

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Rhodes Technologies, Inc.

FILE NO.: AIR/11 – 05

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 500 Washington Street, Coventry, Rhode Island (the “Facility”) and is operated by the Respondent.
- (2) The Facility is (and has been) subject to DEM’s Air Pollution Control (“APC”) Regulations, including but not limited to APC Regulation No. 9, entitled “Air Pollution Control Permits”.
- (3) On 10 November 2010, the Respondent submitted to DEM’s Office of Air Resources (“OAR”) an Application for a General Permit for an Emergency Generator (the “Application”).
- (4) The Application stated that a 238 horsepower (“HP”) natural gas fired emergency generator was installed at the Facility on 12 December 2009.

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) **APC Regulation 9.2.1(a)** – prohibiting the installation of any stationary source without obtaining a minor source permit from DEM for each proposed installation described in APC Regulation 9.3.1.
- (2) **APC Regulation 9.3.1(b)** – requiring a minor source permit for any emergency generator with an internal combustion engine of 50 HP or larger; and, the date of initial startup is on or after November 15, 2007.

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:

One Thousand Dollars (\$1,000.00)

- (2) The proposed administrative penalty is calculated pursuant to the DEM Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the Director within twenty (20) days of your receipt of this Notice of Violation (“NOV”). Payment shall be in the form of a certified check or money order made payable to the “General Treasury - Water & Air Protection Program Account,” and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against the 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.

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 the DEM 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 twenty (20) days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
235 Promenade Street, 3RD Floor
Providence, RI 02908-5767

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
- (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Rule

7.00(b) of the DEM Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters.

- (2) A copy of each request for hearing must also be forwarded to:

Joseph LoBianco, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then this NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (v) and 42-17.6-4(b) and (c).
- (5) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) This NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Joseph LoBianco at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Martha Mulcahey of DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 7032.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section E 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:

Rhodes Technologies, Inc.
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
File No.: 11 – 05
Respondent: Rhodes Technologies, 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 obtain a permit | Type I (\$ 10,000 Max. Penalty)* | Minor | \$1,000 | 1 violation | \$1,000.00 |
| <i>SUB-TOTAL</i> | | | | | \$1,000.00 |

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

PENALTY MATRIX WORKSHEET

CITATION: Failure to obtain a permit

VIOLATION NO.: C (1) and (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 PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED. | | |
| <p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: The Respondent failed to apply for or obtain a minor source permit prior to its installation of an emergency generator. The Respondent is a stationary source of air pollutants subject to state air pollution control regulations. Compliance with permitting and operating requirements is of importance to the regulatory program.</p> <p>(B) Environmental conditions: Not relevant.</p> <p>(C) Amount of the pollutant: Not relevant.</p> <p>(D) Toxicity or nature of the pollutant: Not relevant.</p> <p>(E) Duration of the violation: Not relevant.</p> <p>(F) Areal extent of the violation: Not relevant.</p> <p style="text-align: right; margin-top: 20px;">(continued)</p> | | |

(continued from the previous page)

- (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 obtain the required 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:** Not relevant.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the violation since the Respondent is the operator of the facility. The violation was foreseeable by the Respondent.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The Respondent self disclosed to DEM its failure to apply for and obtain the permit.

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