

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

**IN RE: David Vigliotti
Anthony Caprio
(d/b/a Empire Auto Body)**

FILE NO.: OCI-HW-13-29

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Department of Environmental Management (the “Director” of “DEM”) has reasonable grounds to believe that the above-named parties (“Respondents”) have violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Facts

- (1) The subject property is located at 2151B Hartford Avenue in the town of Johnston, Rhode Island (the “Property”). The Property includes a building in which an automobile body repair business operates (the “Facility”).
- (2) The Facility is operated by David Vigliotti and Anthony Caprio d/b/a Empire Auto Body.
- (3) Empire Auto Body 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 “Empire Auto Body” with the U. S. Environmental Protection Agency (“EPA”) identification number RI5000007328.
- (4) On February 21, 2013, DEM inspected the Facility. The inspection revealed the following:
 - (a) One 5-gallon satellite accumulation container located in the main garage area held hazardous waste in the form of waste paints and thinner. The container was open and not labeled;
 - (b) One 30-gallon and two 5-gallon containers held used oil. Two containers were located in the main garage area and one container was located in the spray booth area. The containers were not labeled with the words “used oil”; and

- (c) One fire extinguisher located in the main garage area was last inspected in January 2011.
- (5) The DEM inspector spoke with David Vigliotti at the time of the inspection. Mr. Vigliotti provided the following information to the inspector:
 - (a) No hazardous waste from the Facility has been shipped offsite to a treatment, storage and disposal facility for several years.
 - (b) Mr. Vigliotti pours liquid paint waste into a 5-gallon container and once it dries out he places the container in a dumpster used for solid waste disposal;
 - (c) Used oil generated at the Facility is transferred to a business called Foster Auto Parts, which burns the used oil for energy recovery. Mr. Vigliotti stated that he calls the owner of Foster Auto Parts when the 30-gallon container is full and the owner comes and picks up the container. Mr. Vigliotti did not maintain records tracking the shipment of used oil to Foster Auto Parts; and
 - (d) Used automotive oil filters are drained and disposed in the solid waste dumpster.
- (6) DEM has not issued a permit authorizing the treatment or disposal of hazardous waste at the Facility.
- (7) Foster Auto Parts does not possess a permit from DEM to transport used oil within the State of Rhode Island and has not obtained an EPA identification number as a transporter.

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) **R.I. Gen. Laws Section 23-19.1-10** – requiring a person to obtain a permit from the DEM prior to treating or disposing of hazardous waste.
- (2) **DEM’s Hazardous Waste Regulations 7.0(B)(1) and 40 CFR 270.1(b)** – requiring a person to obtain a permit from the DEM prior to treating or disposing of hazardous waste.
- (3) **DEM’s Hazardous Waste Regulations 15.2F** – prohibiting the disposal of used oil to the land.
- (4) **DEM’s Hazardous Waste Regulations 5.4C 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.

- (5) **DEM's Hazardous Waste Regulations 5.2A, 40 CFR 262.34(c)(1)(i) and 40 CFR 265.173(a)** – requiring that hazardous waste generators keep containers holding hazardous waste closed except when adding or removing waste.
- (6) **DEM's Hazardous Waste Regulations 15.4A3 and 40 CFR 279.22(c)(1)** – requiring generators to label containers holding used oil with the words “used oil”.
- (7) **DEM's Hazardous Waste Regulations 15.4G and 40 CFR 279.24** – requiring generators to ensure that used oil is shipped offsite by a licensed transporter and to maintain records of each offsite shipment of used oil for a period of at least three years.
- (8) **DEM's Hazardous Waste Regulations 5.2 A, 40 CFR 262.34(a)(4) and 40 CFR 265.33** – requiring that a hazardous waste generator test and maintain all fire protection equipment to assure its proper operation in time of an emergency.

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:

- (1) **IMMEDIATELY upon receipt of this Notice of Violation (“NOV”)**, cease and desist the treatment and/or disposal of hazardous waste.
- (2) **IMMEDIATELY, upon receipt of the NOV**, cease and desist the disposal of used automotive engine filters containing used oil generated at the Facility as solid waste or **within thirty (30) days** submit to DEM copies of analytical test results verifying that the filters do not meet the definition of hazardous waste.
- (3) **Within sixty (60) days of receipt of the NOV:**
 - (a) Remove all hazardous waste 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 (the “Designated Facility”). Submit a copy of the hazardous waste manifest to the DEM.
 - (b) Label all satellite accumulation containers storing hazardous waste with the words “Hazardous Waste” and other words identifying the contents of the container.
 - (c) Close and keep closed all containers storing hazardous waste except when adding or removing waste.
 - (d) Label all containers holding used oil with the words “used oil”.

- (e) Ship used oil offsite for recycling or burning for energy recovery using a licensed used oil transporter.
- (f) Test the fire extinguisher to assure its proper operation in time of an emergency.

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:

Twenty-Nine Thousand One Hundred Sixty Dollars (\$29,160.00)

- (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 Director within thirty (30) days of your receipt of the NOV. Payment shall be in the form of a certified check, cashier's check or money order made payable to the "General Treasury - Environmental Response Fund," and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against Respondents in the NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

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:

David Vigliotti
2151B Hartford Avenue
Johnston, RI 02919

Anthony Caprio
2151B Hartford Avenue
Johnston, RI 02919

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, HAZARDOUS WASTE SECTION

File No.: HW – 13-29

Respondents: David Vigliotti and Anthony Caprio

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) & (3) – Unauthorized treatment or disposal of hazardous waste (paint & used oil)	Type I	Major	\$12,500	1 violation	\$15,000.00
	(\$ <u>25,000</u> Max. Penalty)*	Moderate	\$2,500	1 violation	
C (4) & (5) – Satellite labeling and open container of hazardous waste (paint)	Type I	Minor	\$2,500	1 violation	\$2,500.00
	(\$ <u>25,000</u> Max. Penalty)*				
C (6) – Used oil storage labeling	Type I	Minor	\$5,000	1 violation	\$5,000.00
	(\$ <u>25,000</u> Max. Penalty)*				
C (7) – Off-site shipment of used oil	Type I	Minor	\$5,000	1 violation	\$5,000.00
	(\$ <u>25,000</u> Max. Penalty)*				
C (8) – Failure to inspect fire extinguisher	Type I	Minor	\$1,250	1 violation	\$1,250.00
	(\$ <u>25,000</u> Max. Penalty)*				
SUB-TOTAL					\$28,750.00

*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.

<i>DESCRIPTION OF BENEFIT</i>	<i>CALCULATION</i>	<i>AMOUNT</i>
<p>Economic benefit of noncompliance identified by DEM for disposing of hazardous waste and used oil at unlicensed facilities and for failing to engage a licensed transporter to remove used oil from the facility.</p> <p>The one-time non-depreciable expenses associated with the failure to dispose of the wastes at licensed facilities was estimated based on the minimum of one 55-gallon drum of paint waste and one 55-gallon drum of used oil filters. The expenses associated with the disposal were obtained by contacting local vendors. The first month of noncompliance was chosen to be 90 days after the last offsite shipment of hazardous waste from the facility.</p> <p>The economic benefit gained by the instances of noncompliance was determined to be equivalent to the principle cost (one time non-depreciable expense) of the proper disposal of the waste.</p>	<ul style="list-style-type: none"> • Profit Status C-Corporation • Filing Status C-Corporation • Initial Capital Investment \$0 • One-time Non-depreciable Expense \$410 • Annual Expense \$0 • First Month of Non-Compliance December 1998 • Compliance Date September 30, 2013 • Penalty Due Date September 30, 2013 • Useful Life of Pollution Control N/A • Equipment Annual Inflation Rate N/A • Discount/Compound Rate N/A 	\$410.00
<i>SUB-TOTAL</i>		\$410.00

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$29,160.00

PENALTY MATRIX WORKSHEET

CITATION: Unauthorized treatment or disposal of hazardous waste (paint & used oil)
 VIOLATION NO.: C (1), (2) & (3)

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		
<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: Respondents treated or disposed of hazardous waste (in the form of automotive waste paint) and disposed of used automotive filters containing used oil at an unlicensed facility. State and Federal regulations require generators to ensure that hazardous waste generated at their facility is properly disposed of at a licensed facility. This requirement is the core element of the regulatory program because a licensed facility has protocols and specialized equipment for the safe treatment and disposal of hazardous waste. State regulations prohibit the disposal of used oil to the land. Disposal of hazardous waste and used oil at an unlicensed facility may result in contamination of soil, surface and groundwater.</p> <p>(B) Environmental conditions: David Vigliotti stated that liquid waste paint was poured into a 5-gallon container and allowed to dry and then placed in a dumpster behind the building and disposed as solid waste. The used automotive oil filters were also placed in the dumpster and disposed as solid waste.</p> <p>(C) Amount of the pollutant: Unknown – the Respondents did not track the offsite shipments of hazardous waste.</p> <p>(D) Toxicity or nature of the pollutant: Auto body paint related wastes typically contain federally listed non-halogenated solvents including, but not limited to, xylene, acetone, methyl isobutyl ketone, toluene, methyl ethyl ketone, and isobutanol. Paint waste may also be identified as a characteristic hazardous waste based on flammability and toxicity. Used oil is known to cause soil contamination when released to the environment and may contain constituents that are suspected human carcinogens.</p> <p>(E) Duration of the violation: 14 years. Review of DEM records revealed that the Respondents last shipment of hazardous waste to a licensed treatment, storage and disposal facility occurred on September 3, 1998.</p> <p>(F) Areal extent of the violation: Considered, but not utilized in this calculation.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable and appropriate steps to prevent the noncompliance and have provided no information to DEM that they are now in compliance.
- (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 May 16, 1994 DEM responded to a call from the Johnston Fire Department (FD) that a solid waste dump truck caught fire at the property. The FD reported that flammable liquids were discarded into a dumpster. When the dumpster was emptied into the dump truck the flammable liquids spilled and caught fire. DEM issued a letter of deficiency to Anthony Caprio on May 27, 1994 for failing to notify the DEM of regulated activity, failing to label containers holding hazardous waste, failing to develop a contingency plan and failing to train employees.
- (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 Respondents had complete control over the occurrence of the violation and had knowledge of the requirement to ship hazardous waste to a licensed facility but chose to dispose of the hazardous waste at a solid waste landfill.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized in this calculation.

<u>X</u> 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 \$12,500 (Disposal of hazardous waste)	\$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 (Disposal of used oil)	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Satellite labeling and open container of hazardous waste (paint)

VIOLATION NO.: C (4) & (5)

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: Respondents failed to label and close a satellite accumulation container holding hazardous waste. The requirement to label containers holding hazardous waste is an integral part of the regulatory program because this requirement reduces the potential for mismanagement of hazardous waste. Proper labeling of hazardous waste containers provides important information regarding the chemical properties of the waste for emergency responders who may be called to a facility during a fire, spill or release. DEM regulations require generators to keep all containers holding hazardous waste closed. The requirement to keep containers holding waste closed is designed to prevent spills and releases of hazardous waste from resulting in harm to human health and the environment.</p> <p>(B) Environmental conditions: Considered, but not utilized in this calculation.</p> <p>(C) Amount of the pollutant: One 5-gallon satellite accumulation container holding approximately 1¼ gallons of hazardous waste.</p> <p>(D) Toxicity or nature of the pollutant: Auto body paint related wastes typically contain federally listed non-halogenated solvents including, but not limited to, xylene, acetone, methyl isobutyl ketone, toluene, methyl ethyl ketone, and isobutanol. Paint waste may also be identified as a characteristic hazardous waste based on flammability and toxicity.</p> <p>(E) Duration of the violation: Unknown. David Vigliotti reported the routine disposal of waste paint in a solid waste dumpster but did not track this activity.</p> <p>(F) Areal extent of the violation: Considered, but not utilized in this calculation.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable and appropriate steps to prevent the noncompliance and have provided no information to DEM that they are now in compliance.
- (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:** DEM issued a letter of deficiency to Anthony Caprio on May 27, 1994 for failing to notify the DEM of regulated activity, failing to label containers holding hazardous waste, failing to develop a contingency plan and failing to train employees.
- (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 Respondents had complete control over the occurrence of the violation and had knowledge of the requirement to label containers holding hazardous waste.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized in 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: Used oil storage labeling

VIOLATION NO.: C (6)

TYPE		
<p style="text-align: center;"><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
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: Respondents failed to label containers holding used oil with the words “used oil”. The requirement to label containers holding used oil is an integral part of the regulatory program because this requirement reduces the potential for mismanagement of waste. Proper labeling of containers provides important information regarding the chemical properties of the waste for emergency responders who may be called to a facility during a fire, spill or release.</p> <p>(B) Environmental conditions: Considered, but not utilized in this calculation.</p> <p>(C) Amount of the pollutant: One 30-gallon container holding 15 gallons of used oil and two 5-gallon containers holding approximately 3¾ gallons of used oil.</p> <p>(D) Toxicity or nature of the pollutant: Used oil is known to cause soil contamination when released to the environment and may contain constituents that are suspected human carcinogens.</p> <p>(E) Duration of the violation: Unknown. David Vigliotti reported that used oil is shipped to an unlicensed facility but did not maintain records of the activity.</p> <p>(F) Areal extent of the violation: Considered, but not utilized in this calculation.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable and appropriate steps to prevent the noncompliance and have provided no information to DEM that they are now in compliance.
- (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:** DEM issued a letter of deficiency to Anthony Caprio on May 27, 1994 for failing to notify the DEM of regulated activity, failing to label containers holding hazardous waste, failing to develop a contingency plan and failing to train employees.
- (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 Respondents had complete control over the occurrence of the violation and had knowledge of the requirement to label containers holding used oil.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized in 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 \$5,000	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Off-site shipment of used oil

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		
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: Respondents failed to ensure that the company contracted to remove used oil generated at the facility was licensed to transport used oil and had obtained an EPA identification number to transport used oil. The requirement to use a licensed transporter to ship used oil reduces the potential for mismanagement of used oil. A licensed transporter is required to maintain safety equipment and develop procedures to respond to spills and releases of used oil providing safeguards to prevent contamination of soil and water. Use of an unlicensed transporter may result in improper disposal of used oil.</p> <p>(B) Environmental conditions: Considered, but not utilized in this calculation.</p> <p>(C) Amount of the pollutant: Unknown. David Vigliotti reported that the respondents used an unlicensed transporter but did not track the offsite shipments of used oil.</p> <p>(D) Toxicity or nature of the pollutant: Used oil is known to cause soil contamination when released to the environment and may contain constituents that are suspected human carcinogens.</p> <p>(E) Duration of the violation: Unknown. David Vigliotti reported that the respondents used an unlicensed transporter but did not track the offsite shipments of used oil.</p> <p>(F) Areal extent of the violation: Considered, but not utilized in this calculation.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable and appropriate steps to prevent the noncompliance and have provided no information to DEM that they are now in compliance.
- (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:** DEM issued a letter of deficiency to Anthony Caprio on May 27, 1994 for failing to notify the DEM of regulated activity, failing to label containers holding hazardous waste, failing to develop a contingency plan and failing to train employees.
- (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 Respondents had complete control over the occurrence of the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized in this calculation.

<input type="checkbox"/> MAJOR	<input type="checkbox"/> MODERATE	<input checked="" 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	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250 \$5,000	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to inspect fire extinguisher

VIOLATION NO.: C (8)

TYPE		
<p>___ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>X</u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>___ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<p>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</p>		
<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: Respondents failed to ensure that a fire extinguisher at the facility was inspected on an annual basis. Generators of hazardous waste must equip their facilities with fire control equipment of adequate type and volume to enable emergency personnel to respond to an incident at the facility. State regulations require that fire protection equipment be tested and maintained as required by the generator to ensure its proper operation at the time of emergency.</p> <p>(B) Environmental conditions: Considered, but not used for this calculation.</p> <p>(C) Amount of the pollutant: One 5-gallon satellite accumulation container holding approximately 1¼ gallons of hazardous waste. One 30-gallon container holding 15 gallons of used oil and two 5-gallon containers holding approximately 3¼ gallons of used oil.</p> <p>(D) Toxicity or nature of the pollutant: Auto body paint related wastes typically contain federally listed non-halogenated solvents including, but not limited to, xylene, acetone, methyl isobutyl ketone, toluene, methyl ethyl ketone, isobutanol. Paint waste may also be identified as a characteristic hazardous waste based on flammability and toxicity. Used oil is known to cause soil contamination when released to the environment and may contain constituents that are suspected human carcinogens.</p> <p>(E) Duration of the violation: 1 year. Respondents last had the fire extinguisher certified in January 2011.</p> <p>(F) Areal extent of the violation: Considered, but not used for this calculation.</p>		
<p>(continued)</p>		

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable and appropriate steps to prevent the noncompliance and have provided no information to DEM that they are now in compliance.
- (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:** DEM issued a letter of deficiency to Anthony Caprio on May 27, 1994 for failing to notify the DEM of regulated activity, failing to label containers holding hazardous waste, failing to develop a contingency plan and failing to train employees.
- (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 Respondents 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.

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