

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Sprague Operating Resources LLC

FILE NO.: OCI-AIR-20-39

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. Administrative History

On 26 November 2018, DEM issued a Letter of Noncompliance (“LNC”) to Respondent for the violations that are the subject of this Notice of Violation (“NOV”). The LNC required specific actions to correct the noncompliance. Respondent complied with the LNC.

C. Facts

- (1) The subject facility is located at 100 Dexter Avenue in 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)* [effective 5 April 2018 to Current] (the “Air Permit Rule”).
- (4) On 31 July 2017, DEM issued Respondent Minor Source Permit Approval Nos. 2323-2329, 2363 & 2364 (the “Permit”) for the modification of bulk storage tanks at the Facility to store distillate oil, gasoline, ethanol and other petroleum liquids and the installation of a vapor recovery unit to control volatile organic compound emissions from the loading rack.
- (5) The Permit requires Respondent to:
 - (a) Limit the emission of benzene from the Facility to no more than 0.042 pounds per hour (the “Hourly Limit”), 1.02 pounds per day (the “Daily Limit”), and 372 pounds in any consecutive 12-month period (the “Annual Limit”);

- (b) Determine the hourly and daily emissions of benzene from the Facility monthly no later than 15 days after the end of the previous month and maintain records of these determinations; and
 - (c) Submit compliance reports, malfunction reports and excess emission reports to DEM every 6 months.
- (6) On 19 September 2018, DEM inspected the Facility and reviewed records maintained by Respondent. The inspection revealed the following:
- (a) Respondent exceeded the Hourly Limit and the Daily Limit for benzene as follows:

May 2018	0.048 pounds per hour	1.16 pounds per day
June 2018	0.057 pounds per hour	1.37 pound per day
July 2018	0.062 pounds per hour	1.48 pounds per day
August 2018	0.058 pounds per hour	1.39 pounds per day

- (b) Respondent was not determining and maintaining records of the hourly and daily benzene emissions from the Facility on a monthly basis; and
 - (c) Respondent did not submit a compliance report, malfunction report or an excess emission report to DEM for the period of January 2018 through June 30, 2018.
- (7) On 15 April 2019, Respondent submitted to DEM a report of the annual benzene emissions from the Facility. The report showed that the Facility-wide, consecutive twelve-month benzene emissions exceeded the Annual Limit for each month from November 2018 through March 2019, with actual emissions ranging from 383 to 394 pounds. This corresponds to daily emissions rates of 1.05 pounds to 1.08 pounds, and hourly emission rates of 0.044 pounds to 0.045 pounds for this period, also exceeding the Hourly Limit and the Daily Limit.
- (8) On 26 August 2020, Respondent applied to DEM’s Office of Air Resources (“OAR”) to increase the benzene emissions from the Facility (the “Application”). The Application includes a footnote that states “... *it was originally determined during an inspection by RIDEM following permit issuance that the facility may have exceeded the hourly benzene limit in the permit. However, upon further review, it was discovered that the emission factor for benzene in the compliance calculations was incorrect; therefore, the facility has been in compliance with the benzene limits since issuance of the permit. The change in benzene emissions currently being requested is due to the increased throughput for gasoline and*

ethanol as well as the updated benzene speciation. The distillate benzene weight percent is also being updated per methodology discussed in subsequent sections.”

- (9) DEM determined that the emission factor for benzene utilized in the compliance calculations was not incorrect. Respondent used a different emission factor for benzene in its Application that has not been approved by DEM.

D. 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 Permit Rule, Part 9.10(H)** – requiring any person who receives a permit to comply with all conditions in the permit.

E. 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 (unless a longer time is specified) of receiving a notification of deficiencies in the Application**, submit to OAR a modified application, report or additional information necessary to correct the deficiencies.

F. 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:

\$15,000

- (2) The proposed administrative penalty is calculated pursuant to the *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* [effective 31 December 2001 to Current] (the “Penalty Regulations”) 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.

G. 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 F 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)* [effective 27 November 2014 to Current].
- (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 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 (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 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. 77400 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 G above.

FOR THE DIRECTOR

David E. Chopy, Administrator
DEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

Sprague Operating Resources LLC
c/o Corporation Service Company, Resident Agent
222 Jefferson Boulevard, Suite 200
Warwick, RI 02888

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, AIR

File No.: OCI-AIR-20-39

Respondent: Sprague Operating Resources LLC

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	
D (1) – Emission Limits	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$10,000	1 violation	\$10,000
D (1) – Recordkeeping	Type II <i>(\$5,000 Max. Penalty) *</i>	Major	\$2,500	1 violation	\$2,500
D (1) – Reporting	Type III <i>(\$2,500 Max. Penalty) *</i>	Major	\$2,500	1 violation	\$2,500
SUB-TOTAL					\$15,000

*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 cannot 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 = \$15,000

PENALTY MATRIX WORKSHEET

CITATION: Emission Limits

VIOLATION NO.: D (1)

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;"><u> </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> </u> 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 Part 1.10(A)(1)(b) of the Penalty Regulations.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent exceeded the emission limits for benzene specified in the Permit. The Facility is a stationary source of air pollutants subject to State air pollution control regulations. Compliance with all emission limits specified in a permit is of major importance to the regulatory program. (2) Environmental conditions: Benzene is a volatile organic compound ("VOC"). VOCs are a precursor to the formation of ozone. Rhode Island is in attainment/unclassifiable for the National Ambient Air Quality Standards for ozone. (3) Amount of the pollutant: The Hourly Limit and Daily Limit were exceeded by as much as 48% and 45%, respectively. The Annual Limit was exceeded between 3%-6%. (4) Toxicity or nature of the pollutant: Benzene is a known human carcinogen and is also a federal Hazardous Air Pollutant and a listed Rhode Island Toxic Air Contaminant. (5) Duration of the violation: 4 months for the Hourly Limit and Daily Limit (May 2018 through August 2018) and 5 months for the Hourly Limit, Daily Limit and Annual Limit (November 2018 through March 2019). (6) Areal extent of the violation: Unknown. <p style="text-align: right; margin-top: 20px;">(continued)</p>		

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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.
- (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 has complete control over the violation. Respondent operates 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.

<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	MAJOR	\$5,000 to \$10,000 \$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	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Recordkeeping

VIOLATION NO.: D (1)

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

FACTORS CONSIDERED:

Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent failed to determine and maintain records of the hourly and daily benzene emissions from the Facility as required by the Permit. The Facility is a stationary source of air pollutants subject to state air pollution control regulations. Compliance with the recordkeeping requirements specified in the Permit is of major importance to the regulatory program.
- (2) **Environmental conditions:** Benzene is a VOC. VOCs are a precursor to the formation of ozone. Rhode Island is in attainment/unclassifiable for the National Ambient Air Quality Standards (NAAQS) for ozone.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** Benzene is a known human carcinogen and is also a federal Hazardous Air Pollutant and a listed Rhode Island Toxic Air Contaminant.
- (5) **Duration of the violation:** At least 4 months (May 2018 through August 2018).
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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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.
- (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 has complete control over the violation. Respondent operates 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.

<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	MAJOR	\$5,000 to \$10,000	\$2,500 to \$5,000 \$2,500	\$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: Reporting
 VIOLATION NO.: D (1)

TYPE		
<p>_____ TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>_____ TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> X </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>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</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 submit several semi-annual reports to DEM (compliance report, malfunction report and excess emissions report) as required by the Permit. The Facility is a stationary source of air pollutants subject to state air pollution control regulations. Compliance with all reporting requirements specified in the Permit is of major importance to the regulatory program. (2) Environmental conditions: Among other contaminants, the Facility emits benzene, a VOC. VOCs are a precursor to the formation of ozone. Rhode Island is in attainment/unclassifiable for the National Ambient Air Quality Standards (NAAQS) for ozone. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: Benzene is a known human carcinogen and is also a federal Hazardous Air Pollutant and a listed Rhode Island Toxic Air Contaminant. (5) Duration of the violation: The Facility failed to submit the semi-annual compliance reports to DEM for one 6-month period (January 2018 through June 2018). (6) Areal extent of the violation: Considered, but not utilized for this calculation. 		
<p>(continued)</p>		

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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. Respondent mitigated the noncompliance by submitting the reports to DEM upon receipt of the LNC from DEM requiring that it do so.
- (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 has complete control over the violation. Respondent operates 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.

<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	MAJOR	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500 \$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