

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: REBUILDERS AUTOMOTIVE SUPPLY
CO., INC.**

FILE NO.: OCI-HW-19-98

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 Rhode Island Department of Environmental Management (“Director” of “RIDEM”) has reasonable grounds to believe that the above-named party (“Respondent”) has violated certain statutes and/or administrative regulations under RIDEM's jurisdiction.

B. FACTS

- (1) The property is located at 1650 Flat River Road in Coventry, Rhode Island (“Property”). The Property includes a facility used for the acquisition of used automobile parts for repair and re-sale (“Facility”).
- (2) Respondent operates the Facility.
- (3) Respondent is registered with RIDEM as a large quantity hazardous waste generator at the Facility pursuant to Rhode Island’s *Rules and Regulations for Hazardous Waste Management* (250-RICR-140-10-1) (“HW Rules”) and pursuant to Title 40 of the Code of Federal Regulations (“40 CFR”) under the name “Rebuilders Automotive Supply Co.” with the U.S. Environmental Protection Agency (“USEPA”) identification number RIR000016170 (“ID Number”).
- (4) On December 27, 2019, RIDEM inspected the Facility and met with Barry Moorehead, Rocco DeSimone (“DeSimone”) and Ron Stevens (“Stevens”) at the time of the inspection. DeSimone and Stevens identified themselves as the Operations Manager and Plant Manager, respectively. The inspection revealed the following:
 - (a) Used automotive parts are received from auto salvage yards (including airbag modules/inflators), sorted by type, and stored in different sections of the Facility for re-sale.

- (b) Airbag modules/inflators are evaluated to determine if the airbag modules/inflators are subject to a national recall of airbag modules/inflators manufactured by the Takata Company (“Takata Recall”) that was ordered by the U.S. Department of Transportation (“USDOT”).
 - (c) Approximately 11,880 cardboard box containers holding two airbag modules/inflators were stored in a designated hazardous waste storage area. The containers were labeled as “Hazardous Waste”, but the labels were not marked with accumulation start dates.
 - (d) The cardboard box containers were stored on wooden pallets and did not have adequate aisle space between the containers to allow for access by Facility personnel or RIDEM’s inspector.
- (5) On March 6, 2020, as a follow up to RIDEM’s 3 February 2020 electronic correspondence, DeSimone sent electronic correspondence to RIDEM that included the following information:
- (a) Respondent receives airbag modules/inflators from auto salvage yards on behalf of the original equipment manufacturer (“OEM”), and Respondent is compensated by the OEMs.
 - (b) Respondent began receiving airbag modules/inflators on April 1, 2015.
 - (c) Respondent receives airbag modules/inflators as hazardous materials documented on bills of lading subject to the Takata Recall and a USDOT preservation order which began on February 25, 2015. These airbag modules/inflators are shipped as hazardous materials to Takata preservation facilities.
 - (d) Respondent receives airbag modules/inflators as hazardous materials documented on bills of lading that are not designated by the OEMs as subject to the USDOT preservation order. These airbag modules/inflators are shipped offsite as hazardous waste to the Resource One facility in Covington, Ohio, which is a licensed hazardous waste treatment, storage, and disposal facility (“Resource One Facility”).
 - (e) Respondent receives airbag modules/inflators that are not subject to the Takata Recall that are either returned as a hazardous material to the auto salvage yard or shipped offsite as hazardous waste to the Resource One Facility.

- (6) On October 18, 2021, RIDEM inspected the Facility (“October Inspection”) and met with Stevens and Tom Condor at the time of the inspection. The inspection revealed the following:
- (a) Respondent receives airbag modules/inflators that were removed from inactive automobiles stored at auto salvage yards. The shipments are documented via a bill of lading and handled as a hazardous material described as “SAFETY DEVICES electronically initiated UN3268 Recycled”.
 - (b) Respondent evaluates the airbag modules/inflators and ships certain units offsite for disposal as hazardous waste.
 - (c) Individual airbag modules/inflators were stored in anti-static plastic bags in cardboard boxes marked with black and white labels containing the words “HAZARDOUS WASTE Waste Safety Device, Electronically Initiated”. The black and white labels included the generator’s name, address, and ID Number. The black and white labels on the individual boxes were not marked with USEPA waste numbers or accumulation start dates.
 - (d) 52 pallets were in the Hazardous Waste Storage Area. Each pallet held 99 cardboard boxes each containing 1 airbag module according to Stevens. RIDEM’s inspector estimated that 5,148 cardboard boxes held hazardous waste at the time of the inspection.
 - (e) The cardboard boxes were stored on pallets secured by a clear plastic wrap. Yellow and red labels were present on the plastic wrap and marked with the words “HAZARDOUS WASTE”, the USEPA waste numbers D001 and D003, the generator’s name, address, and USEPA ID Number; however, the labels must be affixed directly onto a container to comply with HW Rules.
 - (f) The cardboard boxes and the pallets were not stored with adequate aisle space.
- (7) On December 10, 2021, at DeSimone’s request, RIDEM spoke by videoconference with DeSimone and Katie Stark regarding the October Inspection. DeSimone stated that Respondent was following memorandums issued by USEPA in 2017 (“2017 Memorandum”) and 2018 (“2018 Memorandum”) and an Interim Rule that USEPA promulgated on November 20, 2018 (“Interim Rule”). DeSimone stated that Respondent did not contact RIDEM prior to accepting the airbag modules to make sure RIDEM did not have more stringent regulations than USEPA.
- (8) The 2017 Memorandum (page 3, paragraph 3) states “Many of these determinations on recycling and treatment are site-and case-specific, and EPA recommends that Takata – and other entities that Takata may send the airbags to – work with the appropriate authorized state authority as well as EPA to make these determinations.”

- (9) The 2018 Memorandum (page 6, paragraph 1) states “Under RCRA section 3006, states may be authorized to administer the state hazardous waste program in lieu of the federal program, and under RCRA section 3009, state requirements may be more stringent than those of the federal program. The EPA therefore recommends that entities managing airbag modules or airbag inflators also consult with the appropriate state regulatory agency in determining the applicable requirements.”
- (10) The Federal Register (page 61560, section VII State Authorization) for the Interim Rule states “...the standards will be applicable on the effective date only in those states that do not have final authorization of their base RCRA programs. Moreover, authorized states are required to modify their programs only when EPA promulgates federal regulations that are more stringent or broader in scope than the authorized state regulations. For those changes that are less stringent, states are not required to modify their program.”
- (11) The HW Rules are more stringent than the Federal rules and a person who wants to receive and store airbag modules determined to be hazardous waste must obtain a permit from RIDEM prior to acceptance of the airbag modules.
- (12) Respondent has not received a permit from RIDEM to receive and store hazardous waste at the Facility.

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) **HW Rules, Part 1.7.2(A)(3)** – prohibiting hazardous waste generators from receiving hazardous waste without first obtaining a permit from RIDEM.
- (2) **R.I. Gen. Laws Section 23-19.1-10, HW Rules Part 1.9(B)(1) and 40 CFR Part 270.1(b)** – prohibiting the storage of hazardous waste onsite by any person who has not applied for or received a permit from RIDEM.
- (3) **HW Rules, Part 1.7.12(C)(1)(a)** – requiring that a large quantity hazardous waste generator mark containers holding hazardous waste with the date upon which the waste first began to accumulate.
- (4) **HW Rules, Part 1.7.9** – requiring that hazardous waste generators maintain no less than 3 feet of aisle space between hazardous waste accumulation containers.

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 upon receipt of this Notice of Violation (“NOV”)**, cease and desist the receipt and storage of hazardous waste from offsite at the Facility without a permit.
- (2) **Within 30 days of receipt of the NOV**, apply to RIDEM’s Office of Land Revitalization and Sustainable Materials Management for a permit to receive and store hazardous waste from offsite at the Facility.
- (3) **Within 30 days of receipt of the NOV**, mark all accumulation containers, excluding satellite accumulation containers, with the date upon which the waste initially began to accumulate and the EPA Waste Numbers (D001, D003).
- (4) **Within 30 days of receipt of the NOV**, arrange accumulation containers holding hazardous waste, excluding satellite accumulation containers, in a manner that provides adequate aisle space between the containers to allow access by Facility and emergency personnel.

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:

\$43,311

- (2) The proposed administrative penalty is calculated pursuant to Rhode Island’s *Rules and Regulations for Assessment of Administrative Penalties* (250-RICR-130-00-1) (“Penalty Rules”) and must be paid to RIDEM within 30 days of your receipt of the NOV.
- (3) 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 RIDEM’s Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (4) Penalties assessed against Respondent in the NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

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

F. RIGHT TO ADMINISTRATIVE HEARING

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before RIDEM's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections 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 RIDEM'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
RIDEM - 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).
- (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 1.7(B) of Rhode Island's *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:

Jenna Giguere, Esquire
RIDEM - 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 RIDEM'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) Jenna Giguere of RIDEM's Office of Legal Services at (401) 222-6607 ext. 2772306 or at jenna.giguere@dem.ri.gov. All other inquiries should be directed to Tracey Tyrrell of RIDEM's Office of Compliance and Inspection at (401) 222-1360 ext. 2777407 or at tracey.tyrrell@dem.ri.gov.

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
RIDEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

REBUILDERS AUTOMOTIVE SUPPLY CO., INC.
c/o Nixon Peabody LLP, Registered Agent
One Citizens Plaza, Suite 500
Providence, RI 02903

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: Hazardous Waste
 File No.: OCI-HW-19-98
 Respondent: REBUILDERS AUTO SUPPLY CO., 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) and C (2) – Failure to obtain a permit	Type I <i>(\$25,000 Max. Penalty) *</i>	Major	\$12, 500	1 violation	\$12,500
C (3) – Failure to mark containers with accumulation start dates	Type I <i>(\$25,000 Max. Penalty) *</i>	Major	\$12, 500	1 violation	\$12,500
C (4) – Failure to provide aisle space for hazardous waste containers	Type II <i>(\$12,500 Max. Penalty) *</i>	Major	\$6,250	1 violation	\$6,250
<i>SUB-TOTAL</i>					\$31,250

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

ADMINISTRATIVE PENALTY SUMMARY (continued)

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>Failing to obtain a Hazardous Waste storage permit. The expenses associated with this violation were derived from USEPA's <i>Estimating Costs for the Economic Benefits of RCRA Noncompliance</i>, updated December 1997. The economic benefit of noncompliance was determined by using a USEPA computer model titled <i>BEN</i> that performs a detailed economic analysis. The dates, dollar amounts, and values used in this analysis are 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>n/a</p> <p>\$53,686</p> <p>July 19, 2018</p> <p>July 1, 2023</p> <p>July 1, 2023</p> <p>n/a</p> <p>n/a</p> <p>7.5%</p>	<p>\$ 12,061</p>
SUB-TOTAL			\$ 12,061

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 RIDEM 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 RULES = \$43,311

PENALTY MATRIX WORKSHEET

CITATION: Failure to obtain a permit

VIOLATION NOs.: C (1) and C (2)

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 VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Rules.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent failed to apply for and obtain a permit to receive hazardous waste from offsite and store it at the facility. The HW Rules require owners and operators of a facility that receives hazardous waste from offsite to obtain a permit and prohibits hazardous waste generators from receiving hazardous waste. The requirement to obtain a permit ensures that facilities that receive hazardous waste have proper safeguards in place to prevent fires, spills, releases and/or explosions. Additional required safeguards include the development of a waste analysis plan, a closure plan including cost estimates for closure of the facility and post closure care of the property. The rules also require owners and operators of these facilities to provide a financial assurance instrument to offset the cost of removing the volume of hazardous waste stored onsite if the company shuts down. The requirement to obtain a hazardous waste storage permit is one of the most significant requirements of the regulatory program. (2) Environmental conditions: The hazardous waste was stored in the southwest corner of the building which is in proximity to the Washington Secondary bike path. (3) Amount of the pollutant: At the time of the October Inspection, RIDEM's inspector observed approximately 5,148 containers holding hazardous waste that was received from offsite without a permit. (4) Toxicity or nature of the pollutant: The hazardous waste consists of electronically initiated safe devices (automotive airbags) that are flammable and highly reactive capable of causing explosions. (5) Duration of the violation: According to Respondent, the process of receiving hazardous waste from offsite without a permit began on April 1, 2015. RIDEM is only assessing a penalty from the date of the 2018 Memorandum to present – approximately 5 years. (6) Areal extent of the violation: Considered, but not utilized in this calculation. 		
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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by obtaining a permit from RIDEM prior to receiving hazardous waste from offsite. Respondent stated that it was following USEPA guidance yet admitted to RIDEM’s inspectors that Respondent did not contact RIDEM to determine if more stringent State regulations apply, as is clearly stated in the USEPA guidance. Upon information and belief, Respondent has taken no steps to mitigate the noncompliance, despite being notified by RIDEM during the December 10, 2021 videoconference that State regulations require a permit from RIDEM.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM has the authority or responsibility to enforce:** Considered, but not utilized in 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:** Respondent 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 in 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: Failure to mark containers with accumulation start dates
 VIOLATION NO.: C (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 VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Rules.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent failed to mark containers holding hazardous waste with the date upon which the waste initially began to accumulate onsite. The accumulation start date is the primary method inspectors use to ensure compliance with the 90-day accumulation period. The HW Rules allow large quantity hazardous waste generators to temporarily store hazardous waste onsite for 90 days without a permit, provided they comply with certain requirements. Failure to comply with the requirements, including marking containers with accumulation start dates, results in the requirement to obtain a permit to store hazardous waste onsite. (2) Environmental conditions: The hazardous waste was stored in the southwest corner of the building which is in proximity to the Washington Secondary bike path. (3) Amount of the pollutant: At the time of the October Inspection, RIDEM's inspector observed approximately 5,148 containers holding hazardous waste that were not marked with accumulation start dates. (4) Toxicity or nature of the pollutant: The hazardous waste consists of electronically initiated safe devices (automotive airbags) that are flammable and highly reactive capable of causing explosions. (5) Duration of the violation: Full duration unknown – at least approximately 2 years. The violation was first observed by RIDEM on December 27, 2019 and a follow up inspection on October 18, 2021 revealed the same violation. (6) Areal extent of the violation: Considered, but not utilized in this calculation. 		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by marking every container holding hazardous waste with an accumulation start date. Respondent did place a label with an accumulation start date on plastic wrapping that was used to cover the containers stored on the pallets; however, labels must be affixed directly onto a container to comply with HW Rules. Upon information and belief, Respondent has taken no steps to mitigate the noncompliance.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM has the authority or responsibility to enforce:** Considered, but not utilized in 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:** Respondent 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 in 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: Failure to provide aisle space for containers
 VIOLATION NO.: C (4)

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

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

FACTORS CONSIDERED:

Taken from Part 1.10(A)(1)(b) of the Penalty Rules.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent failed to store containers holding hazardous waste in a manner to provide adequate aisle space between the containers. Aisle space is required so that Facility personnel and emergency responders can access the containers in the event of a fire or release. Additionally, access to the containers is required for Facility personnel to complete weekly inspections and look for signs of deterioration or a release of waste.
- (2) **Environmental conditions:** The hazardous waste was stored in the southwest corner of the building which is in proximity to the Washington Secondary bike path.
- (3) **Amount of the pollutant:** At the time of the October Inspection, RIDEM's inspector observed approximately 5,148 containers holding hazardous waste that were not stored with adequate aisle space.
- (4) **Toxicity or nature of the pollutant:** The hazardous waste consists of electronically initiated safe devices (automotive airbags) that are flammable and highly reactive capable of causing explosions.
- (5) **Duration of the violation:** Full duration unknown – at least approximately 2 years. The violation was first observed by RIDEM on December 27, 2019 and a follow up inspection on October 18, 2021 revealed the same violation.
- (6) **Areal extent of the violation:** Considered, but not utilized in this calculation.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by storing containers in a manner to provide adequate aisle space between the containers (cardboard boxes). The hazardous waste (airbag modules) was stored in anti-static plastic bags in the cardboard boxes which may contain a release from a corroded or damaged module. Upon information and belief, Respondent has taken no steps to mitigate the noncompliance.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM has the authority or responsibility to enforce:** Considered, but not utilized in 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:** Respondent 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 in 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	\$6,250 to \$12,500 \$6,250	\$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