

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

IN RE: PCL FIXTURES, INC.

FILE NO.: OCI-AIR-19-108

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 275 Ferris Avenue, in the City of East Providence, Rhode Island (the “Facility”)
- (2) Respondent operates the Facility.
- (3) The Facility is a stationary source of air pollutants subject to regulations titled *Air Pollution Control Permits (250-RICR-120-05-9)* (“Part 9”) and *Control of Volatile Organic Compounds from Adhesives and Sealants (250-RICR-120-05-44)* (“Part 44”).
- (4) On 5 June 2018 and 2 November 2018, DEM conducted air compliance inspections of the Facility (the “Inspections”).
- (5) On 20 July 2018, DEM issued Respondent a letter requesting information pertaining to the surface coating and bonding operations conducted at the Facility, as well as design specifications for a dust collector located at the Facility.
- (6) On 2 October 2018, DEM received a response from Respondent to the above referenced information request.

- (7) DEM's review of the 2 October 2018 information request response and findings from the Inspections revealed that:
- (a) The Facility exceeded Part 9 permit thresholds from its surface coating and bonding operations, specifically:
 - (i) Potential emissions of toluene, xylene and ethylbenzene exceeded 1,000 pounds per year, 3,000 pounds per year and 9,000 pounds per year, respectively, and 10 pounds per hour or 100 pounds per day; and
 - (ii) Potential emissions of hazardous air pollutants emissions exceeded 25 tons per year.
 - (b) Respondent operates a Filtered Air Systems dust collector, Model FAS-3008X82RAL-C, at the Facility to control particulate matter emissions from wood manufacturing operations. The emissions of air contaminants, in the absence of this dust collector, exceeded Part 9 permit thresholds of 10 pounds per hour or 100 pounds per day.
 - (c) Respondent utilized a plastic cement welding adhesive identified as *AGMC-1* as part of its bonding operations whose annual air emissions exceeded the Part 9 permit thresholds for methylene chloride of 200 pounds per year. The Facility utilized quantities of this adhesive which resulted in annual air emissions of methylene chloride of 267 pounds per year in 2014, 395 pounds per year in 2015, 450 pounds per year in 2016, 217 pounds per year in 2017 and 339 pounds per year in 2018 (through October).
 - (d) Respondent utilized the following adhesives at the Facility which exceed the emission limitations specified in Part 44 of 510 grams of VOC per liter (equivalent to 4.26 pounds of VOC per gallon):
 - (i) *AGMC-1*, which has a VOC content of 10.97 pounds VOC per gallon;
 - (ii) An adhesive identified as *SS-30 Bond*, which have a VOC content of 10.0 pounds of VOC per gallon; and
 - (iii) An adhesive identified as *PTEG-GLU Solvent*, which has a VOC content of 10.35 pounds of VOC per gallon.
 - (e) Respondent failed to apply for and obtain a permit approval from DEM for its surface coating and bonding operations conducted at the Facility.
 - (f) Respondent failed to apply for and obtain a permit approval from DEM for the installation and operation of the dust collector.

- (8) On 6 March 2019, DEM issued a Notice of Intent to Enforce (“NOI”) to Respondent.
- (9) On 21 March 2019, DEM received a response to the NOI from Respondent. Respondent stated that it intended to submit permit applications for the surface coating and bonding operation and the dust collector, that it stopped using the *AGMC-1*, *SS-30 Bond* and *PTEG-GLU Solvent* adhesives and that it had found compliant replacement adhesives.
- (10) On 5 April 2019, Respondent provided a compliance update to DEM confirming that the Facility had discontinued use of the non-compliant adhesives and had submitted air permit applications to DEM on 28 March 2019 and 4 April 2019.
- (11) On 5 April 2019, DEM received the permit applications.
- (12) On 24 July 2019, DEM issued a minor source permit approval to Respondent for the dust collector.

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) ***Air Pollution Control Permits [effective 31 January 2011 to 5 April 2018]***
 - (a) **9.2.1(a)** – prohibiting the construction, installation or modification of any stationary source without obtaining a minor source permit from DEM for each proposed installation or modification described in Part 9.3.1.
 - (b) **9.2.2** – prohibiting the operation of emission units for which a minor source permit is required without obtaining the required permit.
 - (c) **9.3.1(e)** – requiring a minor source permit for any stationary source that emits or has the potential to emit, in the aggregate, 25 tons per year or more of any combination of hazardous air pollutants.
 - (d) **9.3.1(f)** – requiring a minor source permit for any stationary source which has the potential to increase emissions of a listed toxic air contaminant by greater than the minimum quantity for that contaminant, as specified in Appendix A.
 - (e) **9.3.1(g)** – requiring a minor source permit for any stationary source or process, except for those described in subsections 9.3.1(a), 9.3.1(b) or 9.3.1(d), having the potential to emit 100 pounds or more per day, or 10 pounds or more per hour of any air contaminant or combination of air contaminants into the atmosphere, including surface coating, spray and dip painting, roller coating, knife coating and electrostatic depositing.

- (f) **9.3.1(h)** – requiring a minor source permit for any air pollution control system and appurtenances
- (2) ***Air Pollution Control Permits (250-RICR-120-05-9) [effective 5 April 2018 to Current]***
- (a) **Part 9.6(A)** – prohibiting the construction, installation or modification of any stationary source without obtaining a minor source permit from DEM for each proposed installation or modification described in Part 9.7.1.
 - (b) **Part 9.6(B)** – prohibiting the operation of emission units for which a minor source permit is required without obtaining the required permit.
 - (c) **Part 9.7.1(A)(5)** – requiring a minor source permit for any stationary source that emits or has the potential to emit, in the aggregate, 25 tons per year or more of any combination of hazardous air pollutants.
 - (d) **Part 9.7.1(A)(6)** – requiring a minor source permit for any stationary source which has the potential to increase emissions of a listed toxic air contaminant by greater than the minimum quantity for that contaminant, as specified in Part 9.17.
 - (e) **Part 9.7.1(A)(7)** – requiring a minor source permit for any stationary source or process, except for those described in Part 9.7.1(A)(1), Part 9.7.1(A)(2) or Part 9.7.1(A)(4), having the potential to emit 100 pounds or more per day, or 10 pounds or more per hour of any air contaminant or combination of air contaminants into the atmosphere, including surface coating, spray and dip painting, roller coating, knife coating and electrostatic depositing.
 - (f) **Part 9.7.1(A)(8)** – requiring a minor source permit for any air pollution control system and appurtenances.
- (3) ***Control of Volatile Organic Compounds from Adhesives and Sealants [effective 4 June 2009 to 13 January 2019], 44.3.1*** – except as provided in subsections 44.2.3, 44.2.4, and 44.3.5, no person shall use any adhesive, sealant, adhesive primer or sealant primer that has a VOC content in excess of the applicable limit specified in Table 44-1 and 44-2.
- (4) ***Control of Volatile Organic Compounds from Adhesives and Sealants (250-RICR-120-05-44) [effective 13 January 2019 to Current], Part 44.7(A)*** – except as provided in Part 44.6(B), Part 44.6(C), and Part 44.7(E), no person shall use any adhesive, sealant, adhesive primer or sealant primer that has a VOC content in excess of the applicable limit specified in Part 44.7.1 and Part 44.7.2.

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:

\$20,000

- (2) The proposed administrative penalty is calculated pursuant to the *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 *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, 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 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 or via email at christina.hoefsmit@dem.ri.gov. All other inquiries should be directed to David E. Chopy of DEM's Office of Compliance and Inspection at (401) 222-1360, ext. 7400 or at david.chopy@dem.ri.gov.

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
DEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

PCL Fixtures, Inc
c/o Joshua L. Celeste, Esq., Registered Agent
321 South Main Street
Providence, RI 02903

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, AIR
 File No.: OCI-AIR-19-108
 Respondent: PCL FIXTURES, INC.

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) and C (2) – Failure to apply for and obtain permits and operating without permit approvals (surface coating and dust collection)	Type I <i>(\$10,000 Max. Penalty) *</i>	Moderate	\$2,500	5 years	\$12,500
C (3) and C (4) – Use of adhesives that have a VOC content in excess of the applicable limits	Type I <i>(\$10,000 Max. Penalty) *</i>	Minor	\$1,500	5 years	\$7,500
<i>SUB-TOTAL</i>					\$20,000

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

ADMINISTRATIVE PENALTY SUMMARY (continued)

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 can not 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 = \$20,000

PENALTY MATRIX WORKSHEET

CITATION: Failure to apply for and obtain permits and operating without permit approvals
(surface coating and dust collection)

VIOLATION NOs.: C (1) and C (2)

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 VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10(A)(1)(b) of the <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <ol style="list-style-type: none"> (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 surface coating operations conducted at the Facility and the installation and operation of a dust collector associated with wood finishing operations at the Facility. Respondent operated its surface coating and bonding equipment and dust collector, which exceed the Part 9 permit thresholds prior to having been issued minor source permits from DEM. The 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: For the surface coating operations, from July 2014 to October 2018, the annual air emissions of methylene chloride exceeded the minimum quantity of 200 pounds contained in Part 9.17 for each of these years. For the dust collector, unknown. (4) Toxicity or nature of the pollutant: Methylene chloride is a listed air toxic contaminant under Part 9 and is also a Federal hazardous air pollutant. (5) Duration of the violation: Full duration unknown. Based on data provided for calendar years 2014 through 2018, Respondent conducted operations during these 5 years (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 steps to prevent the noncompliance by applying for and receiving permit approvals from DEM prior to conducting bonding and surface coating operations and prior to installation and operation of the dust collector. Respondent mitigated the noncompliance by submitting the required permit applications on 5 April 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
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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 \$2,500	\$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: Use of adhesives that have a VOC content in excess of the applicable limits
 VIOLATION NOs.: C (3) and C (4)

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		
<small>THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10(A)(1)(b) of the <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent failed to limit its VOC emissions for "Other Plastic Cement Welding Adhesives" utilized at the Facility to the allowable limit specified in Part 44.7.1 "Table 1 – VOC Content Limits for Adhesives, Sealants, Adhesive Primers, Sealant Primers and Adhesives" to 510 grams of VOC per liter (equivalent to 4.26 pounds of VOC per gallon). Compliance with these emission limitations is of importance to the regulatory program (2) Environmental conditions: Considered, but not utilized for this calculation. (3) Amount of the pollutant: The VOC content of the 3 non-compliant adhesives ranged from 10.0 to 10.97 pounds of VOC per gallon. This translates into using non-compliant adhesives that exceeded the allowable VOC emission limit by 135% to 158%. (4) Toxicity or nature of the pollutant: Methylene chloride, a VOC, is a listed air toxic contaminant under Part 9 and is also a Federal hazardous air pollutant. (5) Duration of the violation: Full duration unknown. Based on data provided for adhesive usage for calendar years 2014 through 2018, these non-compliant adhesives were utilized by Respondent during these 5 years. (6) Areal extent of the violation: Unknown. 		
(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 steps to prevent the noncompliance. Respondent mitigated the noncompliance by ceasing use of the noncompliant adhesives and finding compliant replacements as of 21 March 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	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 \$1,500	\$500 to \$1,000	\$100 to \$500