

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Cumberland Quarry Corporation

FILE NO.: AIR 11 – 01

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. Administrative History

On 29 September 2010 DEM issued a written Notice of Alleged Violations (NOAV) to the Respondent for the violations. The Respondent has not complied with the NOAV.

C. Facts

- (1) The facility is located at 6 Manville Hill Road in the town of Cumberland, Rhode Island (the “Facility”) and is operated by the Respondent.
- (2) The Facility is (and has been) subject to DEM’s Air Pollution Control (“APC”) Regulations, including but not limited to APC Regulation No. 9, entitled “Air Pollution Control Permits”.
- (3) On 14 July 2010, DEM’s Office of Air Resources (“OAR”) inspected the Facility. The inspection revealed that the Respondent installed a portable stone crusher powered by a diesel fired generator (the “equipment”).
- (4) On 20 September 2010 OAR received a letter from the Respondent. The letter stated that the equipment has a heat input capacity of 6.7 million British Thermal Units (BTUs) per hour.
- (5) As of the date of this Notice of Violation (“NOV”), the Respondent has failed to obtain a minor source permit for the equipment and upon information and belief, continues to operate the equipment.

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) **APC Regulation 9.2.1(a)** – prohibiting the installation of any stationary source without obtaining a minor source permit from DEM for each installation described in APC Regulation 9.3.1.
- (2) **APC Regulation 9.3.1(a)** – requiring a minor source permit for any fuel burning device designed to burn liquid fuels having a heat input capacity of five million BTUs or more per hour.
- (3) **APC Regulation 9.2.2** – prohibiting the operation of emission units without a required minor source permit.

E. Order

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

- (1) **Immediately upon receipt of the NOV**, cease use of the equipment. No use of the equipment is allowed until a minor source permit for the equipment is issued by OAR.
- (2) **Within thirty (30) days of receipt of the NOV**, submit an application and fee to OAR for a minor source permit for use of the equipment **OR** submit a statement to OAR that the equipment has been disconnected, made non-operational or removed from service.

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, jointly and severally, against each named respondent:

Seven Thousand Five Hundred Dollars (\$7,500.00)

- (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 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 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.
- (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 the Director determines that reasonable efforts have been made to comply promptly with this 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 the DEM 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 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, 3RD 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:

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, Esquire, 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 G 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:

Cumberland Quarry Corporation
c/o Haslaw, Inc., Registered Agent
50 Kennedy Plaza, Suite 1500
Providence, RI 02903

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, AIR

File No.: AIR 11 – 01

Respondent: Cumberland Quarry Corp.

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) and D (2) – Failure to obtain a permit	Type I (\$ <u>10,000</u> Max. Penalty)*	Minor	\$ 2,500	1 violation	\$2,500.00
D (3) – Operating equipment without a permit	Type I (\$ <u>10,000</u> Max. Penalty)*	Moderate	\$ 5,000	1 violation	\$5,000.00
SUB-TOTAL					\$7,500.00

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

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$ 7,500.00

PENALTY MATRIX WORKSHEET

CITATION: Failure to obtain a permit
 VIOLATION NO.: D (1) and (2)

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		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<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: Respondent failed to apply for and obtain a minor source permit from DEM prior to its installation of a portable stone crusher and diesel fired generator subject to state air pollution control regulations. Compliance with permitting and operating requirements is of importance to the regulatory program.</p> <p>(B) Environmental conditions: Not relevant.</p> <p>(C) Amount of the pollutant: The equipment has a heat input capacity of 6.7 million BTUs per hour, which exceeds APC Regulation No. 9's permit threshold of 5 million BTUs per hour.</p> <p>(D) Toxicity or nature of the pollutant: Not relevant.</p> <p>(E) Duration of the violation: 11 months. The equipment was installed on March 15, 2010.</p> <p>(F) Areal extent of the violation: Not relevant.</p> <p style="text-align: right;">(continued)</p>		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** On 29 September 2010, OAR issued a Notice of Alleged Violations (NOAV) to the Respondent requiring that the Respondent submit an application and processing fee for a minor source permit. To date, the Respondent has failed to comply with the NOAV.
- (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 relevant.
- (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 threshold for permit applicability in the subject regulation has been long-standing and as such, 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
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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: Operating equipment without a permit

VIOLATION NO.: D (3)

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;">_____ TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ 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: Respondent operated a portable stone crusher and diesel fired generator, which is subject to permit requirements, without first having been issued a permit from DEM.</p> <p>(B) Environmental conditions: Not relevant</p> <p>(C) Amount of the pollutant: Unknown. The equipment has a heat input capacity of 6.7 million BTUs per hour, which exceeds APC Regulation No. 9's permit threshold of 5 million BTUs per hour.</p> <p>(D) Toxicity or nature of the pollutant: Not relevant.</p> <p>(E) Duration of the violation: 10 months. The equipment became operational on April 21, 2010.</p> <p>(F) Areal extent of the violation: Not relevant.</p> <p style="text-align: right; margin-right: 50px;">(continued)</p>		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent is the operator of the equipment at the facility. Respondent has clear responsibility for complying with DEM's air pollution control regulations and the Rhode Island Clean Air Act. On 29 September 2010, OAR issued a Notice of Alleged Violations (NOAV) to the Respondent requiring that the Respondent submit an application and processing fee for a minor source permit. To date, the Respondent has failed to comply with the NOAV.
- (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 relevant.
- (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 prohibition against operating unpermitted equipment is clearly stated in the cited regulation and section of state law, so the violation was foreseeable.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

MAJOR	<u> X </u> MODERATE	MINOR
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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 \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500