

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: P.J. Keating Company

**FILE NOs.: AIR 14 – 08
and OCI-AIR-14-331**

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 875 Phenix Avenue in the city of Cranston, Rhode Island (the “Facility”). The Facility includes a concrete plant and an asphalt batch plant.
- (2) The Facility is (and has been) subject to the DEM's Air Pollution Control (“APC”) Regulations, including but not limited to, the DEM's APC Regulation No. 9 entitled “*Air Pollution Control Permits*”.
- (3) The DEM has issued the following approvals for the Facility (collectively, the “Permits”):
 - (a) On 31 March 1992 the DEM issued Approval No. 1175 to Tilcon Gammino Inc. On 6 November 2002 the DEM received a letter from the Respondent advising the DEM that the company changed its name from Tilcon Gammino Inc. to P.J. Keating. The DEM transferred the approval to the Respondent;
 - (b) On 12 April 2004 the DEM issued Approval No. 1796 to the Respondent; and
 - (c) On 21 July 2004 the DEM issued Approval No. 1807 to the Respondent.
- (4) The Permits require the Respondent to:
 - (a) Check the dust collector pressure drop a minimum of once per day and record the date, time and measurement (Condition 2 of Approval No. 1175);

- (b) Conduct a visolite or similar leak detection test of the baghouse prior to the initial startup and operation, when plant operations are resumed after winter shutdown, and every 90 days during the operating season (Condition E. 4 of Approval No. 1796 and Condition G.4 of Approval No. 1807); and
 - (c) Submit a written report to the DEM within 10 days of each test's completion (Condition E.4 of Approval No. 1796).
- (5) On 28 August 2014, the DEM inspected the Facility. The inspection revealed the following:
- (a) Failure to conduct pressure drop readings for the dust collector and make required daily records. At the time of the inspection the pressure drop gauge for the dust collector was inoperable; and
 - (b) Failure to conduct visolite or similar leak detection testing after July 2010 of the baghouse and submit documentation to the DEM.
- (6) As of the date of this Notice of Violation (“NOV”), the Respondent has failed to comply with the DEM's APC Regulations for the issues described in Section B.5 above.

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 APC Regulation 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 45 days of receipt of the NOV:**

- (1) Conduct a visolite or similar leak detection test of the baghouse, correct any deficiencies immediately if applicable, and submit to the DEM's Office of Air Resources within 10 days of completion of the test a written report pertaining to said test and corrective actions taken, in accordance with Approval Nos. 1796 and 1807; and
- (2) Repair or replace the pressure drop gauge for the dust collector and implement record keeping of pressure drop measurements a minimum of once per day, in accordance with Approval No. 1175.

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:

Eight Thousand Six Hundred Seventy Two Dollars (\$8,672)

- (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, cashiers 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 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 DEM determines that reasonable efforts have been made to comply promptly with this NOV.

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 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
One Capitol Hill, 2ND Floor
Providence, RI 02903

- (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'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:

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 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 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) Christina Hoefsmit at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Martha Mulcahey 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

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:

P.J. Keating Company
c/o Corporation Service Company, Registered Agent
222 Jefferson Boulevard, Suite 200
Warwick, RI 02888

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, AIR SECTION

File No.: AIR 14 – 08 and OCI-AIR-14-331

Respondent: P.J. Keating Company

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) - Failure to comply with permit (visolite testing)	Type I (\$10,000 Max. Penalty)*	Minor	\$1,500	4 years	\$6,000
C (1) - Failure to comply with permit (pressure drop gauge)	Type I (\$10,000 Max. Penalty)*	Minor	\$1,500	1 violation	\$1,500
SUB-TOTAL					\$7,500

*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 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
<p>Economic benefit of noncompliance realized by the Respondent for failing to conduct baghouse tests was calculated using an EPA program called "BEN". BEN calculated the economic gain of noncompliance based upon a detailed economic analysis. Dates, dollar amounts, and values used in the BEN program are as listed.</p> <p>The air pollution permit requires three fluorescent powder tests per year to detect excess particulate emissions through bag perforations or gaps between bags and cage fittings. Visolite testing cost was estimated with bulk purchase once per year.</p>	Respondent failed to conduct testing on 1 July and 1 October of calendar year 2010 and on 1 April, 1 July and 1 October of calendar years 2011 through 2014. Tests were avoided.	
	Visolite fluorescent tracer power test ¹ :	
	$7,379 \text{ sq. ft.} \times 1 \text{ lb./1000 sq. ft.} = 7.4 \text{ lb. visolite per color test}$	
	$7.4 \text{ lb.} \times 2 \text{ colors/test} \times 1 \text{ test/year} \times \$4.2/\text{lb.} = \$62$	
	$7.4 \text{ lb.} \times 2 \text{ colors/test} \times 3 \text{ tests/year} \times \$4.2/\text{lb.} = \$186$	
	(Projected economic benefit compliance date): 1 January 2015	
	October 2010	\$ 172
April, July and October 2011	\$ 445	
April, July and October 2012	\$ 307	
April, July and October 2013	\$ 182	
April, July and October 2014	\$ 66	
SUB-TOTAL		\$1,172

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 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.

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$8,672

PENALTY MATRIX WORKSHEET

CITATION: Failure to comply with permit (visolite testing)

VIOLATION NO.: C (1)

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

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM's *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 repeatedly failed to conduct visolite or similar leak detection testing of its bag house and failed to submit reports to the DEM. The Respondent is a stationary source of air pollutants subject to state air pollution control regulations. Compliance with terms stated in the permits is of importance to the regulatory program.
- (B) **Environmental conditions:** Considered, but not utilized for this calculation.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** Considered, but not utilized for this calculation.
- (E) **Duration of the violation:** 4 years - July 2010 through 2014.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to take reasonable and appropriate steps to comply with the terms set forth in the permits.
- (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:** The DEM issued an informal letter of noncompliance to the Respondent in 2009 for the same violations that are the subject of this NOV. The DEM issued a formal notice of violation to the Respondent in 2004 that included an administrative penalty for an air pollution violation unrelated to the violation that is the subject of this NOV. The DEM issued a formal notice of violation to the Respondent in 2014 that included an administrative penalty for a water pollution violation.
- (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:** Negligence is attributable to the Respondent for its failure to comply with the requirements set forth in its permits. The Respondent had complete control over the violation. The violation was foreseeable by the Respondent.
- (J) **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> </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

PENALTY MATRIX WORKSHEET

CITATION: Failure to comply with permit (pressure drop gauge)
 VIOLATION NO.: C (1)

TYPE		
<p style="text-align: center;"><u> X </u> TYPE I</p> <p style="text-align: center;"><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> </u> TYPE II</p> <p style="text-align: center;"><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> </u> TYPE III</p> <p style="text-align: center;"><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
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's <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: The Respondent failed to monitor and record the pressure drop of its dust collector. The Respondent is a stationary source of air pollutants subject to state air pollution control regulations. Compliance with terms stated in the permit is of importance to the regulatory program.</p> <p>(B) Environmental conditions: Considered, but not utilized for this calculation.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.</p> <p>(E) Duration of the violation: Full duration unknown - at least 1 day. The pressure gauge was inoperable at the time of the inspection.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</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:** The Respondent failed to take reasonable and appropriate steps to comply with the terms of its permit.
- (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:** The DEM issued an informal letter of noncompliance to the Respondent in 2009 for the same violations that are the subject of this NOV. The DEM issued a formal notice of violation to the Respondent in 2004 that included an administrative penalty for an air pollution violation unrelated to the violation that is the subject of this NOV. The DEM issued a formal notice of violation to the Respondent in 2014 that included an administrative penalty for a water pollution violation.
- (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:** Negligence is attributable to the Respondent for its failure to comply with the requirements set forth in its permit. The Respondent had complete control over the violation. The violation was foreseeable by the Respondent.
- (J) **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