

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Elmwood Realty, LLC
Butler Waste Disposal, LLC**

**FILE Nos.: OCI-WP-22-161
and OCI-HW-22-46**

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 parties (“Respondents”) have violated certain statutes and/or administrative regulations under RIDEM's jurisdiction.

B. ADMINISTRATIVE HISTORY

Elmwood Realty, LLC (“Elmwood”) owns the property that is subject to this Notice of Violation. Butler Waste Disposal, LLC (“Butler”) operates a waste disposal business at the property. Jeffrey Butler is the manager of both Elmwood and Butler.

On 11 October 2022, RIDEM issued a *Notice of Intent to Enforce* (“NIE”) to Elmwood for the discharge of stormwater associated with an industrial activity from the property without the required RIDEM permit. The NIE required Elmwood to apply to RIDEM for permit by 17 November 2022. In response to the NIE, Jeffrey Butler informed RIDEM that Elmwood would apply for the permit. Elmwood failed to comply with the NIE. On 15 March 2023, RIDEM issued an *Expedited Citation Notice* (“ECN”) by electronic correspondence to Elmwood requiring that it apply for the permit. Elmwood’s registered agent acknowledged receipt of the correspondence that same day. Elmwood failed to respond to or comply with the ECN, and the ECN expired on 15 May 2023. As of the date of the NOV, Respondents have failed to comply.

On 28 December 2022, RIDEM issued a *Letter of Non-Compliance* (“LNC”) to Butler for violations documented at the property on 6 June 2022 involving waste, used oil storage, and used oil releases to the surface of the ground. On 31 January 2023, in response to the LNC, Butler sent electronic correspondence to RIDEM stating that all the issues were corrected. A follow up inspection by RIDEM revealed continued noncompliance. On 9 March 2023, RIDEM sent electronic correspondence to Butler with required actions to correct the noncompliance. RIDEM received no response. On 4 May 2023, RIDEM issued a NIE to Butler by certified mail, which was delivered on 12 May 2023. As of the date of the NOV, Butler has failed to respond to or comply with the NIE.

C. FACTS

- (1) The property is located at 3 Ford Lane (also known as 3 Jefferson Boulevard), Assessor's Plat 284, Lot 241, in Warwick, Rhode Island ("Property").
- (2) Elmwood owns the Property.
- (3) Butler operates a waste disposal business at the Property that includes truck maintenance ("Waste Disposal Activity").

Hazardous Waste Issues

- (4) On 6 June 2022, RIDEM inspected the Property and met with Michael Joseph ("Joseph"), who identified himself as the Manager, at the time of the inspection. The inspection revealed the following:
 - (a) One 55-gallon drum holding used oil that included a mixture of solvent ("Solvent") generated from a parts cleaning unit on-site ("Parts Cleaning Unit") and antifreeze ("Mixed Waste Drum"). The drum was stored outside and not under a roofed structure or labeled with the words "Used Oil". Antifreeze meets the definition of hazardous waste, and the Solvent may meet the definition of hazardous waste. Butler failed to provide documentation that the drum does not meet the definition of hazardous waste.
 - (b) Used oil is generated onsite. Joseph stated that the used oil is given to an individual that he could not identify who incinerates the oil in a waste oil burner. Upon information and belief, this individual has not obtained the appropriate letter of authorization or permit from RIDEM and is not a used oil transporter permitted by RIDEM.
 - (c) Multiple used oil releases ("Releases") were present on the pavement surface outside of the service garage.
 - (d) No steps were taken to control the Releases and clean up and properly manage all used oil and resultant wastes.
 - (e) No records of each used oil shipment sent off-site for processing or burning for a period of at least 3 years were available.
- (5) On 9 March 2023, RIDEM inspected the Property and met with Joseph at the time of the inspection. The inspection revealed the following:
 - (a) One 55-gallon drum holding used oil was stored outside and not under a roofed structure and was not labeled with the words "Used Oil". Joseph marked the drum with the words "Used Oil" and moved the drum inside the service garage at the time of inspection. Joseph stated that the Mixed Waste Drum was picked up by Western Oil approximately 2 months ago.

- (b) The Releases were no longer visible.
- (c) Recent multiple used oil releases were present on the ground surface at the right adjacent lot outside of the service garage (“New Releases”). Two company vehicles were parked in the adjacent lot near the New Releases.
- (d) No steps were taken to control the new Releases and clean up and properly manage all used oil and resultant wastes.
- (e) One 20-gallon container holding used oil in the service garage was not labeled, and one 5-gallon container holding used oil in the service garage was not labeled and closed. Joseph marked the 20-gallon container holding used oil in the service garage with the words “Used Oil” and transferred the contents of the 5-gallon container into an above ground storage tank outside of the service garage at the time of inspection.
- (f) The Parts Cleaning Unit was not present. Joseph stated the unit had been emptied and scrapped approximately 1 month ago. Joseph stated that no paperwork was maintained for the unit, as it was left on the side of the road outside of the Property. Joseph also stated that a sample of the Solvent was not collected and analyzed prior to disposing of the unit.

RIDEM’s inspector requested paperwork for the shipment of the Mixed Waste Drum to Western Oil, the safety data sheets for the Solvent, and the paperwork for the shipment of used oil to demonstrate that Butler was using a permitted transporter. Joseph stated that the paperwork was not kept onsite but should be available at the office location.

- (6) On 24 October 2023, RIDEM contacted Western Oil to confirm that it picked up the Mixed Waste Drum. Western Oil informed RIDEM that it had no record that it picked up a drum from Butler.
- (7) As of the date of the NOV, Butler has failed to provide safety data sheets for the Solvent or paperwork associated with the shipment of the Mixed Waste Drum to Western Oil.
- (8) As of the date of the NOV, Butler has failed to provide records of used oil shipments sent off-site for processing or burning.

Stormwater Issues

- (9) The Waste Disposal Activity conforms to the U.S. Occupational Safety and Health Administration standard industry classification code 4212 “Garbage, local collecting and transporting without disposal” (“SIC 4212”).

- (10) Rhode Island's *Regulations for the Rhode Island Pollutant Discharge Elimination System* (250-RICR-150-10-1) ("RIPDES Rules"), Part 1.32(A)(1)(b) and Part 1.4(A)(111)(h), an activity with a SIC 4212 requires a permit from RIDEM if stormwater is likely to enter the waters of the State.
- (11) Due to the Property's topographic elevations and its location within the flood plain, stormwater from the Property discharges to the Pawtuxet River.
- (12) Pawtuxet River is a water of the State.
- (13) Upon information and belief, as of the date of the NOV, Respondents continue to discharge stormwater from the Property to Pawtuxet River.
- (14) As of the date of the NOV, Respondents have failed to apply to RIDEM for a permit to discharge stormwater to Pawtuxet River.

D. VIOLATION

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

- (1) **R.I. Gen. Laws Section 46-12-5(b)** – requiring the discharge of any pollutant into waters of the State comply with the terms and conditions of a permit and applicable regulations.
- (2) **R.I. Gen. Laws Section 46-12-5(c)** – prohibiting the construction or installation of any industrial, commercial, or other establishment, any modification or addition thereto, or undertaking any development which may result in the discharge of any pollutant into the waters of the state, unless the discharge is made to a system or means to prevent pollution approved by the director.
- (3) **RIPDES Rules**
 - (a) **Part 1.8(A)** – requiring any person who discharges or proposes to discharge pollutants into the waters of the State to submit a complete application to RIDEM for a permit.
 - (b) **Part 1.32(A)(1)(b)** – requiring that any person who discharges or proposes to discharge stormwater associated with industrial activity into the waters of the State submit a complete application to RIDEM for a permit.

- (4) **Rhode Island’s *Water Quality Regulations (250-RICR-150-05-1) (“WQ Rules”)***
- (a) **Part 1.13(B)** – requiring the discharge of pollutants into the waters of the State comply with the terms and conditions of an approval issued by RIDEM.
 - (b) **Part 1.15(A)** – prohibiting the discharge of any pollutant into or conducting any activity which will likely cause or contribute pollution to the waters of the State without having obtained all required approvals from the Director.
- (5) **Rhode Island’s *Rules and Regulations for Hazardous Waste Management (250-RICR-140-10-1) (“HW Rules”)***
- (a) **Part 1.7.3** – any person who generates a solid waste shall determine if the waste is a hazardous waste in accordance with the requirements contained in this part and maintain records to document the waste determination.
 - (b) **Part 1.16.2(A)(8)** – requiring that a used oil generator ship used oil to a facility that has notified RIDEM of its used oil activity and/or obtained the appropriate letter of authorization or permit.
 - (c) **Part 1.16.4(A)(1)(c)** – requiring that a used oil generator label all containers holding used oil with the words “Used Oil”.
 - (d) **Part 1.16.4(A)(1)(d)** – requiring that a used oil generator that stores containers outside place the containers on an impervious surface under a roofed structure and protected from precipitation and flooding.
 - (e) **Part 1.16.4(A)(4)** – requiring that a used oil generator maintain an adequate volume of spill control equipment on-site to contain and clean up the entire volume of used oil stored on-site and upon detection of a release of used oil, take immediate steps to stop and control the release and clean up, contain, and properly manage the used oil and other resultant wastes.
 - (f) **Part 1.16.4(A)(7)** – requiring that a used oil generator ensure that the used oil is shipped off-site by a used oil transporter who is permitted by RIDEM.
 - (g) **Part 1.16.4(A)(7)(c)** – requiring that a used oil generator keep a record of each used oil shipment sent off-site for processing or burning for a period of at least 3 years that includes the name and address of the facility, U.S. Environmental Protection Agency Identification Number of the used oil generator, the quantity of used oil shipped, the date that used oil was received by the used oil transporter, and the name and signature of the agent that released the shipment for transport.

(6) **Rhode Island's Oil Pollution Control Regulations (250-RICR-140-25-2)**

- (a) **Part 2.6(A)** – prohibiting any person from discharging, cause to be discharged, or permit the discharge of oil upon the land except by regulation or by permit from RIDEM.
- (b) **Part 2.12(B)(2)** – requiring any person responsible for a release of oil to immediately stop the discharge and begin containment and removal of the oil and waste material.

E. ORDER

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

- (1) **IMMEDIATELY upon receipt of the NOV:**
 - (a) Cease and desist the practice of disposing used oil at an unlicensed facility. All offsite shipments of used oil must be directed to a facility that has notified RIDEM of its used oil activity and/or obtained the appropriate letter of authorization or permit.
 - (b) Properly clean up all releases of used oil and manage the resulting material as used oil.
 - (c) Ensure that used oil is shipped offsite by a used oil transporter who is permitted by RIDEM.
 - (d) Begin to keep a record of each used oil shipment sent off-site for processing or burning for a period of at least 3 years. These records should be maintained on-site and available for review by RIDEM upon request.
- (2) **Within 30 days of receipt of the NOV**, complete a waste determination for the contents of the Mixed Waste Drum by providing the record of the shipment sent off-site to Western Oil to RIDEM.

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

- (1) **Within 30 days of receipt of the NOV**, permanently eliminate the discharge of stormwater associated with industrial activity from the Property to Pawtuxet River **OR** apply to RIDEM's Office of Water Resources ("Application") for a permit under the RIPDES Rules to discharge stormwater from the Property to Pawtuxet River.

- (2) The Application shall be subject to RIDEM review and approval. Upon review, RIDEM shall provide written notification either granting formal approval or stating the deficiencies therein. **Within 15 days (unless a longer time is specified) of receiving a notification of deficiencies** in the application, submit to RIDEM any information necessary to correct the deficiencies.

F. 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, against each named respondent:

- (a) **Elmwood and Butler – \$7,055**

- (b) **Butler – \$43,750**

- (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. Penalty payments shall be by one of two methods:

- (a) By certified check, cashier's check, or money order made payable to the **General Treasury – Water and Air Protection Program** and forwarded to:

Administrator, RIDEM Office of Compliance and Inspection
235 Promenade Street, Suite 220
Providence, RI 02908-5767.

- (b) By wire transfer in accordance with instructions provided by RIDEM.

- (3) Penalties assessed against Respondents in the NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if RIDEM determines that reasonable efforts have been made to comply promptly with the NOV.

G. 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 F 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) An original signed copy of the NOV is being forwarded to the City of Warwick, Rhode Island wherein the Property is located to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and 46-12-9(c), as amended.
- (7) 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 extension 2772306 or at jenna.giguere@dem.ri.gov. All other inquiries should be directed to Patrick J. Hogan of RIDEM's Office of Compliance and Inspection at (401) 222-1360 extension 2777119 or at patrick.hogan@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 G 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:

Elmwood Realty, LLC
C/o Stephen M. Litwin, Esq.
Resident Agent for Service
116 Orange Street
Providence, RI 02903

Butler Waste Disposal, LLC
C/o Stephen M. Litwin, Esq.
Resident Agent for Service
116 Orange Street
Providence, RI 02903

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Programs: Water Pollution and Hazardous Waste
 File Nos.: OCI-WP-22-161 and OCI-HW-22-46
 Respondents: Elmwood Realty, LLC and Butler Disposal, 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	
D (1) – (D) (4) – Discharge of stormwater associated with industrial activity without a permit	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$6,250	1 violation	\$6,250
D (5)(a) – Determination	Type I <i>(\$25,000 Max. Penalty) *</i>	Moderate	\$6,250	1 Violation	\$6,250
D(5)(b) and D(5)(c) – Shipping	Type I <i>(\$25,000 Max. Penalty) *</i>	Major	\$12,500	1 Violation	\$12,500
D(5)(d) and D(6)(a) – Spill control and oil spill clean up	Type I <i>(\$25,000 Max. Penalty) *</i>	Major	\$12,500	1 Violation	\$12,500
D(5)(e) – Recordkeeping	Type I <i>(\$25,000 Max. Penalty) *</i>	Moderate	\$6,250	1 Violation	\$6,250
D(5)(f) & D(5)(g) – Container management	Type I <i>(\$25,000 Max. Penalty) *</i>	Moderate	\$6,250	1 Violation	\$6,250
SUB-TOTAL					\$50,000

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

ADMINISTRATIVE PENALTY SUMMARY (continued)

ECONOMIC BENEFIT FROM NONCOMPLIANCE (for Elmwood Realty LLC and Butler Disposal, LLC)

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>Delayed costs associated with application for a General Permit for Stormwater Discharge Associated with Industrial Activity. The economic benefit of non-compliance was determined by using an EPA 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. The cost to apply for the General Permit used in the analysis is \$20,000.</p>	<ul style="list-style-type: none"> ▪ Profit Status ▪ Filing Status ▪ Initial Capital Investment ▪ One-time Non-depreciable Expense ▪ First Month of Non-compliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	<p>C-Corp</p> <p>\$20,000</p> <p>August 2022</p> <p>1 December 2023</p> <p>1 December 2023</p> <p>6.7%</p>	
SUB-TOTAL			\$805

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 = \$50,805

PENALTY MATRIX WORKSHEET (for Elmwood Realty, LLC and Butler Disposal, LLC)

CITATION: Discharge of stormwater associated with industrial activity without a permit

VIOLATION NOs.: D (1) – D (4)

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

DEVIATION FROM THE STANDARD

THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

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

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents discharged stormwater associated with industrial activity from the Property to Pawtuxet River, a water of the State without the required RIDEM permit. Preventing the discharge of pollutants to waters of the State without a permit is of major importance to the regulatory program.
- (2) **Environmental conditions:** Butler stores and services garbage collection trucks at the Property. The Property directly abuts the main stem of Pawtuxet River. This section of Pawtuxet River is classified as a Class B1 water of the State in accordance with the WQ Rules. Among other uses, Class B1 waters are designated for primary and secondary contact recreational activities and fish and wildlife habitat. Class B1 waters shall have good aesthetic value. However, primary contact recreational activities may be impacted due to pathogens from approved wastewater discharges. This section of Pawtuxet River is impaired due to mercury in fish tissue, non-native aquatic plants, lead, and enterococcus bacteria.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** Considered, but not utilized for this calculation.
- (5) **Duration of the violation:** Full duration unknown – at least approximately 1 year. The violation was first documented on 6 October 2022.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents did not take reasonable and appropriate steps to prevent the noncompliance. Respondents began discharging stormwater associated with the industrial activity without applying for the required RIDEM permit. Respondents have not since mitigated the noncompliance despite being thrice informed of the requirements by telephone on 6 October 2022, by the NIE and by the ECN.
- (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 for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondents for the failure to comply with Rhode Island's *Water Pollution Act*, the WQ Rules and the RIPDES Rules.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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

PENALTY MATRIX WORKSHEET (for Butler Disposal, LLC)

CITATION: Determination

VIOLATION NO.: D (5)(a)

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

THE DEGREE TO WHICH A PARTICULAR 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:** Butler failed to determine whether the contents of the Mixed Waste Drum met the definition of hazardous waste prior to disposing of the drum and failed to determine whether the Solvent was hazardous waste prior to disposing of the Parts Cleaning Unit.
- (2) **Environmental conditions:** Considered, but not utilized for this calculation.
- (3) **Amount of the pollutant:** The Mixed Waste Drum held 55-gallons of oil, antifreeze, and Solvent. The volume of Solvent in the Parts Cleaning Unit was unknown.
- (4) **Toxicity or nature of the pollutant:** Parts cleaning solution typically consist of chemicals such as methyl ethyl ketone, toluene, acetone, isopropyl alcohol, trichloroethylene, and perchloroethylene, all of which are hazardous.
- (5) **Duration of the violation:** Considered, but not utilized for this calculation.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Butler failed to take reasonable and appropriate steps to prevent the noncompliance by determining whether the contents of the Mixed Waste Drum met the definition of hazardous waste prior to disposing of the drum and determining whether the Solvent from the Parts Cleaning Unit met the definition of hazardous waste prior to disposing of the unit. RIDEM is unaware of what steps, if any, Butler has taken to determine whether waste transported off site meets the definition of hazardous waste.
- (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:** As a follow up to the 6 June 2022 inspection, RIDEM's inspector spoke with Jeffrey Butler on 9 June 2022 regarding the need to determine whether the Solvent met the definition of hazardous waste. Also, the LNC required, among other things, that Butler determine whether the Solvent met the definition of hazardous waste. On 31 January 2023, in response to the LNC, Butler sent electronic correspondence to RIDEM stating that all the issues were corrected. Despite this acknowledgement, on the 9 March 2023 inspection Joseph stated to RIDEM's inspector that the Part Cleaning Unit was left on the side of the road outside of the Property approximately 1 month prior to RIDEM's inspection and that no samples were taken of the Solvent to determine whether it met the definition of hazardous waste.
- (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:** Butler had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	<u> </u> X 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 (for Butler Disposal, LLC)

CITATION: Shipping

VIOLATION NOs.: D (5)(b) and D (5) (c)

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		
<p>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</p>		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Rules.</p> <p>(1) The extent to which the act or failure to act was out of compliance: Butler failed to transport used oil with a permitted Rhode Island transporter. Joseph stated that used oil generated on-site is given to an individual that he could not identify who incinerates the used oil in a waste oil burner. Upon information and belief, this individual has not obtained the appropriate Letter of Authorization or permit from RIDEM and is not a used oil transporter permitted by RIDEM. Butler also failed to transport used oil to a facility that has notified RIDEM of its used oil activity and/or obtained the appropriate Letter of Authorization or permit. The requirement to use a licensed transporter reduces the potential for mismanagement of used oil. A licensed transporter is required to maintain safety equipment and develop procedures to respond to spills and releases of used oil providing safeguards to prevent contamination of soil and water. Use of an unlicensed transporter may result in improper disposal of used oil.</p> <p>(2) Environmental conditions: Considered, but not utilized for this calculation.</p> <p>(3) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(4) Toxicity or nature of the pollutant: Used oil is known to cause soil contamination when released to the environment and may contain constituents that are suspected human carcinogens.</p> <p>(5) Duration of the violation: Full duration unknown – upon information and belief at least approximately 1 year. Joseph informed RIDEM’s inspector on the 6 June 2022 inspection that the unlicensed individual has transported the used oil since Butler began operating at the Property several months prior to the inspection. On the 9 March 2023 inspection Joseph stated that the Mixed Waste Drum was transported by Western Oil, which is a permitted Rhode Island transporter. Butler has failed to provide any documents to verify that Western Oil transported this drum, despite repeated requests by RIDEM to do so. RIDEM contacted Western Oil on 24 October 2023, and Western Oil informed RIDEM that it had no record that it picked up a drum from Butler, which leads RIDEM to believe that Western Oil was not used.</p> <p>(6) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Butler failed to prevent the noncompliance by using a permitted RIDEM transporter and transporting the used oil to a facility that has notified RIDEM of its used oil activity and/or obtained the appropriate letter of authorization or permit. RIDEM is unaware of what steps, if any, Butler has taken 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 for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Butler 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:** As a follow up to the 6 June 2022 inspection, RIDEM’s inspector spoke with Jeffrey Butler on 9 June 2022 regarding the need to use a permitted RIDEM transporter and to transport the used oil to a facility that has notified RIDEM of its used oil activity and/or obtained the appropriate letter of authorization or permit. Also, the LNC required, among other things, that Butler comply with these requirements. On 31 January 2023, in response to the LNC, Butler sent electronic correspondence to RIDEM stating that all the issues were corrected. On the 9 March 2023 inspection Joseph stated to RIDEM’s inspector that the Mixed Waste Drum was transported by Western Oil approximately 2 months prior to the inspection; however, no documents have been provided to RIDEM to verify that Western Oil transported the drum and Western Oil has no record of picking up a drum from Butler.

<u> </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 (for Butler Disposal, LLC)

CITATION: Spill control and oil spill cleanup

VIOLATION NOs.: D (5)(d) and D (6)(a)

TYPE		
<p style="text-align: center;"><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;"><u> </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;"><u> </u> TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></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: Butler failed to take immediate steps to control the release of used oil, clean up and properly manage all used oil and resultant wastes as required by regulation. (2) Environmental conditions: The Property directly abuts Pawtuxet River. This section of Pawtuxet River is classified as a Class B1 water of the State. (3) Amount of the pollutant: Unknown. (4) Toxicity or nature of the pollutant: Used oil. Used oil is known to cause soil contamination when released to the environment and may contain constituents that are suspected human carcinogens. (5) Duration of the violation: Full duration unknown – the 6 June 2022 inspection and the 9 March 2023 inspection revealed multiple used oil releases present on the ground surface at the right adjacent lot outside of the service garage. (6) Areal extent of the violation: Unknown. 		
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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Butler failed to take reasonable and appropriate steps to prevent the release of used oil or immediately clean up the used oil. Butler may have taken steps to mitigate the noncompliance by cleaning up the used oil observed on the 6 June 2022 inspection. RIDEM’s inspector observed that the used oil observed on the ground on the 6 June 2022 inspection was no longer visible on the 9 March 2023 inspection.
- (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:** As a follow up to the 6 June 2022 inspection, RIDEM’s inspector spoke with Jeffrey Butler on 9 June 2022 regarding the need to prevent the release of oil to the ground and to immediately cleanup as spills. Also, the LNC required, among other things, that Butler comply with these requirements. On 31 January 2023, in response to the LNC, Butler sent electronic correspondence to RIDEM stating that all the issues were corrected. On the 9 March 2023 inspection RIDEM’s inspector observed new oil releases to the ground that had not been cleaned up.
- (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:** Butler had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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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 (for Butler Disposal, LLC)

CITATION: Recordkeeping
 VIOLATION NO.: D (5)(e)

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

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

FACTORS CONSIDERED:

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

- (1) **The extent to which the act or failure to act was out of compliance:** Butler failed to maintain records of each used oil shipment sent off-site for processing or burning. Keeping records of used oil shipments is important to the regulatory program. The HW Rules require used oil generators keep a record of each used oil shipment sent off-site for processing or burning for a period of at least 3 years that includes the name and address of the facility, the EPA identification number of the used oil generator, the quantity of used oil shipped, the date that used oil was received by the used oil transporter, and the name and signature of the agent that released the shipment for transport.
- (2) **Environmental conditions:** Considered, but not utilized for this calculation.
- (3) **Amount of the pollutant:** Unknown – on the 9 March 2023 inspection Joseph stated that the Mixed Waste Drum was shipped off site during the prior 2 months. The inspector also observed one 55-gallon container, one 20-gallon container and one 5-gallon container all holding used oil.
- (4) **Toxicity or nature of the pollutant:** Used oil. Used oil is known to cause soil contamination when released to the environment and may contain constituents that are suspected human carcinogens.
- (5) **Duration of the violation:** Full duration unknown – at least approximately 1 year. On the 6 June 2022 inspection and 9 March 2023 inspection, Joseph informed RIDEM’s inspector that oil was transported off site; however, he was unable to provide any records at the time of the inspection and Butler has failed to provide any records to RIDEM since the inspections, despite repeated requests to do so.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Butler failed to take reasonable and appropriate steps to prevent the noncompliance by maintaining records for all used oil shipped off-site. RIDEM is unaware of what steps, if any, Butler has taken 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 for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Butler 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:** As a follow up to the 6 June 2022 inspection, RIDEM’s inspector spoke with Jeffrey Butler on 9 June 2022 regarding the need to maintain records for all used oil shipped off-site. Also, the LNC required, among other things, that Butler comply with this requirement. On 31 January 2023, in response to the LNC, Butler sent electronic correspondence to RIDEM stating that all the issues were corrected. On the 9 March 2023 inspection, Joseph stated to RIDEM’s inspector that the Mixed Waste Drum was transported by Western Oil approximately 2 months prior to the inspection; however, no documents have been provided to RIDEM to verify that Western Oil transported the drum.

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 (for Butler Disposal, LLC)

CITATION: Container management

VIOLATION NOs.: D (5)(f) and D(5)(g)

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

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

FACTORS CONSIDERED:

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

- (1) **The extent to which the act or failure to act was out of compliance:** Butler failed to manage containers of used oil in accordance with the HW Rules.
- (2) **Environmental conditions:** The Property directly abuts Pawtuxet River. This section of Pawtuxet River is classified as a Class B1 water of the State.
- (3) **Amount of the pollutant:** On the 6 June 2022 inspection, RIDEM observed that Butler was storing one 55-gallon drum containing used oil outside of the service garage that was not labeled with the words "Used Oil" and was not stored under a roofed structure as required by regulation. On the 9 March 2023 inspection, RIDEM observed that Butler was storing one 55-gallon drum containing used oil outside of the service garage that was not labeled with the words "Used Oil" and was not stored under a roofed structure as required by regulation. Butler was also storing one 20-gallon container and one 5-gallon container holding used oil that was not labeled as required by regulation.
- (4) **Toxicity or nature of the pollutant:** Used oil. Used oil is known to cause soil contamination when released to the environment and may contain constituents that are suspected human carcinogens.
- (5) **Duration of the violation:** Full duration unknown – at least approximately 9 months between the 6 June 2022 inspection and 9 March 2023 inspection.
- (6) **Areal extent of the violation:** Unknown.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Butler failed to take reasonable and appropriate steps to prevent the noncompliance by properly managing the used oil containers. During the 9 March 2023 inspection, Butler did mitigate the noncompliance, as Joseph marked the 55-gallon container and the 20-gallon container holding used oil with the words "Used Oil", moved the 55-gallon container inside the service garage and transferred the contents of the 5-gallon container into a 275-gallon above ground storage tank outside of the service garage at the time of inspection.
- (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:** As a follow up to the 6 June 2022 inspection, RIDEM's inspector spoke with Jeffrey Butler on 9 June 2022 regarding the need to properly manage the used oil containers. Also, the LNC required, among other things, that Butler comply with this requirement. On 31 January 2023, in response to the LNC, Butler sent electronic correspondence to RIDEM stating that all the issues were corrected. On the 9 March 2023 inspection, RIDEM's inspector observed that several containers were not being properly managed for the same issues observed on the 6 June 2022 inspection (that is, labeling and storage outside not under a roofed structure).
- (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:** Butler had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	<u> </u> X 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