

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: DFI-EP, LLC

FILE NO.: OCI-HW-15-36

NOTICE OF VIOLATION

A. Introduction

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

B. Facts

- (1) The property is located at 50 Waterman Avenue in the town of North Providence, Rhode Island (the “Property”). The Property includes a facility used for electroplating of steel and copper to affix various metal and corrosion resistant coatings on products (the “Facility”).
- (2) The Respondent is registered with the DEM as a large quantity hazardous waste generator at the Facility pursuant to the DEM's *Rules and Regulations for Hazardous Waste Management* (the “Hazardous Waste Regulations”) and pursuant to Title 40 of the Code of Federal Regulations (“40 CFR”) under the name of “DFI-EP LLC” with the U.S. Environmental Protection Agency (“EPA”) identification number RID001191931.
- (3) On 23 March 2015, the DEM inspected the Facility (the "Inspection"). The Inspection revealed the following:
 - (a) One 55-gallon container holding hazardous waste, in the form of copper/cadmium filter tubes, in the Central Hazardous Waste Storage Area that had a hazardous waste label on the container identifying the generator as Evans Plating with no accumulation start date (the "Copper/Cadmium Container");
 - (b) One 55-gallon container holding hazardous waste, in the form of wastewater treatment metal hydroxide sludge, in the Central Hazardous Waste Storage Area that had a hazardous waste label on the container identifying the Respondent as the generator with an accumulation start date of 29 July 2014;

- (c) Three 55-gallon containers and one 30 gallon container holding hazardous waste, in the form of copper/cyanide filter tubes, cyanide/nickel, gold and silver, in the Central Hazardous Waste Storage Area that were unlabeled;
- (d) One 55-gallon container holding hazardous waste, in the form of tin/lead filter tubes, in the Central Hazardous Waste Storage Area that had a hazardous waste label on the container identifying the generator as Evans Plating with no accumulation start date (the "Tin/Lead Container");
- (e) One 55-gallon satellite accumulation container holding hazardous waste, in the form of wastewater treatment metal hydroxide sludge, at the filter press that was unlabeled (the "Satellite Container");
- (f) Four plastic storage containers located along the fence line outside the building that contained sludge residue. The Respondent had not determined whether the residue met the definition of hazardous waste ("Plastic Container Residue");
- (g) Solid waste residue on the floor of the building in the areas of the electroplating tanks and the secondary containment. The Respondent had not determined whether the residue met the definition of hazardous waste ("Floor Residue");
- (h) No weekly inspections of the Central Hazardous Waste Storage Area were performed from 19 December 2014 to the date of the Inspection;
- (i) The hazardous waste training program ("Hazardous Waste Training Program") was missing the following information:
 - (i) Definition and description of hazardous waste at the Facility;
 - (ii) Description of applicable exemptions;
 - (iii) Description of the manifest and its function;
 - (iv) Procedures for implementing the Facility's contingency plan;
 - (v) Procedures for use of spill response and personal protection equipment;
and
 - (vi) A list of the type and amount of training provided to each employee, their job titles and a description of their duties; and
- (j) The contingency plan was out of date and listed "Evans Plating" as the generator (the "Contingency Plan").

- (4) The Respondent marked the Tin/Lead Container with an accumulation start date of 13 March 2015 and properly labeled the Satellite Container at the time of the inspection.
- (5) The DEM inspector spoke with Frank DeFruscio, who identified himself as the Facility owner/operator, at the time of the inspection. Mr. DeFruscio stated the following:
 - (a) The Respondent began operations on 1 June 2014; and
 - (b) The Copper/Cadmium Container had been left by the former owner, Evans Plating.
- (6) On 24 March 2015, the Respondent submitted an amended Contingency Plan to the DEM by electronic correspondence.
- (7) On 25 March 2015, the DEM notified Mr. DeFruscio by electronic correspondence that certain phone numbers in the amended Contingency Plan were incorrect. Mr. DeFruscio stated in his response that he would revise the plan to list the correct numbers.
- (8) On 26 March 2015, the Respondent submitted documents to the DEM by electronic correspondence that included the following information:
 - (a) A statement that the Plastic Residue was removed from the containers and placed in a T-Pak and was pending analysis prior to shipment from the Facility;
 - (b) Photographs showing the empty containers that held the Plastic Residue and the T-Pak; and
 - (c) An amended Hazardous Waste Training Program.
- (9) The amended Hazardous Waste Training Program was reviewed by the DEM and is considered incomplete. The Hazardous Waste Training Program is missing the following: a definition of hazardous waste; a description of applicable regulatory exemptions (if applicable); a description of how hazardous waste manifests are used and stored; implementation of a contingency plan; procedures for using and maintaining emergency equipment; and evacuation routes and procedures.
- (10) The Respondent did not receive approval from the DEM to store hazardous waste for greater than 90 days.
- (11) The Respondent did not receive approval from the DEM to store wastewater treatment sludge for greater than 180 days.

- (12) As of the date of this Notice of Violation (“NOV”), the Respondent has failed to demonstrate compliance with the DEM's Hazardous Waste Regulations for all of the issues described in Paragraph B(3) above.

C. Violation

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

- (1) **DEM’s Hazardous Waste Regulations 5.13A** – requiring that a hazardous waste generator obtain a permit from the DEM prior to storing hazardous waste onsite for greater than 90 days or storing wastewater treatment sludge from electroplating operations for greater than 180 days.
- (2) **DEM’s Hazardous Waste Regulations 5.3** – requiring that a hazardous waste generator determine if the waste generated onsite meets the definition of a hazardous waste.
- (3) **DEM’s Hazardous Waste Regulations 5.9A** – requiring that a hazardous waste generator label all satellite accumulation containers holding hazardous waste with the words “Hazardous Waste” and other words identifying the contents of the container.
- (4) **DEM’s Hazardous Waste Regulations 5.13F.1** – requiring that a hazardous waste generator label each container, excluding satellite accumulation containers, holding hazardous waste with the words “Hazardous Waste”, the chemical or common name of the waste, the name and address and EPA identification number of the generator.
- (5) **DEM’s Hazardous Waste Regulations 5.13B.1** - requiring that a hazardous waste generator mark containers holding hazardous waste with the date upon which the waste first began to accumulate.
- (6) **DEM’s Hazardous Waste Regulations 5.13B.8** – requiring that a hazardous waste generator conduct weekly inspections of containers holding hazardous waste looking for leaking containers and signs of deterioration and/or corrosion or other factors and maintain documentation of the inspection of each hazardous waste storage area for a period of at least 3 years.
- (7) **DEM’s Hazardous Waste Regulations 5. 13I.1, 3, 6, 7, 8 and 10** – requiring that a hazardous waste generator provide training to company employees who handle and/or manage hazardous waste said training shall cover a definition of hazardous waste and list of hazardous waste typically generated and/or stored at the facility, a description of applicable regulatory exemptions, waste pre-transport requirements, proper implementation of the facility’s hazardous waste contingency plan, spill prevention and response and maintain written documentation of the type and amount of training provided to each employee,

their job titles and a description of their duties and qualifications for the job and dated sign-in sheet for each training session.

- (8) **DEM's Hazardous Waste Regulations 5.13J.7** – requiring that a hazardous waste generator amend its contingency plan designed to minimize hazards to human health or the environment from fires, explosions or unplanned releases of hazardous waste and to amend the plan if the generator's facility changes in design, the list of emergency coordinators changes or the type and amount of emergency equipment is changed.

D. Order

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

- (1) **IMMEDIATELY upon receipt of the NOV**, cease and desist the storage of hazardous waste onsite for greater than 90 days and the storage of wastewater treatment sludge for greater than 180 days.
- (2) **Within 30 days of receipt of the NOV:**
 - (a) Remove all hazardous waste from the Property that has been stored for greater than 90 days and all wastewater treatment sludge that has been stored for greater than 180 days using a permitted hazardous waste transporter and ship the hazardous waste to a licensed Treatment, Storage and Disposal Facility (the "Designated Facility"). Submit a copy of the uniform hazardous waste manifest signed by the Designated Facility to the DEM's Office of Compliance & Inspection ("OC&I");
 - (b) Collect representative samples of the Plastic Residue and the Floor Residue, submit the samples to a laboratory for analysis to determine if the waste meets the definition of hazardous waste in accordance with the requirements of the DEM's Hazardous Waste Regulations 5.3 and submit a copy of the test results to the OC&I. In the event that the waste is determined to meet the definition of a hazardous waste, **IMMEDIATELY** begin managing the waste in accordance with the applicable requirements of the DEM's Hazardous Waste Regulations;
 - (c) Label all containers holding hazardous waste, excluding satellite accumulation containers, with the words "Hazardous Waste", the chemical or common name of the waste and the name, address and EPA identification number of the generator;
 - (d) Mark all containers holding hazardous waste, excluding satellite accumulation containers, with the date upon which the hazardous waste first began to accumulate;

- (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 3 years; and
- (f) Provide hazardous waste management training to all employees that manage/handle hazardous waste which is relevant to the positions in which they are employed and contains all of the information required by the DEM's Hazardous Waste Regulation 5.13I and submit copies of the training program, attendance sheet and a list of the type of training and amount of training provided to each employee, the employee's name and job title and a description of their job duties to the OC&I.

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:

\$28,750

- (2) The proposed administrative penalty is calculated pursuant to the DEM's *Rules and Regulations for Assessment of Administrative Penalties*, as amended, and must be paid to the DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a certified check, 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 the Respondent in this NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if the DEM determines that reasonable efforts have been made to comply promptly with this NOV.

F. Right to Administrative Hearing

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

- (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);
- (b) Be **RECEIVED** by the DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
One Capitol Hill, 2ND Floor
Providence, RI 02903

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

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

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 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 DEM 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 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:

DFI-EP, LLC
c/o Joshual L. Celeste, Esq. Registered Agent
One Financial Plaza, Suite 1800
Providence, RI 02903

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, HAZARDOUS WASTE
 File No.: OCI-HW-15-14
 Respondent: DFI-EP, LLC

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
C (1) - Storage without a Permit	Type I (\$25,000 Max. Penalty)*	Moderate	\$6,250	1 violation	\$6,250
C (2) - Hazardous Waste Determination	Type I (\$25,000 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500
C (3) – Satellite Container Labeling	Type I (\$25,000 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500
C (4) & (5) – 90 Day Container Labeling & Accumulation Date	Type I (\$25,000 Max. Penalty)*	Moderate	\$6,250	1 violation (Labeling)	\$8,750
		Minor	\$2,500	1 violation (Accumulation Date)	
C (6) – Weekly Container Inspections	Type I (\$25,000 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500
C (7) & (8) – Training & Contingency Plan	Type I (\$25,000 Max. Penalty)*	Minor	\$6,250	1 violation	\$6,250
SUB-TOTAL					\$28,750

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

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

A review of the record in this matter has revealed that the Respondent has either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted can not be quantified.

COST RECOVERY

ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.

A review of the record in this matter has revealed that the DEM has not incurred any additional or extraordinary costs during the investigation, enforcement and resolution of this enforcement action (excluding non-overtime personnel costs), for which the State is not otherwise reimbursed.

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$28,750

PENALTY MATRIX WORKSHEET

CITATION: Storage without a Permit

VIOLATION NO.: C (1)

TYPE		
<p><u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE III <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 Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: The Respondent stored hazardous waste onsite for greater than 90 days and stored wastewater treatment sludge onsite for greater than 180 days without first obtaining a permit from the DEM. The DEM's Hazardous Waste Regulations establish time limits allowing generators to temporarily store hazardous waste without obtaining a permit. A hazardous waste storage permit requires owners and operators of facilities designated to store and manage hazardous waste to install and maintain safety equipment to minimize the possibility of fires, explosions or unplanned releases involving the waste. The requirement to obtain a hazardous waste storage permit is a major component of the regulatory program.</p> <p>(B) Environmental conditions: The containers were stored indoors at the facility.</p> <p>(C) Amount of the pollutant: Two 55-gallon containers.</p> <p>(D) Toxicity or nature of the pollutant: The hazardous waste consisted of filters containing copper and cadmium, which are toxic metals that cause pulmonary irritation and kidney damage. The wastewater treatment sludge may contain heavy metals such as chromium and lead, which may cause neurotoxicity, developmental delays, hypertension and contact dermatitis.</p> <p>(E) Duration of the violation: Full duration unknown for the filters - at least 296 days (1 June 2014 to 23 March 2015). 237 days for the wastewater treatment sludge (29 July 2014 to 23 March 2015).</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to take reasonable and appropriate steps to prevent the violation by shipping hazardous waste and wastewater treatment sludge to a licensed disposal facility within the time frames specified in the DEM's Hazardous Waste Regulations.
- (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:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation

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

PENALTY MATRIX WORKSHEET

CITATION: Hazardous Waste Determination

VIOLATION NO.: C (2)

TYPE		
<p><u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE III <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 Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: The Respondent failed to properly characterize solid waste, in the form of debris from an electroplating operation, stored in several plastic above ground tanks located outside the building and on the floor within the secondary containment areas within the building. State and Federal regulations require generators of waste to determine if their waste meets the definition of a hazardous waste. The failure to properly characterize waste may result in the mismanagement of hazardous waste and lead to improper disposal of hazardous waste.</p> <p>(B) Environmental conditions: The waste was stored in open tanks outdoors exposed to the elements.</p> <p>(C) Amount of the pollutant: Approximately 300 gallons in the plastic above ground tanks and an unknown amount on the floor within the secondary containment areas.</p> <p>(D) Toxicity or nature of the pollutant: Unknown.</p> <p>(E) Duration of the violation: Full duration unknown - at least 296 days (1 June 2014 to 23 March 2015). The Respondent commenced operation on 1 June 2014.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to take reasonable steps to prevent and/or mitigate the noncompliance by determining if the waste met the definition of hazardous waste.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (J) **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: Satellite Container Management
 VIOLATION NO.: C (3)

TYPE		
<u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	_____ TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	_____ TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: The Respondent failed to label a satellite accumulation container holding hazardous waste in the form of wastewater treatment sludge. The requirement to label satellite accumulation containers holding hazardous waste is an integral part of the regulatory program because proper labeling reduces the potential for mismanagement and release of hazardous waste. Proper labeling 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.</p> <p>(B) Environmental conditions: Considered, but not utilized for this calculation.</p> <p>(C) Amount of the pollutant: One 55-gallon container.</p> <p>(D) Toxicity or nature of the pollutant: Wastewater treatment sludge may contain heavy metals such as chromium and lead, which may cause neurotoxicity, developmental delays, hypertension and contact dermatitis.</p> <p>(E) Duration of the violation: Unknown</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to take reasonable and appropriate steps to prevent the violation by labeling the container. The Respondent mitigated the noncompliance during the inspection on 23 March 2015 by properly labeling the container.
- (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:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (J) **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: 90 Day Container Labeling & Accumulation Date
 VIOLATION NO.: C (4) & (5)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: The Respondent failed to label 90 day containers holding hazardous waste. The requirement to label containers holding hazardous waste is an integral part of the regulatory program because it reduces the potential for mismanagement of waste. Labeling 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. The Respondent also failed to mark 90 day containers holding hazardous waste with the date upon which the waste first began to accumulate. State regulations require generators to track the length of time that hazardous waste accumulates onsite. The requirement to track accumulation of hazardous waste provides a means for facility personnel and regulatory agencies to ensure compliance with waste storage time limits.</p> <p>(B) Environmental conditions: Considered, but not utilized for this calculation.</p> <p>(C) Amount of the pollutant: Three 55-gallon containers and one 30-gallon container that were unlabeled and two 55-gallon containers that were not marked with accumulation dates.</p> <p>(D) Toxicity or nature of the pollutant: Wastes included copper/cyanide filters, cyanide/nickel strip solution, gold strip solution containing cyanide and silver strip solution. Cyanide is a toxic compound capable of causing dizziness, headache and nausea at low concentrations and mortality at high concentrations.</p> <p>(E) Duration of the violation: Unknown for the unlabeled containers and for one of the containers with no accumulation date. 10 days for the container holding tin/lead filter tubes (the container was marked with an accumulation start date of 13 March 2015 at the time of the 23 March 2015 inspection).</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to take reasonable and appropriate steps to prevent the violation by labeling and dating the containers. The Respondent partially mitigated the noncompliance by marking one container with an accumulation start date.
- (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:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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

PENALTY MATRIX WORKSHEET

CITATION: Weekly Container Inspections
 VIOLATION NO.: C (6)

TYPE		
<p>X <u>TYPE I</u> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>TYPE II</u> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>TYPE III</u> <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 Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: The Respondent failed to conduct inspections of the 90 day hazardous waste container storage area on a weekly basis. The DEM's regulations require generators to inspect areas in which hazardous waste is stored in containers onsite. The requirement for generators to inspect container storage areas enables generators to identify containers that have been damaged or deteriorated as a result of corrosion or other factors providing a safeguard against releases of hazardous waste.</p> <p>(B) Environmental conditions: Considered, but not utilized for this calculation.</p> <p>(C) Amount of the pollutant: Six 55-gallon containers, one 30-gallon container and one T-Pak.</p> <p>(D) Toxicity or nature of the pollutant: Wastes included copper/cyanide filters, cyanide/nickel strip solution, gold strip solution containing cyanide and silver strip solution. Cyanide is a toxic compound capable of causing dizziness, headache and nausea at low concentrations and mortality at high concentrations.</p> <p>(E) Duration of the violation: About 12 weeks. The last weekly container inspection occurred on 19 December 2014.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		
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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to take reasonable and appropriate steps to prevent the violation by completing weekly inspections.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (J) **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: Training & Contingency Plan

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

TYPE		
<p><u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>TYPE III <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> Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: The Respondent failed to provide hazardous waste management training to several of its employees who work with hazardous waste. The DEM's 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. The Respondent also failed to develop a hazardous waste contingency plan. The DEM's regulations require generators to develop and maintain a complete 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.</p> <p>(B) Environmental conditions: Considered, but not utilized in this calculation.</p> <p>(C) Amount of the pollutant: Six 55-gallon containers, one 30-gallon container and one T-Pak.</p> <p>(D) Toxicity or nature of the pollutant: Wastes included copper/cyanide filters, cyanide/nickel strip solution, gold strip solution containing cyanide and silver strip solution. Cyanide is a toxic compound capable of causing dizziness, headache and nausea at low concentrations and mortality at high concentrations.</p> <p>(E) Duration of the violation: Full duration unknown - the Respondent commenced operation on 1 June 2014 and was required to provide training to its employees within 6 months of their initial hiring date.</p> <p>(F) Areal extent of the violation: Considered, but not utilized in this calculation.</p>		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to take reasonable steps to prevent or mitigate the noncompliance providing training to its employees and by failing to develop a complete contingency plan. The Respondent partially mitigated the noncompliance by providing some training to its employees after the inspection and by using an amended contingency plan.
- (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:** Considered, but not utilized in this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized in 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 \$6,250	\$1,250 to \$2,500	\$250 to \$1,250