

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Geib Refining Corporation

FILE NO.: HW-13-114

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 the DEM's jurisdiction.

B. Facts

- (1) The property is located at 399 Kilvert Street in the city of Warwick, Rhode Island (the “Property”). The Property includes a facility that operates as a secondary refinery for the recovery of precious metals (the “Facility”).
- (2) The Respondent operates the Facility.
- (3) The Respondent is registered with the DEM as a large 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 “Geib Refining Corp” with the U.S. Environmental Protection Agency identification number RID095978995.
- (4) On 15 November 2013 the DEM inspected the Facility. The inspection revealed the following:
 - (a) Two 1-gallon satellite accumulation containers located in the “new” assay lab holding hazardous waste in the form of nitric acid that were not labeled and were not closed at the time of the inspection (the “New Lab Waste”); and
 - (b) One 55-gallon satellite accumulation container located in the “old” assay lab holding hazardous waste in the form of nitric acid that was not located at the generation point of the waste (the “Old Lab Waste”).
- (5) The DEM reviewed the Respondent’s training records and determined that the Respondent has not provided training to at least 1 employee who handles hazardous waste. The Respondent was not able to produce records showing that

annual training was provided to any of its employees in calendar years 2011 or 2012 for hazardous waste or universal waste.

- (6) The Respondent properly labeled and closed the containers for the New Lab Waste at the time of the inspection.
- (7) On 19 November 2013 the DEM received a copy of a uniform hazardous waste manifest documenting the removal and proper disposal of the Old Lab Waste.
- (8) As of the date of this Notice of Violation (“NOV”), the Respondent has failed to provide any documents to the DEM to show that the employees of the Facility who handle and/or manage hazardous waste have been properly trained.

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 Regulation 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.
- (2) **DEM’s Hazardous Waste Regulation 5.2A and 40 CFR 262.34(c)(1)** – requiring that a hazardous waste generator store satellite accumulation containers at or near the generation point of the waste.
- (3) **DEM’s Hazardous Waste Regulation 5.2A, 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.
- (4) **DEM’s Hazardous Waste Regulation 5.2A, 40 CFR 265.16, and 40 CFR 273.16** – requiring that a hazardous waste generator provide training to company employees who handle and/or manage hazardous waste or universal waste, and provide employees with a review of the training on an annual basis.

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 30 days of receipt of the NOV** provide hazardous waste and universal waste management training to the Facility employees that manage/handle hazardous waste that is relevant to the positions in which they are employed and submit copies of the training program and attendance sheet to the DEM’s Office of Compliance & Inspection.

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:

Seventeen Thousand and Ninety Four Dollars (\$17,094)

- (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 30 days of your receipt of the NOV. Payment shall be in the form of a certified check, cashiers 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 the 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 DEM 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 O above. All requests for hearing MUST:
- (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);
- (b) Be **RECEIVED** by the DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of 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's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters*.
- (2) A copy of each request for hearing must also be forwarded to:

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

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

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Susan Forcier at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey Tyrrell of the DEM Office of Compliance and Inspection at (401) 222-1360 ext. 7407.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section F above.

FOR THE DIRECTOR

David E. Chopy, Chief
DEM Office of Compliance and Inspection

Date: _____

CERTIFICATION

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

Geib Refining Corporation
c/o Archibald B. Kenyon, Jr., Registered Agent
133 Old Tower Hill Road, Suite 1
Wakefield, RI 02879

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, HAZARDOUS WASTE

File No.: OCI-HW-13-114

Respondent: Geib Refining Corporation

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) – Failure to properly manage satellite containers	Type I (\$ <u>25,000</u> Max. Penalty)*	Minor	\$2,500 (labeling/open containers) \$3,500 (improper storage location)	2 violations 1 violation	\$8,500
C (4) – Failure to provide training	Type I (\$ <u>25,000</u> Max. Penalty)*	Moderate	\$6,250	1 violation	\$6,250
SUB-TOTAL					\$14,750

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

ADMINISTRATIVE PENALTY SUMMARY (continued)

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 the failure to train employees and provide an annual review of training in the area of hazardous waste and universal waste management.</p> <p>The one-time non-depreciable expenses associated with providing initial training and the annual recurring costs associated with the requirement to provide an annual review of the training were taken from the EPA's document entitled "Estimating Costs for the Economic Benefits of RCRA Noncompliance" dated December 1997.</p>	<ul style="list-style-type: none"> • Profit Status C-Corporation • Filing Status C-Corporation • Initial Capital Investment \$0 • One-time Non-depreciable Expense \$1,998 • Annual Expense \$1,624 • First Month of Non-Compliance October 2011 • Compliance Date June 30, 2014 (training) • Penalty Due Date October 1, 2013 (annual review) June 30, 2014 • Useful Life of Pollution Control N/A • Equipment Annual Inflation Rate N/A • Discount/Compound Rate N/A 	<p>\$2,344</p>
		\$2,344

COST RECOVERY

ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.

A review of the record in this matter has revealed that the DEM has not incurred any additional or extraordinary costs during the investigation, enforcement and resolution of this enforcement action (excluding non-overtime personnel costs), for which the State is not otherwise reimbursed.

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$17,094

PENALTY MATRIX WORKSHEET

CITATION: Failure to properly manage satellite containers

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><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: The Respondent failed to label and keep closed 2 satellite accumulation containers holding hazardous waste and failed to store 1 satellite container in an area that was at or near the generation point of the 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. The 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. The requirement to store satellite containers holding hazardous waste at or near the generation point of the waste is designed to ensure that operator who generates the waste maintains control of the container to prevent mismanagement of the waste.</p> <p>(B) Environmental conditions: The satellite accumulation container holding hazardous waste that was not stored at its generation point was located in an inactive assay laboratory.</p> <p>(C) Amount of the pollutant: At the time of the inspection the DEM inspector observed two 1-gallon satellite accumulation containers holding hazardous waste that were not labeled or closed and one 55-gallon satellite container holding hazardous waste that was not stored at the generation point of the waste.</p> <p>(D) Toxicity or nature of the pollutant: The hazardous waste stored in all of the satellite containers was a waste nitric acid solution that is a highly corrosive waste that reacts violently with water.</p> <p>(E) Duration of the violation: Unknown.</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:** The Respondent failed to take reasonable and appropriate steps to prevent the violation by keeping the containers labeled, closed and stored at the generation point of the waste. The Respondent properly labeled and closed the two 1-gallon containers at the time of the inspection and shipped the 55-gallon container holding hazardous waste offsite to a licensed facility on 18 November 2013.
- (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 7 June 2007 the DEM issued an informal written notice to the Respondent for several violations, including the failure to provide annual hazardous waste management training to company 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 Respondent had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized in 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	\$2500 to \$6250 \$2,500 (labeling/open containers) \$3,500 (improper storage location)	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to provide training

VIOLATION NO.: C (4)

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:</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: The Respondent failed to provide hazardous waste and universal waste management training to its employees who work with these wastes. The DEM and Federal regulations require generators to provide training that teaches employees to perform their duties in a manner that ensures compliance with the regulations. Hazardous waste and universal waste management training help ensure that the facility will be operated in compliance with the regulations and reduces the potential for spills or releases of hazardous waste by teaching employees proper waste handling practices.</p> <p>(B) Environmental conditions: Considered, but not utilized in this calculation.</p> <p>(C) Amount of the pollutant: At the time of the inspection the DEM inspector observed two 1-gallon and one 55-gallon satellite accumulation containers holding hazardous waste.</p> <p>(D) Toxicity or nature of the pollutant: The hazardous waste stored in all of the satellite containers was a waste nitric acid solution that is a highly corrosive waste that reacts violently with water.</p> <p>(E) Duration of the violation: Unknown.</p> <p>(F) Areal extent of the violation: Considered, but not utilized in this calculation.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to take appropriate steps to provide the required training to the company's employees that handle and/or manage regulated 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:** On 7 June 2007 the DEM issued an informal written notice to the Respondent for several violations, including the failure to provide annual hazardous waste management training to company 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 Respondent had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized in this calculation.

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