

Department of Environmental Management  
Administrative Adjudication Division  
State of Rhode Island  
Re: National Plating, LLC.  
AAD NO. 05-006/WME  
Notice of Violation OC&I/RCRA 04-083  
May 2006

**DECISION AND ORDER**

This matter came before the Administrative Adjudication Division for Environmental Matters (“AAD”) of the Department of Environmental Management (“Department” or “DEM”) pursuant to Respondent's request for hearing on Notice of Violation and Order issued by the DEM Office of Compliance and Inspection (“OCI”) on January 7, 2005 (“NOV”). The hearing was held on January 17, 2006.

Following the conclusion of testimony on January 7, 2006, the Hearing Officer ordered post-hearing memoranda to be filed on or before January 27, 2006. Both memoranda were filed on January 27, 2006, and the hearing was deemed concluded on January 27, 2006. Brian Wagner, Esq. represented OCI, and Peter J. Rotelli, Esq. represented Respondent.

The within proceeding was conducted in accordance with the statutes governing the AAD (R.I. GEN. Laws § 42-17.7-1 et seq.); Chapter 17.6 of Title 42 entitled “Administrative Penalties for Environmental Violations”; the Administrative Procedures Act (R.I. GEN Laws § 42-35-1 et seq.); the Administrative Rules of Practice and Procedure for the AAD (“AAD Rules”); and the Rules and Regulations for Assessment of Administrative Penalties (“Penalty Regulations”).

**PREHEARING CONFERENCE**

A prehearing conference was conducted on September 23, 2005. At the prehearing conference, and at the hearing, the parties agreed to the following stipulations of fact:

1. The subject property is located at 946 Eddy Street, Providence, RI, otherwise identified as Providence Assessor's Plat 047, Lot 0810, (the “Property” or “Facility”).
2. The property is owned by Marol Realty of 751 Namquid Drive, Warwick, RI 02888-5338.
3. The property is operated by Respondent, National Plating, LLC, which is registered with the Rhode Island Secretary of State's Office as a Rhode Island business corporation, ID # 93556.
4. The Respondent is registered with the DEM pursuant to the Hazardous Waste Rules and is identified by the U.S.E.P.A. hazardous waste generator identification number RID 001 209 287.
5. DEM representatives conducted an inspection of the Facility on August 26, 2004.
6. During the August 26, 2004 inspection, DEM personnel observed the following containers of hazardous waste stored at the Facility: Location

<b>Location</b>	<b>Number and Size</b>	<b>Waste Description</b>
Assembly Area	1 x 900# Hopper	Dried Metal Hydroxide Sludge(F006)
Plating Line	1 x 55 gal Drum	Polishing Dust
Outside Parking Lot	1 x 30 cu yd container	Metal Hydroxide Sludge (F006)
Filter Press Area	1 x 900# Hopper	Wet Metal Hydroxide Sludge(F006)
Lacquer/Paint Room	1 x 55 gal Drum	Waste Paint/Lacquer Thinner
Aqueous Degreaser	1 x 100 gal tank	Aqueous Degreaser Sludge

7. During the August 26, 2004 inspection, DEM personnel observed 1 x 900 # hopper holding hazardous waste (dried metal hydroxide sludge), located in the assembly area. The following observations were made:

- a. The hopper was not covered;
  - b. The hopper was open in close proximity to workers stringing product for process;
  - c. The hopper was not labeled as a Hazardous Waste; and
  - d. No accumulation start date was marked on the hopper.
8. Mr. Wall, facility plant manager, informed DEM personnel that the metal hydroxide sludge had been dried in a walk-in gas oven by the company to extract additional water from the sludge to reduce the weight prior to shipment off site. The facility is not permitted to treat hazardous waste in a sludge-dryer.
9. During the August 26, 2004 inspection, DEM personnel observed 1 x 55 gallon drum holding hazardous waste (polishing dust), located near the plating line that was not properly labeled with the words "Hazardous Waste" and words describing the contents. Facility personnel completed satellite labeling at the time of inspection.
10. Based on an analysis performed by the Respondent on August 8, 2001, the Respondent's polishing dust is known to be hazardous waste based on its concentration of lead.
11. During the August 26, 2004 inspection, DEM personnel observed 1 x 900 # hopper holding hazardous waste (wet metal hydroxide sludge) located in the filter press area. The following observations were made:
- a. The hopper was not covered;
  - b. The hopper was open when not in use;
  - c. The hopper was not labeled as a Hazardous Waste; and
  - d. No accumulation start date was marked on the hopper.
12. During the August 26, 2004 inspection, DEM personnel observed 1 x 55 gallon drum holding hazardous waste (waste paint/lacquer thinner) located in the lacquer/paint storage and paint booth room. The drum of waste paint/lacquer thinner was not properly labeled with the words "Hazardous Waste" and words describing the contents. Facility personnel completed satellite labeling at the time of the inspection.
13. During the August 26, 2004 inspection, DEM personnel asked Mr. Wall for a copy of the company's current hazardous waste contingency plan for review. The current copy provided for review did not contain any floor plans for emergency egress, hazardous waste locations, or emergency equipment locations.
14. During the August 26, 2004 inspection, DEM personnel observed an Aqueous Degreaser that, according to the Respondent, was no longer being used for manufacturing and had not been used for more than 90 days.
15. The bottom of the Aqueous Degreaser was observed to contain waste sludge from its previous operations, which sludge had not been characterized as required by regulation.
16. During the August 26, 2004 inspection, DEM personnel asked Mr. Wall to produce the last three years of hazardous waste manifests. DEM personnel noted at the time of inspection, that Mr. Wall has been signing Hazardous Waste Manifests for the disposition and removal of Hazardous Waste from the facility for the past three years without proper authorization as required by regulation. Mr. Wall's name is not on the current authorized manifest signers' list. A corrected copy was provided to DEM personnel at the time of the inspection.
17. During the August 26, 2004 inspection, DEM personnel asked Mr. Wall to produce the company's hazardous waste management training program and hazardous waste management training records for the previous three years. Mr. Wall was able to provide training documentation for the years 2001, 2002, and 2003. Review of the company's personnel training records revealed that the training program does not contain all of the elements relating to hazardous waste management required under Hazardous Waste Rule 5.02. The annual training for 2003 consisting of Hazwoper/OSHA training does not meet the requirements of current regulations. A list of the exhibits, marked as they were admitted at the hearing is attached to this Decision as Appendix A. No documents were submitted by Respondent.

## HEARING SUMMARY

At the hearing, the OCI called one (1) witness: TRACEY TYRRELL, a Supervising Environmental Scientist in the DEM office of Compliance and Inspection.

Respondent called one (1) witness: ROBERT CONLON, President of Respondent.

### I. THE NOTICE OF VIOLATION

The NOV (OCI Exhibit No. 1 Full) issued to the Respondent on January 7, 2005 concerns the Respondent's electroplating business located at 946 Eddy Street, Providence, Rhode Island, otherwise identified as Providence Tax Assessor's Plat 047, Lot 0810 (the "Property" or "Facility"). As stipulated by the parties, the property is owned by Marol Realty of 751 Namquid Drive, Warwick, Rhode Island.

The NOV (in Paragraph C. entitled "VIOLATION") cites the Respondent for violating the following statutes and/or regulations:

- (1) Hazardous Waste Rule 5.04, 5.04C and 40 CFR 262.31, and 40 CFR 262.34 relating to the requirement that a generator of hazardous waste properly label all containers holding hazardous waste while in storage at their facility.
- (2) Hazardous Waste Rule 5.04, and 40 CFR 262.34 relating to the requirement that a generator mark all 90-day accumulation containers holding hazardous waste with the date upon which the waste first began to accumulate.
- (3) Hazardous Waste Rule 5.02 and 40 CFR 265.173, relating to the requirement that a generator of hazardous waste keep all containers of hazardous waste closed except when adding or removing waste.
- (4) Hazardous Waste Rule 7.01 and 40 CFR 265.1, relating to the requirement that a generator of hazardous waste shall not treat hazardous waste without first obtaining a permit from the Department.
- (5) Hazardous Waste Rule 5.02 and 40 CFR 265.52, 40 CFR 265.54 relating to the requirement that a generator of hazardous waste develop a contingency plan designed to minimize hazards to human health and the environment in the event of a fire, spill or release of hazardous waste.
- (6) Hazardous Waste Rule 5.08 and 40 CFR 262.11, relating to the requirement that the generator determine if any of its wastes meet any of the definitions of hazardous waste.
- (7) Hazardous Waste Rule 5.09 relating to the requirement that a generator of hazardous waste must authorize in writing those personnel responsible for signing uniform hazardous waste manifests on behalf of the company.
- (8) Hazardous Waste Rule 5.02 and 40 CFR 262.34, 40 CFR 265.16, relating to the requirement that a generator of hazardous waste provide annual Hazardous Waste management training to company employees who handle hazardous waste and to maintain records of the training sessions for a period of at least three years.

The Respondent by letter dated January 25, 2005 requested an administrative hearing at the AAD. Said hearing request neither denied the occurrence of any of the acts or omissions alleged in the NOV, nor asserted that the money amount of the proposed penalty is excessive, as required by R.I. GEN. LAWS Section 42-17.6-4.

It is undisputed that the Respondent is responsible for the violations of the Rules and Regulations for Hazardous Waste Management ("Hazardous Waste Regulations") for which Respondent was cited. OCI has clearly proven the existence of each of the eight (8) separate violations alleged in the NOV by a preponderance of the evidence. These violations were established by the evidence presented, the Stipulations of Fact, and by the admissions of the Respondent. Additionally, it was specifically stated in Respondent's Summary Statement (submitted as Respondent's post-hearing memorandum) that:

“1. Respondent has admitted to all eight violations brought forth in the hearing”.

## II. WITNESS TESTIMONY

TRACEY TYRRELL, a Supervising Environmental Scientist with the OCI, testified that she was extremely familiar with the Penalty Regulations and used them routinely as part of her duties with the OCI. This witness explained that her duties include supervision of the work of the staff that performs inspections, and reviewing and approving draft NOV's and penalty calculations prepared by staff-inspectors following an inspection.

It was the testimony of Ms. Tyrrell that in the instant matter she had reviewed the inspectors' report (OCI Exhibit 2 FULL) and the draft facts and the penalty assessment prepared by the inspectors for the instant NOV; and that in each individual violation in the NOV for which Respondent was cited, the penalty proposed in the NOV was properly calculated in accordance with the Penalty Regulations.

Ms. Tyrrell testified as to how she arrived at the total amount of the proposed penalty, and also as to each of the eight individual alleged violations. She reviewed the factors utilized by OCI as guidance in the calculation thereof; and explained that although OCI only needs to utilize one of the factors, they utilized all of the factors that are listed in the Penalty Worksheet of the NOV for each of the alleged violations.

Ms. Tyrrell was questioned extensively in cross-examination concerning the calculation of the proposed penalty, the consideration by OCI of the Respondent's ability to pay and whether any of the alleged violations had been cured by the Respondent between the date of the inspection (August 26, 2004) and the date the NOV was issued (January 7, 2005).

It was explained by Ms. Tyrrell that the OCI is not able to consider ability to pay at the time an NOV is issued because OCI has no legal means to acquire the necessary financial information from respondents to assess their financial condition at that time. Ms. Tyrrell testified that the OCI does (and in the instant case did) request and receive certain financial information from respondents after the issuance of an NOV in order to evaluate a respondent's ability to pay as part of settlement negotiations. Ms. Tyrrell testified that in the instant matter the Respondent did provide her with financial information as part of settlement negotiations, and that the OCI reviewed said information and presented Respondent with an offer of settlement based on said information.

It was further explained by Ms. Tyrrell that if a violation was cured prior to the issuance of an NOV and OCI was notified of the corrective action prior to issuance of the NOV, then the cure would be accounted for in the penalty calculation. However, as to violations cured after the issuance of the NOV, the cure would be weighed as part of settlement negotiations.

Ms. Tyrrell testified that the OCI was aware of several violations that Respondent cured prior to the issuance of the instant NOV, and that said corrections were considered as a factor in the calculation of the penalty for the violation in question.

ROBERT CONLON, the President of National Plating, LLC. testified that he was an officer of the Respondent at the time of the inspection by DEM of the subject facility on August 26, 2004. He stated that he was not present at the time of said inspection, but was informed of same shortly thereafter by his Plant Manager.

It was Mr. Conlon's testimony that after the inspection by DEM, he forwarded to DEM some documents and financial information (such as tax returns for the years 2002 through 2004, and a profit/loss statement for the current year). There was no further testimony by Mr. Conlon, and no cross-examination of this witness by OCI.

After the presentation of the aforesaid witnesses, both sides rested. Counsel for Respondent, in his closing argument, stated that the Respondent “doesn't contest the fact that it was visited in August of 2004 and certain violations occurred or were in existence at the time of the inspection. Certainly we've stipulated to that and tried to work with DEM in facilitating this hearing.”

It is Respondent's contention that the severity of the penalty is harsh; and that the Respondent should have been dealt with much more leniency since Respondent made a good faith attempt to cure the violation quickly. Respondent argues that all eight violations should be classified as Type 3 and of minor nature; and that said penalties should be reduced to the minimum amounts required by law.

## **ASSESSMENT OF AN ADMINISTRATIVE PENALTY**

As indicated in the NOV, the OCI seeks the assessment of an administrative penalty in the amount of Twenty-eight Thousand Dollars (\$28,000.00) against Respondent. The NOV states that the penalty was assessed pursuant to R.I. GEN. LAWS § 42-17.6-2 and that the proposed penalty is calculated pursuant to the Rules and Regulations for Assessment of Administrative Penalties as amended, ("Penalty Regulations").

§ 12 (c) of the Penalty Regulations provides the following:

In an enforcement hearing the Director must prove the alleged violation by a preponderance of the evidence. Once a violation is established, the violator bears the burden of proving by a preponderance of the evidence that the Director failed to assess the penalty and/or the economic benefit portion of the penalty in accordance with these regulations.

The Department's interpretation of this provision requires the OCI to prove the alleged violation by a preponderance of the evidence and includes establishing, in evidence, the penalty amount and its calculation. Once a violation is established and the OCI has discharged its initial duty of establishing in evidence the penalty amount and the calculation thereof, the burden then shifts to Respondent to prove by a preponderance of the evidence that the penalty was not assessed in accordance with the Penalty Regulations or that the penalty is excessive. In Re: Richard Fickett, AAD No. 93-014/GWE, Final Decision and Order issued December 9, 1995.

Section 10 of the Penalty Regulations provides for the calculation of the penalty through the determination of whether a violation is Type I, Type II or Type III violation and whether the Deviation from Standard is Minor, Moderate or Major. Once the Type and Deviation from the Standard are known, a penalty range for the violation can be determined by reference to the appropriate penalty matrix.

§ 42-17.6-4(a) of the R.I. Gen. Laws provides that a respondent who disputes an administrative penalty has an affirmative obligation of "asserting that the money amount of the proposed administrative penalty is excessive." As a result of this statutory obligation, a Respondent also bears the burden of proving that the penalty is excessive. C. J. Donnelly, Inc. v. Donnelly Bros., Inc., 96 R.I. 255,263,191 A.2d 143 (1963) ("[t]he" burden of furnishing satisfactory proof is always on him who asserts a claim in law or equity").

A review of the Penalty Matrix Worksheets attached to the NOV (OCI Exhibit I, Full) fully supports the testimony of Ms. Tyrrell that the OCI was aware that several violations were cured by Respondent prior to the issuance of the NOV, and that Respondent's correction of those violations was considered as a factor in calculating the penalty for the violation in question.

The Worksheet for Violation C(2), relating to accumulation start dates, notes evidence of a partial cure in factor (H), stating that, "The Respondent took reasonable and appropriate steps, at the time of the inspection to mitigate the noncompliance by properly labeling the satellite drums. The Respondent did not correct the labeling requirements on hoppers of metal hydroxide sludge."

The Worksheet for Violation C(5), relating to Respondent's contingency plan, notes evidence of a full cure in factor (G), stating that, "The Respondent forwarded a partial completed contingency plan [to OC&I] on 30 August 2004."

The Worksheet for Violation C(7), relating to Respondent's designation of authorized agents to sign hazardous waste manifests, notes evidence of a full cure in factor (G), stating that, "The Respondent has taken reasonable and appropriate steps to mitigate the noncompliance with the proper submission of paperwork authorizing personnel to sign the hazardous Waste Manifest."

Evidence of OC&I's consideration of "cure" (or the lack thereof) as a factor in calculating penalties can also be seen in the Worksheet for Violation C(3), relating to Respondent's failure to keep containers of waste closed, which notes in factor (G) that, "Respondent failed to take reasonable and appropriate steps to mitigate the noncompliance and did not close or cover the open containers during the course of the inspection." (*Emphasis added.*)

Counsel for Respondent questioned Ms. Tyrrell generally about whether or not some violations had been corrected; however Respondent never identified which violations it was referring to or how or when (before or after the issuance of the NOV) those violations were allegedly cured. Accordingly, even if OC&I had failed to account for Respondent's corrective efforts in its calculation of one of the proposed penalties, Respondent failed to identify any specific penalty that was improperly calculated as a result of corrective efforts by Respondent.

The documentary and testimonial evidence introduced by OCI as well as the stipulations of fact and admissions by Respondent clearly establishes that OCI has met its burden of proving the alleged violations by a preponderance of the evidence, and that OCI more than satisfied its initial duty of establishing in evidence the penalty amount and its calculation thereof. The evidence introduced by Respondent was insufficient to meet its burden of proving by a preponderance of the evidence that the penalty was not assessed in accordance with the Penalty Regulations, or that the penalty is excessive.

The evidence introduced by OCI clearly demonstrates that the administrative penalties as set forth in the NOV were calculated properly in accordance with the pertinent statutes and penalty regulations. The violation C(1) for failure to Properly Label Containers should be considered Type I/Moderate; the violation C(2) for Failure to Mark Containers with accumulation-Start Dates should be considered Type I/Moderate; the violation C(3) for Failure to Keep Containers closed When not in Use should be considered Type II/Moderate; the violation C(4) for Treatment of Hazardous Waste Without a Permit should be considered Type I/Major; the violation C(5) for Failure to Maintain a complete Hazardous Waste Contingency Plan should be considered Type I/Moderate; the violation C(6) for Failure to Determine/Characterize Waste should be considered Type I/Moderate; the violation C(7) for Failure to Designate agents Authorized to Sign Manifests should be considered Type III/Moderate; and the violation C(8) for Failure to Provide Annual Employee Training should be considered Type I/Moderate.

Respondent's challenge as to the proposed penalty was entirely unsupported by testimony or valid documentation. Respondent offered no tangible or credible evidence, nor were any valid arguments advanced by Respondent, which warrant a reduction of the administrative penalties. The penalty amount and the calculation thereof were established in evidence through the introduction of a copy of the NOV with the attached Penalty Summary and Worksheet (OCI, 1 Full), as well as by the testimony of Ms. Tyrrell. I found the testimony of Ms. Tyrrell to be clear, credible and most persuasive. It was uncontradicted, and clearly establishes that the penalty as set forth in the NOV was assessed in accordance with the pertinent statutes and the appropriate Penalty Regulations. Wherefore the NOV and the penalty should be upheld.

## **FINDINGS OF FACT**

After considering the stipulations of the parties and the documentary and testimonial evidence of record, I find as a fact the following:

1. The subject property is located at 946 Eddy Street, Providence, RI, otherwise identified as Providence Assessor's Plat 047, Lot 0810.
2. The Property is owned by Marol Realty of 751 Namquid Drive, Warwick, RI 02888-5338.
3. The Property is operated by Respondent, National Plating, LLC, which is registered with the Rhode Island Secretary of State's Office as A Rhode Island business corporation, ID # 93556.
4. The Respondent is a generator of hazardous wastes and is subject to regulation pursuant to RIDEM's *Rules & Regulations for Hazardous Waste Management*.

5. The Respondent is registered with the DEM pursuant to the Hazardous Waste Rules and is identified by the U.S.E.P.A. hazardous waste generator identification number RID 001 209 287.
6. DEM representatives conducted an inspection of the Facility on August 26, 2004.
7. During the August 26, 2004 inspection, DEM personnel observed the following containers of hazardous waste stored at the Facility:

<b>Location</b>	<b>Number and Size</b>	<b>Waste Description</b>
Assembly area	1 x 900# Hopper	Dried Metal Hydroxide Sludge (F006)
Plating Line	1 x 55 gal Drum	Polishing Dust
Outside Parking Lot (rear)	1 x 30 cu yd container	Metal Hydroxide Sludge (F006)
Filter Press Area	1 x 900# Hopper	Wet Metal Hydroxide Sludge (F006)
Lacquer/Paint Room	1 x 55 gal Drum	Waste Paint/Lacquer Thinner
Aqueous Degreaser	1 x 100 gal tank	Aqueous Degreaser Sludge

8. During the August 26, 2004 inspection, DEM personnel observed 1 x 900 # hopper holding hazardous waste (dried metal hydroxide sludge), located in the assembly area. The following observations were made:
  - a. The hopper was not covered;
  - b. The hopper was open in close proximity to workers stringing product for process;
  - c. The hopper was not labeled as a Hazardous Waste; and
  - d. No accumulation start date was marked on the hopper.
9. Mr. Wall, facility plant manager, informed DEM personnel that the metal hydroxide sludge had been dried in a walk-in gas oven by the company to extract additional water from the sludge to reduce the weight prior to shipment off site. The facility is not permitted to treat hazardous waste in a sludge-dryer.
10. During the August 26, 2004 inspection, DEM personnel observed 1 x 55 gallon drum holding hazardous waste (polishing dust), located near the plating line that was not properly labeled with the words "Hazardous Waste" and works describing the contents. Facility personnel completed satellite labeling at the time of the inspection.
11. Based on an analysis performed by the Respondent on August 8, 2001, the Respondent's polishing dust is known to be hazardous waste based on its concentration of lead.
12. During the August 26, 2004 inspection, DEM personnel observed 1 x 900 # hopper holding hazardous waste (wet metal hydroxide sludge) located in the filter press area. The following observations were made:
  - a. The hopper was not covered;
  - b. The hopper was open when not in use;
  - c. The hopper was not labeled as a Hazardous Waste; and
  - d. No accumulation start date was marked on the hopper.
13. During the August 26, 2004 inspection, DEM personnel observed 1 x 55 gallon drum holding hazardous waste (waste paint/lacquer thinner) located in the lacquer/paint storage and paint booth room. The drum of waste paint/lacquer thinner was not properly labeled with the words "Hazardous Waste" and words describing the contents. Facility personnel completed satellite labeling at the time of the inspection.
14. During the August 26, 2004 inspection, DEM personnel asked Mr. Wall for a copy of the company's current hazardous waste contingency plan for review. The current copy provided for review did not contain any floor plans for emergency egress, hazardous waste locations, or emergency equipment locations.
15. During the August 26, 2004 inspection, DEM personnel observed an Aqueous Degreaser that, according to the Respondent, was no longer being used for manufacturing and had not been used for more than 90 days.

16. The bottom of the Aqueous Degreaser was observed to contain waste sludge from its previous operations, which sludge had not been characterized as required by regulation.

17. During the August 26, 2004 inspection, DEM personnel asked Mr. Wall to produce the last three years of hazardous waste manifests. DEM personnel noted at the time of the inspection, that Mr. Wall has been signing Hazardous Waste Manifests for the disposition and removal of Hazardous Waste from the facility for the past three years without proper authorization as required by regulation. Mr. Wall's name is not on the current authorized manifest signers' list. A corrected copy was provided to DEM personnel at the time of the inspection.

18. During the August 26, 2004 inspection, DEM personnel asked Mr. Wall to produce the company's hazardous waste management training program and hazardous waste management training records for the previous three years. Mr. Wall was able to provide training documentation for the years 2001, 2002, and 2003. Review of the company's personnel training records revealed that the training program does not contain all of the elements relating to hazardous waste management required under Hazardous Waste Rule 5.02. The annual training for 2003 consisting of Hazwoper/OSHA training does not meet the requirements of current regulations.

19. Several of the violations alleged in the NOV were subsequently corrected by the Respondent during or after the August 26, 2004 inspection, which corrective actions were properly considered by OC&I in calculating the proposed administrative penalty.

## **CONCLUSIONS OF LAW**

After due consideration of the documentary and testimonial evidence of Record and based upon the findings of fact as set forth herein, I conclude the following as a matter of law:

1. OC&I has proved by a preponderance of the evidence that Respondent violated Hazardous Waste Rules 5.04 and 5.04C, and 40 CFR §§262.31 and 262.34 by failing to properly label all containers holding hazardous waste while in storage at the facility.
2. OC&I has proved by a preponderance of the evidence that Respondent violated Hazardous Waste Rule 5.04, and 40 CFR 262.34 by failing to mark all 90-day accumulation containers holding hazardous waste with the date upon which the waste first began to accumulate.
3. OC&I has proved by a preponderance of the evidence that Respondent violated Hazardous Waste Rule 5.02 and 40 CFR 265.173 by failing to keep all containers of hazardous waste closed except when adding or removing waste.
4. OC&I has proved by a preponderance of the evidence that Respondent violated Hazardous Waste Rule 7.01 and 40 CFR 265.1 by treating hazardous waste without first obtaining a permit from the Department.
5. OC&I has proved by a preponderance of the evidence that Respondent violated Hazardous Waste Rule 5.02 and 40 CFR §§ 265.52 and 265.54 requiring generators of hazardous waste to develop a contingency plan designed to minimize hazards to human health and the environment in the event of a fire, spill or release of hazardous waste.
6. OC&I has proved by a preponderance of the evidence that Respondent violated Hazardous Waste Rule 5.08 and 40 CFR §§ 262.11 requiring hazardous waste generators to determine if their wastes meet any of the definitions of hazardous waste.
7. OC&I has proved by a preponderance of the evidence that Respondent violated Hazardous Waste Rule 5.09 requiring generators of hazardous waste to authorize in writing those personnel responsible for signing uniform hazardous waste manifests on behalf of the company.
8. OC&I has proved by a preponderance of the evidence that Respondent violated Hazardous Waste Rule 5.02 and 40 CFR §§ 262.34 and 265.16 requiring generators of hazardous waste to provide annual Hazardous Waste management training to company employees who handle hazardous waste and to maintain records of the training sessions for a period of at least three years.

9. The administrative penalty as proposed in the NOV is not excessive and was properly calculated in accordance with the Administrative Penalties for Environmental Violations Act, R.I. Gen. Laws ch. 42-17.6 and the Rules and Regulations for the Assessment of Administrative Penalties.

10. Respondent failed to meet its burden to prove that the penalty proposed in the NOV was either excessive or improperly calculated.

11. Respondent failed to establish that it lacks the ability to pay the penalty proposed in the NOV.

12. The Administrative penalty proposed in the NOV, Twenty-Eight Thousand and 00/100 Dollars (\$28,000.00) shall be assessed as the final administrative penalty in the within matter and shall be paid to the Office of Compliance & Inspection within thirty (30) days of the date of the final agency decision.

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby

### **ORDERED**

1. That the Notice of Violation and Order No. OC&I/RCRA 04-083 issued to the Respondent on January 7, 2005 is SUSTAINED.

2. That the Respondent shall pay an administrative penalty in the total amount of Twenty-Eight Thousand and 00/100 Dollars (\$28,000.00).

3. The aforesaid penalty shall be paid within thirty (30) days of the entry of the Final Agency Order in this matter, and shall be in the form of a certified check or money order, made payable to the "General Treasury-Environmental Response Fund Account" and shall be forwarded to:

Office of Management Services  
RI Department of Environmental Management  
235 Promenade Street, Room 340  
Providence, Rhode Island 02908

Entered as an Administrative Order and herewith recommended to the Director for issuance as a Final Agency Decision and Order this \_\_\_\_ day of May, 2006.

\_\_\_\_\_  
Joseph F. Baffoni  
Hearing Officer

Entered as a Final Agency Decision and Order this \_\_\_\_\_ day of \_\_\_\_\_, 2006  
W. Michael Sullivan, Ph. D.  
Director

### **APENDIX A**

#### **LIST OF EXHIBITS**

##### **FOR OCI:**

OCI1 **January 7, 2005 Notice of Violation (copy):**

OCI2 August 26, 2004 Hazardous Waste Generator Inspection Report  
Full (copy);

OCI 3 July 26, 2004 [sic] Hazardous Waste Field Inspection Report  
Full (copy);

OCI 4 July 20, 2001 Letter of Non-Compliance from RIDEM to  
Full Respondent (copy);

OCI 5 April 6, 2001 Hazardous Waste Generator Inspection Report

Full (copy);  
OCI 6 August 5, 2004 RI Corporation Database Search Results (copy);  
OCI 7 January 12, 2004, letter from the Narragansett Bay Commission to  
Full Respondent (copy).

FOR RESPONDENT:

No documents were submitted by Respondent.

#### **NOTICE OF APPELLATE RIGHTS**

This Final Order constitutes a final order of the Department of Environmental Management pursuant to RI general Laws § 42-35-12. Pursuant to R.I. Gen. Laws § 42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.