

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

IN RE: Northland Environmental, LLC

FILE NO.: HW-14-102

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 facility is located at 275 Allens Avenue in the city of Providence, Rhode Island (the “Facility”).
- (2) On 1 December 2007, the DEM issued a permit to the Respondent to operate a Treatment, Storage and Disposal 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”) (the “Permit”).
- (3) The Permit went into effect on 1 December 2007 and expired on 1 December 2012.
- (4) The Respondent submitted a timely Permit reapplication.
- (5) On 29 January 2013, the DEM issued a letter to the Respondent advising the Respondent that the expired Permit remains in full force and effect.
- (6) The Permit requires the Respondent to:
 - (a) Comply with all conditions of the permit;
 - (b) Properly label all containers holding hazardous waste;
 - (c) Keep containers of hazardous waste that are incompatible separated;
 - (d) Remove a tank holding hazardous waste from service if an inspection by a qualified inspector shows that the tank is unfit for use;

- (e) Properly operate and maintain all facilities and systems of treatment and control that are installed or used to achieve compliance with the conditions of the permit;
 - (f) Assign and attach a tracking number to a container prior to moving it to the storage area;
 - (g) Keep containers holding hazardous waste closed except for when adding or removing waste; and
 - (h) Provide annual training to employees who manage hazardous waste.
- (7) On 30 September 2013, the DEM inspected the Facility. The inspection revealed the following:
- (a) Failure to affix a hazardous waste label (or a legible hazardous waste label) to the following containers;

Building 11 Staging Area

- (i) One 55-gallon black metal container holding an unknown waste (as shown in photograph 2 of the DEM's inspection report) (the "BMC-SA");

Building 11 SE Area

- (ii) One 55-gallon blue plastic container holding an unknown waste (as shown in photograph 25 of the DEM's inspection report);

Building 11 Acid Area

- (iii) One 15-gallon blue plastic container with only a "corrosive" label (as shown in photograph 18 of the DEM's inspection report);
- (iv) One 55-gallon blue plastic container holding unknown waste (as shown in photograph 19 of the DEM's inspection report);

Building 11 Reactive Area

- (v) One 5-gallon black plastic container (tracking tag PRO-76534-019, as shown in photograph 29 of the DEM's inspection report); and
- (vi) One 5-gallon white plastic container (as shown in photograph 31 of the DEM's inspection report).

- (b) Failure to mark the following containers with a unique identification (tracking) number prior to storing the containers at the Facility;

Building 11 Staging Area

- (i) One 30-gallon blue metal container holding D001 waste (as shown in photograph 1 of the DEM's inspection report);
- (ii) One 55-gallon black metal container holding concrete sealant (as shown in photographs 3 and 4 of the DEM's inspection report);
- (iii) Three containers of various size (two 55-gallon and one 5-gallon) containers (as shown in photograph 4 of the DEM's inspection report);
- (iv) BCM-SA;
- (v) Four 30-gallon blue plastic containers (as shown in photograph 5 of the DEM's inspection report);
- (vi) Seven 5-gallon white plastic containers (as shown in photographs 5, 7 and 8 of the DEM's inspection report);
- (vii) One 5-gallon white plastic container labeled “non-regulated waste” (as shown in photograph 9 of the DEM's inspection report);
- (viii) One 5-gallon white plastic container labeled “non-hazardous waste” (as shown in photograph 10 of the DEM's inspection report);

Building 11 Acid Area

- (ix) Two 55-gallon black metal containers containing flammable liquid (as shown in photograph 12 of the DEM's inspection report);
- (x) One 55-gallon black metal container holding D008 waste (as shown in photograph 13 of the DEM's inspection report);
- (xi) One 55-gallon black metal container labeled “hazardous waste” and “Battery” (as shown in photograph 14 of the DEM's inspection report);
- (xii) One 5-gallon white plastic container holding lead acid batteries (as shown in photograph 15 of the DEM's inspection report);
- (xiii) One 5-gallon white plastic container with a corrosive label (as shown in photograph 16 of the DEM's inspection report);
- (xiv) Two 5-gallon black plastic containers (as shown in photograph 17 of the DEM's inspection report);

Building 11 Lab Pack Area

- (xv) One black metal aerosol lab pack (as shown in photograph 20 of the DEM's inspection report);
- (xvi) One 30-gallon blue plastic container (as shown in photograph 21 of the DEM's inspection report);
- (xvii) One 5-gallon white plastic container (as shown in photograph 22 of the DEM's inspection report);

Building 11 Reactive Area (Top Dock Tracking Area)

- (xviii) One 15-gallon blue plastic container (as shown in photograph 30 of the DEM's inspection report);

Building 11 Upper Warehouse

- (xix) One T-Pak labeled “filter cake from aluminum” (as shown in photographs 33 and 34 of the DEM's inspection report);
- (xx) Three T-Paks containing metal hydroxide solids D006, D007, D008 and F006;
- (xxi) One 55-gallon container (manifest 006027079FLE);
- (xxii) One T-Pak (also incorrectly labeled manifest 006944320FLE, as shown in photograph 35 of the DEM's inspection report); and

Building 4: East Side of Allens Avenue

- (xxiii) One 55-gallon white plastic container (as shown in photograph 38 of the DEM's inspection report).

(c) Failure to properly label the following containers;

Building 11 Staging Area

- (i) One 5-gallon white plastic container holding D008 waste, no bar code no manifest number (as shown in photograph 8 of the DEM's inspection report);
- (ii) One 30-gallon blue plastic container with a corrosive label (facility label indicated that the container is an oxidizer) and no manifest number (as shown in photograph 23 of the DEM's inspection report);
- (iii) One 55-gallon black metal container labeled as “hazardous waste”, but also marked as “non RCRA regulated material” (as shown in photograph 24 of the DEM's inspection report); and

Building 4: East Side of Allens Avenue

- (iv) A quantity of at least 32 boxes labeled “Kodak Ektacolor” no document shipping number (as shown in photographs 39 and 40 of the DEM’s inspection report).
 - (d) Failure to store apart two 15-gallon blue containers, one containing water reactive hazardous waste and the other containing flammable hazardous waste in Building 11 SE Area (as shown in photograph 26 of the DEM’s inspection report);
 - (e) Failure to keep closed one 55-gallon black metal container holding hazardous waste in Building 11 Reactive Area while the generator was not adding or removing waste (as shown in photograph 28 of the DEM’s inspection report);
 - (f) Failure to have three of the personnel that manage hazardous waste at the Facility take the annual 8 hour hazardous waste training program within the last year; and
 - (g) Failure to replace two tanks (S-21A and S-21B) in accordance with the recommendation of a tank inspection engineer in reports dated 9 July 2012 and 10 July 2012 (the "Tank Inspection Reports").
- (8) As of the date of this Notice of Violation (“NOV”), the Respondent has failed to demonstrate that it is in compliance with the Permit for the issues described in Section B (7) 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) **DEM’s Hazardous Waste Regulations 7.0B, 40 CFR §270.30(a), and the Compliance Section of the Permit**– requiring that the permittee comply with all the conditions of the permit.
- (2) **DEM’s Hazardous Waste Regulation 8.1A.40, Conditions 5 and 34 of the Permit, and Sections 3.32.1(2) and 3.32.1(5) of the Permit** – requiring that the permittee label the side of containers holding hazardous waste with the words “hazardous waste”, the generator’s name and address, the Environmental Protection Agency or Rhode Island waste number, and a unique ID (tracking) number and inspect containers and the labels prior to acceptance at the Facility.
- (3) **DEM’s Hazardous Waste Regulations 8.1, 40 CFR §264.173(a), Condition 5 of the Permit, and Sections 3.32.1 and 4.23(8) of the Permit**- requiring that a container holding hazardous waste always be closed during storage or moving operations, except when adding or removing waste.

- (4) **DEM's Hazardous Waste Regulations 8.1, 40 CFR §264.177(c) and §264.17(a), Conditions 4 and 5 of the Permit, and Sections 4.23(5) and 4.30 of the Permit-** requiring that a storage container holding a hazardous waste that is incompatible with any waste nearby in other containers must be separated from other materials by means of a dike, berm wall or other device and the permittee must take precautions to prevent accident ignition or reaction of ignitable or reactive waste.
- (5) **DEM's Hazardous Waste Regulations 8.1A(44), 40 CFR §264.191(d), §264.196, and Conditions 4, 5 and 33 of the Permit -** requiring that if, as a result of an assessment conducted by an independent qualified registered engineer, a tank system is found to be leaking or unfit for use, the permittee must properly remove the tank from service.
- (6) **DEM's Hazardous Waste Regulations 8.1, 40 CFR §264.16 (c), and Conditions 5 and 27 of the Permit -** requiring that personnel that manage hazardous waste must take part in an annual review of the initial training.

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 thirty 30 days of receipt of the NOV:**

- (1) Complete the replacement of tanks S-21A and S-21B and all other repair work in accordance with the DEM's Hazardous Waste Regulations and the Tank Inspection Reports;
- (2) Submit documentation to the DEM's Office of Waste Management ("OWM") demonstrating that all personnel that manage hazardous waste have completed the annual 8 hour training; and
- (3) Submit a letter to the OWM stating that the Facility is now in full compliance with its Permit for the issues raised in the NOV.

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:

\$63,750

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

F. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM'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, 2ND Floor
Providence, RI 02903

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
- (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Rule 7.00(b) of the DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters*.

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

Joseph J. LoBianco, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767

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

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

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

FOR THE DIRECTOR

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

Date: _____

CERTIFICATION

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

Northland Environmental, LLC
C/o CT Corporation System, Registered Agent
450 Veterans Memorial Parkway, Suite 7A
East Providence, RI 02914

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, HAZARDOUS WASTE
 File No.: HW-14-102
 Respondent: Northland Environmental, LLC

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) and C(2) - Failure to comply with the permit [labeling and tracking number]	Type I (\$25,000 Max. Penalty)*	Major	\$25,000	1 violation	\$25,000
C(1) and C(3) - Failure to comply with the permit [container management - incompatible waste storage and open container]	Type I (\$25,000 Max. Penalty)*	Moderate	\$12,500	1 violation (incompatible waste)	\$12,500
		Minor	\$6,250	1 violation (open container)	\$6,250
C(1) and C(4) - Failure to comply with the permit [tank management]	Type I (\$25,000 Max. Penalty)*	Moderate	\$6,250	2 violations	\$12,500
C(1) and C(5) - Failure to comply with the permit [annual training]	Type II (\$12,500 Max. Penalty)*	Moderate	\$2,500	3 violations	\$7,500
SUB-TOTAL					\$63,750

*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 Respondent has either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot 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 = \$63,750

PENALTY MATRIX WORKSHEET

CITATION: Failure to comply with the permit [labeling and tracking number]

VIOLATION NO.: C (1) and (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.		
<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: The Respondent failed to: (1) label certain containers; (2) label completely certain containers; or (3) mark certain containers with a unique identification (tracking) number prior to storing the containers at the facility. The requirement to label containers holding hazardous waste is an integral part of the regulatory program because this requirement reduces the potential for mismanagement of hazardous waste. Proper labeling of hazardous waste containers provides important information regarding the chemical properties of the waste for emergency responders who may be called to a facility during a fire, spill or release and enables facility personnel and regulatory agencies to ensure compliance with accumulation time limits contained within the permit. Marking every container with a unique identification number upon receipt that is associated with the hazardous waste manifest for each shipment is a requirement of the permit.</p> <p>(B) Environmental conditions: Considered, but not utilized for this calculation.</p> <p>(C) Amount of the pollutant: 86 containers. Of these, thirteen are 55-gallon containers, seven are 30-gallon containers, two are 15-gallon containers, and eighteen are 5-gallon containers [total volume of 1045 gallons]; 32 are various sized containers [Kodak Ektacolor] and five are 1-cubic yard T-Paks.</p> <p>(D) Toxicity or nature of the pollutant: Unknown for some of the containers that were not identified as to the content. The containers that could be identified contained at least sealant, corrosives, D001, D006, D007, D008, metal hydroxide, aluminum filter cake, flammables, batteries and lead acid batteries.</p> <p>(E) Duration of the violation: Considered, but not utilized for this calculation.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to properly label the containers and comply with the permit.
- (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 15 March 2012, the EPA issued an administrative complaint to the Respondent for alleged violations that were identified during inspections of the facility in July 2009, which included the failure to label containers.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violation, and the violation was foreseeable.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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

PENALTY MATRIX WORKSHEET

CITATION: Failure to comply with the permit [container management- incompatible waste storage and open container]

VIOLATION NO.: C (1) and (3)

TYPE		
<p style="text-align: center;"><u>X</u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM'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: The Respondent failed to comply with the permit by keeping separate containers holding incompatible waste and ensuring that a container was closed except for when adding or removing waste.</p> <p>(B) Environmental conditions: Considered, but not utilized for this calculation.</p> <p>(C) Amount of the pollutant: 165 gallons. Two 55-gallon containers (incompatible hazardous waste) and one 55-gallon container (open lid).</p> <p>(D) Toxicity or nature of the pollutant: The incompatible hazardous waste containers held a water reactive waste and a flammable waste and the open container held sodium hydrosulfite and sodium dithionite.</p> <p>(E) Duration of the violation: Considered, but not utilized for this calculation.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p> <p style="text-align: right; margin-top: 20px;">(continued)</p>		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to take reasonable and appropriate steps to prevent the violation by keeping separate incompatible hazardous waste and ensuring that containers in storage remained closed except for when adding or removing 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 15 March 2012, the EPA issued an administrative complaint to the Respondent for alleged violations that were identified during inspections of the facility in July 2009, which included the failure to properly store water reactive wastes and failing to keep closed containers holding hazardous waste, except for when adding or removing waste.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violation, and the violation was foreseeable.
- (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	<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 \$12,500 (incompatible waste)	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250 \$6,250 (open container)	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to comply with the permit [tank management]

VIOLATION NO.: C (1) and (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		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
FACTORS CONSIDERED: Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i>		
(A) The extent to which the act or failure to act was out of compliance: The Respondent failed to comply with the permit by replacing 2 tanks holding hazardous waste in accordance with the recommendation of the tank inspector. The tank inspector's report dated 9 June 2012 recommended that tanks S-21A and S-21B be replaced within 1 year, as well as work needed on other tanks. Following these reports are important to the regulatory program, as it shows that the Respondent is operating the facility in a way that minimizes spills and releases.		
(B) Environmental conditions: Considered, but not utilized for this calculation		
(C) Amount of the pollutant: 11,200 gallons - each tank holds 5600 gallons.		
(D) Toxicity or nature of the pollutant: The tanks hold acid wastes.		
(E) Duration of the violation: Considered, but not utilized for this calculation.		
(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:** The Respondent failed to take reasonable and appropriate steps to prevent the violation by replacing the tanks as recommended by the tank inspector in his 9 June 2012 report.
- (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 15 March 2012, the EPA issued an administrative complaint to the Respondent for alleged violations that were identified during inspections of the facility in July 2009, which included the failure to manage hazardous waste tanks in accordance with 40 CFR.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violation, and the violation was foreseeable.
- (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
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500 \$6,250	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failing to comply with the permit [annual training]

VIOLATION NO.: C (1) and (5)

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.		
<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: The Respondent failed to provide annual training to those employees that manage hazardous waste at the facility. Hazardous waste management training is important to the regulatory program, as it instructs those managing hazardous waste how to properly, store, treat and dispose hazardous waste; and it instructs those managing hazardous waste how to respond during emergency spills and releases.</p> <p>(B) Environmental conditions: Considered, but not utilized for this calculation.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: The types of hazardous waste that the employees manage at the facility include flammable, corrosive, reactive and listed wastes.</p> <p>(E) Duration of the violation: Full duration unknown - at least 6 months. Three employees had not attended the 8 hour annual hazardous waste management training since March 21, 2012, as of the DEM's inspection of the facility on 30 September 2013.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to take reasonable and appropriate steps to prevent the violation by ensuring that the three employees that manage hazardous waste at the facility attended the 8 hour annual refresher training for hazardous waste management.
- (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 15 March 2012, the EPA issued an administrative complaint to the Respondent for alleged violations that were identified during inspections of the facility in July 2009, which included the failure to provide adequate training to staff.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violation, and the violation was foreseeable.
- (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
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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 \$2,500	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250