

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF COMPLIANCE & INSPECTION

IN RE: EAGLEPICHER TECHNOLOGIES, LLC

FILE NO.: OCI-AIR-20-13

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 2000 South County Trail, in the Town of East Greenwich, Rhode Island (the “Facility”).
- (2) On 24 November 2014, Respondent acquired the Facility from Yardney Technical Products, Inc.
- (3) Since 24 November 2014, Respondent has operated the Facility.
- (4) The Facility is a stationary source of air pollutants subject to the Rhode Island Code of Regulations titled *Air Pollution Control Permits (250-RICR-120-05-9)* (“Part 9”).
- (5) On 8 January 2016, DEM received a Minor Source Permit Application, submitted by Alliance Environmental Group, Inc., on behalf of Respondent. The application was for the installation and operation of a zinc oxide paste strip process and air pollution control equipment consisting of a carbon absorber to control mercury emissions from this process.
- (6) On 28 March 2017, DEM conducted an air compliance inspection of the Facility (the “Inspection”).

- (7) During the Inspection, DEM discovered the following:
  - (a) The zinc oxide paste strip process was installed and operational;
  - (b) No air pollution control devices were in place to control emissions from this process; and
  - (c) A Donaldson Torit dust collector was installed and operational. This dust collector controls particulate emissions generated from the wrapping booth located inside the zinc oxide paste strip production room and from three grinders located within the silver oxide production area. The Minor Source Permit Application received by DEM on 8 January 2016 did not include this dust collector.
- (8) On 2 June 2017, DEM issued Respondent a letter requesting additional information pertaining to the zinc oxide paste strip process and the Donaldson Torit dust collector located at the Facility.
- (9) On 10 October 2017, DEM received a response from Respondent to the above referenced information request, dated 9 October 2017.
- (10) DEM's review of the 9 October 2017 information request response and findings from the Inspection revealed that the battery production process, including the zinc oxide paste strip production and the Donaldson Torit dust collector, commenced operation at the Facility in February 2013, under the name of Yardney Technical Products.
- (11) On 27 February 2019, DEM received a revised Minor Source Permit Application, submitted by Trinity Consultants, on behalf of Respondent. Respondent also provided two test reports that quantify the mercury emissions from the zinc oxide paste strip process and document the results of laboratory analysis conducted on a grab sample of dust obtained from the Donaldson Torit dust collector, which was analyzed for zinc, lead, nickel and cadmium. Specifically:
  - (a) The tests were performed by APCC, LTD on 9 May 2017, 10 May 2017 and 6 July 2017, the results of which are summarized in a report dated 14 July 2017; and
  - (b) The laboratory analysis of the dust collector grab sample was conducted by New England Testing Laboratory and the results documented in a report dated 3 April 2018.

- (12) DEM utilized the results contained in the above referenced test reports to calculate actual mercury emissions from the zinc oxide paste strip process and actual cadmium and lead emissions exhausted to the Donaldson Torit dust collector for years 2015 and 2016. The findings are as follows:
- (a) The actual annual mercury emissions from the zinc oxide paste strip process for each of these years was calculated to be 2.84 pounds and 8.83 pounds, respectively, exceeding the minimum quantity of 0.7 pounds specified in Part 9, requiring a Minor Source Permit approval prior to commencing operation;
  - (b) The actual annual emissions of cadmium exhausted to the Donaldson Torit dust collector for each of these years was calculated to be 0.54 pounds and 1.15 pounds, respectively, exceeding the minimum quantity of 0.07 pounds specified in Part 9, requiring a Minor Source Permit approval prior to commencing operation; and
  - (c) The actual annual emissions of lead exhausted to the Donaldson Torit dust collector in 2016 was calculated to be 1.20 pounds, exceeding the minimum quantity of 0.9 pounds specified in Part 9, requiring a Minor Source Permit approval prior to commencing operation.
- (13) The Air Emissions Inventory submitted by Respondent for calendar year 2017 reported air emissions of the following listed air toxic contaminants from the Facility, which exceeded the minimum quantity specified in Part 9, requiring a Minor Source Permit approval prior to commencing operation:
- (a) 17.67 pounds of mercury;
  - (b) 0.53 pounds of cadmium compounds; and
  - (c) 1,109 pounds of isopropyl alcohol.

C. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statute(s) and/or regulation(s):

- (1) **Rhode Island Code of Regulations titled *Air Pollution Control Permits (250-RICR-120-05-9) Part 9.6(B)*** – prohibiting the operation of emission units for which a minor source permit is required without obtaining the required permit.

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:

**\$12,500**

- (2) The proposed administrative penalty is calculated pursuant to the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* and must be paid to DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a certified check, cashier's check or money order made payable to the "General Treasury - Water & Air Protection Program" and shall be forwarded to DEM's Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against Respondent 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.

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 DEM's 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 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  
DEM - 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); **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 Part 1.7(B) of the Rhode Island Code of Regulations titled *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:
- Christina Hoefsmit, 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 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) 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) Christina Hoefsmit of DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Karen Peltier of DEM's Office of Compliance and Inspection at (401) 222-1360, ext. 7136.

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 F above.

FOR THE DIRECTOR

By: \_\_\_\_\_  
David E. Chopy, Administrator  
Office of Compliance and Inspection

Dated: \_\_\_\_\_

CERTIFICATION

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_  
the within Notice of Violation was forwarded to:

EAGLEPICHER TECHNOLOGIES, LLC  
c/o Corporation Service Company, Registered Agent  
222 Jefferson Boulevard, Suite 200  
Warwick, RI 02888

by Certified Mail.

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# ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, AIR  
 File No.: OCI-AIR-20-13  
 Respondent: EAGLEPICHER TECHNOLOGIES, LLC

<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) – Failure to apply for and obtain permits and operating without permit approvals (zinc oxide paste strip process and dust collector)	Type I <i>(\$10,000 Max. Penalty) *</i>	Moderate	\$2,500	5 years	\$12,500
<b>SUB-TOTAL</b>					<b>\$12,500</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 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.

A review of the record in this matter has revealed that Respondent has either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.

## 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 DEM 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 REGULATIONS = \$12,500**

# PENALTY MATRIX WORKSHEET

CITATION: Failure to apply for and obtain permits and operating without permit approvals (zinc oxide paste strip process and dust collector)  
 VIOLATION NO.: C (1)

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

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

**FACTORS CONSIDERED:**

Taken from Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)*

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent failed to apply for and obtain minor source permit approvals for the zinc oxide paste strip operations conducted at the Facility and the operation of a dust collector utilized to control particulate emissions generated from the wrapping booth located inside the zinc oxide paste strip production room and from three grinders located within the silver oxide production area. Respondent operated its zinc oxide paste strip production equipment and dust collector, both of which had actual and potential uncontrolled emissions exceed the Part 9 permit thresholds prior to having been issued minor source permits from DEM. Respondent is a stationary source of air pollutants subject to state air pollution control regulations. Compliance with the requirements to apply for and obtain minor source permit approvals is of major importance to the regulatory program.
- (2) **Environmental conditions:** Considered, but not utilized for this calculation.
- (3) **Amount of the pollutant:** The annual emissions of mercury from the paste strip operations for calendar years 2015 and 2016 exceeded the minimum quantity of 0.7 pounds contained in Part 9.17 for each of these years. The annual emissions of cadmium exhausted to the dust collector for calendar years 2015 and 2016 exceeded the minimum quantity of 0.07 pounds contained in Part 9.17 for each of these years. The annual emissions of lead exhausted to the dust collector for calendar year 2016 exceeded the minimum quantity of 0.9 pounds contained in Part 9.17.
- (4) **Toxicity or nature of the pollutant:** Mercury, cadmium, and lead are listed air toxic contaminants under Part 9 and are also Federal hazardous air pollutants.

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- (5) **Duration of the violation:** Approximately 5 years – the violation has occurred since Respondent acquired the Facility on 24 November 2014.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.
- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable steps to prevent the noncompliance by applying for and receiving permit approvals from DEM prior to operating its zinc oxide manufacturing process and the baghouse. Respondent mitigated the noncompliance by submitting the required permit applications on 27 February 2019.
- (8) **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:** 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:** Respondent had complete control over the violation since Respondent is the operator of the Facility. The violation was foreseeable by Respondent.
- (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>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	
	<b>MODERATE</b>	\$2,500 to \$5,000 <b>\$2,500</b>		\$1,000 to \$2,500		\$500 to \$1,000	
	MINOR	\$1,000 to \$2,500		\$500 to \$1,000		\$100 to \$500	