

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Alpha Plating and Metallizing Co., Inc.

FILE NO.: 2010-47-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 party (“Respondent”) has violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Facts

- (1) The subject property is located at 12 Humbert Street, North Providence, Rhode Island (the “Property”). The Property includes a facility that is used for electroplating of costume jewelry products (the “Facility”).
- (2) The Facility is operated by Alpha Plating and Metallizing Co., Inc.
- (3) The Respondent is registered with the DEM as a small quantity hazardous waste generator at the Facility pursuant to the DEM 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 “Alpha Plating & Metallizing Inc.” with the U. S. Environmental Protection Agency (“EPA”) identification number RI5000010249.
- (4) On February 16, 2010 DEM inspected the Facility. The inspection revealed the following:
 - (a) Six fifty five gallon containers holding spent filtrate/presscake located in the plating room. One of the containers was affixed with a label marked with the words “Hazardous Waste” (“container #1 in the plating room”). The remaining five containers were not labeled (the “unlabeled plating room containers”).
 - (b) Three fifty five gallon containers holding spent filtrate/presscake located outside the tubing and vibing room. The containers were not labeled (the “unlabeled tubing/vibing room containers”).

- (c) Three fifty five gallon containers holding spent filtrate/presscake located in the dryer room. One container was affixed with a label marked with the words "Hazardous Waste" and an accumulation start date of May 18, 2004 ("container #1 in the dryer room"). One container was affixed with a label marked with the words "Hazardous Waste" ("container #2 in the dryer room"). The remaining container was not labeled (the "container #3 in the dryer room").
 - (d) One fifty five gallon container holding chrome waste affixed with a label marked with the words "Hazardous Waste" located in the chemical product storage area (the "chemical product storage area container").
 - (e) One thirty gallon container that was not labeled holding rinsate wastewater located in the wastewater treatment area (the "wastewater treatment area container").
- (5) On February 17, 2010 DEM inspected the Facility. The inspection included the collection of samples from three of the unlabeled plating room containers, one of the unlabeled tubing/vibing room containers, and the wastewater treatment area container.
- (6) On or about February 26, 2010 DEM received the analytical test results for the samples collected on February 17, 2010. Review of the results revealed that the waste held in the three sampled unlabeled plating room containers had lead and cadmium in concentrations that met the definition of hazardous waste (the "unlabeled plating room containers holding hazardous waste") and the waste held in the one sampled unlabeled tubing/vibing room container had lead and cadmium in concentrations that met the definition of hazardous waste (the "unlabeled tubing/vibing room container holding hazardous waste").
- (7) The inspections and review of the analytical reports revealed the following:
- (a) No determination was made whether waste held in the unlabeled tubing/vibing room containers, the unlabeled plating room containers, container #3 in the dryer room, and the wastewater treatment area container met the definition of hazardous waste.
 - (b) The labels on container #1 in the plating room, container #2 in the dryer room, and the chemical product storage area container were not marked with an accumulation start date.
 - (c) The labels on container #1 in the plating room, container #1 in the dryer room, container #2 in the dryer room, and the chemical product storage area container were missing the Generator's name and address, the U.S. Department of Transportation shipping name of the principal hazardous waste components and the EPA Waste Number assigned to the waste.

- (d) The unlabeled plating room containers holding hazardous waste and the unlabeled tubing/vibing room container holding hazardous waste were not closed at the time of the inspection.
- (e) Universal waste (in the form of six fluorescent light bulbs) was not stored in a manner to prevent breakage and/or unplanned releases of waste, was not labeled as universal waste and was not tracked as to the length of time the universal waste was accumulated onsite.
- (8) During the inspection on February 16, 2010 the DEM inspector asked Mr. Henry Leite, the president of Alpha Plating and Metallizing Co., Inc, to produce a copy of records pertaining to the weekly inspections of the ninety day storage areas for the last three years. Mr. Leite stated that the company did not conduct weekly inspections of the container storage areas and was not able to produce written inspection logs for review by DEM.
- (9) During the inspection on February 16, 2010 the DEM inspector asked Mr. Leite to produce a copy of the hazardous waste personnel training records for review. Mr. Leite stated that the company had not provided hazardous waste training to its employees.
- (10) As of the date of this Notice of Violation (“NOV”), the Respondent has failed to comply with the Hazardous Waste Regulations.

C. Violation

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

- (1) **Hazardous Waste Regulation 5.02A and 40 CFR 262.34(a)** - requiring that a hazardous waste generator store hazardous waste onsite for a period of time that does not exceed ninety days.
- (2) **Hazardous Waste Regulation 5.08 and 40 CFR 262.11** - requiring that a hazardous waste generator determine if the waste generated onsite meets the definition of a hazardous waste.
- (3) **Hazardous Waste Regulation 5.04A and 40 CFR 262.34(a)(3)** - requiring that a hazardous waste generator label each container, excluding satellite accumulation containers, holding hazardous waste with the words “Hazardous Waste”, the name and address of the generating facility, the U.S. Department of Transportation shipping name, the EPA or Rhode Island waste code and the hazardous waste manifest number (prior to being shipped offsite).
- (4) **Hazardous Waste Regulation 5.02A and 40 CFR 262.34 (a)(2)** - requiring that a hazardous waste generator mark containers holding hazardous waste with the date upon which the waste first began to accumulate.

- (5) **Hazardous Waste Regulation 5.02A, 40 CFR 262.34(a)(1)(i) and 40 CFR 265.173(a)** - requiring that a hazardous waste generators keep containers holding hazardous waste closed except when adding or removing waste.
- (6) **Hazardous Waste Regulation 5.02 A, 40 CFR 262.34(a)(1)(i) and 40 CFR 265.174** - requiring that a hazardous waste generator conduct weekly inspections of container storage areas looking for leaking containers and signs of deterioration caused by corrosion or other factors and maintain documentation of the inspection of each hazardous waste storage area.
- (7) **Hazardous Waste Regulation 5.02A, 40 CFR 262.34(a)(4) and 40 CFR 265.16** - requiring that a hazardous waste generator provide training to company employees who handle and/or manage hazardous waste and provide employees with a review of the training on an annual basis.
- (8) **Hazardous Waste Regulation 13.06E3(2) and 40 CFR 273.13** - requiring that small quantity handlers of universal waste manage universal waste in a way that prevents releases of any universal waste or component of a universal waste to the environment.
- (9) **Hazardous Waste Regulation 13.06F and 40 CFR 273.14** - requiring that a small quantity handler of universal waste properly label or mark the universal waste or the container(s) in which the waste(s) is/are contained.
- (10) **Hazardous Waste Regulation 13.06G and Code of Federal Regulations 40 CFR 273.15** – requiring that a small quantity handler of universal waste demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

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 sixty days of receipt of the NOV:**

- (1) Remove all hazardous waste from the Property that has been stored for greater than ninety days using a permitted hazardous waste transporter and ship the hazardous waste to a licensed Treatment, Storage and Disposal Facility (the “Designated Facility”) and submit a copy of the uniform hazardous waste manifest signed by the Designated Facility to the DEM Office of Compliance & Inspection.
- (2) Collect a representative sample from the unlabeled tubing/vibing room containers, the unlabeled plating room containers, container #3 in the dryer room, and the wastewater treatment area container 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 Hazardous Waste Regulation 5.08 and submit a copy of the test results to the DEM Office of Compliance & Inspection. 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 Hazardous Waste Regulations.

- (3) Label all containers holding hazardous waste, excluding satellite accumulation containers, with the words “Hazardous Waste”, the name and address of the generating facility, the U.S. Department of Transportation shipping name, the EPA or Rhode Island waste code and the hazardous waste manifest number (prior to being shipped offsite).
- (4) Mark all containers holding hazardous waste, excluding satellite accumulation containers, with the date upon which the hazardous waste first began to accumulate.
- (5) Close and keep closed all containers holding hazardous waste except when adding or removing waste.
- (6) 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 three years.
- (7) Provide hazardous waste management training to Facility personnel 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 DEM Office of Compliance & Inspection.
- (8) Properly store all universal waste in a manner that prevents breakage, spills or releases.
- (9) Properly label and mark all universal waste or containers holding universal waste.
- (10) Document the date upon which the universal waste first began to accumulate.

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:

Forty Nine Thousand Five Hundred Ninety Nine Dollars (\$49,599.00)

- (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 days of your receipt of this NOV. Payment shall be in the form of a certified check or money order made payable to the “General Treasury - Environmental Response Fund,” and shall be forwarded to

the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.

- (3) Penalties assessed against 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 Director determines that reasonable efforts have been made to comply promptly with this NOV.

F. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Paragraphs B through E above. All requests for hearing MUST:
 - (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b),
 - (b) Be **RECEIVED** by DEM's Administrative Adjudication Division, at the following address, within twenty days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

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

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

- (2) A copy of each request for hearing must also be forwarded to:

Susan Forcier, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then this NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (v) and 42-17.6-4(b) and (c).
- (5) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) This NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Susan Forcier 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

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:

Alpha Plating and Metallizing Co., Inc.
c/o Martin M. Temkin, Esq., Registered Agent
10 Weybosset Street
Providence, RI 02903

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE & INSPECTION, HAZARDOUS WASTE SECTION

File No.: 2010-47-HW

Respondent: Alpha Plating and Metallizing Co., Inc.

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
C(1) – Storage for greater than ninety days	Type I (\$ 25,000 Max. Penalty)*	Minor	\$ 6,250	1	\$6,250
C(2) – Lack of waste determination	Type I (\$ 25,000 Max. Penalty)*	Major	\$12,500	1	\$12,500
C(3) – Improper labeling/missing labeling on storage containers	Type I (\$ 25,000 Max. Penalty)*	Moderate	\$6,250	1	\$6,250
C(4) – Lack of accumulation start dates	Type I (\$ 25,000 Max. Penalty)*	Moderate	\$6,250	1	\$6,250
C(5) – Failure to close containers	Type I (\$ 25,000 Max. Penalty)*	Minor	\$6,250	1	\$6,250
C(6) – Lack of weekly container inspections	Type II (\$ 12,500 Max. Penalty)*	Moderate	\$2,500	1	\$2,500
C(7) – Failure to provide training	Type I (\$ 25,000 Max. Penalty)*	Moderate	\$6,250	1	\$6,250
C(8), (9) & (10) – Improper management of universal waste	Type I (\$ 25,000 Max. Penalty)*	Minor	\$2,500	1	\$2,500
SUB-TOTAL					\$48,750.00

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

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.

DESCRIPTION OF COST	CALCULATION OF ACTUAL COST INCURRED	AMOUNT
TCLP Extraction – Solid	\$49.00/sample x 5 samples	\$ 245.00
TCLP RCRA 8 Metals – Solid	\$92.00/sample x 5 samples	\$ 460.00
<i>SUB-TOTAL</i>		\$ 705.00

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$49,599 .00

PENALTY MATRIX WORKSHEET

CITATION: Storage for greater than ninety days
 VIOLATION NO.: C (1)

TYPE		
<p style="text-align: center;"><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondent stored a container holding hazardous waste on the property for over ninety days and failed to take necessary steps to obtain a permit as required by State law and Federal and State regulations or to properly dispose of the hazardous waste. The requirement to obtain a permit to store hazardous waste or properly dispose of hazardous waste is a major component of the regulatory program.</p> <p>(B) Environmental conditions: Not relevant.</p> <p>(C) Amount of the pollutant: One fifty-five gallon container. Based on the volume of the container the total volume of hazardous waste could have equaled fifty-five gallons.</p> <p>(D) Toxicity or nature of the pollutant: Respondent stored a characteristic hazardous waste containing lead and cadmium having EPA waste numbers D006 and D008.</p> <p>(E) Duration of the violation: The container was marked with an accumulation start date of May 18, 2004.</p> <p>(F) Areal extent of the violation: Not relevant.</p> <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:** Respondent failed to take reasonable steps to prevent and/or mitigate the noncompliance by obtaining a permit to store the hazardous waste or by properly disposing of the hazardous waste within the ninety day accumulation time limit.
- (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 January 2, 2002 DEM issued a Letter of Non-Compliance to Respondent for instances of noncompliance including storage of hazardous waste for greater than ninety days without a permit.
- (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:** 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:** Not relevant.

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

PENALTY MATRIX WORKSHEET

CITATION: Lack of waste determination

VIOLATION NO.: C (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>FACTORS CONSIDERED:</p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondent stored several containers holding waste on the property and failed to determine if waste generated at the facility 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.</p> <p>(B) Environmental conditions: Not relevant.</p> <p>(C) Amount of the pollutant: Nine fifty-five gallon containers and one thirty gallon container. Based on the volume of the containers the total volume of hazardous waste could have equaled five hundred twenty-five gallons.</p> <p>(D) Toxicity or nature of the pollutant: The toxicity and/or nature of the waste was not known at the time of the inspection due to the Respondent's failure to characterize the waste</p> <p>(E) Duration of the violation: The DEM inspector was not able to determine the length of time the unidentified waste was stored by Respondent.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable steps to prevent and/or mitigate the noncompliance determining if waste met the definition of hazardous waste.
- (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 January 2, 2002 DEM issued a Letter of Non-Compliance to Respondent for instances of noncompliance including failure to determine if waste stored met the definition of hazardous waste.
- (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:** 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:** Not relevant.

<input checked="" type="checkbox"/> MAJOR	<input type="checkbox"/> MODERATE	<input type="checkbox"/> 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 \$12,500	\$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

PENALTY MATRIX WORKSHEET

CITATION: Improper labeling/missing labeling on storage containers

VIOLATION NO.: C (3)

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

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

FACTORS CONSIDERED:

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

- (A) **The extent to which the act or failure to act was out of compliance:** Respondent failed to properly label containers holding hazardous waste while in temporary storage onsite with the Generator's name and address, the U.S. Department of Transportation shipping name of the principal hazardous waste components and the EPA Waste Number assigned to the waste. The requirement to properly label containers holding hazardous waste is an integral part of the regulatory program because it reduces the potential for mismanagement 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.
- (B) **Environmental conditions:** Not relevant.
- (C) **Amount of the pollutant:** Four fifty-five gallon containers with no labels and four other fifty-five gallon containers with incomplete labels. Based on the number and volume of the containers the total volume of hazardous waste could have equaled four hundred forty gallons.
- (D) **Toxicity or nature of the pollutant:** The waste stored in seven of the containers was a characteristic hazardous waste containing lead and cadmium having EPA waste numbers D006 and D008. The waste stored in the remaining container was a characteristic hazardous waste having EPA waste number D007.
- (E) **Duration of the violation:** The DEM inspector was not able to determine the length of time the Respondent stored the hazardous waste in the containers.
- (F) **Areal extent of the violation:** Not relevant.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable steps to prevent and/or mitigate the noncompliance by labeling or completely labeling several containers holding hazardous waste.
- (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 January 2, 2002 DEM issued a Letter of Non-Compliance to Respondent for instances of noncompliance including failure to label containers holding hazardous waste.
- (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:** 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:** Not relevant.

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

PENALTY MATRIX WORKSHEET

CITATION: Lack of accumulation start dates

VIOLATION NO.: C (4)

TYPE		
<u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	_____ TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	_____ TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondent failed to mark several containers holding hazardous waste with the date upon which the waste first began to accumulate onsite. State Regulations require generators to mark containers holding hazardous waste with an accumulation start date to ensure compliance with the less than ninety day temporary storage limit.</p> <p>(B) Environmental conditions: Not relevant.</p> <p>(C) Amount of the pollutant: Six fifty-five gallon containers holding filtrand/prescake and one fifty-five gallon container holding a chrome waste. Based on the volume of the containers the total volume of hazardous waste could have potentially equaled three hundred eighty-five gallons.</p> <p>(D) Toxicity or nature of the pollutant: The waste stored in six of the containers was a characteristic hazardous waste containing lead and cadmium having EPA waste numbers D006 and D008. The waste stored in the remaining container was a characteristic hazardous waste having EPA waste number D007.</p> <p>(E) Duration of the violation: The period of time that Respondent stored hazardous waste in the containers is not known.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to take reasonable steps to prevent the violation.
- (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 relevant.
- (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:** Respondent had complete control over the occurrence of the violation which was foreseeable since Respondent had marked one container holding hazardous waste with an accumulation start date.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

<input type="checkbox"/> MAJOR	<input checked="" type="checkbox"/> MODERATE	<input type="checkbox"/> 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: Failure to close containers

VIOLATION NO.: C (5)

TYPE		
<p style="text-align: center;"><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondent failed to keep containers holding hazardous waste closed. State and Federal Regulations require generators to keep containers holding hazardous waste closed except when adding or removing waste to prevent spills and releases of hazardous waste.</p> <p>(B) Environmental conditions: Not relevant.</p> <p>(C) Amount of the pollutant: Four fifty-five gallon containers. Based on the number and volume of the containers the total volume of hazardous waste could have equaled two hundred twenty gallons.</p> <p>(D) Toxicity or nature of the pollutant: The waste stored in the four containers was a characteristic hazardous waste containing lead and cadmium having EPA waste numbers D006 and D008.</p> <p>(E) Duration of the violation: The DEM inspector was not able to determine the length of time the Respondent stored the hazardous waste in open containers.</p> <p>(F) Areal extent of the violation: Not relevant.</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:** Respondent failed to take reasonable steps to prevent and/or mitigate the noncompliance by keeping the containers holding waste closed as required by regulation.
- (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 January 2, 2002 DEM issued a Letter of Non-Compliance to Respondent for instances of noncompliance including failure to close containers holding hazardous waste.
- (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:** 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:** Not relevant.

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

PENALTY MATRIX WORKSHEET

CITATION: Lack of weekly container inspections

VIOLATION NO.: C (6)

TYPE		
<p style="text-align: center;">___ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">X 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 Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondent failed to conduct weekly inspections of the areas in which containers holding hazardous waste were stored as required by regulation. 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.</p> <p>(B) Environmental conditions: Not relevant.</p> <p>(C) Amount of the pollutant: Seven fifty-five gallon containers holding hazardous waste (waste filtrand/prescake) and one fifty-five gallon container holding a chrome waste. Based on the volume of the containers the total volume of hazardous waste could have potentially equaled four hundred forty gallons.</p> <p>(D) Toxicity or nature of the pollutant: The waste stored in seven of the containers was a characteristic hazardous waste containing lead and cadmium having EPA waste numbers D006 and D008. The waste stored in the remaining container was characteristic hazardous waste containing chromium having EPA waste number D007.</p> <p>(E) Duration of the violation: The Respondent was not able to produce written logs of weekly container inspections for the past three years.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable steps to prevent and/or mitigate the noncompliance by conducting weekly inspections of the container storage areas as required by regulation.
- (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 January 2, 2002 DEM issued a Letter of Non-Compliance to Respondent for instances of noncompliance including failure to conduct weekly inspections of areas in which containers of hazardous waste were stored.
- (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:** 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:** Not relevant.

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

PENALTY MATRIX WORKSHEET

CITATION: Failure to provide training

VIOLATION NO.: C (7)

TYPE		
<p style="text-align: center;"><u>X</u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondent failed to provide hazardous waste management training to employees who work with hazardous waste at the facility. State and Federal Regulations require generators to develop a hazardous waste training program that teaches employees to perform their duties in a manner that ensures compliance with the regulations. Generators are required to provide this training to employees within six months after the employment of the personnel and to provide an annual refresher of the training to their employees. Hazardous waste management training helps ensure that the facility will be operated in compliance with the regulations and reduces the potential for spills or releases of hazardous waste by teaching employees proper waste handling practices.</p> <p>(B) Environmental conditions: Not relevant.</p> <p>(C) Amount of the pollutant: Seven fifty-five gallon containers holding hazardous waste (waste filtrand/prescake) and one fifty-five gallon container holding a chrome waste. Based on the volume of the containers the total volume of hazardous waste could have potentially equaled four hundred forty gallons.</p> <p>(D) Toxicity or nature of the pollutant: The waste stored in seven of the containers was a characteristic hazardous waste containing lead and cadmium having EPA waste numbers D006 and D008. The waste stored in the remaining container was characteristic hazardous waste containing chromium having EPA waste number D007.</p> <p>(E) Duration of the violation: The Respondent was not able to produce documentation that it had provided its employees with hazardous waste training for the past three years.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable steps to prevent and/or mitigate the noncompliance by providing its employees with hazardous waste management training.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Not relevant. On January 2, 2002 DEM issued a Letter of Non-Compliance to Respondent for instances of noncompliance including failure to provide hazardous waste management training to its employees as required by regulation.
- (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:** Not relevant.

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

PENALTY MATRIX WORKSHEET

CITATION: Improper management of universal waste

VIOLATION NO.: C (8), (9) & (10)

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

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

FACTORS CONSIDERED:

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

- (A) **The extent to which the act or failure to act was out of compliance:** Respondent failed to properly label and provide an accumulation start date for containers holding universal waste held in storage at the facility. Respondent also failed to place several universal waste items into a container to prevent breakage and/or unplanned releases of waste. Failure to properly label and protect universal wastes from possible breakage poses a threat to the health, safety, and welfare of workers and the environment. Failing to provide an accumulation start date for storage of containers holding universal waste prevents the regulatory program from determining how long universal waste was being stored by the Respondent.
- (B) **Environmental conditions:** Not relevant.
- (C) **Amount of the pollutant:** Six eight foot long fluorescent light bulbs.
- (D) **Toxicity or nature of the pollutant:** Fluorescent light bulbs are known to contain mercury which is an element that affects the central nervous system.
- (E) **Duration of the violation:** The DEM inspector was not able to determine the length of time the bulbs were stored.
- (F) **Areal extent of the violation:** Not relevant.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable steps to prevent and/or mitigate the noncompliance by properly managing the universal waste.
- (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 relevant.
- (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:** 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:** Not relevant.

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