

Craig Stuart and Matt Koller, ESM 204 Memo #1, April 14, 2021

Philern Corp. is guilty of violating several hazardous waste statutes after the recent inspections from the State Department of Toxic Substances Control (DTSC), and considering that “the exact penalty amount sought by DTSC depends on a variety of factors, including Philern’s good faith efforts to comply with the regulations,” should immediately implement controls to prevent additional violations and reduce the likelihood of significant financial penalties. However, there are certain violations for which Philern is in technical compliance and should challenge. Considering Jill’s conflict with Inspector Hitton, she should not attend this meeting; we recommend that Phil, Ernie, and Sam attend and take a conciliatory stance while disputing certain violations.

Violations for which Philern should admit fault and rectify include: **(1) inadequate training of laboratory personnel.** Sam Richardson should immediately schedule a mandatory training for all laboratory researchers handling hazardous waste to comply with statute §66265.16(a)(1) and (2), which requires all personnel to be trained to comply with hazardous waste requirements, including, but not limited to proper labeling, storage, oversight, transportation, treatment, or disposal of hazardous waste according to Exhibit E; **(2) improper labeling of waste containers in the SAAs and in the central waste accumulation area and (3) illegal storage of hazardous waste in the central waste accumulation area of Building B for more than 90 days.** Philern must ensure that any container holding hazardous waste is clearly dated and labeled with the composition, statement of hazardous properties, contact information of the waste producer, and the words “Hazardous Waste,” per statute §66262.34(f)(3), and implement a written schedule for inspecting the facility for malfunctions and deterioration, operator errors, or discharges relating to improper handling of hazardous waste, per statute §66265.15, ensuring SAA waste is only stored for 90 days.

Violations for which Philern Corp is in technical compliance and should dispute include: **(1) illegal offsite transportation, storage, and accumulation of Building C hazardous waste in the central waste accumulation area of Building B:** The inspector clearly references Management Memo #EO-93-031-MM to conclude that the property on which Building C rests is not contiguous with the property on which Building B rests because a public street connects the two non-contiguous properties. While Inspector Hitton is correct in asserting that these two properties are non-contiguous, he fails to note that the entrances and exits for Buildings B and C are indeed at a crossroads intersection. Provided your night janitor, Ed Riedy, complies with your directive to use a handcart to transport the hazardous waste, then Building C is considered onsite property. It is of the utmost importance that he continues to use a handcart, and not a motor vehicle, to transport the hazardous waste, and that he does so by crossing the crosswalk (therefore crossing *over* the public right-of-way) and not travel along the street (thereby making use of the public right-of-way).

(2) Illegal operation of Satellite Accumulation Areas (SAAs): The DTSC violation concerning Philern's SAAs noted that "the four satellite accumulation areas were illegal because the waste accumulating there were not located at or near where the wastes were generated, nor were the waste under the control of the operator." To meet the SAA exemption, regulation §66262.34(e) requires that "up to 55 gallons of hazardous waste could be accumulated at or near any point of generation for up to one year if certain criteria are met." This requires the SAA to "remain under the control of the operator of the process that generated the waste" and the hazardous waste be accumulated "at the initial accumulation point" which must be "at or near the area where the waste is generated." (§66262.34(e)(1)(A)) According to the DTSC Management Memo #EO-93-008-MM, "at or near" is defined as in the "same or adjacent" room of the working area. Therefore, the SAA locations were illegal during the initial inspection because Building A Room 8 is not adjacent to an SAA room. You should admit fault for this violation but maintain that a restructuring of the four current SAAs complies with the "at or near" clause of the satellite accumulation exemption. See Exhibit G(a) for proposed restructure (attached).

Philern should challenge the inspector's claims that waste was *not under the control* of the operator(s) as speculative and unsupported. Inspectors claimed that "operators appeared to lack sufficient control over the waste they generated"; "appeared" doesn't imply that the waste was not controlled, nor does "appearing to lack control" violate the SAA exemption criteria. Additionally, statute §66262.34(e)(1)(A) maintains that "the initial accumulation point" must be "under the control of the operator of the process generating the waste," defined by DTSC Management Memo #EO-93-008-MM as follows: (1) "under the control" means waste being in the *line of sight* of the operator or in a locked compartment to which the operator(s) control(s) access, and (2) "operator of the process" is defined as the *hands-on* operator(s) of the machinery or activity that generates the waste. In this case, the 170 laboratory researchers are operators. If an accumulation container was not in the *line of sight* of one of the 170 operators, Sam's locking mechanisms ensure compliance with SAA criteria. Restructuring the SAAs in Buildings A and B will allow you to challenge DTSC's alleged SAA violations.

Additional advice. (1) DTSC inspectors did not discriminate against Jill because she was a woman; his demeanor was due to the "several containers of waste that had been accumulating in the WAA for more than 18 months" (p11) following similar violations that Philern "had taken appropriate actions to correct the labelling and training deficiencies" (p10). **(2)** Philern has already received bad press for its violations; we recommend that Philern admit fault on trivial, rectifiable violations and outline steps they've taken to comply but clearly state that Philern is **not guilty** of the more serious violations, such as radioactive spills, and improper storage and transport of hazardous waste.

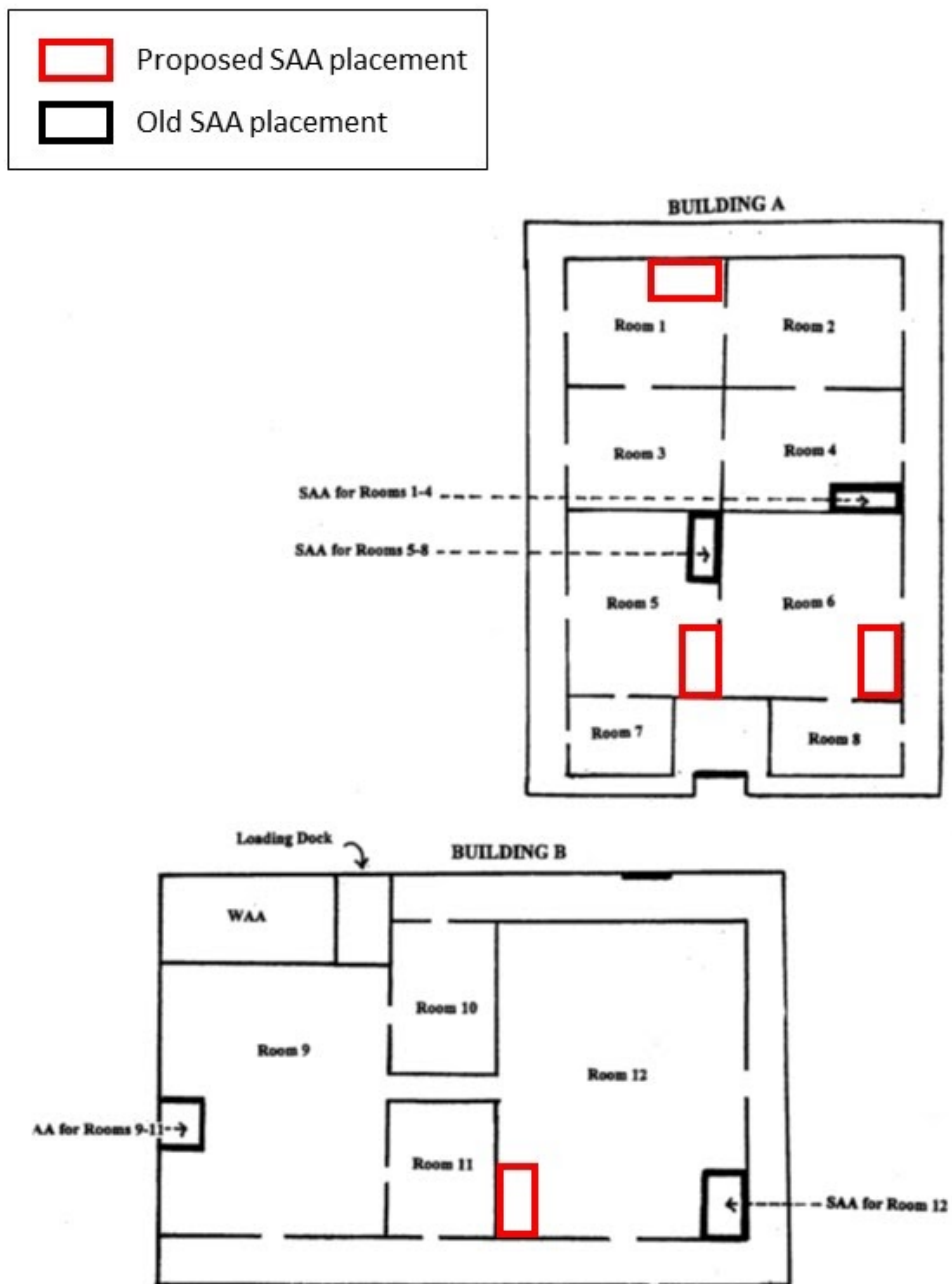


EXHIBIT G(a): Revised Diagram of Satellite Accumulation Areas