

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Erlin Guerrero
Albino Folcarelli
dba Sayles Collision Center**

FILE NO.: OCI-HW-15-71

AMENDED NOTICE OF VIOLATION

A. Introduction

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

B. Facts

- (1) The property is located at 103 Sayles Street in the City of Providence, Rhode Island. The property includes a facility used for auto body repair services (the “Facility”).
- (2) Respondents own and operate the Facility.
- (3) On 5 June 2015, the DEM inspected the Facility. The inspection revealed the following:
 - (a) Seven 5-gallon containers in the Paint Mix Room that were full of paint waste and unlabeled; and
 - (b) One 55-gallon container in the Main Auto Body Repair Area, about ¾ full of used oil, which was unlabeled and open.
- (4) During the inspection, the DEM inspector spoke with Erlin Guerrero (“Guerrero”), who identified himself as the owner of the Facility. Guerrero provided the following information:
 - (a) Based on product knowledge, the paint waste that the Facility generates is hazardous waste;
 - (b) The paint waste is transported to Providence Lacquer;
 - (c) No hazardous waste manifests for the transport of hazardous waste are available;

- (d) Used oil is transported to El Maestro Towing for heating purposes;
 - (e) No records of shipments of used oil are available;
 - (f) The Facility has no Environmental Protection Agency ("EPA") identification number for the generation of hazardous waste;
 - (g) The Facility has no written hazardous waste contingency plan;
 - (h) The Facility has no: employee on site or on call to act as an emergency coordinator; emergency contact information posted near the hazardous waste storage areas; and clearly marked location for fire extinguishers, spill control equipment and fire alarms; and
 - (i) The Facility has provided no hazardous waste training to its employees.
- (5) Review of records maintained by the DEM after the inspection revealed the following:
- (a) Providence Lacquer has no license to accept hazardous waste; and
 - (b) El Maestro Towing has no license to accept used oil.
- (6) The Facility is not authorized by the DEM or the EPA to transport hazardous waste or used oil.
- (7) The DEM determined that the Facility is a small quantity generator of hazardous waste ("SQG").
- (8) On 7 November 2016, the DEM issued a Notice of Violation (the "2016 NOV") to Guerrero dba Sayles Collision Center for the issues of noncompliance described above. On 10 November 2016, the 2016 NOV was delivered to an individual at the Facility; however, it is unclear whether Guerrero received the 2016 NOV.
- (9) On 7 August 2018, the DEM inspected the Facility and spoke with Guerrero and Albino Folcarelli at the time of the inspection. The inspection revealed the following:
- (a) One open black steel 55-gallon container holding approximately 27 gallons of hazardous waste (in the form of spent lacquer thinner) that was open and not labeled;
 - (b) Respondents are using a distillation unit to recycle the spent lacquer thinner onsite;
 - (c) Respondents transported used oil to an AutoZone facility for recycling and did not keep a written record;

- (d) Respondents had not provided hazardous waste management training to their employees who handle waste; and
 - (e) Respondents did not prepare a contingency plan.
- (10) As of the date of this Notice of Violation (“NOV”), Respondents have failed to provide any documents to the DEM to demonstrate that they have addressed the issues of noncompliance described 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) **Rhode Island Code of Regulations titled *Rules and Regulations for Hazardous Waste Management (250-RICR-140-10-1)* (the “Hazardous Waste Regulations”) 5.14I (recently amended to Part 1.7.13(J)(1)), 6.2A (recently amended to Part 1.8.2(A)), 15.4 G (recently amended to Part 1.16.4(A)(7)), 15.7D (recently amended to Part 1.16.7(A) and Part 1.16.7(D)) and Title 40 of the Code of Federal Regulations (“40 CFR”) 263.11 – prohibiting the transport of hazardous waste or used oil without a hazardous waste or used oil transporter permit and an EPA identification number and requiring that used oil generators ensure that their used oil is shipped off-site by a used oil transporter who is permitted by the DEM.**
- (2) **Hazardous Waste Regulations 5.2A (recently amended to Part 1.7.2(A)(1)) and 5.14I (recently amended to Part 1.7.13(J)(1)) – prohibiting the shipping of hazardous waste to a facility not licensed by the DEM and that does not have an EPA identification number to accept hazardous waste.**
- (3) **Hazardous Waste Regulations 15.2H (recently amended to Part 1.16.2(A)(8)), 5.14I (recently amended to Part 1.7.13(J)(1)) and 15.7G (recently amended to Part 1.16.7(G)(1)) – prohibiting the shipment of used oil to a facility that has not notified the DEM of its used oil activity and/or obtained the appropriate letter of authorization or permit.**
- (4) **Hazardous Waste Regulations 5.4 (recently amended to Part 1.7.4) – requiring that a hazardous waste generator apply for and obtain an EPA identification number prior to shipping hazardous waste offsite.**
- (5) **Hazardous Waste Regulations 15.4G3 (recently amended to Part 1.16.7(G)(3)) – requiring used oil transporters to keep a record of each used oil shipment accepted for transport for a period of at least 3 years.**

- (6) **Hazardous Waste Regulations 5.9A (recently amended to Part 1.7.8(A)(1) and Part 1.7.8(A)(4))** – requiring that a hazardous waste generator keep closed and label all satellite accumulation containers holding hazardous waste with the words “Hazardous Waste” and other words identifying the contents of the container.
- (7) **Hazardous Waste Regulations 15.4A3 (recently amended to Part 1.16.4(A)(1)(c))** – requiring that a used oil generator label all containers holding used oil with the words “Used Oil”.
- (8) **Hazardous Waste Regulations 15.4A5 (recently amended to Part 1.16.4(A)(1)(e))** – requiring that a used oil generator keep containers holding used oil closed except when adding or removing used oil.
- (9) **Hazardous Waste Regulations 5.2B (recently amended to Part 1.7.2(A)(2)) and 5.14I (recently amended to Part 1.7.13(J)(1))** – prohibiting a hazardous waste generator from shipping hazardous waste off-site for treatment or disposal or recycling without first completing a manifest approved by the EPA.
- (10) **Hazardous Waste Regulations 5.14H (recently amended to Part 1.7.13(I)(1))**– requiring that an SQG prepare and maintain a contingency plan or have one employee designated as an emergency coordinator onsite at all times; post the name and telephone number of the emergency response coordinator, local fire department, DEM’s phone numbers and the company’s environmental contractor near all telephones in the hazardous waste storage area; mark the location of all fire extinguishers, spill control equipment and fire alarms and take immediate action to clean up any spills or releases of hazardous waste.
- (11) **Hazardous Waste Regulations 5.14E (recently amended to Part 1.7.13(F))** – requiring that a hazardous waste generator provide training to all employees who handle and/or manage hazardous waste.
- (12) **Hazardous Waste Regulations 5.8 (recently amended to Part 1.7.7(A)(4) and Part 1.7.7(B))** – requiring that a hazardous waste generator maintain records regarding hazardous waste management training for previous employees and current personnel.

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) **IMMEDIATELY** begin shipping hazardous waste generated by the Facility using a licensed hazardous waste transporter to a licensed hazardous waste treatment, storage and disposal facility.
- (2) **IMMEDIATELY** begin shipping used oil generated by the Facility using a licensed used oil transporter to a facility licensed to accept used oil.

(3) **Within 30 days of receipt of the NOV:**

- (a) Close and label all satellite accumulation containers holding hazardous waste with the words "Hazardous Waste" and other words identifying the contents of the container;
- (b) Label all containers holding used oil with the words "Used Oil";
- (c) Close and keep closed all containers holding used oil except when adding or removing waste;
- (d) Submit a completed EPA Form 8700-12 to the DEM's Office of Compliance & Inspection ("OC&I") to obtain an EPA identification number;
- (e) Develop and maintain a hazardous waste contingency plan for the Facility that includes all the applicable information contained in 40 CFR 265 Subpart D and submit a copy to the OC&I;
- (f) Provide hazardous waste management training to Facility employees 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;
- (g) Develop and maintain records regarding the job title, job description, type and amount of hazardous waste management training required for the Facility's job positions and type and amount of training received by persons in these positions for all employees who handle or manage hazardous waste and submit copies of the records to the OC&I;
- (h) Begin keeping completed copies of all hazardous waste manifests generated at the Facility and submit the appropriate copy to the DEM's Office of Waste Management; and
- (i) Begin keeping records of all used oil shipments from the Facility and maintain the records for a period of at least 3 years.

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:

\$43,056

- (2) The proposed administrative penalty is calculated pursuant to the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* 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 Respondents 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 DEM 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 O above. All requests for hearing MUST:
 - (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);
 - (b) Be **RECEIVED** by the DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of the 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, Room 350
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 Part 1.7B of the Rhode Island Code of Regulations titled *Rules and Regulations for the Administrative Adjudication Division (250-RICR-10-00-1)*.
- (2) A copy of each request for hearing must also be forwarded to:
- Tricia Quest, 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 regarding 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) Tricia Quest of 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, Administrator
Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

Erlin Guerrero
dba Sayles Collision Center
103 Sayles Street
Providence, Rhode Island 02905

Albino Folcarelli
dba Sayles Collision Center
103 Sayles Street
Providence, Rhode Island 02905

by Hand Delivery.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, HAZARDOUS WASTE

File No.: OCI-HW-15-71

Respondents: Erlin Guerrero and Albino Folcarelli dba Sayles Collision Center

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) – Transport of Hazardous Waste and Used Oil Without a License	Type I <i>(\$25,000 Max. Penalty) *</i>	Major	\$12,500	1 violation	\$12,500
C (2) & (3) – Transport of Hazardous Waste and Used Oil to an Unapproved Facility	Type I <i>(\$25,000 Max. Penalty) *</i>	Major	\$12,500	1 violation	\$12,500
C (4) – EPA ID Number	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$2,500	1 violation	\$2,500
C (5) & (9) – Recordkeeping	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$2,500	2 violations	\$5,000
C (6), (7) and (8) – Container Management	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$2,500	2 violations	\$5,000
C (10), (11) & (12) – Contingency Plan and Training	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$2,500	2 violations	\$5,000
SUB-TOTAL					\$42,500

*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 COMPLY. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:

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

DESCRIPTION OF BENEFIT	CALCULATION		AMOUNT
<p>Economic benefit of noncompliance identified by the DEM for failing to develop a contingency plan and for failing to provide hazardous waste training to employees. The expenses associated with the development of a contingency plan and provide training were derived from the EPA <i>Estimating Costs for the Economic Benefits of RCRA Noncompliance</i>, updated December 1997.</p> <p>The economic benefit was determined from an EPA model that performs 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 ▪ First Month of Noncompliance ▪ 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>\$4,814</p> <p>June 2013 – Contingency Plan June 2013 - Training</p> <p>June 15, 2016</p> <p>June 15, 2016</p> <p>N/A</p> <p>N/A</p> <p>7.8%</p>	<p>\$556</p>
SUB-TOTAL			\$556

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= \$43,056

PENALTY MATRIX WORKSHEET

CITATION: Transport of Hazardous Waste and Used Oil Without a License
 VIOLATION NO.: C (1)

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;"><u> </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> </u> 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>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10A.1.b of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents transported hazardous waste and used oil without a hazardous waste or used oil transporter license or EPA identification number and failed to ensure that the used oil was shipped off-site by a used oil transporter who is permitted by the DEM. (2) Environmental conditions: Considered, but not utilized for this calculation. (3) Amount of the pollutant: Unknown. (4) Toxicity or nature of the pollutant: Respondents generate paint related hazardous waste and used oil. (5) Duration of the violation: Approximately 5½ years – Respondents have been transporting hazardous waste and used oil from this location since it began operating on or about June 2013. (6) Areal extent of the violation: Considered, but not utilized for this calculation <p style="text-align: right; margin-top: 20px;">(continued)</p>		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable and appropriate steps to prevent the violation by transporting hazardous waste and used oil without the appropriate DEM or EPA approval. The DEM has received no information that Respondents have since complied with this requirement.
- (8) **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.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondents, as the hazardous waste and used oil generator, had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (10) **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 \$12,500	\$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: Transport of Hazardous Waste and Used Oil to an Unapproved Facility
 VIOLATION NO.: C (2) & (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;"><u> </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> </u> 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>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10A.1.b of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents shipped hazardous waste and used oil to facilities not approved by the DEM or EPA to accept hazardous waste or used oil. (2) Environmental conditions: Considered, but not utilized for this calculation. (3) Amount of the pollutant: Unknown. (4) Toxicity or nature of the pollutant: Respondents generate paint related hazardous waste and used oil. (5) Duration of the violation: Approximately 5½ years – Respondents have been shipping hazardous waste and used oil from this location to non-permitted facilities since it began operating on or about June 2013. (6) Areal extent of the violation: Considered, but not utilized for this calculation <p style="text-align: right; margin-top: 20px;">(continued)</p>		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable and appropriate steps to prevent the violation by shipping hazardous waste and used oil to facilities not authorized by DEM or EPA to accept hazardous waste or used oil. The DEM has received no information that Respondents have since complied with this requirement.
- (8) **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.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondents, as the hazardous waste and used oil generator, had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (10) **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 \$12,500	\$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: EPA ID Number
 VIOLATION NO.: C (4)

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><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10A.1.b of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents failed to notify DEM of its regulated waste activity and failed to obtain an EPA identification number prior to storing and shipping hazardous waste. State and Federal regulations require generators to apply for and obtain an EPA identification number prior to storing or shipping hazardous waste offsite. The EPA identification number enables generators and regulatory agencies to track shipments of hazardous waste to ensure proper management and disposal. (2) Environmental conditions: Considered, but not utilized for this calculation. (3) Amount of the pollutant: Full amount unknown – at the time of the June 5, 2015 inspection the Facility had seven 5-gallon containers holding hazardous waste that were full, and one 55-gallon container holding used oil about ¾ full and at the time of the August 7, 2018 inspection the Facility had one 55-gallon container holding hazardous waste about ½ full. (4) Toxicity or nature of the pollutant: Respondents generate paint related hazardous waste and used oil. (5) Duration of the violation: Approximately 5½ years – Respondents have been generating hazardous waste and used oil at this location since it began operating on or about June 2013 without an EPA identification number. (6) Areal extent of the violation: Considered, but not utilized for this calculation 		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable and appropriate steps to prevent the violation by obtaining an EPA identification number. Respondents have failed to mitigate the noncompliance by obtaining an EPA identification number.
- (8) **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.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondents, as the hazardous waste and used oil generator, had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered but not utilized for this calculation.

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

PENALTY MATRIX WORKSHEET

CITATION: Recordkeeping

VIOLATION NOs.: C (5) & (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.

FACTORS CONSIDERED:

Taken from Part 1.10A.1.b of the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)*

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents failed to keep records of each used oil shipment for at least 3 years and failed to complete a hazardous waste manifest prior to shipping hazardous waste offsite. The hazardous waste manifest enables generators and regulatory agencies to track shipments of hazardous waste to ensure proper management and disposal. Keeping records of used oil shipments are an important part to the regulatory program.
- (2) **Environmental conditions:** Considered, but not utilized for this calculation.
- (3) **Amount of the pollutant:** Unknown.
- (4) **Toxicity or nature of the pollutant:** Respondents generate paint related hazardous waste and used oil.
- (5) **Duration of the violation:** Approximately 5½ years – Respondents have been generating hazardous waste and used oil at this location since it began operating on or about June 2013 without completing a hazardous waste manifest for the shipment of hazardous waste and without keeping records of used oil shipments.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable and appropriate steps to prevent the violation by maintaining hazardous waste manifests and shipping documents. The DEM has received no information that Respondents have since complied with these requirements.
- (8) **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.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondents, as the hazardous waste and used oil generator, had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (10) **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> </u> X 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: Container Management
 VIOLATION NO.: C (6), (7) & (8)

TYPE		
<u> X </u> TYPE I DIRECTLY related to protecting health, safety, welfare or environment.	<u> </u> TYPE II INDIRECTLY related to protecting health, safety, welfare or environment.	<u> </u> TYPE III INCIDENTAL 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 Part 1.10A.1.b of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents failed to label and close satellite accumulation containers holding hazardous waste and used oil. The requirement to label containers holding hazardous waste and used oil is an integral part of the regulatory program because this requirement reduces the potential for mismanagement of waste. Proper labeling and closure of 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. (2) Environmental conditions: Considered, but not utilized for this calculation. (3) Amount of the pollutant: At the time of the 5 June 2015 inspection, the Facility had seven 5-gallon containers that were holding hazardous waste that were full with no labels and one 55-gallon container holding used oil about $\frac{3}{4}$ full, open with no label. At the time of the 7 August 2018 inspection, the facility had one 55-gallon container about $\frac{1}{2}$ full, holding used thinner that was open and not labeled. (4) Toxicity or nature of the pollutant: Respondents generate paint related hazardous waste and used oil. (5) Duration of the violation: Full duration unknown – at least 3 $\frac{1}{2}$ years. Violation first documented by the DEM on 5 June 2015. (6) Areal extent of the violation: Considered, but not utilized for this calculation 		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable and appropriate steps to prevent the violation by storing hazardous waste without identifying labels and in an open container and storing used oil in an open container without identifying labels. The DEM has received no information that Respondents have since complied with these requirements.
- (8) **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.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondents, as the hazardous waste and used oil generator, had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (10) **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> </u> X <u> </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: Contingency Plan and Training
 VIOLATION NOs.: C (10), (11) & (12)

TYPE		
<u> X </u> TYPE I DIRECTLY related to protecting health, safety, welfare or environment.	<u> </u> TYPE II INDIRECTLY related to protecting health, safety, welfare or environment.	<u> </u> TYPE III INCIDENTAL 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 Part 1.10A.1.b of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents failed to develop 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 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 and/or response personnel that may be called upon for assistance during a fire, spill or release incident. State and Federal regulations require generators to provide hazardous waste training 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. (2) Environmental conditions: Considered, but not utilized for this calculation. (3) Amount of the pollutant: Full amount unknown – at the time of the June 5, 2015 inspection the Facility had seven 5-gallon containers holding hazardous waste that were full, and one 55-gallon container holding used oil about ¾ full and at the time of the August 7, 2018 inspection the Facility had one 55-gallon container holding hazardous waste about ½ full. (4) Toxicity or nature of the pollutant: Respondents generate paint related hazardous waste and used oil. (5) Duration of the violation: Approximately 5 ½ years – Respondents have been generating hazardous waste and used oil at this location since it began operating on or about June 2013 without a contingency plan or hazardous waste training of its employees. (6) Areal extent of the violation: Considered, but not utilized for this calculation 		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents failed to take reasonable and appropriate steps to prevent the violation by preparing a contingency plan and providing training. The DEM has received no information that Respondents have since complied with these requirements.
- (8) **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.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondents, as the hazardous waste and used oil generator, had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (10) **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> </u> X 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