

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Rhode Island Resource Recovery Corporation

FILE NO.: AIR 11 – 06

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 65 Shun Pike in the town of Johnston, 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 30 September 2010 and 1 October 2010, DEM’s Office of Air Resources (“OAR”) inspected the Facility. The inspection revealed that the Respondent installed natural gas fired emergency generators at its pumping stations located on Shun Pike and Austin Way, both in the town of Johnston, Rhode Island (the “Shun Pike Generator” and the “Austin Way Generator”, respectively).
- (4) On 14 January 2011, the Respondent submitted electronic correspondence to OAR. The correspondence stated that the Shun Pike Generator has a heat input rating of 1.591 million British thermal units per hour (“MMBTU/hr”) and the Austin Way Generator has a heat input rating of 0.543 MMBTU/hr. The correspondence further stated that the generators were installed on 22 January 2008 and were started up on 24 September 2008.
- (5) On 14 April 2011, OAR received minor source permit applications for the Shun Pike Generator and the Austin Way Generator.

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 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 a heat input capacity of 350,000 BTUs or more per hour 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:

Five Thousand Four Hundred Thirty Two Dollars (\$5,432.00)

- (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 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 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 J. 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 J. LoBianco, Esquire, 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:

Rhode Island Resource Recovery Corporation
c/o Rodio & Ursillo, Ltd., Registered Agent
86 Weybosset Street, Suite 400
Providence, RI 02903

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, AIR

File No.: AIR 11 – 06

Respondent: Rhode Island Resource Recovery Corp.

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 D (2) – Failure to obtain a permit	Type I (\$ <u>10,000</u> Max. Penalty)*	Moderate	\$ 2,500	2 violations	\$5,000.00
SUB-TOTAL					\$5,000.00

*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 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
Economic Benefit of noncompliance realized by the Respondent for failing to apply for an air pollution permit for equipment subject to permitting requirements was calculated by utilizing an EPA program called "BEN". BEN calculated the economic gain of noncompliance based upon a detailed economic analysis. Dates, dollar amounts, and values utilized in the BEN Program are as listed.	Two Minor Source Permits = \$ 2,542 Due: September 24, 2008 Receipt of application fee by OAR (economic benefit compliance date): April 14, 2011	\$ 432.00
SUB-TOTAL		\$ 432.00

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$ 5,432.00

PENALTY MATRIX WORKSHEET

CITATION: Failure to obtain a permit
 VIOLATION NO.: C (1) and (2)

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		
<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 <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: Respondent failed to apply for and obtain minor source permits from DEM prior to its installation of emergency generators subject to State air pollution control regulations. Compliance with permitting and operating requirements is of major 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: The emergency generators were installed on 22 January 2008 and started up on 24 September 2008. The duration of the violation was approximately 2 ½ years.</p> <p>(F) Areal extent of the violation: Not relevant.</p> <p style="text-align: right;">(continued)</p>		

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** On 15 March 2011, OAR issued a Notice of Alleged Violations (NOAV) to the Respondent requiring that the Respondent submit permit applications for the emergency generators. The Respondent submitted the applications on 14 April 2011.
- (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 threshold for permit applicability in the subject regulation has been long-standing and as such, the violation was foreseeable by the Respondent.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The violation was discovered during an OAR inspection.

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