the NOV** collect a representative sample of the waste from each of the Containers and submit the sample to a laboratory for analysis to determine if the waste meets the definition of hazardous waste in accordance with the DEM’s Hazardous Waste Regulation 5.8 and submit a copy of the test results to the DEM. If the waste is determined to meet the definition of a hazardous waste, **IMMEDIATELY** begin managing the waste in accordance with the applicable requirements of the DEM’s Hazardous Waste Regulations.

F. 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:

**Twenty Five Thousand Three Hundred Fourteen Dollars (\$25,314.00)**

- (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, 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 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.

G. 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 F 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  
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 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, 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 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) 222-6607. 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 G 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:

Symmetry International, Inc.  
c/o Paul T. DiCristofaro, Esq., Registered Agent  
400 Reservoir Avenue, Suite 3-1  
Providence, RI 02907

Lance Industries, Inc.  
c/o Paul T. DiCristofaro, Esq., Registered Agent  
400 Reservoir Avenue, Suite 3-1  
Providence, RI 02907

by Certified Mail.

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## ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, HAZARDOUS WASTE

File No.: 2010-66-HW

Respondents: Symmetry International, Inc. and Lance Industries, Inc.

<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	
D (1) General Requirements – Hazardous Waste Determination	Type I (\$ <u>25,000</u> Max. Penalty)*	Major	\$25,000	1 violation	\$25,000.00
<b><i>SUB-TOTAL</i></b>					<b>\$25,000.00</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.

<i>DESCRIPTION OF BENEFIT</i>	<i>CALCULATION</i>	<i>AMOUNT</i>
<p>Economic benefit of noncompliance identified by the State of Rhode Island for failing to determine if the waste met the definition of hazardous waste. One time non-depreciable costs for the Respondents' failure to comply were obtained from the EPA "Estimating Costs for the Economic Benefits of RCRA Noncompliance", updated December 1997. The one-time non-depreciable expense used in this calculation is the Upper Bound Cost Estimate.</p> <p>The economic benefit gained by the instances of noncompliance was calculated by utilizing an EPA computer model entitled "BEN". The model calculates the economic gain of noncompliance by performing a detailed economic analysis. The dates, dollar amounts and values used in this analysis are as listed in this table.</p>	<ul style="list-style-type: none"> <li>• Profit Status                      C-Corporation</li> <li>• Filing Status                        C-Corporation</li> <li>• Initial Capital Investment        \$0</li> <li>• One-time Non-depreciable Expense        \$ 6,647 (Waste determination)</li> <li>• Annual Expense                     \$0</li> <li>• First Month of Non-Compliance        May 21, 2010</li> <li>• Compliance Date                    October 31, 2011</li> <li>• Penalty Due Date                    October 31, 2011</li> <li>• Useful Life of Pollution Control        N/A</li> <li>• Equipment Annual Inflation Rate        N/A</li> <li>• Discount/Compound Rate            7.8%</li> </ul>	\$314.00
<b><i>SUB-TOTAL</i></b>		<b>\$314.00</b>

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$25,314 .00**

**PENALTY MATRIX WORKSHEET**

CITATION: General Requirements – Hazardous Waste Determination  
 VIOLATION NO.: D (1)

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

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

**FACTORS CONSIDERED:**

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

- (A) **The extent to which the act or failure to act was out of compliance:** Respondents stored containers holding liquid and solid chemical wastes at the property without determining if the wastes met the definition of hazardous waste. State and Federal regulations require generators of waste to determine if their waste meets the definition of a hazardous waste. The failure to properly characterize waste may result in the mismanagement of hazardous waste and lead to improper disposal of hazardous waste.
- (B) **Environmental conditions:** The containers holding the uncharacterized liquid and solid chemical wastes were stored inside a building on the property.
- (C) **Amount of the pollutant:** Fifty-six (56) 55-gallon containers, sixty-four (64) 5-gallon containers, twenty-eight (28) 1-gallon containers and one (1) 30-gallon container. Based on the volume of the containers the total amount of hazardous waste could equal three thousand four hundred sixty three (3,463) gallons.
- (D) **Toxicity or nature of the pollutant:** Unknown. Several of the containers were marked with product labels indicating that the contents were flammable.
- (E) **Duration of the violation:** Unknown. At least 16 months. The DEM first documented the violation on May 21, 2010.
- (F) **Areal extent of the violation:** Not used for this calculation.

(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 mitigate the noncompliance. DEM inspected the facility on May 21, 2010, January 5, 2011, March 31, 2011, and August 2, 2011. On each inspection the DEM inspectors informed Steven Lancia, the president of Symmetry Products, or Anthony Chernasky, the plant manager for Symmetry Products, of the actions necessary to comply with the regulations. DEM issued a Letter of Noncompliance (LNC) to Symmetry Products on August 12, 2010 and two letters, one on October 20, 2010 and another on February 21, 2011, granting extensions of the deadline contained in the LNC after receiving written requests from Mr. Lancia for additional time to comply. The letters reiterated the requirement to complete the waste determinations.
- (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:** Not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Not utilized for this calculation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not used for this calculation.

<u>  X  </u> MAJOR	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	<b>MAJOR</b>	\$12,500 to \$25,000 <b>\$25,000</b>	\$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	\$250 to \$1,250