

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: WAL, Inc.**

**FILE NO.: 2010-77-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 438 West Fountain Street, Providence, Rhode Island (the "Property"). The Property includes a building that is operated as a custom paint manufacturing and retail sale facility (the "Facility").
- (2) The Facility is operated by WAL, Inc. (d/b/a Werner Sullivan & Nilsson, Inc).
- (3) On July 15, 2010, DEM inspected the Facility. The inspection revealed the following:
  - (a) Liquid flammable hazardous waste in the form of waste auto body paints and paint thinners stored on the loading dock of the Facility. The waste was comprised of two 55-gallon drums, one 30-gallon drum, and one 20-gallon drum holding paint thinner (collectively, the "Drums"), and five wooden pallets on which were various sized containers of paint (collectively, the "Containers");
  - (b) The waste in the Drums and in an unknown number of containers was generated at the Facility;
  - (c) The waste in an unknown number of Containers was received from the Respondent's customers and stored at the Facility;
  - (d) The Drums and Containers were not labeled, did not have secondary containment, and did not have adequate aisle space;
  - (e) The Drums and Containers were stored at the Facility greater than ninety (90) days; and

- (f) One fire extinguisher was present at the loading dock. The extinguisher had not been inspected since January of 2008.
- (4) During the July 15, 2010 inspection, Dennis Caraccia, the Facility General Manager, stated that the Respondent did not:
  - (a) Conduct weekly inspections of the Drums and Containers; or
  - (b) Have a written hazardous waste contingency plan; or
  - (c) Provide hazardous waste management training to its employees.
- (5) After the July 15, 2010 inspection the DEM reviewed its records and determined that the Respondent failed to:
  - (a) Apply for and obtain a U.S Environmental Protection Agency (“EPA”) identification number as a hazardous waste generator; and
  - (b) Submit to the DEM a list of agents authorized to sign hazardous waste manifests.
- (6) On July 23, 2010, DEM received copies of two hazardous waste manifests submitted by the Respondent via electronic mail. The manifests documented the shipment to a licensed treatment, storage and disposal facility of twelve 55-gallon containers described as holding approximately five thousand sixty five (5,065) pounds of waste paint related material, paint thinners, removing agents and aerosol cans and assigned the EPA waste numbers D001, D002, D035, F003, F005, U080, and U235.
- (7) As of the date of this Notice of Violation (“NOV”), the Respondent has failed to fully comply with the DEM’s Rules and Regulations for Hazardous Waste Management (the “Hazardous Waste Regulations”).
- (8) The Respondent did not receive approval from DEM to receive and store hazardous waste on the Property.

C. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) **R.I. Gen. Laws Section 23-19.1-10, Hazardous Waste Regulation 7.0B1 and 7.0B2, and Title 40 of the Code of Federal Regulations (“40 CFR”) 270.1(b) and (c)** – prohibiting the storage of hazardous waste at a facility, except for waste generated at the facility, without a permit from DEM.
- (2) **Hazardous Waste Regulation 5.1 and 40 CFR 262.12** – requiring that a hazardous waste generator apply for and obtain an EPA identification number.
- (3) **Hazardous Waste Regulation 5.4A 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 U.S. Department of Transportation shipping name, the EPA or Rhode Island waste code and the hazardous waste manifest number (prior to being shipped offsite).
- (4) **Hazardous Waste Regulation 5.2A 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 5.2A and 40 CFR 264.175** – requiring that a hazardous waste generator provide a containment system for all drums and containers holding liquid hazardous waste in storage onsite.
- (6) **Hazardous Waste Regulation 5.2A and 40 CFR 265.35** – requiring that a hazardous waste generator maintain adequate aisle space in the facility to allow for the unobstructed movement of personnel, fire protection equipment, spill control equipment and decontamination equipment.
- (7) **Hazardous Waste Regulation 5.2A, 40 CFR 262.34(a)(1)(i) and 40 CFR 265.174** – 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.
- (8) **Hazardous Waste Regulation 5.2A, 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.
- (9) **Hazardous Waste Regulation 5.2A, 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.
- (10) **Hazardous Waste Regulation 5.2A and 40 CFR 265.33** – requiring that a hazardous waste generator test and maintain all fire protection equipment to assure its proper operation in time of an emergency.

- (11) **Hazardous Waste Regulation 5.9** – requiring that a hazardous waste generator submit to the DEM a list of agents authorized by the company to sign uniform hazardous waste manifests for shipments of hazardous waste.

D. Order

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

- (1) **IMMEDIATELY** cease and desist receiving hazardous waste at the Facility.
- (2) **Within thirty (30) days of receipt of the NOV**, remove all hazardous waste from the Property that has been received from offsite or generated and stored onsite for greater than ninety (90) days using a permitted hazardous waste transporter and ship the hazardous waste to a licensed Treatment, Storage and Disposal Facility.
- (3) **Within sixty (60) days of receipt of the NOV**, submit the following to the DEM Office of Compliance and Inspection (“OC&I”):
  - (a) A completed EPA Form 8700-12 to obtain an EPA identification number;
  - (b) The names and signatures of all agents authorized to sign the uniform hazardous waste manifests; and
  - (c) a copy of the manifest(s) for the removal of the hazardous waste in paragraph D.2 above.
- (4) **Within sixty days of receipt of the NOV**, comply with paragraphs (a) through (g) below **OR** manage the hazardous waste exclusively in satellite accumulation containers in compliance with 40 CFR 262.34(c) and paragraphs (h) through (l) below.
  - (a) Label all containers holding hazardous waste, excluding satellite accumulation containers, with the words “hazardous waste”, the name and address of the generating facility, the U.S. Department of Transportation shipping name, the EPA or Rhode Island waste code and the hazardous waste manifest number (prior to being shipped offsite).
  - (b) Mark all containers holding hazardous waste, excluding satellite accumulation containers, with the date upon which the hazardous waste first began to accumulate.
  - (c) Relocate all containers holding liquid hazardous waste, excluding satellite accumulation containers, to an area that has a containment system which is designed to contain spill and releases of the hazardous waste stored onsite.
  - (d) Provide aisle space throughout the Facility to allow for the unobstructed movement of personnel and emergency equipment.

- (e) Begin conducting weekly inspections of the hazardous waste container storage areas looking for leaking containers and signs of deterioration caused by corrosion or other factors and maintain documentation onsite of the inspection of each hazardous waste storage area for a period of at least three (3) years.
- (f) 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.
- (g) 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.
- (h) Label all satellite accumulation containers with the words “hazardous waste” and other words to describe the contents of the containers.
- (i) Store all hazardous waste in containers that are in good condition free from corrosion, rusting and structural defects.
- (j) Store all hazardous waste in containers that are compatible with the waste.
- (k) Keep all containers holding hazardous waste closed except when adding or removing waste.
- (l) Maintain a document certifying that the fire extinguisher has been tested and is operating properly.

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:

**Forty Nine Thousand Nine Hundred and Eighty Eight Dollars (\$49,988.00)**

- (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 days of your receipt of the 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, 3<sup>RD</sup> 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, 4<sup>TH</sup> 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 \_\_\_\_\_  
the within Notice of Violation was forwarded to:

WAL, Inc.  
c/o William A. Walaska, Registered Agent  
459 Washington Street  
P.O. Box 5910  
Providence, RI 02903

by Certified Mail.

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# ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, HAZARDOUS WASTE  
 File No.: 2010-77-HW  
 Respondent: WAL, 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),(2)&(3) – Permit and Notification Requirements	Type I (\$ 25,000 Max. Penalty)*	Major	\$12,500 (Permit)	1 violation	\$15,000.00
		Minor	\$2,500 (Notification)	1 violation	
C (4),(5),(6) &(7) – Pre Transport Requirements (Labeling, Containment,& Aisle Space)	Type I (\$ 25,000 Max. Penalty)*	Moderate	\$ 6,250 (Labeling & Accumulation Date)	2 violations	\$17,500.00
		Minor	\$2,500 (Containment & Aisle Space)	2 violations	
C (8) – Pre-Transport Requirements (Weekly Inspections)	Type II (\$ 12,500 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500.00
C (9)&(10) – General Facility Standards (Training & Contingency Plan)	Type I (\$ 25,000 Max. Penalty)*	Minor	\$2,500 (Contingency Plan)	1 violation	\$8,750.00
		Moderate	\$6,250 (Training)	1 violation	
C (11) – Preparedness and Prevention	Type II (\$ 12,500 Max. Penalty)*	Minor	\$1,250	1 violation	\$1,250.00
<b>SUB-TOTAL</b>					<b>\$45,000.00</b>

\*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 DEM for receiving hazardous waste without obtaining a permit to operate a Treatment, Storage and Disposal Facility (TSDF) from DEM, for failing to store liquid hazardous waste in a containment system, for failing to develop a contingency plan and for failing to provide hazardous waste training to employees. The one-time non-depreciable expense associated with the failure to obtain TSDF permit was the application fee of \$25,000.00. The one-time non-depreciable expense associated with the installation of secondary containment was obtained by surveying local contractors and vendors. The expenses associated with the development of a contingency plan and providing personnel with required training were 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"> <li>• Profit Status</li> <li>• Filing Status</li> <li>• Initial Capital Investment</li> <li>• One-time Non-depreciable Expense</li> <li>• Annual Expense</li> <li>• First Month of Non-Compliance</li> <li>• Compliance Date</li> <li>• Penalty Due Date</li> <li>• Useful Life of Pollution Control</li> <li>• Equipment Annual Inflation Rate</li> <li>• Discount/Compound Rate</li> </ul>	<ul style="list-style-type: none"> <li>C-Corporation</li> <li>C-Corporation</li> <li>\$0</li> <li>\$30,374.30</li> <li>\$0</li> <li>May 14, 2003</li> <li>July 22, 2010</li> <li>February 28, 2010</li> <li>N/A</li> <li>N/A</li> <li>7.8%</li> </ul>	\$4988.00	
	<b><i>SUB-TOTAL</i></b>			\$4,988.00

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$49,988.00**

**PENALTY MATRIX WORKSHEET**

CITATION: Permit and Notification Requirements  
 VIOLATION NO.: C (1),(2)& (3)

<b>TYPE</b>		
<u><b>X</b></u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	_____ <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	_____ <b>TYPE III</b> <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 received and stored hazardous waste at the facility without first obtaining a permit from the DEM and generated hazardous waste without applying for and obtaining an EPA hazardous waste generator identification number. State and Federal Regulations require any person who operates a hazardous waste Treatment, Storage and Disposal facility obtain a permit from the State prior to conducting such activity. State and Federal Regulations also require generators of hazardous waste obtain an EPA identification number.
- (B) **Environmental conditions:** The hazardous waste was stored in drums and in small containers placed in cardboard boxes on pallets near a loading dock.
- (C) **Amount of the pollutant:** 5,065 pounds of hazardous waste.
- (D) **Toxicity or nature of the pollutant:** Federally listed hazardous waste containing non-halogenated solvents including, but not limited to, xylene, acetone, methyl isobutyl ketone, alcohol, methanol, toluene, methyl ethyl ketone, isobutanol, pyridine and benzene. Waste also identified as a characteristic hazardous waste based on flammability and toxicity.
- (E) **Duration of the violation:** The Respondent's last offsite shipment of hazardous waste occurred on May 14, 2003 and so the duration of the violation relating to the failure to obtain an EPA Identification Number was seven (7) years. The duration of the violation for failing to obtain a permit for receiving/storing hazardous waste was a minimum of three (3) years up to a maximum of seven (7) years depending on when the Respondent first received hazardous waste from offsite.
- (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 appropriate steps to prevent the noncompliance. Respondent took action to mitigate the noncompliance by shipping hazardous waste to a licensed treatment, storage and disposal facility.
- (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 violations.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

<u>  X  </u> 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	<b>MAJOR</b>	\$12,500 to \$25,000 <b>\$12,500</b> <b>(Permit)</b>	\$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
	<b>MINOR</b>	\$2,500 to \$6,250 <b>\$2,500</b> <b>(Notification)</b>	\$1,250 to \$2,500	\$250 to \$1,250

## PENALTY MATRIX WORKSHEET

CITATION: Pre-Transport Requirements (Labeling, Containment & Aisle Space)

VIOLATION NO.: C (4), (5), (6) & (7)

TYPE		
<u>  X  </u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE III</b> <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><b>FACTORS CONSIDERED:</b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent failed to label and date containers holding hazardous waste, failed to provide a containment system for the containers and failed to provide adequate aisle space between containers. 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 day accumulation time limit for hazardous waste storage. The requirement to provide secondary containment for containers holding liquid hazardous waste provides a safeguard against spills and/or releases of hazardous waste and reduces the potential of exposure to hazardous waste for personnel working in the facility or the potential for a spill or release of waste to impact the environment. The requirement to provide aisle space between containers holding hazardous waste improves the ability of emergency response personnel to manage spills and/or releases of hazardous waste by allowing them access to all of the containers in the storage area.</p> <p>(B) <b>Environmental conditions:</b> The hazardous waste was stored in drums and in small containers placed in cardboard boxes on pallets near a loading dock.</p> <p>(C) <b>Amount of the pollutant:</b> 5,065 pounds of hazardous waste.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Federally listed hazardous waste containing non-halogenated solvents including, but not limited to, xylene, acetone, methyl isobutyl ketone, alcohol, methanol, toluene, methyl ethyl ketone, isobutanol, pyridine and benzene. Waste also identified as a characteristic hazardous waste based on flammability and toxicity.</p> <p>(E) <b>Duration of the violation:</b> Unknown. The time period during which the containers were not properly managed could not be determined at the time of the inspection.</p> <p>(F) <b>Areal extent of the violation:</b> 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 appropriate steps to prevent the noncompliance. Respondent took action to mitigate the noncompliance by shipping the hazardous waste to a licensed treatment, storage and disposal facility.
- (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 violations.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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 <b>\$6,250 (Labeling &amp; Accumulation Date)</b>	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250 <b>\$2,500 (Containment &amp; Aisle Space)</b>	\$1,250 to \$2,500	\$250 to \$1,250

# PENALTY MATRIX WORKSHEET

CITATION: Pre-Transport Requirements (Weekly Inspections)

VIOLATION NO.: C (8)

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><b>FACTORS CONSIDERED:</b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent failed to conduct weekly inspections of the hazardous waste container storage area. State regulations require generators to inspect areas in which hazardous waste is stored in containers onsite 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) <b>Environmental conditions:</b> The hazardous waste was stored in drums and in small containers placed in cardboard boxes on pallets near a loading dock.</p> <p>(C) <b>Amount of the pollutant:</b> 5,065 pounds of hazardous waste.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Federally listed hazardous waste containing non-halogenated solvents including, but not limited to, xylene, acetone, methyl isobutyl ketone, alcohol, methanol, toluene, methyl ethyl ketone, isobutanol, pyridine and benzene. Waste also identified as a characteristic hazardous waste based on flammability and toxicity.</p> <p>(E) <b>Duration of the violation:</b> The duration of the violation for failing to conduct and document the weekly inspections of containers holding hazardous waste was a minimum of three (3) years.</p> <p>(F) <b>Areal extent of the violation:</b> 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 appropriate steps to prevent the noncompliance. Respondent took action to mitigate the noncompliance by shipping the hazardous waste to a licensed treatment, storage and disposal facility.
- (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.

<b>MAJOR</b>	<b>MODERATE</b>	<b><u>X</u> MINOR</b>
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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	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	<b>MODERATE</b>	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250	\$1,250 to \$2,500 <b>\$2,500</b>	\$250 to \$1,250

# PENALTY MATRIX WORKSHEET

CITATION: General Facility Standards (Training & Contingency Plan)

VIOLATION NO.: C (9) & (10)

TYPE		
<p style="text-align: center;"><b><u>X</u> TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><b>___ TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><b>___ TYPE III</b></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><b>FACTORS CONSIDERED:</b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent failed to develop and maintain a hazardous waste contingency plan for the facility and failed to provide hazardous waste management training to employees who work with hazardous waste. State and Federal regulations require 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) <b>Environmental conditions:</b> The hazardous waste was stored in drums and in small containers placed in cardboard boxes on pallets near a loading dock.</p> <p>(C) <b>Amount of the pollutant:</b> 5,065 pounds of hazardous waste.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Federally listed hazardous waste containing non-halogenated solvents including, but not limited to, xylene, acetone, methyl isobutyl ketone, alcohol, methanol, toluene, methyl ethyl ketone, isobutanol, pyridine and benzene. Waste also identified as a characteristic hazardous waste based on flammability and toxicity.</p> <p>(E) <b>Duration of the violation:</b> 7 years.</p> <p>(F) <b>Areal extent of the violation:</b> 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 appropriate steps to prevent the noncompliance. Respondent took action to mitigate the noncompliance by shipping the hazardous waste to a licensed treatment, storage and disposal facility.
- (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	<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 <b>\$6,250 (Training)</b>	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250 <b>\$2,500 (Contingency Plan)</b>	\$1,250 to \$2,500	\$250 to \$1,250

# PENALTY MATRIX WORKSHEET

CITATION: Preparedness and Prevention

VIOLATION NO.: C (11)

TYPE		
<p style="text-align: center;"><u>      </u> 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;"><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><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent failed to ensure that the fire extinguisher at the facility was inspected on an annual basis. Generators of hazardous waste must equip their facilities with fire control equipment of adequate type and volume to enable emergency personnel to respond to an incident at the facility. State regulations require that fire protection equipment be tested and maintained as required by the generator to ensure its proper operation at the time of emergency.</p> <p>(B) <b>Environmental conditions:</b> The hazardous waste was stored in drums and in small containers placed in cardboard boxes on pallets near a loading dock.</p> <p>(C) <b>Amount of the pollutant:</b> 5,065 pounds of hazardous waste.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Federally listed hazardous waste containing non-halogenated solvents including, but not limited to, xylene, acetone, methyl isobutyl ketone, alcohol, methanol, toluene, methyl ethyl ketone, isobutanol, pyridine and benzene. Waste also identified as a characteristic hazardous waste based on flammability and toxicity.</p> <p>(E) <b>Duration of the violation:</b> 2 ½ years. The fire extinguisher had been last tested and inspected in January 2008.</p> <p>(F) <b>Areal extent of the violation:</b> 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 and appropriate steps to prevent or mitigate the noncompliance by inspecting and testing the fire extinguisher.
- (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.

<b>MAJOR</b>	<b>MODERATE</b>	<u><b>X</b></u> <b>MINOR</b>
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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	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	<b>MODERATE</b>	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250	\$1,250 to \$2,500 <b>\$1,250</b>	\$250 to \$1,250