

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Amado Velasquez
Aaron Velasquez
Vito Matarese**

FILE NO.: OCI-HW-13-76

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. Administrative History

On October 20, 2009 DEM issued an informal written notice to Amado Velasquez for the same property and one of the same violations that is the subject of this notice of violation. Mr. Velasquez fully complied with the informal notice. On June 22, 2010 DEM issued a letter of compliance to Mr. Velasquez.

C. Facts

- (1) The subject property is located at 385 Huntington Avenue in the city of Providence, Rhode Island (the “Property”). The Property includes a building in which an automobile parts, salvage and repair business operates (the “Facility”).
- (2) Vito Matarese owns the Property (the “Owner”).
- (3) Amado Velasquez and Aaron Velasquez operate the Facility doing business as A & M International Auto Parts (the “Operators”).
- (4) On July 15, 2013 DEM inspected the Facility. The inspection revealed the following:
 - (a) An area of stained soil located in close proximity to the “shop building” indicative of a release of oil;
 - (b) One 5-gallon container holding absorbent material containing used oil (the “Container”); and

- (c) Three lead/acid automobile batteries that were not labeled with the words “universal waste-battery” or other appropriate words as required by regulation.
- (5) During the inspection, Aaron Velasquez informed the DEM inspector that the Operators have not evaluated the absorbent material containing used oil in the Container to determine if it meets the definition of hazardous waste.
- (6) During the inspection, Aaron Velasquez informed the DEM inspector that the Operators intended to manage the spent lead-acid batteries as universal waste and as such the Operators are a small quantity handler of universal waste.
- (7) As of the date of this Notice of Violation (“NOV”), the Respondents have failed to demonstrate that they are in compliance with the DEM’s *Rules and Regulations for Hazardous Waste Management* (the “Hazardous Waste Regulations”) and the DEM’s *Oil Pollution Control Regulations*.

D. 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 5.8 and Title 40 of the Code of Federal Regulations (“40 CFR”) 262.11** – requiring that a person who generates a solid waste as defined in 40 CFR 261.2 determine if the waste meets the definition of a hazardous waste.
- (2) **DEM’s Hazardous Waste Regulations 13.5I and 40 CFR 273.14(a)** – requiring that a small quantity handler of universal waste properly label or mark universal waste batteries (i.e., each battery).
- (3) **DEM’s Hazardous Waste Regulations 15.2F** – prohibiting the release and/or discharge of used oil to the land.
- (4) **DEM’s Hazardous Waste Regulations 15.4D** – requiring used oil generators to take immediate steps to contain and clean up spills or releases of used oil.
- (5) **DEM’s Oil Pollution Control Regulations Section 6(a)** – prohibiting the release and/or discharge of oil to the land.
- (6) **DEM’s Oil Pollution Control Regulations Section 12(b)** – requiring a person to take immediate steps to contain and clean up spills or releases of oil.

E. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), the Respondents are hereby ORDERED to:

- (1) **IMMEDIATELY** upon receipt of the NOV, cease and desist the release and discharge of oil to the land.
- (2) **Within thirty (30) days of receipt of the NOV**, remove all oil impacted soil and media from the Property and dispose of it at a properly licensed facility. Upon completion of the removal activity collect soil samples from the excavated areas and have the samples analyzed to determine the concentration of volatile organic compounds and total petroleum hydrocarbons using the Environmental Protection Agency test methods 8260 and 8015, respectively.
- (3) **Within ten (10) days of receipt of the analytical test results** submit a copy to DEM's Office of Compliance & Inspection.

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), Aaron Velasquez and Amado Velasquez are hereby ORDERED to:

- (1) Collect a representative sample of the waste in the Container 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 DEM's Hazardous Waste Regulations 5.8 and submit a copy of the test results to the DEM's Office of Compliance & Inspection. If 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) Properly label and mark all waste batteries with any of the following phrases: Universal Waste-Battery(ies); Waste Battery(ies), or Used Battery(ies).

F. 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 as described below:
 - (a) Aaron Velasquez and Amado Velasquez for violations D(1) and D(2) – Five Thousand Dollars (\$5,000.00)
 - (b) Vito Matarese, Aaron Velasquez and Amado Velasquez for violations D(3) through D(6) – Five Thousand Dollars (\$5,000.00)

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

G. 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 F 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 G 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:

Amado Velasquez
385 Huntington Avenue
Providence, RI 02909

Aaron Velasquez
385 Huntington Avenue
Providence, RI 02909

Vito Matarese
190 Council Rock Road
Cranston, RI 02921-2216

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, HAZARDOUS WASTE SECTION

File No.: OCI-HW-13-76

Respondents: Amado Velasquez, Aaron Velasquez, and Vito Matarese

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	
D (1) – Failure to determine if waste hazardous waste	Type I (\$ <u>25,000</u> Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500.00
D (2) – Failure to label universal waste batteries	Type I (\$ <u>25,000</u> Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500.00
D (3), (4), (5), & (6) – Release of oil to land and failure to clean up oil	Type I (\$ <u>25,000</u> Max. Penalty)*	Minor	\$2,500	2 violations	\$5,000.00
SUB-TOTAL					\$10,000.00

*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.

A review of the record in this matter has revealed that the Respondents have either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted can not be quantified.

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 = \$10,000.00

PENALTY MATRIX WORKSHEET

CITATION: Failure to determine if waste hazardous waste

VIOLATION NO.: D (1)

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.		
<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 determine if a container holding solid waste, in the form of used absorbent material containing used oil, 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, but not utilized for this calculation.</p> <p>(C) Amount of the pollutant: One 5 gallon container holding used absorbent material containing 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. The DEM first discovered the violation on July 15, 2013.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p> <p style="text-align: right;">(continued)</p>		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable steps to prevent and/or mitigate the noncompliance by properly characterizing the solid waste to determine if it is a hazardous waste.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** On October 20, 2009 DEM issued a Letter of Non-Compliance to Amado Velasquez for releasing used oil to the environment and failing to manage containers and tanks holding used oil in accordance with the requirements of the DEM's Hazardous Waste Regulations.
- (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 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: Failure to label universal waste batteries
 VIOLATION NO.: D (2)

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:** Respondents failed to properly label universal waste in the form of spent lead acid batteries held in storage at the facility. Failure to properly label universal waste poses a threat to the health, safety, and welfare of workers and to the environment.
- (B) **Environmental conditions:** The universal waste batteries were stored inside of the facility.
- (C) **Amount of the pollutant:** 3 universal waste batteries.
- (D) **Toxicity or nature of the pollutant:** Spent lead acid batteries from automobiles contain sulfuric acid which is highly corrosive and lead which is a toxic metal. Both substances may cause harm to human health and impact the environment.
- (E) **Duration of the violation:** Unknown. The DEM first discovered the violation on July 15, 2013.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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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 steps to prevent and/or mitigate the noncompliance by labeling the universal waste.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** On October 20, 2009 DEM issued a Letter of Non-Compliance to Amado Velasquez for releasing used oil to the environment and failing to manage containers and tanks holding used oil in accordance with the requirements of the DEM's Hazardous Waste Regulations.
- (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:** 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 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 \$2,500	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Release of oil to land and failure to clean up oil

VIOLATION NO.: D (3), (4), (5) & (6)

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: Respondents released used oil onto the ground surface at the facility and failed to clean up the spilled material. State and Federal regulations require generators to ensure that used oil generated at their facility is properly recycled 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 management of used oil. State regulations prohibit the disposal of used oil to the land. Disposal of used oil at an unlicensed facility may result in contamination of soil, surface and groundwater.</p> <p>(B) Environmental conditions: Used oil was released onto exposed soil at the facility.</p> <p>(C) Amount of the pollutant: The amount of released pollutant is unknown.</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. The DEM first discovered the violation on July 15, 2013.</p> <p>(F) Areal extent of the violation: Considered, but not utilized in this calculation.</p> <p style="text-align: right;">(continued)</p>		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable steps to prevent the noncompliance. Respondents failed to take reasonable steps to mitigate the noncompliance by cleaning up the oil and impacted soil.
- (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 October 20, 2009 DEM issued a Letter of Non-Compliance to Amado Velasquez for releasing used oil to the environment and failing to manage containers and tanks holding used oil in accordance with the requirements of the DEM's Hazardous Waste Regulations.
- (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:** Amado Velasquez and Aaron Velasquez had complete control over the occurrence of the violation and had knowledge of the requirement to prevent the discharge of used oil and to immediately clean up spilled oil.
- (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> </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