

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Edward A. Johnson, Jr., and  
Kevin F. Johnson d/b/a Universal Plating Co., Inc.**

**FILE NO.: OCI-HW-15-76**

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 the DEM's jurisdiction.

B. Facts

- (1) The property is located at 25 River Avenue in the city of Providence (the “Property”). The Property includes a facility used for the application of metal coatings to jewelry products through an electroplating process (the “Facility”).
- (2) The Respondents operate the Facility d/b/a Universal Plating Co., Inc.
- (3) On 7 October 2005, the Rhode Island Secretary of State revoked the Certificate of Registration/Organization for Universal Plating Co., Inc. Edward A. Johnson, Jr. is the last known president of the corporation. Kevin F. Johnson is the vice president of the corporation.
- (4) Universal Plating Co., Inc. is registered with the DEM as a small quantity hazardous waste generator ("SQG") 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 “Universal Plating Co Inc.” with the U.S. Environmental Protection Agency (“EPA”) identification number RID982748022.
- (5) On 15 September 2015, the DEM inspected the Facility. The inspection revealed the following:
  - (a) One 55-gallon 180 day container holding hazardous waste (corrosive acid) that was open. The container had a hazardous waste label, but the label did not have an accumulation start date or waste description;
  - (b) One 55-gallon 180 container holding hazardous waste (corrosive acid) that had no hazardous waste label and did not have an accumulation start date;

- (c) Two 20-gallon 180 day containers holding hazardous waste (corrosive acid) that had no hazardous waste labels, were not marked with an accumulation start date and were open;
  - (d) The containers identified in Facts B(5)(a) through (c) above (collectively, the "180 Day Containers") did not have a minimum of 3 feet of aisle space between the rows;
  - (e) One 55-gallon satellite container holding hazardous waste (corrosive acid) that had no hazardous waste label and was open;
  - (f) No hazardous waste determination was completed for: 25 miscellaneous sized containers holding waste located near an outside wall, one 5-gallon container holding waste behind the vibe unit, one 55-gallon container holding waste adjacent to the evaporator unit, and dust from the grinding of white metals that are located in the baghouse (the "Undetermined Waste Containers");
  - (g) No weekly inspections of the 180 Day Containers;
  - (h) No hazardous waste contingency plan or posting of the names and numbers of its emergency coordinators and the number for the local fire department, the national response center and the DEM near the phones at the Facility was completed; and
  - (i) The locations of fire extinguishers, spill control equipment and fire alarms were not clearly marked.
- (6) During the inspection, Kevin Johnson stated that no hazardous waste training had been provided to the company employees.
  - (7) Review of records maintained by the DEM revealed that a list of agents authorized by the Respondents to sign hazardous waste manifests was not on file with the DEM.
  - (8) Review of records provided by Mr. Johnson to the DEM during the inspection revealed that the 180 Day Containers were stored at the Facility for greater than 180 days.
  - (9) On 10 November 2015, the DEM received a copy of a hazardous waste manifest for the Facility. The manifest showed that on 27 October 2015 the waste held in the 180 Day Containers and 3 other drums holding hazardous waste were shipped to a licensed disposal facility.
  - (10) As of the date of this Notice of Violation ("NOV"), the Respondents have not demonstrated that they have corrected the noncompliance identified in Sections B (5)(f through i), B(6) and B (7) 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 Regulations 5.14D1** – requiring that a SQG label each 180 day container holding hazardous waste with the words “Hazardous Waste”, the chemical or common name of the waste and the name, address and EPA identification number ("EPA ID") of the generating facility.
- (2) **DEM's Hazardous Waste Regulations 5.14B1** – requiring that a SQG mark 180 day containers holding hazardous waste with the date upon which the waste first began to accumulate.
- (3) **DEM's Hazardous Waste Regulations 5.14B.2** – requiring that a SQG keep 180 day containers holding hazardous waste closed except when adding or removing waste.
- (4) **DEM's Hazardous Waste Regulations 5.9A and 5.9D** – requiring that a hazardous waste generator label all satellite containers holding hazardous waste with the words “Hazardous Waste” and other words identifying the contents of the container and keep the containers closed except when adding or removing waste.
- (5) **DEM's Hazardous Waste Regulations 5.3 and 40 CFR 262.11** – requiring that a hazardous waste generator determine if the waste generated onsite meets the definition of a hazardous waste.
- (6) **DEM's Hazardous Waste Regulations 5.14B8** – requiring that a SQG 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.
- (7) **DEM's Hazardous Waste Regulations 5.10** – requiring that a hazardous waste generator maintain a minimum of 3 feet of space between rows to allow for the unobstructed movement of personnel, fire protection equipment, spill control equipment and decontamination equipment.
- (8) **DEM's Hazardous Waste Regulations 5.14H** – requiring that a SQG either prepare a hazardous waste contingency plan **OR** designate an emergency coordinator, post the name and telephone number for the emergency coordinator, post the telephone numbers for the local fire department, the DEM, the National Response Center and the companies environmental contractor near all phones.

- (9) **R.I. Gen. Laws Section 23-19.1-10, Hazardous Waste Regulations 5.14A and 7B.2, and 40 CFR 270.1(c)** – requiring a SQG to obtain a permit from the DEM prior to storing hazardous waste for greater than 180 days.
- (10) **DEM’s Hazardous Waste Regulations 5.14E** – requiring that a SQG 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.
- (11) **DEM’s Hazardous Waste Regulations 5.7** – requiring that a hazardous waste generator submit to the DEM a list of agents authorized by the company to sign uniform hazardous waste manifests for shipments of hazardous waste.

D. Order

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

- (1) Collect representative samples from the Undetermined Waste Containers and submit the samples to a laboratory for analysis to determine if the waste meets the definition of hazardous waste in accordance with the requirements of the DEM's Hazardous Waste Regulation 5.08 and submit a copy of the test results to the DEM's Office of Compliance & Inspection ("OC&I"). In the event that 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.

**OR**

**IMMEDIATELY** begin managing the Undetermined Waste Containers as hazardous waste.

- (2) Label all 180 day containers holding hazardous waste with the words “Hazardous Waste”, the chemical or common name of the waste and the name, address and EPA ID of the generating facility.
- (3) Mark all 180 day containers holding hazardous waste with the date upon which the hazardous waste first began to accumulate.
- (4) Transport all 180 day containers holding hazardous waste for greater than 180 days at the Facility to a licensed disposal facility.
- (5) Keep closed all containers holding hazardous waste except for when adding or removing waste.
- (6) Label all satellite containers holding hazardous waste with the words “Hazardous Waste” and other words identifying the contents of the container.

- (7) Begin conducting weekly inspections of the hazardous waste container storage areas looking for leaking containers and signs of deterioration caused by corrosion or other factors and maintain documentation onsite of the inspection of each hazardous waste storage area for a period of at least 3 years.
- (8) Provide a minimum of 3 feet of space between rows of containers to allow for the unobstructed movement of personnel and emergency equipment.
- (9) Develop and maintain a hazardous waste contingency plan for the Facility and submit a copy to the OC&I **OR** designate an emergency coordinator, post the name and telephone number for the emergency coordinator, post the telephone numbers for the local fire department, the DEM, the National Response Center and the Respondents' environmental contractor near all phones.
- (10) Provide hazardous waste management training to Facility employees that manage/handle hazardous waste which is relevant to the positions in which they are employed and submit copies of the training program and attendance sheet to the OC&I.
- (11) 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:

**\$31,050**

- (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 Respondents in the NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if the Director determines that reasonable efforts have been made to comply promptly with the NOV.

F. Right to Administrative Hearing

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

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

Administrative Clerk  
DEM - Administrative Adjudication Division  
One Capitol Hill, 4<sup>TH</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 the NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (vi) and 42-17.6-4(b) and (c).
- (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) The NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

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

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

FOR THE DIRECTOR

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

Dated: \_\_\_\_\_

CERTIFICATION

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

Edward A. Johnson, Jr., President  
d/b/a Universal Plating Co.  
25 River Avenue  
Providence, RI 02908

Kevin F. Johnson, Vice President  
d/b/a Universal Plating Co.  
25 River Avenue  
Providence, RI 02908

by Certified Mail.

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## ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, HAZARDOUS WASTE

File No.: OCI-HW-15-76

Respondent: Edward Johnson, Jr., and Kevin Johnson d/b/a Universal Plating Co., 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	
C (1), (2), (3) & (4) – Container Labeling, Accumulation Date and Open Containers	Type I (\$25,000 Max. Penalty)*	Minor	\$2,500	3 violations	\$7,500
C (5) – Hazardous Waste Determination	Type I (\$25,000 Max. Penalty)*	Moderate	\$12,500	1 violation	\$12,500
C (6) & (7) – Weekly Inspections & Aisle Space	Type II (\$12,500 Max. Penalty)	Minor	\$2,500	1 violation	\$2,500
C (8) & (10) – Contingency Plan & Training	Type I (\$25,000 Max. Penalty)*	Minor	\$2,500	2 violations	\$5,000
C(9) – Greater Than 180 Day Storage	Type I (\$25,000 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500
<b>SUB-TOTAL</b>					<b>\$30,000</b>

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



# PENALTY MATRIX WORKSHEET

CITATION: Container Labeling, Accumulation Date and Open Containers

VIOLATION NO.: C (1), (2), (3) & (4)

<b>TYPE</b>		
<p style="text-align: center;"><b><u>X</u> TYPE I</b></p> <p style="text-align: center;"><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><b>TYPE II</b></p> <p style="text-align: center;"><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><b>TYPE III</b></p> <p style="text-align: center;"><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><u>FACTORS CONSIDERED:</u></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 or properly label containers holding hazardous waste. The requirement to label containers holding hazardous waste is an integral part of the regulatory program because this requirement reduces the potential for mismanagement of hazardous waste. Proper labeling of hazardous waste containers provides important information regarding the chemical properties of the waste for emergency responders who may be called to a facility during a fire, spill or release. The Respondent also failed to mark containers holding hazardous waste with the date upon which the waste first began to accumulate. The accumulation start date enables generators and regulatory authorities to track the amount of time hazardous waste is stored at a facility. This requirement is of significant concern to the regulatory program because it helps ensure hazardous waste is not stored onsite for extended periods of time. Storage exceeding certain time thresholds requires the generator to obtain a hazardous waste storage permit. The Respondent also failed to keep closed containers holding hazardous waste. The requirement to keep containers holding hazardous waste closed is an integral part of the regulatory program because it reduces the potential for the release of hazardous waste.</p> <p>(B) <b>Environmental conditions:</b> Considered, but not utilized for this calculation.</p> <p>(C) <b>Amount of the pollutant:</b> One 55-gallon satellite container (open, no label), one 55-gallon 180 day container (incomplete label, no accumulation start date, open), one 55-gallon 180 day container (no label, no accumulation start date) and two 20-gallon 180 day containers (no label, no accumulation start date, open).</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Each container held nitric acid, which is a corrosive hazardous waste and toxic to humans if swallowed or inhaled.</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>		
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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 violations by properly labeling and dating the containers and keeping the containers closed. The DEM has no information on what steps, if any, the Respondent took to mitigate the noncompliance. On 27 October 2015, the Respondent shipped 4 drums holding hazardous waste to a licensed facility.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<b>MAJOR</b>	<b>MODERATE</b>	<b><u>X</u> 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: Hazardous Waste Determination  
 VIOLATION NO.: C (5)

<b>TYPE</b>		
<u>  X  </u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <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's *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondent failed to complete a hazardous waste determination on containers holding waste and a baghouse for dust collection. 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 could lead to the improper disposal of hazardous waste.
- (B) **Environmental conditions:** Considered, but not utilized for this calculation.
- (C) **Amount of the pollutant:** 25 miscellaneous sized containers holding waste located near an outside wall, one 5-gallon container holding waste behind the vibe unit, one 55-gallon container holding waste adjacent to the evaporator unit, and dust from the grinding of white metals that are located in the baghouse.
- (D) **Toxicity or nature of the pollutant:** Unknown. The Respondent generates and stores waste acid and collects metals in the baghouse, which may contain toxic metals such as lead.
- (E) **Duration of the violation:** Unknown.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to take reasonable and appropriate steps to prevent the violation by completing a hazardous waste determination prior to storing the waste at the facility. To mitigate the noncompliance, on 29 September 2015, the Respondent submitted to the DEM an analysis of "plating process" waste. The analysis revealed a high level of lead that would likely make the waste a characteristic hazardous waste. The DEM has no information on what additional steps, if any, the Respondent took to mitigate the noncompliance. On 27 October 2015, the Respondent shipped 4 drums holding hazardous waste to a licensed facility.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<b>MAJOR</b>	<b><u>X</u> MODERATE</b>	<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
	<b>MODERATE</b>	\$6,250 to \$12,500 <b>\$12,500</b>	\$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: Weekly Inspections & Aisle Space  
 VIOLATION NO.: C (6) & (7)

<b>TYPE</b>		
<u>      </u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>  <b>X</b>  </u> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <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's *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondent failed to complete and document weekly inspections of the container storage area at the facility. State regulations require generators to inspect areas in which hazardous waste is stored in containers 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. The Respondent also failed to store the 180 day containers with adequate aisle space. The requirement to provide aisle space was established to allow company, emergency response and regulatory personnel access to containers holding hazardous waste to ensure they are in good condition and to respond to spills or releases of waste.
- (B) **Environmental conditions:** Considered, but not utilized for this calculation.
- (C) **Amount of the pollutant:** Two 55-gallon and two 20-gallon 180 day containers.
- (D) **Toxicity or nature of the pollutant:** Each container held nitric acid, which is a corrosive hazardous waste and toxic to humans if swallowed or inhaled.
- (E) **Duration of the violation:** Unknown.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to take reasonable steps to prevent the noncompliance by conducting weekly inspections and storing the containers with adequate aisle space. The DEM has no information on what steps, if any, the Respondent took to mitigate the noncompliance. On 27 October 2015, the Respondent shipped 4 drums holding hazardous waste to a licensed facility.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** 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	<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	\$1,250 to \$2,500 <b>\$2,500</b>	\$250 to \$1,250



# PENALTY MATRIX WORKSHEET

CITATION: Contingency Plan and Training

VIOLATION NO.: C (8) & (10)

TYPE		
<p style="text-align: center;"><b>X</b> <u>TYPE I</u></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">____ <u>TYPE II</u></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">____ <u>TYPE III</u></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><b><u>FACTORS CONSIDERED:</u></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 develop and maintain a hazardous waste contingency plan for the facility and failed to provide hazardous waste management training to employees who work with hazardous waste. State and Federal regulations require small quantity generators to develop a contingency plan or designate an emergency response coordinator and to post contact numbers near all phones in the hazardous waste storage areas. 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. State and Federal regulations also 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. 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> One 55-gallon satellite container, two 55-gallon 180 day containers and two 20-gallon 180 day containers.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> The Respondent generates and stores nitric acid waste, which is a corrosive hazardous waste and toxic to humans if swallowed or inhaled.</p> <p>(E) <b>Duration of the violation:</b> Unknown – Respondent has been in business at this location for approximately 20 years. The Respondent was unable to produce a copy of a contingency plan and training records for employees that manage hazardous waste.</p> <p>(F) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to take reasonable steps to prevent the noncompliance by developing a contingency plan and training its employees. The DEM has no information on what steps, if any, the Respondent took to mitigate the noncompliance.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<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: Greater Than 180 Day Container Storage  
 VIOLATION NO.: C (9)

<b>TYPE</b>		
<u>  X  </u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE III</b> <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
<b>DEVIATION FROM THE STANDARD</b>		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<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 stored hazardous waste at the facility for greater than 180 days without first obtaining a permit from the DEM. State regulations establish time limits allowing generators to temporarily store hazardous waste without obtaining a permit. A hazardous waste storage permit requires owners and operators of facilities designated to store and manage hazardous waste to install and maintain safety equipment to minimize the possibility of fires, explosions or unplanned releases involving the waste. The requirement to obtain a hazardous waste storage permit is a major component of the regulatory program.</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 and two 20-gallon 180 day containers.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Each container held nitric acid, which is a corrosive hazardous waste and toxic to humans if swallowed or inhaled.</p> <p>(E) <b>Duration of the violation:</b> Full duration unknown - at least 7 months. At the time of the 15 September 2015 inspection the Respondent had not shipped hazardous waste off site since 28 February 2013. On 27 October 2015, the Respondent shipped 1 drum of hazardous waste (corrosive acid) off site.</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 shipping containers holding hazardous waste offsite within 180 days. On 27 October 2015, the Respondent shipped 1 drum holding hazardous waste (corrosive acid) and 3 other drums holding hazardous waste to a licensed facility.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** 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