

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: 597 BRANCH AVE. LLC
Mitri, Inc.**

FILE NO.: OCI-AIR-20-110

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 parties (“Respondents”) have violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Administrative History

On 6 June 2018, DEM issued a letter (the “2018 Letter”) by certified mail to the facility that is the subject of this Notice of Violation (“NOV”). The letter requested that the facility submit documents to DEM to demonstrate that it complied with the rule that is the subject of the NOV. On 11 June 2018, the letter was delivered. On 4 January 2019, DEM issued a Letter of Noncompliance (“LNC”) by regular mail to the resident agent for Mitri, Inc. The LNC required the same action as noted above. As of the date of the NOV, Respondents have not responded to or complied with the 2018 Letter or the LNC.

C. Facts

- (1) The Facility is located at 597 Branch Avenue in Providence, Rhode Island (the “Property”). The Property includes a gasoline dispensing facility (the “Facility”).
- (2) 597 BRANCH AVE. LLC owns the Property.
- (3) Mitri, Inc. operates the Facility.
- (4) On 25 July 1994, the product pipelines for the Facility were replaced, which was a significant modification of the Facility.
- (5) On 15 June 2009, the Rhode Island Secretary of State revoked the Certificate of Registration/Organization for 597 BRANCH AVE. LLC. DEM has no knowledge of the last known member/president/manager/corporate officer of the corporation.
- (6) The Facility is a stationary source of air pollutants subject to *Air Pollution Control Regulation No. 11 – Petroleum Liquids Marketing and Storage*.

- (7) On or about June 2018, DEM's review of records revealed that Respondents failed to report when the Stage II Vapor Recovery System ("VRS") was decommissioned.
- (8) On 4 January 2019 and 9 November 2020, DEM inspected the Facility. The inspection revealed that the VRS at the Facility was not decommissioned.
- (9) DEM has not granted an extension or an exemption to decommission the VRS at the Facility.
- (10) As of the date of the NOV, the VRS at the Facility has not been decommissioned.

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 Pollution Control Regulation No. 11 – Petroleum Liquids Marketing and Storage [effective 25 December 2013 to 10 January 2019], 11.10.2.2* – requiring that Stage II vapor collection and control systems at all gasoline dispensing facilities constructed or substantially modified after 15 November 1992 be decommissioned by December 22, 2017 unless DEM granted an exemption in accordance with 11.10.2.4 or 11.10.2.5 of this rule.
- (2) *Air Pollution Control Regulation No. 11 – Petroleum Liquids Marketing and Storage (250-RICR-120-05-11) [effective 10 January 2019 to Current] ("APCR 11"), Part 11.14.2(C)* – requiring that Stage II vapor collection and control systems at all gasoline dispensing facilities constructed or substantially modified after 15 November 1992 be decommissioned by December 22, 2017 unless DEM granted an extension in accordance with Part 11.14.2(D) or Part 11.14.2(E) of this rule.

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 complete the following:

- (1) **Within 30 days of receipt of the NOV**, submit a notification to DEM to decommission the VSR at the Facility that complies with Part 11.14.5(A) of APCR 11.
- (2) **Within 120 days of receipt of the NOV**, decommission the VSR at the Facility in accordance with Part 11.14.5(B) through (E) of APCR 11.

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:

\$2,500

- (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] 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 Respondents 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.
- (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 Director determines that reasonable efforts have been made to comply promptly with the NOV.

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 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 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

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:

Mitri, Inc.
c/o Joseph Mitri, Registered Agent
597 Branch Avenue
Providence, RI 02904

597 BRANCH AVE. LLC
597 Branch Avenue
Providence, RI 02904

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, AIR
 File No.: OCI-AIR-20-110
 Respondents: 597 BRANCH AVE. LLC and SUNOCO, 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) and D (2) – Failure to Decommission Stage II Vapor Recovery System | Type II <i>(\$5,000 Max. Penalty) *</i> | Major | \$2,500 | 1 violation | \$2,500 |
| SUB-TOTAL | | | | | \$2,500 |

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

| ECONOMIC BENEFIT FROM NONCOMPLIANCE |
|---|
| <p>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:</p> <ul style="list-style-type: none"> - THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED. |
| <p>A review of the record in this matter has revealed that Respondents have 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.</p> |

| COST RECOVERY |
|--|
| <p>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.</p> |
| <p>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.</p> |

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$2,500

PENALTY MATRIX WORKSHEET

CITATION: Failure to Decommission Stage II Vapor Recovery System
 VIOLATION NOs.: D (1) and D (2)

| 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 | | |
| <small>THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small> | | |
| <p><u>FACTORS CONSIDERED:</u></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> [effective 31 January 2001 to Current]</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondents failed to decommission the Stage II Vapor Recovery System at the Facility. Respondents are a stationary source of air pollutants subject to State air pollution control regulations. Compliance with this requirement is of importance to the regulatory program. (2) Environmental conditions: Considered, but not utilized for this calculation. (3) Amount of the pollutant: Considered, but not utilized for this calculation. (4) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation. (5) Duration of the violation: Approximately 3 years – the deadline to decommission the Stage II Vapor Recovery System is 22 December 2017. (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:** Respondents failed to take reasonable and appropriate steps to prevent and/or mitigate the noncompliance, despite receiving 2 written notices from DEM requiring that they 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:** Respondents had complete control over the violation since Respondents are the owner and the operator of the Facility. The violation was foreseeable by Respondents.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

| | | |
|------------------------|---------------------------|--------------|
| <u> </u> MAJOR | <u> </u> MODERATE | 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 \$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 |