

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: The Estate of Michael F. Zampini
 Thomas Zampini d/b/a Zampini Auto Wrecking**

**FILE NOs.: OCI-SW-17-29
 and OCI-HW-17-9**

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. Administrative History

On 3 July 2017, DEM issued a Notice of Intent to Enforce (“NIE”) to Respondents for the violations that are the subject of this Notice of Violation (“NOV”). Respondents were notified of the remedial actions required to rectify the violations and required to complete them within 180 days of receipt of the NIE. The NIE was delivered to Respondents on 8 July 2017. As of the date of the NOV, Respondents have failed to fully comply with the NIE.

C. Facts

- (1) The subject property is located at 2 Mill Road, Assessor’s Plat 1B, Lot 19 in the Town of Richmond, Rhode Island (the "Property").
- (2) The Estate of Michael F. Zampini owns the Property.
- (3) Thomas Zampini (“Zampini”) d/b/a Zampini Auto Wrecking operates an automobile wrecking and salvage business on the Property, which is licensed by the Town of Richmond, Rhode Island.
- (4) Upon information and belief, Respondents do not currently, nor at the time of the violations, possess a license or other approval from the DEM to operate a solid waste management facility on the Property.
- (5) Upon information and belief, Respondents do not currently, nor at the time of the violations, possess a license or other approval from the DEM to operate a used vehicle tire storage and recycling facility on the Property.

- (6) Upon information and belief, Respondents do not currently, nor at the time of the violations, possess a license or other approval from the Rhode Island Department of Business Regulation to operate an automobile wrecking and salvage business on the Property.
- (7) On 1 March 2017, 3 March 2017 and 2 June 2017, the DEM inspected the Property and observed the following:
 - (a) Approximately 315 cubic yards of solid waste deposited on the ground, which consisted of various vehicles and heavy equipment in various states of disrepair (including a bulldozer, trailer beds, truck beds, trucks, buses, a camper, loaders, and a mobile home), auto parts, tanks, white goods, lawn furniture, computer parts, and scrap metal;
 - (b) Approximately 490 used rubber tires;
 - (c) Approximately 40 unregistered vehicles;
 - (d) Five 55-gallon drums, one 30-gallon container and one 5-gallon container (collectively, the "Containers") holding unknown liquid wastes. The Containers were not labeled to identify the wastes stored inside them or with the date upon which accumulation began; and
 - (e) Staining of the land that was consistent with petroleum near a green colored machine (the "Petroleum Stained Soil").
- (8) During the inspection on 3 March 2017, the DEM agent asked Zampini what the liquid wastes were in the Containers. Zampini stated that two of the drums were generated by Schnitzer when the company was on the Property scrapping vehicles. Zampini offered no information regarding the remaining Containers.
- (9) On 29 January 2018, 150 gallons of used oil was removed from the Property, as evidenced by the receipt of electronic correspondence dated 7 May 2018 from Zampini to the DEM. The correspondence included an invoice from WESTERN OIL INC. for the removal and disposal of the used oil.
- (10) On 17 May 2018, the DEM inspected the Property and observed the following:
 - (a) Approximately 725 cubic yards of solid waste, which consisted of approximately 131 unregistered junk vehicles and approximately 700 used rubber tires;
 - (b) Scrap metal, used vehicle parts, white goods and other materials in stockpiles and scattered in a disorganized fashion as observed in the prior inspections;
 - (c) The Containers were no longer present; and

- (d) The Petroleum Stained Soil, which was approximately 78 square feet.
- (11) Respondents did not determine whether any of the liquid wastes in the Containers met the definition of hazardous waste as set forth in the Rhode Island Code of Regulations titled *Rules and Regulations for Hazardous Waste Management (250-RICR-140-10-1)* (the “Hazardous Waste Regulations”).
- (12) Respondents failed to notify DEM of the oil release and failed to clean up the oil release.
- (13) As of the date of the NOV, Respondents have failed to fully and completely address the instances of noncompliance in subsections C (7) and C (10) above.

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) **R.I. Gen. Laws Section 23-18.9-5** – prohibiting the disposal of solid waste at other than a solid waste management facility.
- (2) **R.I. Gen. Laws Section 23-18.9-8** – prohibiting the operation of a solid waste management facility without a license or approval from the DEM.
- (3) **R.I. Gen. Laws Section 46-12.5.1-3** – prohibiting discharges of oil into or upon the land of the State.
- (4) **Rhode Island Code of Regulations titled *Oil Pollution Control Regulations (250-RICR-140-25-2)* (the “OPC Regulations”), Section 6(a) (recently amended to Part 2.6(A))** – prohibiting the placement of oil into the land of the State.
- (5) **OPC Regulations, Section 12 (recently amended to Part 2.12)** – requiring a person to immediately notify the DEM of oil releases to the land and to immediately begin to clean up any oil releases.
- (6) **Hazardous Waste Regulations, Rule 5.3 (recently amended to Part 1.7.3)** – requiring that any person who generates solid waste (which includes liquid waste) determine if the waste generated onsite meets the definition of a hazardous waste.
- (7) **Hazardous Waste Regulations, Rule 15.4D (recently amended to Part 1.16.4(A)(4))** – requiring generators of used oil to immediately stop and control releases of used oil and to clean up, contain and properly manage the used oil and any resultant wastes.

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:

- (1) **IMMEDIATELY** cease the disposal of solid waste on the Property.
- (2) **IMMEDIATELY** cease the operation of the solid waste management facility on the Property.
- (3) **Within 30 days of receipt of the NOV**, take remedial action to clean up the release of oil that has occurred on the Property in full compliance with Part 1.16.4(A)(4) of the Hazardous Waste Regulations and Part 2.12 of the OPC Regulations, which shall include, but not be limited to, the excavation and removal of the oil-contaminated soils and investigation of any subsurface petroleum contamination. Respondents shall procure the services of a qualified environmental consultant or contractor to prepare a site status report and a remedial action plan for the Property in accordance with Part 2.12(E) of the OPC Regulations. The report and plan shall be submitted to the OC&I. The OC&I will review the report and issue further instructions on how to proceed with the investigation and remediation of the release. Remedial action and clean-up shall continue until the release has been mitigated to the satisfaction of the DEM and the contaminant concentrations are at or below the applicable standards, as per Part 2.12 of the OPC Regulations and Part 1.9.2(B)(4) of the Rhode Island Code of Regulations titled *Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases (250-RICR-140-30-1)*.
- (4) **Within 30 days of receipt of the NOV**, provide documentation to DEM on the status of the Containers.
- (5) **Within 120 days of receipt of the NOV**, remove all solid waste from the Property, including all used tires and all junk vehicles. Respondents have the option of applying for and obtaining a license from the Rhode Island Department of Business Regulation to operate an automobile wrecking and salvage business on the Property. Doing so will allow Respondents to keep the unregistered and inoperable vehicles on the Property and up to 400 used tires. If Respondents do obtain such a license, then Respondents shall forward copies of the licensing documentation to DEM. DEM will then review the status of the Property and issue further instructions on how to proceed with the required remedial actions. All solid waste removed from the Property shall be disposed of at a licensed solid waste management facility or recycling facility.
- (6) **Within 10 days** of completion of the solid waste removal project, submit written verification that the solid waste in question has been disposed of at a licensed solid waste management facility or recycling facility to the OC&I.

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:

\$17,963

- (2) The proposed administrative penalty is calculated pursuant to the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* 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, cashier's 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 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 DEM 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's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections 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 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
235 Promenade Street, Suite 350
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 Part 1.7(B) of the Rhode Island Code of Regulations titled *Rules and Regulations for the Administrative Adjudication Division (250-RICR-10-00-1)*.
- (2) A copy of each request for hearing must also be forwarded to:
- Christina Hoefsmit, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767
- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before the DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. 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) An original signed copy of the NOV is being forwarded to the Town of Richmond, Rhode Island wherein the Property is located, to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and Section 23-18.9-13, as is or as amended.
- (7) The NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Christina Hoefsmit of the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey D'Amadio 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 G above.

FOR THE DIRECTOR

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

Dated: _____

CERTIFICATION

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

The Estate of Michael F. Zampini
c/o Thomas Zampini, Executor
2 Mill Road
Hope Valley, RI 02832-3214

Thomas Zampini d/b/a Zampini Auto Wrecking
2 Mill Road
Hope Valley, RI 02832-3214

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Programs: OFFICE OF COMPLIANCE AND INSPECTION, SOLID WASTE AND HAZARDOUS WASTE

File Nos.: OCI-SW-17-29 and OCI-HW-17-9

Respondents: The Estate of Michael F. Zampini and Thomas Zampini d/b/a Zampini Auto Wrecking

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	
D (1) – Disposal of solid waste at other than a licensed solid waste management facility	Type I <i>(\$25,000 Max. Penalty)*</i>	Moderate	\$6,250	1 violation	\$6,250
D (2) – Operating a facility without a license	Type I <i>(\$25,000 Max. Penalty)*</i>	Moderate	\$6,250	1 violation	\$6,250
D (3), (4), (5) and (7) – Release of oil and failure to take corrective action	Type I <i>(\$25,000 Max. Penalty)*</i>	Minor	\$2,500	1 violation	\$2,500
D (6) – Hazardous waste determination	Type I <i>(\$25,000 Max. Penalty)*</i>	Minor	\$2,500	1 violation	\$2,500
SUB-TOTAL					\$17,500

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

ADMINISTRATIVE PENALTY SUMMARY (continued)

ECONOMIC BENEFIT FROM NON-COMPLIANCE

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

- THERE IS NO IDENTIFIABLE BENEFIT FROM NON-COMPLIANCE; OR
- THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED.

DESCRIPTION OF BENEFIT	CALCULATION	AMOUNT
<p>Economic benefit of non-compliance identified by the DEM for failing to remove the solid waste for proper disposal and to complete a hazardous waste determination. The expenses associated with removing and disposing of the mixed solid waste and used tires were obtained from documents published by the EPA’s Office of Resource Conservation and Recovery and the RIRRC’s FY 2018 Fee Table. The expenses associated with completing a waste determination were obtained from DEM’s contract for laboratory services.</p> <p>The economic benefit gained was calculated by utilizing an EPA computer model titled <i>BEN</i> which performs 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"> ▪ Profit Status For profit, other than a C-Corporation ▪ Filing Status For Profit, other than a C-Corporation ▪ Initial Capital Investment \$0 ▪ One-time Non-depreciable Expense \$7,369 – Mixed solid waste disposal \$1,378 - Used tire disposal \$1,218 - Hazardous waste determination ▪ First Month of Non-compliance March 2017 ▪ Compliance Date 31 December 2018 ▪ Penalty Due Date 15 February 2019 ▪ Useful Life of Pollution Control N/A ▪ Equipment Annual Inflation Rate N/A ▪ Discount Compound Rate 7.3% 	<p>SUB-TOTAL</p>
		<p>\$463</p>

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 = \$17,963

PENALTY MATRIX WORKSHEET

CITATION: Disposal of solid waste at other than a licensed solid waste management facility
 VIOLATION NO.: D (1)

TYPE		
X 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 Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents disposed of or allowed for the disposal of 315 cubic yards of mixed solid waste (observed on 2 June 2017) and approximately 725 cubic yards of solid waste consisting of approximately 700 used rubber tires and approximately 131 unregistered motor vehicles (observed on 17 May 2018) on the Property. Prohibiting the disposal of solid waste at other than a licensed solid waste management facility is significant to the regulatory program. The improper disposal of solid waste can have significant adverse impacts to public health and safety and the environment. (2) Environmental conditions: The Property is in a GAA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment and which are in wellhead protection areas for community water supply wells, groundwater reservoirs and portions of their recharge areas and groundwater dependent areas. The Property is in the wellhead protection area for a non-community water supply well. Residences near the Property rely on private drinking water wells. The Property is in a groundwater recharge area and in a sole source aquifer. The Property is located within the Upper Wood River watershed. Roaring Brook flows through the Property. (3) Amount of the pollutant: 315 cubic yards of mixed solid waste and approximately 725 cubic yards of solid waste, consisting of approximately 700 used rubber tires and approximately 131 unregistered vehicles. (4) Toxicity or nature of the pollutant: Components of motor vehicles, appliances, computer equipment and other materials deposited on the Property are typically sources of hazardous materials such as petroleum hydrocarbons, volatile organic compounds and toxic metals. Rainwater infiltration may allow hazardous materials to leach into the groundwater below the disposal areas. The stockpiles of solid waste may provide harborage to rodents and insects pests. (5) Duration of the violation: Full duration unknown. The DEM first observed solid waste on the Property on 3 March 2017. (6) Areal extent of the violation: The solid waste disposal area encompasses a large portion of the approximately 23-acre Property. 		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the non-compliance by prohibiting the disposal of solid waste on the Property. Respondents have yet to mitigate the non-compliance despite receiving the NIE from the DEM, which required that they do so.
- (8) **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.
- (9) **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:** Negligence is attributable to Respondents for the failure to comply with the law. Respondents, as owners and operators of the Property, had complete control over the occurrence of the violation.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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: Operating a facility without a license
 VIOLATION NO.: D (2)

TYPE		
<p style="text-align: center;"><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___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><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents operated a solid waste management facility without a license issued by the DEM. Prohibiting the operation of a solid waste management facility without the approval of the DEM is significant to the regulatory program. Failure to comply with the statute bypasses the public health and safety and environmental safeguards attained by restricting solid waste disposal to licensed facilities that operate in accordance with rules and regulations. (2) Environmental conditions: The Property is in a GAA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment and which are in wellhead protection areas for community water supply wells, groundwater reservoirs and portions of their recharge areas and groundwater dependent areas. The Property is in the wellhead protection area for a non-community water supply well. Residences near the Property rely on private drinking water wells. The Property is in a groundwater recharge area and in a sole source aquifer. The Property is located within the Upper Wood River watershed. Roaring Brook flows through the Property. (3) Amount of the pollutant: 545 cubic yards of mixed solid waste, approximately 490 used rubber tires and approximately 40 unregistered vehicles. (4) Toxicity or nature of the pollutant: Components of motor vehicles, appliances, computer equipment and other materials deposited on the Property are typically sources of hazardous materials such as petroleum hydrocarbons, volatile organic compounds and toxic metals. Rainwater infiltration may allow hazardous materials to leach into the groundwater below the disposal area. The stockpiles of solid waste may provide harborage to rodents and insects pests. (5) Duration of the violation: Full duration unknown. The DEM first observed solid waste on the property on 3 March 2017. (6) Areal extent of the violation: The solid waste disposal area encompasses approximately 3.5 acres. 		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the non-compliance by first obtaining a license or approval from the DEM to operate a solid waste management facility on the Property. Respondents have yet to mitigate the non-compliance despite receiving the NIE from the DEM, which required that they do so.
- (8) **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.
- (9) **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:** Negligence is attributable to Respondents for the failure to comply with the law. Respondents, as owners and operators of the Property, had complete control over the occurrence of the violation. The operation of a solid waste management facility without a license from the DEM is expressly prohibited by law.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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: Release of oil and failure to take corrective action
 VIOLATION NOs.: D (3), (4), (5) and (7)

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><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: A release of oil occurred on the Property and Respondents failed to immediately report the release to the DEM and then take all the necessary remedial actions. The law, the Hazardous Waste Regulations and the OPC Regulations prohibit the release of oil to the land of the State and require that any releases be immediately reported to the DEM, investigated and rectified in accordance with the remedial actions required by the Hazardous Waste Regulations and the OPC Regulations. (2) Environmental conditions: The Property is in a GAA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment and which are in wellhead protection areas for community water supply wells, groundwater reservoirs and portions of their recharge areas and groundwater dependent areas. The Property is in the wellhead protection area for a non-community water supply well. Residences near the Property rely on private drinking water wells. The Property is in a groundwater recharge area and in a sole source aquifer. The Property is located within the Upper Wood River watershed. Roaring Brook flows through the Property. (3) Amount of the pollutant: Unknown due to Respondents' failure to investigate the release and take corrective action. (4) Toxicity or nature of the pollutant: Unknown due to Respondents' failure to investigate the release and take corrective action. (5) Duration of the violation: Unknown. (6) Areal extent of the violation: Considered, but not utilized for this calculation. 		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the non-compliance by taking the necessary actions to prevent the release and then failing to take corrective action after the release did occur. Respondents have yet to mitigate the noncompliance.
- (8) **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.
- (9) **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:** Negligence is attributable to Respondents for the failure to comply with the law, the Hazardous Waste Regulations and the OPC Regulations. Respondents, as owners and operators of the Property, had complete control over the occurrence of the violation.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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

PENALTY MATRIX WORKSHEET

CITATION: Hazardous waste determination
 VIOLATION NO.: D (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><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents failed to determine whether the liquid wastes that were in storage on the Property on 3 March 2017 met the definition of hazardous waste. At the time of the DEM’s inspection, Respondents were unable to present written verification whether a hazardous waste determination had been made. (2) Environmental conditions: The Property is located in a GAA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment and which are located in wellhead protection areas for community water supply wells, groundwater reservoirs and portions of their recharge areas and groundwater dependent areas. The Property is located in the wellhead protection area for a non-community water supply well. Residences in the vicinity of the Property rely on private drinking water wells. The Property is located in a groundwater recharge area and in a sole source aquifer. The Property is located within the Upper Wood River watershed. Roaring Brook flows through the Property. (3) Amount of the pollutant: Full amount unknown – there were five 55-gallon containers, one 30-gallon container and one 5-gallon container holding liquid waste. (4) Toxicity or nature of the pollutant: Unknown. (5) Duration of the violation: Unknown. (6) Areal extent of the violation: Considered, but not utilized for this calculation. 		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to prevent the noncompliance by making a hazardous waste determination when the waste was generated. The DEM has no knowledge if Respondents have mitigated the noncompliance.
- (8) **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.
- (9) **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:** Negligence is attributable to Respondents for the failure to comply with the Hazardous Waste Regulations. Respondents, as owners and operators of the Property, had complete control over the occurrence of the violation. The Hazardous Waste Regulations expressly require that generators of solid waste determine whether any of their wastes meet the definition of hazardous waste.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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