

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Narragansett Jewelry Co., Inc.
(d/b/a C & J Jewelry Company, Inc.)

FILE NO.: OCI-HW-12-82

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 facility is located at 100 Dupont Drive in the city of Providence, Rhode Island (the “Facility”).
- (2) The Respondent operates the Facility.
- (3) The Respondent is registered with the DEM as a small quantity hazardous waste generator at the Facility pursuant to the DEM’s *Rules and Regulations for Hazardous Waste Management* (the “Hazardous Waste Regulations”) and pursuant to Title 40 of the Code of Federal Regulations (“40 CFR”) under the name of “C & J Jewelry Company, Inc.” with the U.S. Environmental Protection Agency (“EPA”) identification number RI5000001321.
- (4) On August 6, 2012, DEM inspected the Facility. The inspection revealed the following:
 - (a) A solid waste in the form of a polishing dust is generated at the Facility. No determination has been made whether the waste meets the definition of hazardous waste.
 - (b) One (1) 55-gallon container holding corrosive hazardous waste labeled “pit solution” was stored for greater than ninety (90) days without first obtaining a permit. The container was marked with an accumulation start date of October 17, 2010 and was located in the ninety (90) day Hazardous Waste Container Storage Area (the “Pit Solution Container 1”).
 - (c) One (1) 55-gallon container holding approximately ten (10) gallons of hazardous waste containing lead labeled “spent soldering waste” (the “Spent

Soldering Waste Container”) and one (1) 55-gallon container of hazardous waste labeled “pit solution” (the “Pit Solution Container 2”), both located in the ninety (90) day Hazardous Waste Container Storage Area, with no accumulation start date on the label.

- (d) The Spent Soldering Waste Container had no EPA identification number and no EPA waste number on the label.
 - (e) One (1) above ground storage tank (the “Above Ground Tank”) holding approximately two hundred (200) gallons of corrosive hazardous waste missing a label with the words “hazardous waste”.
 - (f) Twenty-nine (29) boxes holding used fluorescent bulbs and five (5) used electronics missing a label with the words “universal waste”.
 - (g) The Pit Solution Container 1, the Pit Solution Container 2 and the Spent Soldering Waste Container (collectively, the “Containers”) had no secondary containment system.
 - (h) Failure to conduct weekly inspections of the Containers and the Above Ground Storage Tank to detect corrosion or leakage and failure to conduct daily inspections of the Above Ground Storage Tank to determine compliance with the freeboard requirement.
 - (i) Failure to provide training to employees relating to the management of hazardous waste and universal waste.
 - (j) The hazardous waste contingency plan was missing key elements including, but not limited to, actions to be taken to respond to an incident, a description of arrangements with outside response teams, a list of designated emergency coordinators, a list of emergency equipment, verification that the plan was submitted to local fire/police departments and hospitals, procedures to assess impacts on human health and the environment, procedures to ensure that fires, spills/releases or explosions do not occur and procedures to properly manage wastes generated by clean up activities.
- (5) The Respondent did not receive approval from the DEM to store hazardous waste onsite for a period of greater than ninety (90) days.
- (6) As of the date of this Notice of Violation (“NOV”), the Respondent has failed to comply with the DEM’s Hazardous Waste Regulations for the violations specified in Section B.4 above.

C. Violation

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

- (1) **DEM's Hazardous Waste Regulations 5.2A 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 (90) days.
- (2) **DEM's Hazardous Waste Regulations 5.8 and 40 CFR 262.11** – requiring that a hazardous waste generator determine if the waste generated onsite meets the definition of a hazardous waste.
- (3) **DEM's Hazardous Waste Regulations 5.2A 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.
- (4) **DEM's Hazardous Waste Regulations 5.4A 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).
- (5) **DEM's Hazardous Waste Regulations 5.2A and 40 CFR 262.34(a)(3)** – requiring that a hazardous waste generator label tanks holding hazardous waste with the words “Hazardous Waste”.
- (6) **DEM's Hazardous Waste Regulations 13.5I 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 with the words “Universal Waste” and words to identify the type of universal waste.
- (7) **DEM's Hazardous Waste Regulations 5.2A and 40 CFR 264.175** – requiring that a hazardous waste generator provide a containment system for all drums and containers holding liquid hazardous waste in storage onsite.
- (8) **DEM's Hazardous Waste Regulations 5.2A, 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.
- (9) **DEM's Hazardous Waste Regulations 5.2B, 40 CFR 262.34(a)(1)(ii) and 40 CFR 265.201(c)** – requiring that a hazardous waste generator conduct daily inspections of tanks and tank system's discharge control equipment, monitoring equipment, and waste level and conduct weekly inspections looking for signs of deterioration or leakage.

- (10) **DEM's Hazardous Waste Regulations 5.2A, 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.
- (11) **DEM's Hazardous Waste Regulations 13.1 and 40 CFR 273.16** – requiring small quantity handlers of universal waste to inform employees of proper handling and emergency procedures appropriate for the types of universal waste handled at the facility.
- (12) **DEM's Hazardous Waste Regulations 5.2A, 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.

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 (60) days of receipt of the NOV:**

- (1) Collect a representative sample of the polishing dust and submit the sample to a laboratory for analysis to determine if the waste meets the definition of hazardous waste in accordance with the requirements of the DEM's Hazardous Waste Regulations 5.8 and submit a copy of the test results to the DEM's Office of Compliance & Inspection (the "OC&I). In the event that the waste is determined to meet the definition of a hazardous waste, **IMMEDIATELY** begin managing the waste in accordance with the applicable requirements of the DEM's Hazardous Waste Regulations.
- (2) Remove all hazardous waste, excluding satellite accumulation containers, from the Property that has been stored for greater than ninety (90) days using a permitted hazardous waste transporter and ship the hazardous waste to a licensed Treatment, Storage and Disposal Facility and submit a copy of the manifest to the OC&I.
- (3) Mark all containers holding hazardous waste, excluding satellite accumulation containers, with the date upon which the hazardous waste first began to accumulate.
- (4) 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).
- (5) Label all tanks holding hazardous waste with the words "Hazardous Waste".

- (6) Label and mark all universal waste or containers holding universal waste with the words "Universal Waste" and other words to identify the type of universal waste.
- (7) Relocate all containers holding liquid hazardous waste, excluding satellite accumulation containers, to an area that has a containment system which is designed to contain spill and releases of the hazardous waste stored onsite.
- (8) 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 (3) years.
- (9) Begin conducting daily inspections of the hazardous waste storage tank and tank system's discharge control equipment, monitoring equipment, and waste level and conduct weekly inspections of the tank system looking for signs of deterioration or leakage.
- (10) Provide training to Facility personnel that manage/handle hazardous waste and/or universal waste which meets the requirements of 40 CFR 265.16 and 40 CFR 273.16 and is relevant to the positions in which they are employed and submit copies of the training program and attendance sheet to the OC&I.
- (11) Develop and maintain a hazardous waste 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 OC&I.

E. Penalty

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:

Thirty Six Thousand Three Hundred Eighty Two Dollars (\$36,382.00)

- (2) The proposed administrative penalty is calculated pursuant to the DEM's *Rules and Regulations for Assessment of Administrative Penalties*, as amended, and must be paid to the DEM within thirty (30) days of your receipt of this 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 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 (20) days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
One Capitol Hill, 2ND Floor
Providence, RI 02903

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

Richard M. Bianculli Jr., Esquire
DEM - Office of Legal Services
235 Promenade Street, 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 Bianculli 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:

Narragansett Jewelry Co, Inc.
c/o James J. McGair, Esq, Registered Agent
128 Dorrance Street, Suite 350
Providence, RI 02903

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, HAZARDOUS WASTE SECTION

File No.: OCI-HW-12-82

Respondent: Narragansett Jewelry 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 (2) – Waste Determination	Type I (\$ 25,000 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500.00
C (1) & (3) – Storage and Accumulation Start Date	Type I (\$ 25,000 Max. Penalty)*	Moderate (Storage)	\$6,250	1 violation	\$8,750.00
		Minor (Accumulation Date)	\$2,500	1 violation	
C (4), (5) & (6) – Labeling	Type I (\$ 25,000 Max. Penalty)*	Minor	\$2,500	3 violations	\$7,500.00
C (7), (8) & (9) – Containment & Inspections	Type I (\$ 25,000 Max. Penalty)* Type II (\$ 12,500 Max. Penalty)*	Moderate (Containment)	\$6,250	1 violation	\$8,750.00
		Minor (Inspections)	\$2,500	1 violation	
C (10) & (11) – Training	Type I (\$ 25,000 Max. Penalty)*	Moderate	\$6,250	1 violation	\$6,250.00
C (12) – Contingency Plan & Emergency Procedures	Type I (\$ 25,000 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500.00
SUB-TOTAL					\$36,250.00

*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 DEM for storing hazardous waste for greater than 90 days, failure to complete a waste determination, failure to provide secondary containment for liquid hazardous waste and failure to provide hazardous waste training to employees. The one-time non-depreciable expenses associated with the storage, determination and containment costs were obtained by surveying local vendors. The expense associated with providing personnel with required training was derived from the EPA "Estimating Costs for the Economic Benefits of RCRA Noncompliance", updated December 1997.</p> <p>The Economic Benefit gained by the instances of noncompliance was calculated by utilizing an EPA computer model entitled "BEN". The model calculates the economic gain of noncompliance by performing a detailed economic analysis. The dates, dollar amounts and values used in this analysis are as listed in this table.</p>	• Profit Status	C-Corporation	\$132.00
	• Filing Status	C-Corporation	
	• Initial Capital Investment	\$0	
	• One-time Non-depreciable Expense	\$2,565.00	
	• Annual Expense	\$0	
	• First Month of Non-Compliance	8/6/12 (determination, containment) 10/17/10 (storage) 8/6/09 (training)	
	• Compliance Date	1/31/13	
	• Penalty Due Date	1/31/13	
	• Useful Life of Pollution Control	N/A	
	• Equipment Annual Inflation Rate	N/A	
• Discount/Compound Rate	7.8%		
SUB-TOTAL			\$132.00

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$ 36,382.00

PENALTY MATRIX WORKSHEET

CITATION: 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><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 was out of compliance for generating a solid waste in the form of a polishing dust without determining 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. The failure to properly characterize waste may result in the mismanagement of hazardous waste and lead to improper disposal of hazardous waste.</p> <p>(B) Environmental conditions: Considered, by not utilized for this calculation.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Unknown.</p> <p>(E) Duration of the violation: Unknown.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable steps to prevent and/or mitigate the noncompliance by determining if the 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:** Considered, but not utilized for this calculation
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** 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:** Respondent has previously shipped the polishing dust offsite as a non-regulated waste without completing a waste characterization.

<u> </u> MAJOR	<u> </u> 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: Storage and Accumulation Start Date

VIOLATION NO.: C (1) and (3)

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 was out of compliance for storing one container of hazardous waste onsite for a period of greater than ninety (90) days without first obtaining a permit and failing to mark two containers holding hazardous waste with an accumulation start date. The storage time limit and requirement to date containers holding hazardous waste are integral parts of the regulatory program because these requirements reduce the potential for mismanagement of hazardous waste. The Hazardous Waste Regulations allow generators to temporarily store hazardous waste onsite without obtaining a permit provided the waste is shipped offsite within ninety (90) days of accumulation. The requirement to mark containers holding hazardous waste with the accumulation date enables facility personnel and regulatory agencies to ensure compliance with the less than ninety (90) day accumulation time limit for hazardous waste storage.</p> <p>(B) Environmental conditions: Considered, but not utilized for this calculation.</p> <p>(C) Amount of the pollutant: Respondent stored three (3) 55-gallon drums holding approximately one hundred twenty gallons (120) of hazardous waste. One (1) container exceeded the 90-day accumulation time limit and two (2) containers were not marked with accumulation start dates.</p> <p>(D) Toxicity or nature of the pollutant: Two (2) containers held a corrosive hazardous waste and one (1) container held a hazardous waste containing lead which is a toxic metal.</p> <p>(E) Duration of the violation: One (1) container stored for approximately six hundred ninety (690) days. Unknown for the remaining two (2) containers.</p>		
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- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.
- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable steps to prevent or mitigate the noncompliance by storing hazardous waste onsite for greater than 90 days and for failing to date the containers holding the hazardous waste while in storage.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violations.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u> </u> MAJOR	<u> X </u> 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 \$6,250 (Storage)	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250 \$2,500 (Accumulation Date)	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Labeling
 VIOLATION NO.: C (4), (5) & (6)

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.

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 label containers and a tank holding hazardous waste and failed to label boxes holding universal waste. The requirement to label containers and tanks is an integral part of the regulatory program because these requirements reduce the potential for mismanagement of hazardous and universal waste. Proper labeling of hazardous waste containers and tanks and universal waste containers provides important information regarding the chemical properties of the waste(s) for emergency responders who may be called to a facility during a fire, spill or release.
- (B) **Environmental conditions:** Considered, but not used for this calculation.
- (C) **Amount of the pollutant:** One (1) 55-gallon container holding ten (10) gallons, one (1) 750-gallon tank holding approximately two hundred (200) gallons of hazardous waste, and twenty nine (29) boxes holding universal waste lamps.
- (D) **Toxicity or nature of the pollutant:** The 55- gallon container held a hazardous waste containing lead which is a toxic metal, the tank held a corrosive hazardous waste and the universal waste consisted of lamps containing mercury which is also a toxic metal.
- (E) **Duration of the violation:** Unknown.
- (F) **Areal extent of the violation:** Considered, but not used for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take appropriate steps to prevent the noncompliance by labeling the containers and tank.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not used for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violations.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not used for this calculation.

<u> </u> MAJOR	<u> </u> 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: Containment & Inspections

VIOLATION NO.: C (7), (8) and (9)

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;"><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		
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 provide a containment system for the containers holding liquid hazardous waste. The requirement to provide secondary containment for containers holding liquid hazardous waste provides a safeguard against spills and/or releases of hazardous waste and reduces the potential of exposure to hazardous waste for personnel working in the facility or the potential for a spill or release of waste to impact the environment. Respondent also failed to conduct inspections of the hazardous waste container storage area and storage tank system on a weekly basis and to conduct daily inspections of the storage tank. State regulations require generators to inspect areas in which hazardous waste is stored in containers and tanks onsite and to maintain written logs documenting the results of the inspections. The requirement for generators to inspect container storage areas and storage tanks enables generators to identify containers and/or tanks 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: Considered, but not used for this calculation</p> <p>(C) Amount of the pollutant: Three (3) 55-gallon containers holding hazardous waste and one (1) tank holding approximately two hundred (200) gallons of hazardous waste.</p> <p>(D) Toxicity or nature of the pollutant: Two (2) containers and one (1) tank held a corrosive hazardous waste and one (1) container held a hazardous waste containing lead which is a toxic metal.</p> <p>(E) Duration of the violation: Unknown for the containment. Respondent's records indicate that the last weekly inspection of the containers occurred on 11/29/10. Unknown for inspections of the tank.</p>		
(continued)		

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- (F) **Areal extent of the violation:** Considered, but not used for this calculation.
- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take steps to prevent or mitigate the noncompliance by providing a containment system and inspecting the tank system. Respondent conducted weekly inspections of the container storage area but discontinued the activity.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not used for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the occurrence of the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not used for this calculation.

<u> </u> MAJOR	<u> X </u> 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 \$6,250 (Containment)	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500 \$2,500 (Inspections)	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Training
 VIOLATION NO.: C (10) & (11)

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.		
FACTORS CONSIDERED: Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i>		
<p>(A) The extent to which the act or failure to act was out of compliance: Respondent failed to provide training to employees who handle hazardous waste and universal waste. 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. 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. Generators are also required to provide information to employees regarding the types of universal waste stored onsite and safe handling procedures.</p> <p>(B) Environmental conditions: Considered, but not used for this calculation.</p> <p>(C) Amount of the pollutant: Three (3) 55-gallon containers holding approximately one hundred twenty (120) gallons of hazardous waste, one (1) tank holding approximately two hundred (200) gallons of hazardous waste, and twenty nine (29) boxes holding universal waste lamps.</p> <p>(D) Toxicity or nature of the pollutant: The containers held a corrosive hazardous waste and a hazardous waste containing lead which is a toxic metal, the tank held a corrosive hazardous waste and the universal waste consisted of lamps containing mercury which is also a toxic metal.</p> <p>(E) Duration of the violation: Respondent was unable to produce records to demonstrate that the required training was provided to employees during the three (3) years prior to the inspection.</p> <p>(F) Areal extent of the violation: Considered, but not used for this calculation.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to prevent and/or mitigate the noncompliance by providing training to employees working with hazardous and universal wastes.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not used for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not used for this calculation.

<u> </u> MAJOR	<u> X </u> MODERATE	<u> </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 \$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: Contingency Plan and Emergency Procedures

VIOLATION NO.: C (12)

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.		
FACTORS CONSIDERED: Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i>		
<p>(A) The extent to which the act or failure to act was out of compliance: Respondent failed to develop and maintain a complete hazardous waste contingency plan for the facility containing all of the information required by regulation. 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: Considered, but not used for this calculation.</p> <p>(C) Amount of the pollutant: Three (3) fifty-five (55) gallon containers holding approximately one hundred twenty (120) gallons of hazardous waste and a tank holding approximately two hundred (200) gallons of hazardous waste. Twenty nine (29) boxes holding universal waste lamps.</p> <p>(D) Toxicity or nature of the pollutant: The containers held a corrosive hazardous waste and a hazardous waste containing lead which is a toxic metal, the tank held a corrosive hazardous waste and the universal waste consisted of lamps containing mercury which is also a toxic metal.</p> <p>(E) Duration of the violation: Unknown. The time period during which the generated hazardous waste without developing a complete contingency plan could not be determined at the time of the inspection</p> <p>(F) Areal extent of the violation: Considered, but not used for this calculation.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent developed a contingency plan for the facility but it was lacking critical information 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:** 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.

<u> </u> MAJOR	<u> </u> 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