

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

**IN RE: Albert Cerbo
d/b/a Charisma Manufacturing Co., Inc.**

FILE NO.: 2010-63-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 property is located at 400 Broad Street in the city of Central Falls, Rhode Island (the “Property”). The Property includes a facility used for electroplating costume jewelry, ornaments and specialty items (the “Facility”).
- (2) Albert Cerbo operates the Facility doing business as Charisma Manufacturing Co., Inc.
- (3) The Rhode Island Secretary of State’s corporations database lists Charisma Manufacturing Co., Inc. (“Charisma”) as an inactive corporation, having its principal place of business at 400 Broad Street in the city of Central Falls, Rhode Island. Charisma’s corporate status was revoked by the Secretary of State on October 7, 2002. The record lists Albert Cerbo as the President of Charisma.
- (4) Charisma is registered with the DEM as a large quantity hazardous waste generator at the Facility pursuant to 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 “Charisma Manufacturing Company” with the U. S. Environmental Protection Agency (“EPA”) identification number RID055176572.

- (5) On May 18, 2010 DEM inspected the Facility. The inspection revealed the following:
- (a) No labels on nineteen 5-gallon satellite accumulation containers holding hazardous waste (in the form of acetone) located in the flammable liquid storage area (the “5-gallon acetone containers”), one 55-gallon satellite accumulation container holding hazardous waste (in the form of paint) located in the resin casting room, and one 55-gallon satellite accumulation container holding hazardous waste (in the form of polishing dust) and one 5-gallon satellite accumulation container holding hazardous waste in the form of metal hydroxide sludge (the “metal hydroxide sludge container”), both located in the water treatment area.
 - (b) Incorrect labels on one 55-gallon container holding hazardous waste (in the form of PCB-containing ballasts) located in the plating area and one 55-gallon container holding used oil located in the vibe room. The labels were marked “non-regulated waste” and “spent lube oil,” respectively.
 - (c) Containers holding hazardous waste that were not closed, specifically, one 55-gallon container holding acetone located in the flammable liquid storage area (the “55-gallon acetone container”) and one 55-gallon container holding lead filter press waste, one 30-gallon container holding a nickel filter, one 5-gallon container holding a nickel filter, one 30-gallon container holding cyanide, and the metal hydroxide sludge container, all located in the water treatment area.
 - (d) The 55-gallon acetone container and the 5-gallon acetone containers were not stored at or near their point of generation and were not under the control of the operator.
 - (e) The hazardous waste manifests maintained at the Facility showed that hazardous waste was shipped to Northland Environmental, LLC (“Northland”) on March 6, 2008, April 29, 2008 and July 23, 2008 with hazardous waste manifest numbers 003626399 JJK, 003632291 JJK, and 004940023 JJK, respectively. The manifests were not signed by Northland and no exception report was filed by the Respondent with DEM.
 - (f) A list of the names and signatures of agents authorized to sign the hazardous waste manifest forms was not on file with DEM.
 - (g) The personnel who handle or manage the hazardous waste at the Facility have not been trained in the management of hazardous waste as required by the Hazardous Waste Regulations.
 - (h) The contingency plan did not contain all the elements required by the Hazardous Waste Regulations. Specifically, the primary and secondary emergency coordinators are no longer employed by the Respondent and the

emergency contact phone numbers for the DEM, Narragansett Bay Commission and the Central Falls Fire Department are incorrect.

- (i) Numerous fire extinguishers located throughout the Facility had not been tested annually. The inspection tag on each extinguisher was dated November 2008.
 - (j) Universal waste consisting of ten lead acid batteries located in the plating room and five computer monitors located in the chemical storage room that were not containerized, labeled or marked with an accumulation start date.
- (6) 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 5.04C and 40 CFR 262.34(c)(1)(ii)** - requiring that a hazardous waste generator label all satellite accumulation containers holding hazardous waste with the words “Hazardous Waste” and other words identifying the contents of the container.
- (2) **Hazardous Waste Regulation 5.02A, 40 CFR 262.34(c)(1)(i) and 40 CFR 265.173(a)** - requiring that a hazardous waste generator keep containers holding hazardous waste closed except when adding or removing waste.
- (3) **Hazardous Waste Regulation 5.02A and 40 CFR 262.34 (c)(1)** - requiring that satellite containers must be at the point of generation and under the control of the operator.
- (4) **Hazardous Waste Regulations 5.09** - 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
- (5) **Hazardous Waste Regulations 5.03I and 40 CFR 262.42** - requiring that within thirty five days of a designated facility receiving hazardous waste the generator either obtain a copy of the manifest that was signed by the designated facility or file an exception report with DEM.
- (6) **Hazardous Waste Regulation 5.02A, 262.34(a)(4), and 40 CFR 265.33** - requiring that a hazardous waste generator test and maintain fire protection equipment as necessary to ensure its proper operation at the time of emergency.
- (7) **Hazardous Waste Regulation 5.02A, 40 CFR 262.34(a)(4) and 40 CFR 265.51** - requiring that a hazardous waste generator prepare and maintain a contingency plan designed to minimize hazards to human health or the environment from fires,

explosions or unplanned releases of hazardous waste or constituents to the air, soil or surface water.

- (8) **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.
- (9) **Hazardous Waste Regulation 15.04A(3)** - requiring that used oil generators who store used oil in containers shall label all containers with the words “Used Oil.”
- (10) **Hazardous Waste Regulation 13.06F, 13.06G, 40 CFR 273.14 and 40 CFR 273.15** - requiring that a small quantity handler of universal waste properly label or mark the universal waste or the containers in which the wastes are contained and 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 thirty days of receipt of the NOV**:

- (1) Label all satellite accumulation containers holding hazardous waste with the words “Hazardous Waste” and other words identifying the contents of the container.
- (2) Close and keep closed all satellite accumulation containers holding hazardous waste except when adding or removing waste.
- (3) Relocate all satellite accumulation containers holding hazardous waste to an area that is at the point of generation and under the control of the operator.
- (4) Submit to the DEM Office of Compliance and Inspection a list of agents authorized by Respondent to sign hazardous waste manifests.
- (5) Obtain copies of signed manifests from Northland for the shipments of hazardous waste specified in Section B (5)(e) of the NOV.
- (6) Test and maintain all fire extinguishers at the Facility to ensure proper operation at the time of emergency.
- (7) Develop and maintain a contingency plan for the Facility that includes all of the applicable information contained in 40 CFR 265 Subpart D and submit a copy to the DEM Office of Compliance and Inspection.
- (8) 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.

- (9) Label all containers storing used oil with the words "Used Oil."
- (10) Contain and label all universal waste at the Facility and begin to track the date of accumulation of all universal waste stored at the Facility.

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:

Thirty Eight Thousand Eight Hundred Seventy Dollars (\$38,870.00)

- (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 respondents in this NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if the Director determines that reasonable efforts have been made to comply promptly with this NOV.

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:

Richard M. Bianculli Jr., 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) Richard M. Bianculli Jr., Esq. 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 _____, 2011 the within Notice of Violation was forwarded to:

Albert Cerbo
d/b/a Charisma Manufacturing Co., Inc.
400 Broad Street
Central Falls, RI 02863

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, HAZARDOUS WASTE

File No.: 2010-63-HW

Respondent: Albert Cerbo, d/b/a Charisma Manufacturing 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), (2) and (3) – Pre Transport Requirements	Type I (\$ 25,000 Max. Penalty)*	Moderate	\$6,250	3 violations	\$18,750.00
C (4) and (5) – Manifests	Type II (\$ 12,500 Max. Penalty)*	Minor	\$1,250	2 violations	\$2,500.00
C(6) – Preparedness and Prevention	Type II (\$ 12,500 Max. Penalty)*	Minor	\$1,250	1 violation	\$1,250.00
C(7) and (8)– General Facility Standards and Contingency Plan	Type I (\$ 25,000 Max. Penalty)*	Moderate	\$8,750	1 violation	\$8,750.00
C(10) – Universal Waste	Type I (\$ 25,000 Max. Penalty)*	Minor	\$2,500	3 violations	\$7,500.00
SUB-TOTAL					\$38,750.00

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

ECONOMIC BENEFIT FROM NONCOMPLIANCE

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

- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR
- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.

DESCRIPTION OF BENEFIT	CALCULATION		AMOUNT
<p>Economic Benefit of noncompliance identified by the State of Rhode Island for failing to provide hazardous waste training to employees. The One-time Non-depreciable Expense related to the noncompliance was obtained by surveying local contractors and vendors. The Economic Benefit gained by the instances of noncompliance was determined to equal the principal cost of the training program since the Respondent did not pay for required training. The Economic Benefit gained by the instances of noncompliance was calculated by utilizing an EPA computer model entitled "BEN". The model calculates the economic gain of noncompliance by performing a detailed economic analysis. The dates, dollar amounts and values used in this analysis are as listed in this table.</p>	<ul style="list-style-type: none"> • Profit Status 	C-Corporation	\$ 120.00
	<ul style="list-style-type: none"> • Filing Status 	C-Corporation	
	<ul style="list-style-type: none"> • Initial Capital Investment 	\$1,800.00	
	<ul style="list-style-type: none"> • One-time Non-depreciable Expense 		
	<ul style="list-style-type: none"> • Annual Expense 	\$0	
	<ul style="list-style-type: none"> • First Month of Non-Compliance 	May 18, 2010	
	<ul style="list-style-type: none"> • Compliance Date 	March 30, 2011	
	<ul style="list-style-type: none"> • Penalty Due Date 	March 30, 2011	
	<ul style="list-style-type: none"> • Useful Life of Pollution Control 	N/A	
	<ul style="list-style-type: none"> • Equipment Annual Inflation Rate 	N/A	
<ul style="list-style-type: none"> • Discount/Compound Rate 	N/A		
<i>SUB-TOTAL</i>			\$ 120.00

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$38,870 .00

PENALTY MATRIX WORKSHEET

CITATION: Pre Transport Requirements
 VIOLATION NO.: C (1), (2) and (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		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p>FACTORS CONSIDERED: 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: The Respondent failed to properly label, keep closed and place at the point of generation at the facility satellite containers holding hazardous waste. State and Federal regulations require the following of hazardous waste generators: label all satellite containers holding hazardous waste with the words “hazardous waste” and other words to describe the contents as soon as the waste is placed in the container; keep closed containers storing hazardous waste unless adding or removing waste; and keep satellite containers storing hazardous waste at or near the point of generation.</p> <p>(B) Environmental conditions: Not relevant.</p> <p>(C) Amount of the pollutant: Nineteen five gallon containers were not at the point of generation and had no labels; one fifty five gallon container had an improper label; one fifty five gallon container was open; one five gallon container was open; two fifty five gallon containers had no labels, two thirty gallon containers were open; one five gallon container had no label and was open; and one fifty five gallon container was not at the point of generation and was open.</p> <p>(D) Toxicity or nature of the pollutant: Acetone; cyanide; ballasts containing PCBs; lead; polishing dust; metal hydroxide sludge; paint; and nickel filters.</p> <p>(E) Duration of the violation: Unknown.</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 and appropriate steps to prevent or mitigate the noncompliance by labeling, closing and placing the containers of hazardous waste at the point of generation.
- (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:** Respondent were issued a Letter of Noncompliance by DEM on April 12, 2005 for the following violations: failing to label satellite containers, failing to close satellite containers and failing to affix accumulation start date to excess hazardous waste at satellite accumulation point.
- (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 violations.
- (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: Manifests
 VIOLATION NO.: C (4) and (5)

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;"><u>X</u> 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>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 submit to the DEM a list of employees who are authorized by the company to sign uniform hazardous waste manifests and failed to ensure that that the manifests sent to the Treatment, Storage and Disposal Facility (TSDF) were signed and returned. State regulations require generators to submit a list of the names and signatures of employees who are authorized by the company to sign uniform hazardous waste manifests. Federal and State regulations also require that the generator of hazardous waste ensure that a signed copy for each shipment of hazardous waste is received from the designated facility within thirty-five days or that an exception report is filed with DEM.</p> <p>(B) Environmental conditions: Not relevant.</p> <p>(C) Amount of the pollutant: Two thousand fifty five gallons of liquid hazardous waste and four hundred pounds of solid hazardous waste.</p> <p>(D) Toxicity or nature of the pollutant: Hazardous waste identified on the manifests that were not signed and returned was: waste corrosive liquid (nitric acid, sulfuric acid), and waste toxic liquid (copper sulfate, copper cyanide).</p> <p>(E) Duration of the violation: The manifests were signed and shipped by the generator on March 6, 2008, April 29, 2008, and July 23, 2008. Signed copies of the destination facility manifest should have been returned by April 11, 2008, June 3, 2008, and August 28, 2008, respectively.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent or mitigate the noncompliance by submitting an authorized signer's form to DEM and ensuring that signed copies of the manifests were returned from the TSDF.
- (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:** 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	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	\$1,250 to \$2,500 \$1,250	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Preparedness and Prevention

VIOLATION NO.: C (6)

TYPE		
<p style="text-align: center;"><u> </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> X </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> </u> 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 ensure that the fire extinguishers at the facility were inspected on an annual basis. Generators of hazardous waste must equip their facilities with portable fire extinguishers. Hazardous waste regulations require that fire protection equipment must be tested and maintained by the generator to ensure its proper operation at the time of emergency.</p> <p>(B) Environmental conditions: Not relevant.</p> <p>(C) Amount of the pollutant: At the time of the inspection, approximately four hundred gallons of hazardous waste was stored in satellite containers at the facility, of which approximately three hundred gallons was out of compliance with the hazardous waste regulations.</p> <p>(D) Toxicity or nature of the pollutant: Acetone; cyanide; ballasts containing PCBs; lead; polishing dust; metal hydroxide sludge; paint; and nickel filters.</p> <p>(E) Duration of the violation: The fire extinguishers had been last tested and inspected in November 2008.</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 and appropriate steps to prevent or mitigate the noncompliance by inspecting and testing the fire extinguishers.
- (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:** 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	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	\$1,250 to \$2,500 \$1,250	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: General Facility Standards and Contingency Plan

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

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.		
<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 provide hazardous waste management training to employees who manage hazardous waste at the facility and failed to maintain an adequate contingency plan for 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. State and Federal Regulations require generators to develop and maintain a contingency plan containing procedures to follow to minimize hazards posed to human health and the environment from fires, explosions or planned or unplanned releases involving hazardous waste. 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.</p> <p>(B) Environmental conditions: Not relevant.</p> <p>(C) Amount of the pollutant: At the time of the inspection, approximately four hundred gallons of hazardous waste was stored in satellite containers at the facility, of which approximately three hundred gallons was out of compliance with the hazardous waste regulations.</p> <p>(D) Toxicity or nature of the pollutant: Acetone; cyanide; ballasts containing PCBs; lead; polishing dust; metal hydroxide sludge; paint; and nickel filters.</p> <p>(E) Duration of the violation: The contingency plan and personnel training had not been updated since 2005.</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 and appropriate steps to prevent or mitigate the noncompliance by updating the contingency plan and personnel 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:** Respondent were issued a Letter of Noncompliance by DEM on April 12, 2005 for failing to provide hazardous waste training to personnel that manage 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:** 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 \$8,750	\$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: Universal Waste
 VIOLATION NO.: C (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		
<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> <ul style="list-style-type: none"> (A) The extent to which the act or failure to act was out of compliance: Respondent failed to place universal waste into closed containers, label the containers and mark the containers with an accumulation start date. A handler of universal waste must manage universal waste in a way that prevents releases to the environment. (B) Environmental conditions: Not relevant. (C) Amount of the pollutant: Ten lead acid batteries and five CRT computer monitors in storage at the facility that were not in closed containers or labeled and marked with an accumulation start date. (D) Toxicity or nature of the pollutant: Lead acid batteries and CRT computer monitors. (E) Duration of the violation: Unknown (F) Areal extent of the violation: Not relevant. <p style="text-align: right;">(continued)</p>		

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent or mitigate the noncompliance by placing universal waste into closed containers, labeling the waste and marking it with an accumulation start date.
- (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:** 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	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