

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Metallurgical Solutions, Inc.

FILE NO.: OCI-HW-14-78

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 85 Aldrich Street in the city of Providence (the "Property"). The Property includes a facility used for the heat treatment of metals including high speed m-series tools (the "Facility").
- (2) Respondent owns the Property and operates the Facility.
- (3) 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 "Metallurgical Solutions, Inc." with the U.S. Environmental Protection Agency ("EPA") identification number RI5000007609.
- (4) On 27 June 2014 and 8 July 2014, the DEM inspected the Facility. The inspection revealed the following:
 - (a) Five 55-gallon 180 day containers holding hazardous waste for greater than 180 days located near the shipping dock;
 - (b) No hazardous waste determination was completed on sand blast material prior to storing 2 containers holding approximately 50 gallons of the material outdoors (the "Sand Blast Material"). One container was located under the dust collector, and the second container is a roll off;

- (c) No label on two 55-gallon satellite containers holding hazardous waste in the form of a barium chloride solid with nitrates. One container was located at the east end of the heat treatment line, and the second was located outdoors under the dust collector;
 - (d) Incomplete labels on eight 55-gallon 180 day containers holding hazardous waste in the form of a barium chloride solid with nitrates located near the shipping dock. Two of these containers were not marked with the date upon which the waste first began to accumulate;
 - (e) No weekly inspections were performed of the 180 day containers, and the containers were stored less than 3 feet apart between the rows; and
 - (f) No hazardous waste contingency plan was developed nor were the names and numbers of its emergency coordinators and the number for the local fire department, the national response center and the DEM posted near the phones at the Facility. The location of fire extinguishers, spill control equipment and fire alarms were not clearly marked.
- (5) During the inspection on 27 June 2014, Kevin O'Meara, who identified himself as the General Manager, stated that no hazardous waste training or universal waste training was provided to its employees.
- (6) Manifest shipping records maintained by the DEM show that on 11 August 2014 the Respondent shipped 12 drums of hazardous waste offsite to a licensed disposal facility.
- (7) On 31 January 2017, the DEM inspected the Facility. The inspection revealed the following:
- (a) Six 55-gallon containers were stored in the heat treatment area. Of these, 3 were determined to be satellite containers and 3 were determined to be 180 day containers. 2 of the satellite containers were open, 2 of the 180 day containers had incomplete labels and 1 of the 180 day containers was open;
 - (b) Fourteen 55-gallon 180 day containers were stored near the shipping dock. Of these, 9 containers were stored for greater than 180 days and 4 containers were stored less than 3 feet apart between the rows; and
 - (c) No weekly inspections were performed of the 180 day containers.
- (8) No list of agents authorized by Respondent to sign hazardous waste manifests is on file with the DEM.
- (9) Respondent did not receive approval from the DEM to store hazardous waste at the Facility for greater than 180 days

- (10) As of the date of this Notice of Violation (“NOV”), Respondent has failed to demonstrate that it has fully corrected the noncompliance identified in Sections B (4), (5), (7), (8) and (9) 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) **R.I. Gen. Laws Section 23-19.1-10, DEM’s Hazardous Waste Regulations 5.14A and 7B.2 and 40 CFR 270.1(c)** – requiring a person to obtain a permit from the DEM prior to treating, storing or disposing of hazardous waste.
- (2) **DEM’s Hazardous Waste Regulations 5.3 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 5.9A and 5.9D** – requiring that a hazardous waste generator label all satellite containers holding hazardous waste with the words “Hazardous Waste” and other words identifying the contents of the container and keep the containers closed except when actively adding or removing waste.
- (4) **DEM’s Hazardous Waste Regulations 5.14D1 and 5.14B2** – requiring that a hazardous waste generator label each container, excluding satellite containers, holding hazardous waste with the words “Hazardous Waste”, the chemical or common name of the waste and the name, address and EPA identification number of the generating facility; and keeps all containers holding hazardous waste closed except when it is necessary to add or remove waste.
- (5) **DEM’s Hazardous Waste Regulations 5.14B1** – requiring that a hazardous waste generator mark containers holding hazardous waste with the date upon which the waste first began to accumulate.
- (6) **DEM’s Hazardous Waste Regulations 5.14B8** – 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.
- (7) **DEM’s Hazardous Waste Regulations 5.10** – requiring that a hazardous waste generator arrange containers to provide aisle space of no less than 3 feet to allow for the unobstructed movement of personnel, fire protection equipment, spill control equipment and decontamination equipment.
- (8) **DEM’s Hazardous Waste Regulations 5.14H** – requiring that a hazardous waste generator either prepare a hazardous waste contingency plan or designate an emergency coordinator, post the name and telephone number for the emergency

coordinator, post the telephone numbers for the local fire department, the DEM, the National Response Center and the companies environmental contractor near all phones and take immediate steps to clean up any spills or releases of hazardous waste.

- (9) **DEM's Hazardous Waste Regulations 5.14E** – 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.
- (10) **DEM's Hazardous Waste Regulations 5.7** – requiring that a hazardous waste generator submit to the DEM a list of agents authorized by the company to sign uniform hazardous waste manifests for shipments of hazardous waste.

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**:

- (1) Remove all hazardous waste from the Property that has been stored for greater than 180 days using a permitted hazardous waste transporter and ship the hazardous waste to a licensed Treatment, Storage and Disposal Facility (the "Designated Facility") and submit a copy of the uniform hazardous waste manifest signed by the Designated Facility to the DEM's Office of Compliance & Inspection (the "OC&I");
- (2) Collect a representative sample from the 2 containers holding the Sand Blast Material 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 5.3 and submit a copy of the test results to 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;
- (3) Label all satellite containers holding hazardous waste with the words "Hazardous Waste" and other words identifying the contents of the container;
- (4) Keep all containers holding hazardous waste closed except when actively adding or removing waste;
- (5) Label all containers holding hazardous waste, excluding satellite containers, with the words "Hazardous Waste", the chemical or common name of the waste and the name, address and EPA identification number of the generating facility;
- (6) Mark all containers holding hazardous waste, excluding satellite containers, with the date upon which the hazardous waste first began to accumulate;

- (7) 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 3 years;
- (8) Provide adequate aisle space throughout the Facility to allow for the unobstructed movement of personnel and emergency equipment;
- (9) Develop and maintain a hazardous waste contingency plan for the Facility and submit a copy to the OC&I **OR** designate an emergency coordinator, post the name and telephone number for the emergency coordinator, post the telephone numbers for the local fire department, the DEM, the National Response Center and the companies environmental contractor near all phones and take immediate steps to clean up any spills or releases of hazardous waste;
- (10) Provide hazardous waste management training to Facility personnel that manage/handle hazardous waste which is relevant to the positions in which they are employed and submit copies of the training program and attendance sheet to the 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:

\$31,075

- (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 Respondent 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.
- (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 the 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's 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 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, 4TH 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 for Environmental Matters*.

(2) A copy of each request for hearing must also be forwarded to:

Christina Hoefsmit, 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 the 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 (vi) and 42-17.6-4(b) and (c).

- (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) The 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) Christina Hoefsmit at the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey Tyrrell of the DEM's 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

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

Dated: _____

CERTIFICATION

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

Metallurgical Solutions, Inc.
c/o Richard H. Gregory, III, Registered Agent
5 Benefit Street
Providence, RI 02904

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, HAZARDOUS WASTE
 File No.: OCI-HW-14-78
 Respondent: Metallurgical Solutions, Inc.

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
C (1) – Storage	Type I <i>(\$25,000 Max. Penalty)*</i>	Moderate	\$ 6,250	1 violation	\$6,250
C (2) – Determination	Type I <i>(\$25,000 Max. Penalty)*</i>	Minor	\$2,500	1 violation	\$2,500
C (3), (4) & (5) – Open Containers, Labeling & Accumulation Date	Type I <i>(\$25,000 Max. Penalty)*</i>	Minor	\$2,500	3 violations	\$7,500
C (6) & (7) – Weekly Inspection & Aisle Space	Type II <i>(\$12,500 Max. Penalty)</i>	Minor	\$2,500	2 violations	\$5,000
C (8) & (9) – Contingency Plan & Training		Minor	\$2,500	1 violation (Contingency Plan)	\$8,750
		Moderate	\$6,250	1 violation (Training)	
SUB-TOTAL					\$30,000

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

PENALTY MATRIX WORKSHEET

CITATION: Storage
 VIOLATION NO.: C (1)

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
 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's *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** Respondent stored hazardous waste at the Facility for greater than 180 days without first obtaining a permit from the DEM. The DEM's Hazardous Waste Regulations establish time limits allowing generators to temporarily store hazardous waste without a permit. A hazardous waste storage permit requires owners and operators of facilities designated to store and manage hazardous waste to install and maintain safety equipment to minimize the possibility of fires, explosions or unplanned releases involving the waste. The requirement to obtain a hazardous waste storage permit is a major component of the regulatory program.
- (B) **Environmental conditions:** The containers were stored inside at the Facility.
- (C) **Amount of the pollutant:** Five 55-gallon containers holding hazardous waste were observed in 2014 and nine 55-gallon containers holding hazardous waste were observed in 2017.
- (D) **Toxicity or nature of the pollutant:** Barium chloride containing chromium which is a known human carcinogen and when inhaled or ingested is capable of causing tissue damage.
- (E) **Duration of the violation:** The containers observed in 2014 were dated 27 September 2013 (285 days), 14 November 2013 (236 days), 21 December 2013 (2 containers, 199 days) and 4 January 2014 (185 days). The containers observed in 2017 were dated March 2016 (300 days), May 2016 (240 days), 14 May 2016 (255 days), 1 April 2016 (300 days), 7 April 2016 (293 days), 1 January 2016 (395 days), February 2016 (330 days), 15 March 2016 (315 days) and 13 January 2016 (383 days).
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

(continued)

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by storing hazardous waste onsite for greater than 180 days. The DEM has no knowledge on what steps, if any, Respondent has taken to mitigate the noncompliance. The containers observed in 2014 may have been part of the shipment of hazardous waste that was sent to the licensed disposal facility on 11 August 2014.
- (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 and failed to take steps to prevent the occurrence. Respondent was informed at the time of the inspection in 2014 that it was in noncompliance with the DEM's Hazardous Waste Regulations for storing hazardous waste on site for greater than 180 days. Despite this knowledge, the DEM documented during its inspection in 2017 that Respondent was storing 9 containers for far in excess of 180 days.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	<u>X</u> MODERATE	MINOR
--------------	--------------------------	--------------

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: Determination

VIOLATION NO.: C (2)

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's <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 complete a waste determination on spent sand blast material prior to storing it at the Facility. 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 in this case led to the improper disposal of hazardous waste.</p> <p>(B) Environmental conditions: The containers were stored outside at the Facility near a dust collector.</p> <p>(C) Amount of the pollutant: Two containers, one 20-gallon and one 30-gallon.</p> <p>(D) Toxicity or nature of the pollutant: The toxicity of the pollutant is unknown as a result of the failure to complete a waste determination.</p> <p>(E) Duration of the violation: Unknown.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p> <p style="text-align: right;">(continued)</p>		

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by completing a hazardous waste determination prior to storing the material onsite. The DEM has no knowledge on what steps, if any, Respondent has taken to mitigate the noncompliance.
- (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 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:** The DEM inspector informed Respondent of the appropriate steps to mitigate the noncompliance at the time of the inspection in 2014.

MAJOR	MODERATE	<u>X</u> MINOR
--------------	-----------------	------------------------------

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: Open Containers, Container Labeling & Accumulation Date

VIOLATION NO.: C (3), (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		
<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's <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 close and label satellite containers and failed to close and completely label 180 day containers holding hazardous waste. The requirement to close and label containers holding hazardous waste is an integral part of the regulatory program because these requirements reduce 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. Respondent also failed to mark the 180 day containers with the date upon which the waste first began to accumulate. The accumulation start date enables generators and regulatory authorities to track the amount of time hazardous waste is stored at a facility. This requirement is of significant concern to the regulatory program because it helps ensure that hazardous waste is not stored onsite for extended periods of time. Storage exceeding certain time thresholds require the generator to obtain a hazardous waste storage permit.</p> <p>(B) Environmental conditions: The satellite containers were stored outside (and inside) and the 180 day containers were stored inside at the Facility.</p> <p>(C) Amount of the pollutant: In 2014, two 55-gallon satellite containers and eight 55-gallon 180 day containers that were not labeled as required and two of the 180 day containers were not marked with an accumulation start date. In 2017, two of the satellite containers and one of the 180 day containers were open and 2 of the 180 day containers had incomplete labels.</p> <p>(D) Toxicity or nature of the pollutant: Barium chloride containing chromium which is a known human carcinogen and when inhaled or ingested is capable of causing tissue damage.</p> <p>(E) Duration of the violation: Unknown.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		
(continued)		

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by closing, completely labeling and dating the containers holding hazardous waste. The DEM has no knowledge on what steps, if any, Respondent has taken to mitigate the noncompliance. The containers observed in 2014 may have been part of the shipment of hazardous waste that was sent to the licensed disposal facility on 11 August 2014.
- (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 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:** The DEM inspector informed Respondent of the appropriate steps to mitigate the noncompliance at the time of the inspection in 2014.

MAJOR	MODERATE	<u>X</u> MINOR
--------------	-----------------	-----------------------

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: Weekly Inspection & Aisle Space
 VIOLATION NO.: C (6) & (7)

TYPE		
<u> </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> X </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's *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 complete and document weekly inspections of the container storage area near the loading dock. State regulations require generators to inspect areas in which hazardous waste is stored in containers and to maintain written logs documenting the results of the inspections. The requirement for generators to inspect container storage areas enables generators to identify containers that have been damaged or deteriorated as a result of corrosion or other factors providing a safeguard against releases of hazardous waste. Respondent also failed to store the 180 day containers with adequate aisle space. The requirement to provide aisle was established to allow company, emergency response and regulatory personnel access to containers holding hazardous waste to ensure they are in good condition and to respond to spills or releases of waste.
- (B) **Environmental conditions:** The containers were stored indoors near a loading dock at the Facility.
- (C) **Amount of the pollutant:** In 2014, eleven 55-gallon 180 day containers were not inspected weekly and were not stored with adequate aisle space. In 2017, seventeen 55-gallon 180 day containers were not inspected weekly and four 55-gallon 180 day containers were not stored with adequate aisle space.
- (D) **Toxicity or nature of the pollutant:** Barium chloride containing chromium which is a known human carcinogen and when inhaled or ingested is capable of causing tissue damage.
- (E) **Duration of the violation:** Full duration unknown; however, Respondent failed to document weekly container inspections for at least 3 years (based on the 2014 inspection).
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

(continued)

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable steps to prevent the noncompliance by conducting the weekly inspections and storing the containers with adequate aisle space. The DEM has no knowledge on what steps, if any, Respondent has taken to mitigate the noncompliance. The containers observed in 2014 may have been part of the shipment of hazardous waste that was sent to the licensed disposal facility on 11 August 2014.
- (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 was informed at the time of the inspection in 2014 that it was in noncompliance with the DEM's Hazardous Waste Regulations for failing to conduct weekly inspections of the 180 day containers and for storing the containers without adequate aisle space. Despite this knowledge, the DEM documented during its inspection in 2017 that Respondent was storing 17 containers without conducting weekly inspections and was storing 4 containers without adequate aisle space.
- (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
--------------	-----------------	-----------------------

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 \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Contingency Plan and Training

VIOLATION NO.: C (8) & (9)

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's <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 develop and maintain a hazardous waste contingency plan for the Facility and failed to provide hazardous waste management training to employees who work with hazardous waste. State and Federal regulations require small quantity generators to develop a contingency plan or designate an emergency response coordinator and to post contact numbers near all phones in the hazardous waste storage areas. 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. State and Federal regulations also 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 reduce the potential for spills or releases of hazardous waste by teaching employees proper waste handling practices.</p> <p>(B) Environmental conditions: The 180 day containers were stored inside at the Facility.</p> <p>(C) Amount of the pollutant: Eleven 55-gallon 180 day containers were observed in 2014 and seventeen 55-gallon 180 day containers were observed in 2017.</p> <p>(D) Toxicity or nature of the pollutant: Barium chloride containing chromium which is a known human carcinogen and when inhaled or ingested is capable of causing tissue damage.</p> <p>(E) Duration of the violation: Full duration unknown – at least 6 years. The Respondent was unable to produce a copy of a contingency plan and training records for at least 3 years (as of the 2014 inspection) and failed to produce a contingency plan or training records during the 2017 inspection.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		
(continued)		

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable steps to prevent the noncompliance by developing a contingency plan and training its employees. The DEM has no knowledge on what steps, if any, Respondent has taken to mitigate the noncompliance.
- (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 was informed at the time of the inspection in 2014 that it was in noncompliance with the DEM's Hazardous Waste Regulations for failing to develop a contingency plan and failing to train its employees. Despite this knowledge, the DEM documented during its inspection in 2017 that Respondent was storing 17 containers without having developed a contingency plan or training its employees.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The DEM inspector informed the Respondent of the appropriate steps to mitigate the noncompliance at the time of the inspection.

MAJOR	<u> </u> X MODERATE	<u> </u> X MINOR
--------------	------------------------------------	---------------------------------

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 (Training)	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250 \$2,500 (Plan)	\$1,250 to \$2,500	\$250 to \$1,250