

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Calise & Sons Bakery, Inc.**

**FILE NO.: 10 – 13**

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 facility is located at 2 Quality Drive in Lincoln, Rhode Island (the “Facility”).
- (2) The Respondent operates the Facility.
- (3) The Facility is a stationary source of air pollutants subject to the DEM Air Pollution Control (“APC”) Regulations.
- (4) On 19 February 2010, the DEM Office of Air Resources (“OAR”) inspected the Facility. The inspection revealed that the Respondent installed three natural gas ovens without applying for or receiving a minor source permit from OAR.
- (5) On 12 March 2010, the Respondent submitted to OAR an Application for Approval of Plans to Construct, Install or Modify Air Pollution Control Equipment for the natural gas ovens (the “Application”). The Application stated that the Facility emitted thirty tons per year of ethanol, which is a volatile organic compound (“VOC”).
- (6) The Respondent failed to submit annual VOC emissions statements to OAR for calendar years 2005, 2006, and 2007.
- (7) On 6 July 2010 OAR approved the Application.

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) **The Rhode Island Clean Air Act, Section 23-23-5 (19)** – prohibiting any person from operating any device which is subject to approval or permit by DEM without an approval or permit from DEM.
- (2) **APC Regulation No. 9, Section 9.2.1 (a)** – requiring that no person construct, install or modify or cause the construction, installation or modification of any stationary source subject to the provisions of the regulation without obtaining a minor source permit from DEM for each proposed installation or modification described in Subsection 9.3.1 of the APC Regulations.
- (3) **APC Regulation No. 9, Section 9.2.2** – prohibiting the operation of emission units for which a permit is required from DEM without obtaining the required permit.
- (4) **APC Regulation No. 9, Section 9.3.1 (g)** – requiring a minor source permit for any stationary source or process having the potential to emit one hundred pounds or more per day, or ten pounds or more per hour of any air contaminant or combination of air contaminants into the atmosphere.
- (5) **APC Regulation No. 14, Section 14.3.1** – requiring the owner or operator of any facility emitting twenty five tons or more of VOC per year to submit an annual emissions statement to DEM.

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:

**Five Hundred Sixty Two Thousand Seven Hundred and  
Thirty Six Dollars (\$562,736.00)**

- (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 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  
235 Promenade Street, 3<sup>RD</sup> Floor  
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); **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:

Marisa Desautel, Esquire  
DEM - Office of Legal Services  
235 Promenade Street, 4<sup>TH</sup> 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) Marisa Desautel at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Christopher John 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 hand delivered to:

Calise & Sons Bakery, Inc.  
c/o Michael R. Calise, Registered Agent  
2 Quality Drive  
Lincoln, RI 02865

---



## ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, AIR  
 File No.: 10 – 13  
 Respondent: Calise & Sons Bakery, Inc.

<b>GRAVITY OF VIOLATION</b>					
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) and (3) – Operating without a permit	Type I (\$ 10,000 Max. Penalty)*	Major	\$10,000	10 years	\$100,000.00
C (2) and C (4) – Failure to obtain a permit	Type I (\$ 10,000 Max. Penalty)*	Major	\$ 10,000	1 violation	\$ 10,000.00
C (5) – Failure to submit annual emissions statements	Type III (\$ 2,500 Max. Penalty)*	Minor	\$500	3 years	\$1,500.00
<b>SUB-TOTAL</b>					<b>\$111,500.00</b>

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

### ECONOMIC BENEFIT FROM NONCOMPLIANCE

**COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT ARE IN COMPLIANCE. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:**

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

DESCRIPTION OF BENEFIT	CALCULATION	AMOUNT
Economic benefit of noncompliance realized by the Respondent for failing to install air pollution control equipment was calculated by utilizing an EPA program called "BEN". BEN calculated the economic gain of noncompliance based upon a detailed economic analysis. Dates, dollar amounts, and values utilized in the BEN program are as listed.	Capital Investment: \$552,097	\$451,236.00
	One Time Expenditure: \$24,620	
	Annual Recurring Costs: \$16,100	
	Noncompliance Date: September 1, 2000 <sup>1</sup>	
	Compliance Date: March 12, 2010	
<b><i>SUB-TOTAL</i></b>		<b>\$ 451,236.00</b>

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$ 562,736.00**

---

<sup>1</sup> For failing to install pollution control equipment and submit an application for a preconstruction permit for three bakery ovens that commenced operation approximately on 1 September 2000.

**PENALTY MATRIX WORKSHEET**

<b>TYPE</b>		
VIOLATION NO.: C (1) and (3) <u>  X  </u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE III</b> <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 operated three bakery ovens without a permit from DEM. The Respondent is a stationary source of air pollutants subject to state air pollution control regulations. Compliance with permitting and operating requirements is of major importance to the regulatory program.
- (B) **Environmental conditions:** Not relevant.
- (C) **Amount of the pollutant:** The Facility emitted volatile organic compounds (VOCs), in quantities ranging from 17.07 tons in 2001 to 47.55 tons in 2009.
- (D) **Toxicity or nature of the pollutant:** VOCs, after their release during certain atmospheric conditions in the presence of sunlight and other pollutants, contribute to the formation of ozone.
- (E) **Duration of the violation:** Approximately ten years. The bakery ovens began operation on or about September 2000. The Respondent operated said ovens without a permit until July 2010.
- (F) **Areal extent of the violation:** Not relevant.

(continued)



(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent did not take reasonable and appropriate steps to prevent the violation. The Respondent applied to DEM for a permit on 12 March 2010 after being notified by DEM of the noncompliance on 19 February 2010. DEM issued a permit on 6 July 2010.
- (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:** Not applicable.
- (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 as the operator of the Facility. The prohibition against operating unpermitted equipment is clearly stated in the cited regulation, so the violation was foreseeable by the Respondent.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** None.

<u>  X  </u> MAJOR	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	<b>MAJOR</b>	\$5,000 to \$10,000 <b>\$10,000</b>	\$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	\$500 to \$1,000	\$100 to \$500

**PENALTY MATRIX WORKSHEET**

CITATION: Failure to obtain a permit  
 VIOLATION NO.: C (2) and (4)

<b>TYPE</b>		
<b><u>X</u> TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<b><u>      </u> TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<b><u>      </u> TYPE III</b> <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
<b>DEVIATION FROM THE STANDARD</b>		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> The Respondent failed to apply for or obtain a minor source permit prior to its installation of the three bakery ovens. The Respondent is a stationary source of air pollutants subject to state air pollution control regulations. Compliance with permitting and operating requirements is of major importance to the regulatory program.</p> <p>(B) <b>Environmental conditions:</b> Not relevant.</p> <p>(C) <b>Amount of the pollutant:</b> The bakery ovens have the potential to emit significant quantities of volatile organic compounds (VOCs).</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> 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) <b>Duration of the violation:</b> Approximately 10 years. The Respondent installed the bakery ovens on or about September 2000.</p> <p>(F) <b>Areal extent of the violation:</b> 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 did not take reasonable and appropriate steps to prevent the noncompliance. The Respondent applied to DEM for a permit on 12 March 2010 after being notified by DEM of the noncompliance on 19 February 2010. DEM issued a permit on 6 July 2010.
- (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:** Not applicable.
- (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 prohibition against installing unpermitted equipment is clearly stated in the cited regulation, so the violation was foreseeable by the Respondent.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** None.

<u>  X  </u> MAJOR	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	<b>MAJOR</b>	\$5,000 to \$10,000 <b>\$10,000</b>	\$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	\$500 to \$1,000	\$100 to \$500

**PENALTY MATRIX WORKSHEET**

CITATION: Failure to submit annual emissions statements  
 VIOLATION NO.: C (5)

<b>TYPE</b>		
<u>      </u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>  <b>X</b>  </u> <b>TYPE III</b> <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 submit annual emissions statements to OAR. The Respondent is a stationary source of air pollutants subject to state air pollution control regulations. Compliance with reporting requirements is of minor importance to the regulatory program.
- (B) **Environmental conditions:** Not relevant.
- (C) **Amount of the pollutant:** The Facility emitted 26.15 tons of volatile organic compounds (VOCs) in 2005, 37.58 tons of VOCs in 2006, and 39.54 tons of VOCs in 2007.
- (D) **Toxicity or nature of the pollutant:** VOCs, after their release during certain atmospheric conditions in the presence of sunlight and other pollutants, contribute to the formation of ozone.
- (E) **Duration of the violation:** Three years (2005, 2006, and 2007).
- (F) **Areal extent of the violation:** Not relevant.

(continued)

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent did not take reasonable and appropriate steps to prevent the noncompliance. The Respondent submitted the required emissions statements after being notified of the noncompliance by DEM on 19 February 2010.
- (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:** Not applicable.
- (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. The requirement to submit the emissions statements is clearly stated in the cited regulation, so the violation was foreseeable by the Respondent.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** None.

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

Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 10,000		<b>TYPE I</b>	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
	<b>MINOR</b>	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500 <b>\$500</b>