

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: ACN-Providence, LLC

FILE NO.: AIR 11 – 07

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 DEM's jurisdiction.

B. Facts

- (1) The subject facility is located at 455 George Washington Highway, Smithfield, Rhode Island (the “Facility”) and is operated by the Respondent.
- (2) The Facility is a stationary source of air pollutants subject to DEM’s Air Pollution Control (“APC”) Regulations.
- (3) On 23 August 2006, DEM issued the Respondent Operating Permit No. RI-04-06 (the “Permit”). The Permit requires the Respondent to emit xylene and toluene only from the drum painting and drying operation, with the exception of de minimis emissions from emission unit D001.
- (4) On January 19, 2011 IES Engineers submitted a letter to DEM on behalf of the Respondent as a follow up to an inspection of the Facility by DEM on November 10, 2010. A review of the letter by DEM revealed the following:
 - (a) The Respondent used 900 gallons of an adhesive with the trade name *707 Clear/Red CAM-Bond Spray Contact Cement* (“Adhesive 707”) in calendar years 2006 through 2010 that had a volatile organic compound (“VOC”) content of 5.65 pounds of VOC per gallon of coating minus water;
 - (b) The Respondent used 255 gallons of an adhesive with the trade name *808 Clear CAM-Bond Roller Contact Cement* (“Adhesive 808”) in calendar years 2006 and 2007 that had a VOC content of 5.44 pounds of VOC per gallon of coating minus water; and
 - (c) Adhesive 707 and Adhesive 808 contained toluene.

- (5) Adhesive 707 and Adhesive 808 were used to adhere gaskets to metal drum lids by air drying.
- (6) The metal drum lids are considered miscellaneous metal parts under the APC Regulations.
- (7) The application of the adhesive coatings for the purpose of adhering gaskets to metal drum lids at the Facility is not considered an insignificant activity under the APC Regulations.
- (8) The application of the adhesive coatings for the purpose of adhering gaskets to metal drum lids at the Facility is considered an emission unit under the APC Regulations (the “Adhesive Coating Emission Unit”).
- (9) The Respondent did not include the Adhesive Coating Emission Unit on the Permit application form submitted to DEM.

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) **APC Regulation No. 29, Section 29.4.6** – requiring compliance with an operating permit.
- (2) **APC Regulation No. 29, Section 29.5.1** – requiring the inclusion of all information for each emission unit on an application form submitted to DEM, except for insignificant activities.
- (3) **APC Regulation No. 19, Section 19.3.1** – requiring air dried surface coatings used for miscellaneous metal parts to not exceed 3.5 pounds of VOC per gallon of coating (minus water).

D. 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:

Twelve Thousand Five Hundred Dollars (\$ 12,500.00)

- (2) The proposed administrative penalty is calculated pursuant to the DEM Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the Director within twenty (20) days of your receipt of this Notice of Violation (“NOV”). Payment shall be in the form of a certified check or money order made payable to the “General Treasury - Water & Air Protection Program Account,” 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.

E. 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 Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through D 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 DEM's Administrative Adjudication Division, at the following address, within twenty (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 Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters.
- (2) A copy of each request for hearing must also be forwarded to:

Joseph J. LoBianco, 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 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 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) Joseph J. LoBianco at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Martha Mulcahey of DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 7032.

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 E 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:

ACN-Providence, LLC
c/o Ed Desilets, Registered Agent
455 George Washington Highway
Smithfield, RI 02917

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, AIR

File No.: AIR 11 – 07

Respondent: ACN-Providence, 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) – Failure to comply with permit	Type I (\$ 10,000 Max. Penalty)*	Minor	\$2,500	1 violation	\$2,500
C (3) – Failure to meet an emission limitation	Type I (\$ 10,000 Max. Penalty)*	Moderate	\$2,500	5 years	\$10,000
<i>SUB-TOTAL</i>					\$12,500.00

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

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$ 12,500.00

PENALTY MATRIX WORKSHEET

CITATION: Failure to comply with permit

VIOLATION NO.: C (1)

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 Section 10 (a) (2) of the DEM <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 restrict emissions of toluene to be only from a drum painting and drying operation, with the exception of de minimis emissions from emission unit D001, as required by the permit. The Respondent is a stationary source of air pollutants subject to federal and state air pollution control regulations. Compliance with requirements pertaining to allowable sources for emissions as stated in the permit is of major importance to the regulatory program.</p> <p>(B) Environmental conditions: Not relevant.</p> <p>(C) Amount of the pollutant: Not relevant.</p> <p>(D) Toxicity or nature of the pollutant: The chemical toluene is a toxic air pollutant, hazardous air pollutant (HAP) and volatile organic compound (VOC). VOCs, after their release during certain atmospheric conditions in the presence of sunlight and other pollutants, contribute to the formation of ozone.</p> <p>(E) Duration of the violation: Data show that the air dried adhesive coatings that contained toluene were used by the Respondent between 2006 and 2010.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
(continued)		

(continued from the previous page)

- (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 noncompliance. The Respondent mitigated the violation by replacing the air dried coating(s) with an adhesive containing neither xylene nor toluene after issuance of Notices of Alleged Violations by DEM to the Respondent on 8 February 2011 and 15 March 2011.
- (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:** The Respondent has previously failed to comply with other air pollution control regulations and was issued a Notice of Violation and assessed an administrative penalty in December 2006 and July 2010.
- (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 violation since the Respondent is the operator of the facility. The violation was foreseeable by the Respondent.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

MAJOR	MODERATE	<u> X </u> MINOR
--------------	-----------------	----------------------------------

Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500 \$2,500	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Failure to meet an emission limit
 VIOLATION NO.: C (3)

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 Section 10 (a) (2) of the DEM *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondent failed to limit its VOC emissions for coating miscellaneous metal parts to 3.5 pounds of VOC per gallon (minus water) as required by the cited regulation for air dried coatings. The Respondent is a stationary source of air pollutants subject to federal and state air pollution control regulations. Compliance with the emissions limitation is of importance to the regulatory program.
- (B) **Environmental conditions:** Not relevant.
- (C) **Amount of the pollutant:** DEM determined that excess emissions from the adhesive coatings was approximately 2,430 pounds between calendar years 2006 and 2010, compared to the allowable limitation of the cited regulation.
- (D) **Toxicity or nature of the pollutant:** The facility applies surface coatings to miscellaneous metal parts and emits volatile organic compounds (VOCs). VOCs, after their release during certain atmospheric conditions in the presence of sunlight and other pollutants, contribute to the formation of ozone. Data supplied by the Respondent to DEM show that the “as applied” VOC content of one coating, namely “707 Clear/Red CAM-Bond Spray Contact Cement” used from 2006 through 2010 was 5.65 lbs. VOC/gallon coating, minus water and exempt solvents, and another coating, namely “808 Clear CAM-Bond Roller Contact Cement” used in 2006 and 2007 was 5.44 lbs. VOC/gallon coating, minus water and exempt solvents. Therefore, the adhesives used had a VOC content per gallon roughly 55% to 61% above the allowable limitation on an “as applied” basis set by the cited regulation.
- (E) **Duration of the violation:** 5 years. Data shows that the air dried adhesive coatings that contained more than the required 3.5 pounds of VOC per gallon of coating (minus water) were used by the Respondent between 2006 and 2010.

(continued)

(continued from the previous page)

- (F) **Areal extent of the violation:** Not relevant.
- (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 noncompliance. The Respondent mitigated the violation by replacing the air dried coating(s) with an adhesive compliant with 3.5 lbs. of VOC per gallon of coating (minus water and exempt compounds) after issuance of Notices of Alleged Violations by DEM to the Respondent on 8 February 2011 and 15 March 2011.
- (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:** The Respondent has previously failed to comply with other air pollution control regulations and was issued a Notice of Violation and assessed an administrative penalty in December 2006 and July 2010.
- (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 violation since the Respondent is the operator of the facility. The violation was foreseeable by the Respondent.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Air releases from adhesives/coatings were annually reported to DEM on the facility's air pollution inventory.

MAJOR	<u> X </u> MODERATE	MINOR
--------------	-------------------------------------	--------------

Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000 \$2,500	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500