

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: J.H. Lynch & Sons, Inc.**

**FILE NO.: OCI-AIR-18-35  
X-ref Approval Nos. 2024, 2097  
and 2098**

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 the DEM's jurisdiction.

B. Facts

- (1) The facility is located at 50 Lynch Place in the Town of Cumberland, Rhode Island (the “Facility”). The Facility includes an asphalt plant and a baghouse to capture particulate matter.
- (2) On 7 April 2010, the DEM issued to Respondent an approval (numbers 2024, 2097 and 2098) (the “Permit”) to emit air pollutants from the Facility.
- (3) The Permit requires that Respondent:
  - (a) Comply with a maximum emission limit for carbon monoxide discharged from the dryer/mixer drum of 445 ppmv, corrected to 7 percent O<sub>2</sub> (1-hour average) when burning alternative fuel (the “Emission Limit”);
  - (b) Test the burner for the dryer/mixer drum at least once per year (the “Annual Testing”) for nitrogen oxides and carbon monoxide emissions for each fuel used;
  - (c) Provide the DEM with at least 30 days prior notice of the Annual Testing;
  - (d) Conduct the Annual Testing under operating conditions deemed acceptable and representative for assessing compliance with the applicable emission limits;

- (e) Submit a report to the DEM of the results of the Annual Testing that includes the stack temperature, stack flow, correction of the carbon monoxide and nitrogen oxides concentrations to 7 percent O<sub>2</sub> and the model of the instrument used to measure emissions;
  - (f) Submit each alternative fuel certification to the DEM within 10 days of each delivery; and
  - (g) Submit a written report of the results of the visolite test of the baghouse within 10 days of completion of the test.
- (4) On 27 July 2017, the DEM inspected the Facility and reviewed Facility records. The inspection and review of records revealed that:
- (a) Annual Testing was performed in calendar years 2014, 2015 and 2016;
  - (b) Waste oil was burned as an alternative fuel since May 2016; however, no certification was submitted to the DEM for any delivery; and
  - (c) Visolite tests on the baghouse were performed in March, July and October 2013; April, July and September 2014; April and October 2015; April and November 2016; and April and July 2017; however, these reports were not submitted to the DEM within 10 days of completing the tests.
- (5) On 8 August 2017, Respondent submitted to the DEM the alternative fuel certifications for each delivery of waste oil burned in calendar years 2016 and 2017. The certifications showed that waste oil was delivered to the Facility on the following dates: 10 June 2016; 16 June 2016; 21 June 2016; 27 June 2016; 30 June 2016; 12 July 2016; 18 July 2016; 27 July 2016; 9 August 2016; 16 August 2016; 24 August 2016; 26 August 2016; 9 September 2016; 26 September 2016; 5 October 2016; 6 October 2016; 11 October 2016; 13 October 2016; 19 October 2016; 26 October 2016; 31 October 2016; 7 November 2016; 15 November 2016; 18 November 2016; 1 December 2016; 1 May 2017; 10 May 2017; 17 May 2017; 31 May 2017; 19 June 2017; 23 June 2017; 5 July 2017; and 19 July 2017.
- (6) On 15 November 2017, Respondent submitted a letter to the DEM. The letter included the following information:
- (a) The report of the Annual Testing for 2016, which revealed that:
    - (i) The test was not completed while burning waste oil (alternative fuel) due to operational issues;
    - (ii) The test did not record or document the asphalt mix temperature and the stack flow;
    - (iii) The test did not correct the carbon monoxide and nitrogen oxides concentrations to 7 percent O<sub>2</sub>; and

- (iv) The test did not document the model of the instrument used to measure emissions;
  - (b) The report of the Annual Testing for 2017, which revealed that:
    - (i) The carbon monoxide concentration was 693 ppmv, corrected to 7 percent O<sub>2</sub>, while burning alternative fuel;
    - (ii) The burner was operating at 38% output and 15% output while burning natural gas and alternative fuel, respectively;
    - (iii) The test did not record or document the asphalt mix temperature and the stack flow;
    - (iv) The test did not document the model of the instrument used to measure emissions; and
  - (c) The visolite reports for calendar years 2012 through 2017.
- (7) Respondent failed to comply with the Emission Limit for calendar year 2017.
  - (8) Respondent failed to perform the Annual Testing for the waste oil (alternative fuel) burned in calendar year 2016.
  - (9) Respondent failed to provide prior notice to the DEM for the Annual Testing performed in calendar years 2014, 2015, 2016 and 2017.
  - (10) Respondent failed to submit the alternative fuel certifications to the DEM within 10 days of each delivery.
  - (11) Respondent failed to submit the visolite reports to the DEM within 10 days of completing each test.
  - (12) The DEM determined that the fuel outputs for the Annual Testing performed in 2017 were neither acceptable nor representative for assessing compliance with the emission limits.
  - (13) The DEM determined that the reports for the Annual Testing performed in calendar years 2016 and 2017 failed to meet the requirements of the Permit.

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) **DEM's Air Pollution Control Regulations, 9.6.8** – requiring any person who receives a permit to comply with all conditions in the permit.

D. 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, **within 30 days of receipt of this Notice of Violation (“NOV”)**, test the burner for the dryer/mixer drum for nitrogen oxides and carbon monoxide emissions for each fuel used in accordance with all the provisions of the Permit and submit a report of the results of the test and corrective actions taken, if any, to the DEM.

E. 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:

**\$23,892**

- (2) The proposed administrative penalty is calculated pursuant to the DEM's *Rules and Regulations for Assessment of Administrative Penalties*, as amended, and must be paid to the 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 Account" and shall be forwarded to the 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.

F. 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's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through E 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 the 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 DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for 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, 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 the 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) Joseph J. LoBianco of the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to David E. Chopy of the 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 F above.

FOR THE DIRECTOR

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

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

CERTIFICATION

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

J. H. Lynch & Sons, Inc.  
c/o Lawrence P. McCarthy, III, Registered Agent  
50 Lynch Place  
Cumberland, RI 02864

by Certified Mail.

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# ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, AIR  
 File No.: OCI-AIR-18-35 X-ref Approval Nos.: 2024, 2097 and 2098  
 Respondent: J. H. Lynch & Sons, 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) – Emission Limit	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$7,500	1 violation	\$7,500
C (1) – Annual Test 2016	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$7,500	1 violation	\$7,500
C (1) – Annual Test 2017	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$5,000	1 violation	\$5,000
C (1) – Notification and Reports	Type III <i>(\$2,500 Max. Penalty) *</i>	Major	\$2,500	1 violation	\$2,500
<b><i>SUB-TOTAL</i></b>					<b>\$22,500</b>

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

## ADMINISTRATIVE PENALTY SUMMARY (continued)

<b>ECONOMIC BENEFIT FROM NON-COMPLIANCE</b>		
<p><b>COSTS OF COMPLIANCE, EQUIPMENT, O&amp;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:</b></p> <ul style="list-style-type: none"> <li>- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR</li> <li>- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.</li> </ul>		
<i>DESCRIPTION OF BENEFIT</i>	<i>CALCULATION</i>	<i>AMOUNT</i>
<p>Failing to perform annual test for alternative fuel in 2016. The economic benefit of non-compliance was determined by using an EPA computer model titled <i>BEN</i> that performs a detailed economic analysis. The dates, dollar amounts and values used in this analysis are listed in this table.</p>	<ul style="list-style-type: none"> <li>▪ Profit Status</li> <li>▪ Filing Status</li> <li>▪ Initial Capital Investment</li> <li>▪ One-time Non-depreciable Expense</li> <li>▪ Annually Recurring Costs</li> <li>▪ First Month of Noncompliance</li> <li>▪ Compliance Date</li> <li>▪ Penalty Due Date</li> <li>▪ Useful Life of Pollution Control</li> <li>▪ Equipment Annual Inflation Rate</li> <li>▪ Discount Compound Rate</li> </ul>	<p>C Corp.</p> <p>C Corp.</p> <p>\$0</p> <p>\$2,000</p> <p>\$0</p> <p>December 2018</p> <p>31 December 2018</p> <p>31 December 2018</p> <p></p> <p></p> <p>7.3%</p>
<b><i>SUB-TOTAL</i></b>		<b>\$1,392</b>

<b>COST RECOVERY</b>
<p><b>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.</b></p>
<p>A review of the record in this matter has revealed that the 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.</p>

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$23,892**



# PENALTY MATRIX WORKSHEET

CITATION: Emission Limit

VIOLATION NO.: C (1)

<b>TYPE</b>		
<p style="text-align: center;"><u>  X  </u> <b>TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u>      </u> <b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u>      </u> <b>TYPE III</b></p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Part 1.10A.1.b of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <ol style="list-style-type: none"> <li>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent failed to comply with its emission limit for carbon monoxide. Respondent is a stationary source of air pollutants subject to state air pollution control regulations. Compliance with emission limits is of major importance to the regulatory program.</li> <li>(2) <b>Environmental conditions:</b> Rhode Island is in attainment for national ambient air quality standards for carbon monoxide. The DEM is responsible for ensuring that levels of carbon monoxide remain below existing air quality standards. The Facility is a bituminous asphalt processing plant in a residential section of Cumberland, Rhode Island, a community of 33,506 residents (based on 2010 census).</li> <li>(3) <b>Amount of the pollutant:</b> The carbon monoxide level was 696 ppmv, corrected for 7% oxygen, when using alternative fuel, which is 55% above the Emission Limit.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> Carbon monoxide is a colorless, odorless gas that can increase the severity of lung ailments, cause dizziness, fatigue, nausea, and even death.</li> <li>(5) <b>Duration of the violation:</b> Full duration unknown – at least 1 day. An agent from Hauck Manufacturing Company performed the test on 12 September 2017. No test was performed using alternative fuel in 2016. The Facility used alternative fuel on 197 days in 2016 and 2017. The agent from Hauck Manufacturing Company had no recommendations, so it's possible the Facility violated the Emissions Limit on each of the 197 days.</li> <li>(6) <b>Areal extent of the violation:</b> Unknown.</li> </ol>		
(continued)		

## ADMINISTRATIVE PENALTY SUMMARY (continued)

(continued from the previous page)

- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by operating and/or maintaining the burner in a manner to comply with the Emission Limit. The letter submitted by Respondent to the DEM on 15 November 2017 makes no mention of the noncompliance, so it is unlikely Respondent has taken any steps to mitigate the noncompliance.
- (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:** The DEM issued 2 separate notices of violation to Respondent for the same regulation that is the subject of this notice of violation. On 6 August 2003, the DEM issued a notice of violation and penalty to Respondent for its failure to obtain a permit from the DEM for the installation of pollution control equipment at its asphalt facility on Taunton Avenue in East Providence, Rhode Island. On 7 January 2009, the DEM issued a notice of violation and penalty to Respondent for its failure to obtain a permit from the DEM for the installation of pollution control equipment at the Facility.
- (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:** Negligence is attributable to Respondent for its failure to operate and/or maintain the burner in a manner to comply with the Emission Limit. Respondent had complete control over the violation, and the violation was foreseeable.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u>  </u> <b>X</b> <b>MAJOR</b>	<b>MODERATE</b>	<b>MINOR</b>
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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	<b>MAJOR</b>	\$5,000 to \$10,000 <b>\$7,500</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: Annual Test 2016

VIOLATION NO.: C (1)

<b>TYPE</b>		
<u>  X  </u> <b>TYPE I</b> DIRECTLY related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE II</b> INDIRECTLY related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE III</b> INCIDENTAL to protecting health, safety, welfare or environment.
<b>DEVIATION FROM THE STANDARD</b> THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b>FACTORS CONSIDERED:</b></p> <p>Taken from Part 1.10A.1.b of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent failed to perform an annual test on its burner for the dryer/mixer drum for nitrogen oxides and carbon monoxide emissions using an alternative fuel as required by its permit. Respondent is a stationary source of air pollutants subject to state air pollution control regulations. Performing requiring testing is of major importance to the regulatory program.</p> <p>(2) <b>Environmental conditions:</b> Rhode Island is in attainment for national ambient air quality standards for nitrogen oxides and carbon monoxide. The DEM is responsible for ensuring that levels of nitrogen oxides and carbon monoxide remain below existing air quality standards. The Facility is a bituminous asphalt processing plant in a residential section of Cumberland, Rhode Island, a community of 33,506 residents (based on 2010 census).</p> <p>(3) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</p> <p>(4) <b>Toxicity or nature of the pollutant:</b> Carbon monoxide is a colorless, odorless gas that can increase the severity of lung ailments, cause dizziness, fatigue, nausea, and even death. Breathing air with a high concentration of nitrogen oxides can irritate airways in the human respiratory system. Such exposures over short periods can aggravate respiratory diseases, particularly asthma, leading to respiratory symptoms (such as coughing, wheezing or difficulty breathing), hospital admissions and visits to emergency rooms. Longer exposures to elevated concentrations of nitrogen oxides may contribute to the development of asthma and potentially increase susceptibility to respiratory infections. People with asthma, as well as children and the elderly are generally at greater risk for the health effects of nitrogen oxides. Nitrogen oxides react with other chemicals in the air to form both particulate matter and ozone.</p> <p>(5) <b>Duration of the violation:</b> Considered, but not utilized for this calculation.</p> <p>(6) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</p>		
(continued)		

## ADMINISTRATIVE PENALTY SUMMARY (continued)

(continued from the previous page)

- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by performing the required test. An agent from Hauck Manufacturing Company inspected the burner on 11 May 2016 and attempted to test the burner using alternative fuel; however, he reported to Respondent that the valve was faulty and he could not perform a proper test.
- (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:** The DEM issued 2 separate notices of violation to Respondent for the same regulation that is the subject of this notice of violation. On 6 August 2003, the DEM issued a notice of violation and penalty to Respondent for its failure to obtain a permit from the DEM for the installation of pollution control equipment at its asphalt facility on Taunton Avenue in East Providence, Rhode Island. On 7 January 2009, the DEM issued a notice of violation and penalty to Respondent for its failure to obtain a permit from the DEM for the installation of pollution control equipment at the Facility.
- (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:** Negligence is attributable to Respondent for its failure to comply with its permit. Respondent had complete control over the violation, and the violation was foreseeable.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The Facility used alternative fuel on 197 days in 2016 and 2017. The test performed by Hauck Manufacturing Company on 12 September 2017 using alternative fuel exceeded the Emissions Limit, so it's possible the Facility violated the Emissions Limit on each of the 197 days.

<u>  X  </u> MAJOR	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	<b>MAJOR</b>	\$5,000 to \$10,000 <b>\$7,500</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: Annual Test 2017

VIOLATION NO.: C (1)

<b>TYPE</b>		
<p style="text-align: center;"><u>  X  </u> <b>TYPE I</b></p> <p><b>DIRECTLY</b> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u>      </u> <b>TYPE II</b></p> <p><b>INDIRECTLY</b> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u>      </u> <b>TYPE III</b></p> <p><b>INCIDENTAL</b> to protecting health, safety, welfare or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Part 1.10A.1.b of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <ol style="list-style-type: none"> <li>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent failed to perform an annual test on its burner for the dryer/mixer drum for nitrogen oxides and carbon monoxide emissions using proper operating conditions as required by its permit. Respondent is a stationary source of air pollutants subject to state air pollution control regulations. Performing requiring testing in the manner prescribed in the permit is of major importance to the regulatory program.</li> <li>(2) <b>Environmental conditions:</b> Rhode Island is in attainment for national ambient air quality standards for nitrogen oxides and carbon monoxide. The DEM is responsible for ensuring that levels of nitrogen oxides and carbon monoxide remain below existing air quality standards. The Facility is a bituminous asphalt processing plant in a residential section of Cumberland, Rhode Island, a community of 33,506 residents (based on 2010 census).</li> <li>(3) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> Carbon monoxide is a colorless, odorless gas that can increase the severity of lung ailments, cause dizziness, fatigue, nausea, and even death. Breathing air with a high concentration of nitrogen oxides can irritate airways in the human respiratory system. Such exposures over short periods can aggravate respiratory diseases, particularly asthma, leading to respiratory symptoms (such as coughing, wheezing or difficulty breathing), hospital admissions and visits to emergency rooms. Longer exposures to elevated concentrations of nitrogen oxides may contribute to the development of asthma and potentially increase susceptibility to respiratory infections. People with asthma, as well as children and the elderly are generally at greater risk for the health effects of nitrogen oxides. Nitrogen oxides react with other chemicals in the air to form both particulate matter and ozone.</li> <li>(5) <b>Duration of the violation:</b> Considered, but not utilized for this calculation.</li> <li>(6) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</li> </ol>		
(continued)		

## ADMINISTRATIVE PENALTY SUMMARY (continued)

(continued from the previous page)

- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by performing the required test in the manner prescribed in the permit. The test on 12 September 2017 was performed using natural gas and alternative fuel at 38% output and 15% output, respectively. These fuel outputs are not acceptable and representative conditions to determine compliance with emission limits.
- (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:** The DEM issued 2 separate notices of violation to Respondent for the same regulation that is the subject of this notice of violation. On 6 August 2003, the DEM issued a notice of violation and penalty to Respondent for its failure to obtain a permit from the DEM for the installation of pollution control equipment at its asphalt facility on Taunton Avenue in East Providence, Rhode Island. On 7 January 2009, the DEM issued a notice of violation and penalty to Respondent for its failure to obtain a permit from the DEM for the installation of pollution control equipment at the Facility.
- (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 retained Hauck Manufacturing Company to perform the test. The DEM has no information that Respondent was willful or negligent in the occurrence of the violation.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u>  X  </u> MAJOR	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	<b>MAJOR</b>	\$5,000 to \$10,000 <b>\$5,000</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: Notification and Reports  
 VIOLATION NO.: C (1)

TYPE		
___ TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	___ TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>X</u> TYPE III <u>INCIDENTAL</u> 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 1.10A.1.b of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent failed to provide notice to the DEM of annual testing and failed to submit reports to the DEM within the time specified in the permit. Respondent is a stationary source of air pollutants subject to state air pollution control regulations. Complying with the notice and reporting requirements in the permit is important to the regulatory program.
- (2) **Environmental conditions:** Rhode Island is in attainment for national ambient air quality standards for nitrogen oxides and carbon monoxide. The DEM is responsible for ensuring that levels of nitrogen oxides and carbon monoxide remain below existing air quality standards. The Facility is a bituminous asphalt processing plant in a residential section of Cumberland, Rhode Island, a community of 33,506 residents (based on 2010 census).
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** Carbon monoxide is a colorless, odorless gas that can increase the severity of lung ailments, cause dizziness, fatigue, nausea, and even death. Breathing air with a high concentration of nitrogen oxides can irritate airways in the human respiratory system. Such exposures over short periods can aggravate respiratory diseases, particularly asthma, leading to respiratory symptoms (such as coughing, wheezing or difficulty breathing), hospital admissions and visits to emergency rooms. Longer exposures to elevated concentrations of nitrogen oxides may contribute to the development of asthma and potentially increase susceptibility to respiratory infections. People with asthma, as well as children and the elderly are generally at greater risk for the health effects of nitrogen oxides. Nitrogen oxides react with other chemicals in the air to form both particulate matter and ozone.
- (5) **Duration of the violation:** 4 years for the notification of annual testing (2014 - 2017); 2 years for the submission of the alternative fuel certifications (2016, 2017); 5 years for the late submission of the visolite reports (2013-2017)
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.

(continued)

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by providing notice of the annual testing to the DEM and submitting reports within the time specified in the permit.
- (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:** The DEM issued 2 separate notices of violation to Respondent for the same regulation that is the subject of this notice of violation. On 6 August 2003, the DEM issued a notice of violation and penalty to Respondent for its failure to obtain a permit from the DEM for the installation of pollution control equipment at its asphalt facility on Taunton Avenue in East Providence, Rhode Island. On 7 January 2009, the DEM issued a notice of violation and penalty to Respondent for its failure to obtain a permit from the DEM for the installation of pollution control equipment at the Facility.
- (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:** Negligence is attributable to Respondent for its failure to comply with its permit. Respondent had complete control over the violations, and the violations were foreseeable.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u>  </u> <b>X</b> <b>MAJOR</b>	<b>MODERATE</b>	<b>MINOR</b>
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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	<b>MAJOR</b>	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500 <b>\$2,500</b>
	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