

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: New England Testing Laboratory, Inc.

FILE NO.: 2010-65-HW

NOTICE OF VIOLATION

A. Introduction

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

B. Facts

- (1) The subject property is located at 1254 Douglas Avenue, North Providence, Rhode Island (the “Property”). The Property includes a facility that is used to operate a laboratory for testing environmental samples (the “Facility”).
- (2) The Respondent operates the Facility.
- (3) The Respondent is registered with the DEM as a small quantity hazardous waste generator at the Facility pursuant to 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 “New England Testing Lab” with the U. S. Environmental Protection Agency (“EPA”) identification number RID001196591.
- (4) On May 20, 2010 DEM inspected the Facility. The inspection revealed the following:
 - (a) Several dozen plastic containers holding liquid waste generated from the analysis of samples (the “Sample Containers”) located in a building used to store chemical products and hazardous waste (the “Storage Building”).
 - (b) Two unlabeled 5-gallon satellite accumulation containers located in the laboratory holding hazardous waste. One container held spent solvents and the other held spent acid.
 - (c) Three unlabeled 1-gallon containers located in the Storage Building. One container held waste tetrachloroethylene, one container held waste 1,1,2

trichloro-1,1,2 trifluoroethane, and one container held waste sodium hydroxide.

- (d) Nine 55-gallon drums located in the Storage Building labeled hazardous waste. The labels did not include the U.S. Department of Transportation (“USDOT”) shipping name or EPA waste code.
- (e) The Storage Building is located within fifty feet of the property line.
- (f) Universal waste in the form of seven mercury containing lamps located in the Storage Building that were not:
 - (i) Contained in packaging designed to minimize breakage;
 - (ii) Labeled as universal waste; and
 - (iii) Tracked for the length of time the universal waste accumulated.
- (g) The Respondent’s hazardous waste training program:
 - (i) Is directed by employees who are not trained in hazardous waste management procedures;
 - (ii) Does not teach the employees to perform their duties in a way to ensure compliance with 40 CFR;
 - (iii) Does not train all employees who are responsible for hazardous waste management within six months of assuming their current position;
 - (iv) Does not include an annual review of training;
 - (v) Does not include records of the job title, job description, type and amount of training required for the position, and type and amount of training received by the person filling the position; and
 - (vi) Does not include records for all personnel requiring training and for a period of three years for former personnel who were trained.
- (5) During the May 20, 2010 inspection, Joseph Jankowski, the Facility Operations Manager, stated that:
 - (a) The Sample Containers were being held for project purposes and that when the containers were no longer needed they were disposed as waste; and
 - (b) That he conducts weekly inspections of the Storage Building but did not maintain a written log.
- (6) During the May 20, 2010 inspection, the DEM inspector asked to review the hazardous waste contingency plan and Mr. Jankowski produced a document

entitled “Chemical Hygiene Plan, revision dated 10/18/06”. The contingency plan did not contain procedures to:

- (a) Identify the exact source and extent of a spill or release;
- (b) Identify the potential environmental impacts of a spill; or
- (c) Manage waste generated by a spill clean up.

The contingency plan was not sent to the local fire and police departments and the local hospital.

- (7) After the May 20, 2010 inspection the DEM reviewed its records and determined that the Respondent failed to submit to the DEM a list of agents authorized by the company to sign uniform hazardous waste manifests.
- (8) On June 22, 2010 Mr. Jankowski sent an electronic correspondence to DEM. The correspondence described changes made at the Facility to comply with the Hazardous Waste Regulations, including the shipment of a majority of the Sample Containers for disposal.
- (9) As of the date of this Notice of Violation (“NOV”), the Respondent has failed to fully comply with the Hazardous Waste Regulations.

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) **Hazardous Waste Regulation 5.08 and 40 CFR 262.11** – requiring that a hazardous waste generator determine if the waste generated onsite meets the definition of a hazardous waste.
- (2) **Hazardous Waste Regulation 5.04C 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.
- (3) **Hazardous Waste Regulation 5.04A and 40 CFR 262.34(a)(3)** – requiring that a hazardous waste generator label each container, excluding satellite accumulation containers, holding hazardous waste with the words “Hazardous Waste”, the name and address of the generating facility, the USDOT shipping name, and the EPA or Rhode Island waste code.
- (4) **Hazardous Waste Regulation 5.02A and 40 CFR 262.34 (a)(2)** – requiring that a hazardous waste generator mark containers holding hazardous waste with the date upon which the waste first began to accumulate.

- (5) **Hazardous Waste Regulation 5.02A** – 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.
- (6) **Hazardous Waste Regulation 5.02A, 40 CFR 262.34(a)(1), and 40 CFR 265.176** – requiring that a hazardous waste generator store flammable hazardous waste in an area that is at least fifty (50) feet from the facility’s property line.
- (7) **Hazardous Waste Regulation 5.02A, 40 CFR 262.34(a)(4) and 40 CFR 265.51** – requiring that a hazardous waste generator prepare and maintain a contingency plan designed to minimize hazards to human health or the environment from fires, explosions or unplanned releases of hazardous waste or constituents to the air, soil or surface water.
- (8) **Hazardous Waste Regulation 5.02A, 40 CFR 262.34(a)(4) and 40 CFR 265.16** – requiring that a hazardous waste generator provide training to company employees who handle and/or manage hazardous waste and provide employees with a review of the training on an annual basis.
- (9) **Hazardous Waste Regulation 5.09** – 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.
- (10) **Hazardous Waste Regulation 13.06E3(2) and 40 CFR 273.13(d)(1)** – requiring that small quantity handlers of universal waste contain unbroken mercury-containing lamps in packaging that will minimize breakage during normal handling conditions.
- (11) **Hazardous Waste Regulation 13.06F and 40 CFR 273.14** – requiring that a small quantity handler of universal waste properly label or mark the universal waste or the container(s) in which the waste(s) is/are contained.
- (12) **Hazardous Waste Regulation 13.06G and 40 CFR 273.15** – requiring that a small quantity handler of universal waste demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

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) **Within sixty (60) days of receipt of the NOV:**
 - (a) Collect a representative sample from each container holding unidentified waste located in the Storage Building and submit the sample to a third party

laboratory for analysis to determine if the waste meets the definition of hazardous waste in accordance with the requirements of Hazardous Waste Regulation 5.08 and submit a copy of the test results to the DEM Office of Compliance & Inspection (“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 Hazardous Waste Regulations.

- (b) Label all satellite accumulation containers holding hazardous waste with the words “Hazardous Waste” and other words identifying the contents of the container.
- (c) Label all containers holding hazardous waste, excluding satellite accumulation containers, with the words “Hazardous Waste”, the name and address of the generating facility, the USDOT shipping name, the EPA or Rhode Island waste code and the hazardous waste manifest number (prior to being shipped offsite).
- (d) Mark all containers holding hazardous waste, excluding satellite accumulation containers, with the date upon which the hazardous waste first began to accumulate.
- (e) Conduct weekly inspections of the Storage Building looking for leaking containers and signs of deterioration caused by corrosion or other factors and maintain documentation onsite of the inspection of each hazardous waste storage area for a period of at least three (3) years.
- (f) Relocate all storage containers holding flammable hazardous waste to an area that is at least fifty (50) feet away from the Facility’s property line.
- (g) Develop and maintain a hazardous waste contingency plan for the Facility that includes all of the applicable information contained in 40 CFR 265 Subpart D and submit a copy to OC&I.
- (h) 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 OC&I.
- (i) Submit the names and signatures of all agents authorized to sign the uniform hazardous waste manifests to OC&I.
- (j) Place all universal waste into containers designed to prevent breakage during normal handling conditions.
- (k) Properly label and mark all universal waste or containers holding universal waste.

(l) Document the date upon which the universal waste first began to accumulate.

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 One Thousand Five Hundred and Twenty Dollars (\$21,520.00)

(2) The proposed administrative penalty is calculated pursuant to the DEM Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the Director within twenty (20) days of your receipt of this NOV. Payment shall be in the form of a certified check or money order made payable to the "General Treasury - Environmental Response Fund," and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.

(3) Penalties assessed against respondent in this NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

(4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if the Director determines that reasonable efforts have been made to comply promptly with this NOV.

F. Right to Administrative Hearing

(1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Paragraphs B through E above. All requests for hearing MUST:

(a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b),

(b) Be **RECEIVED** by DEM's Administrative Adjudication Division, at the following address, within twenty (20) days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
235 Promenade Street, 3RD Floor
Providence, RI 02908-5767

- (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 M. Bianculli Jr. 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 April, 2011, the within Notice of Violation was forwarded to:

New England Testing Laboratory, Inc.
c/o John D. Manera, Registered Agent
1254 Douglas Avenue
North Providence, RI 02904

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, HAZARDOUS WASTE

File No.: 2010-65-HW

Respondent: New England Testing Laboratory, 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) – General Requirements (Waste Determination)	Type I (\$ <u>25,000</u> Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500.00
C (2), (3) & (4) – Pre-Transport Requirements (Labeling)	Type I (\$ <u>25,000</u> Max. Penalty)*	Minor	\$2,500	3 violations	\$7,500.00
C (5) – Pre-Transport Requirements (Weekly Inspections)	Type II (\$ <u>12,500</u> Max. Penalty)*	Minor	\$1,250	1 violation	\$1,250.00
C (6) - Pre-Transport Requirements (Storage Near Property Line)	Type II (\$ <u>12,500</u> Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500.00
C (7) & (8) – General Facility Standards (Training) and Contingency Plan	Type I (\$ <u>25,000</u> Max. Penalty)*	Minor	\$2,500	2 violations	\$5,000.00
C (10), (11) & (12) – Universal Waste Requirements	Type I (\$ <u>25,000</u> Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500.00
SUB-TOTAL					\$21,250.00

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

ECONOMIC BENEFIT FROM NONCOMPLIANCE

COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT ARE IN COMPLIANCE. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:

- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR
- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.

<i>DESCRIPTION OF BENEFIT</i>	<i>CALCULATION</i>		<i>AMOUNT</i>
<p>Economic Benefit of noncompliance identified by the State of Rhode Island for failing to provide hazardous waste training to employees. The expense associated with providing personnel with required training was derived from the EPA "Estimating Costs for the Economic Benefits of RCRA Noncompliance", updated December 1997.</p> <p>The Economic Benefit gained by the instances of noncompliance was calculated by utilizing an EPA computer model entitled "BEN". The model calculates the economic gain of noncompliance by performing a detailed economic analysis. The dates, dollar amounts and values used in this analysis are as listed in this table.</p>	<ul style="list-style-type: none"> • Profit Status • Filing Status • Initial Capital Investment • One-time Non-depreciable Expense • Annual Expense • First Month of Non-Compliance • Compliance Date • Penalty Due Date • Useful Life of Pollution Control • Equipment Annual Inflation Rate • Discount/Compound Rate 	<p>C-Corporation</p> <p>C-Corporation</p> <p>\$0</p> <p>\$1,800</p> <p>\$0</p> <p>May 20, 2007</p> <p>March 31, 2011</p> <p>March 31, 2011</p> <p>N/A</p> <p>N/A</p> <p>7.8%</p>	<p>\$270.00</p>
<i>SUB-TOTAL</i>			\$270.00

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$21,520.00

PENALTY MATRIX WORKSHEET

CITATION: General Requirements (Waste Determination)
 VIOLATION NO.: C (1)

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: Respondent stored several dozen plastic containers holding liquid waste at the facility without determining if waste 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: The plastic containers holding the uncharacterized liquid wastes were stored in cardboard boxes inside the Storage Building.</p> <p>(C) Amount of the pollutant: Approximately three (3) cubic yards of unidentified waste held in plastic containers.</p> <p>(D) Toxicity or nature of the pollutant: Unknown.</p> <p>(E) Duration of the violation: Unknown.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable steps to prevent the noncompliance. Respondent submitted a document to DEM after the inspection stating that a majority of the containers were shipped off site for disposal; however, no information was provided whether the waste was determined to be 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:** Not relevant.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the occurrence of the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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: Pre-Transport Requirements (Labeling)

VIOLATION NO.: C (2), (3) & (4)

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: Respondent failed to label satellite containers and label and date storage containers holding hazardous waste. The requirement to label and date containers holding hazardous waste are integral parts 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. The requirement to mark containers holding hazardous waste with the accumulation date enables facility personnel and regulatory agencies to ensure compliance with the less than ninety (90) day accumulation time limit for hazardous waste storage.</p> <p>(B) Environmental conditions: Not relevant.</p> <p>(C) Amount of the pollutant: Two 1-gallon satellite accumulation containers holding hazardous waste that were not labeled, three 1-gallon storage containers holding hazardous waste that were not labeled or marked with an accumulation date, and nine 55-gallon containers that had hazardous waste labels that were missing information.</p> <p>(D) Toxicity or nature of the pollutant: The wastes included federally listed hazardous waste containing mixed solvents including, but not limited to tetrachloroethylene, trichloroethylene and methylene chloride. Respondent also identified the waste as a characteristic hazardous waste based on the characteristics of flammability, corrosivity and toxicity.</p> <p>(E) Duration of the violation: Unknown.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable steps to prevent the noncompliance. Respondent submitted a document to DEM after the inspection stating that a majority of the containers were shipped off site for disposal and that the remaining containers were properly labeled.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Not relevant.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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: Pre-Transport Requirements (Weekly Inspections)

VIOLATION NO.: C (5)

TYPE		
<p style="text-align: center;">____ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u>X</u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">____ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondent failed to document weekly inspections of the Storage Building. 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.</p> <p>(B) Environmental conditions: Not relevant.</p> <p>(C) Amount of the pollutant: Three 1-gallon storage containers and nine 55-gallon containers holding hazardous waste.</p> <p>(D) Toxicity or nature of the pollutant: The wastes included federally listed hazardous waste containing mixed solvents including, but not limited to tetrachloroethylene, trichloroethylene and methylene chloride. Respondent also identified the waste as a characteristic hazardous waste based on the characteristics of flammability, corrosivity and toxicity.</p> <p>(E) Duration of the violation: Unknown. At least three (3) years.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable steps to prevent the noncompliance. The Respondent sent a document to DEM after the inspection indicating that it began maintaining written records of the weekly container inspections.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Not relevant.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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

PENALTY MATRIX WORKSHEET

CITATION: Pre-Transport Requirements (Storage Near Property Line)

VIOLATION NO.: C (6)

TYPE		
<p style="text-align: center;">___ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u>X</u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondent failed to store flammable hazardous waste in an area that is greater than fifty (50) feet from the Facility's property line. State and Federal regulations require generators to store containers holding flammable hazardous wastes at least fifty (50) feet from a property line. This requirement is designed to minimize the potential for harm to humans and property located adjacent to the facility by keeping flammable wastes a safe distance from abutting properties.</p> <p>(B) Environmental conditions: Flammable hazardous waste was stored in a building that was located on or near the facility's property line.</p> <p>(C) Amount of the pollutant: Two 1-gallon containers and six 55-gallon containers holding flammable hazardous waste.</p> <p>(D) Toxicity or nature of the pollutant: The wastes included federally listed hazardous waste containing mixed solvents including, but not limited to tetrachloroethylene, trichloroethylene and methylene chloride. Respondent also identified the waste as a characteristic hazardous waste based on the characteristics of flammability, corrosivity and toxicity.</p> <p>(E) Duration of the violation: Unknown.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable steps to prevent the noncompliance. Respondent submitted a document to DEM after the inspection stating that a majority of the containers in the Storage Building were shipped off site for disposal; however, no information was provided whether this included the containers holding flammable 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:** Not relevant.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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

PENALTY MATRIX WORKSHEET

CITATION: General Facility Standards (Training) and Contingency Plan

VIOLATION NO.: C (7) & (8)

TYPE		
<p style="text-align: center;"><u>X</u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p>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: Respondent failed to develop and maintain a complete 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 generators to develop and maintain a contingency plan containing procedures to follow to minimize hazards posed to human health and the environment from fires, explosions or planned or unplanned releases involving hazardous waste. A contingency plan reduces the potential for injury of employees working at the facility and/or response personnel that may be called upon for assistance during a fire, spill or release incident at the facility. 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 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: Flammable hazardous waste was stored in the Storage Building that was located on or near the facility's property line. Respondent also stored unidentified wastes in plastic containers inside the building.</p> <p>(C) Amount of the pollutant: Three 1-gallon containers and nine 55-gallon containers holding hazardous waste and approximately three cubic yards of unidentified waste held in plastic containers in the building.</p> <p>(D) Toxicity or nature of the pollutant: The wastes included federally listed hazardous waste containing mixed solvents including, but not limited to tetrachloroethylene, trichloroethylene and methylene chloride. Respondent also identified the waste as a characteristic hazardous waste based on the characteristics of flammability, corrosivity and toxicity.</p> <p>(E) Duration of the violation: Unknown. At least three (3) years.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable steps to prevent the noncompliance. Respondent submitted a document to DEM after the inspection stating that a majority of the containers in the Storage Building were shipped off site for disposal; however, no information was provided whether this included the containers holding flammable 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:** Not relevant.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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: Universal Waste Requirements
 VIOLATION NO.: C (10), (11) & (12)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.

DEVIATION FROM THE STANDARD
 THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** Respondent failed to properly label and provide an accumulation start date for containers holding universal waste held in storage at the facility. Respondent also failed to place several universal waste items into a container to prevent breakage and/or unplanned releases of waste. Failure to properly label and protect universal wastes from possible breakage poses a threat to the health, safety, and welfare of workers and the environment. Failing to provide an accumulation start date for storage of containers holding universal waste prevents the regulatory program from determining how long universal waste was being stored.
- (B) **Environmental conditions:** Not relevant.
- (C) **Amount of the pollutant:** Seven 8-foot long fluorescent light bulbs.
- (D) **Toxicity or nature of the pollutant:** Fluorescent light bulbs are known to contain mercury which is an element that affects the central nervous system.
- (E) **Duration of the violation:** Unknown.
- (F) **Areal extent of the violation:** Not relevant.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable steps to prevent the noncompliance. Respondent submitted a document to DEM after the inspection stating that the universal waste was placed in appropriate containers and is properly labeled.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Not relevant.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the occurrence of the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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