

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF COMPLIANCE & INSPECTION**

IN RE: Twin Oaks Restaurant

**FILE NO.: OCI-WP-20-48
X. ref. RIPDES Permit RIG250021
RIPDES Referral #19-02**

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 7 June 2018 and September 12, 2018, DEM issued informal written notices to Respondent by certified mail for violations of the permit that is the subject of this Notice of Violation (“NOV”). On 12 June 2018 and 19 September 2018, respectively, the notices were delivered to Respondent. On 9 January 2019, DEM issued a letter to Respondent by certified mail. The letter advised Respondent to reapply to DEM by 31 March 2019 for a permit for the discharge described in the NOV. On 15 January 2019, the letter was delivered to Respondent. As of the date of the NOV, Respondent has not responded to nor complied with the notices or the letter.

C. Facts

- (1) The facility is a restaurant located at 100 Sabra Street in Cranston, Rhode Island (the “Facility”).
- (2) On 18 November 2013, DEM issued to Respondent Rhode Island Pollutant Discharge Elimination System (“RIPDES”) Permit No. RIG250021 (the “Permit”), which became effective on that date. The Permit authorized Respondent to discharge non-contact cooling water from the Facility to Spectacle Pond (the “Discharge”).

- (3) The Permit required Respondent to:
 - (a) Summarize monitoring results obtained during the previous quarterly period and report these results to DEM in a Discharge Monitoring Report (“DMR”) to be postmarked no later than the 15TH day of the month following the completed quarterly reporting period;
 - (b) Monitor using standard test methods promulgated in Title 40 Part 136 of the Code of Federal Regulations (“40 CFR 136”) to analyze effluent samples; and
 - (c) Maintain records of the date, exact place and time of sampling, the individual performing the sampling, and the analytical techniques or methods used.
- (4) Respondent failed to submit the DMR for the quarter ending 30 June 2018 (the “Q2 DMR”) to DEM. The DMR was due by 15 July 2018.
- (5) On 30 August 2018, DEM inspected the Facility. The inspection revealed the following:
 - (a) Records maintained by Respondent failed to document the time of sampling, the individual performing the sampling, and the analytical techniques or methods used;
 - (b) Respondent was measuring pH with pH test strips, which is not a method approved under 40 CFR 136; and
 - (c) Respondent was using a laser temperature gun to measure temperature, which is not a method approved under 40 CFR 136.
- (6) On 30 September 2018, the Permit expired.
- (7) Respondent failed to submit the DMR for the quarter ending 30 September 2018 to DEM (“Q3 DMR”). The DMR was due by 15 October 2018.
- (8) On 4 January 2019, DEM reissued RIPDES Non-Contact Cooling Water General Permit (the “2019 Permit”), which became effective on 1 March 2019.
- (9) On 3 March 2020, DEM inspected the Facility. The inspection revealed that the Discharge was still present.
- (10) As of the date of the NOV, Respondent has failed to submit the Q2 DMR and the Q3 DMR to DEM.
- (11) As of the date of the NOV, Respondent has failed to reapply to DEM for the 2019 Permit for the Discharge.

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) **R.I. Gen. Laws Section 46-12-5(b)** – requiring the discharge of any pollutant into waters of the State comply with the terms and conditions of a permit and applicable regulations.
- (2) ***Water Quality Regulations [effective 28 December 2010 to 19 August 2018]***
 - (a) **Rule 11(B)** – requiring the discharge of pollutants into the waters of the State comply with the terms and conditions of a permit issued by DEM.
 - (b) **Rule 16(A)** – mandating compliance with all terms, conditions, management practices and operation and maintenance requirements set forth in a permit
- (3) ***Water Quality Regulations [effective 19 August 2018 to Current]***
 - (a) **Part 1.13(B)** – requiring the discharge of pollutants into the waters of the State comply with the terms and conditions of a permit issued by DEM.
 - (b) **Part 1.18(A)** – mandating compliance with all terms, conditions, management practices and operation and maintenance requirements set forth in a permit.
- (4) ***Regulations for the Rhode Island Pollutant Discharge Elimination System [effective 25 February 2003 to 7 October 2018]***
 - (a) **Rule 14.02(a)** – requiring the permittee to comply with all conditions of the permit.
 - (b) **Rule 14.03** – requiring the permittee to apply for and obtain a new permit after the expiration date of the permit.
 - (c) **Rule 14.11(d)** – requiring the permittee to analyze effluent samples using methods approved under 40 CFR §136 or as established by the EPA.
 - (d) **Rule 14.13** – requiring the permittee to maintain records of the date, exact place and time of sampling, the individual performing the sampling, and the analytical techniques or methods used.
 - (e) **Rule 14.14 and Rule 14.17(d)** – requiring the permittee to report monitoring results on a DMR at the intervals specified in the permit.

(5) ***Regulations for the Rhode Island Pollutant Discharge Elimination System [effective 7 October 2018 to Current]***

- (a) **Part 1.14(B)** – requiring the permittee to comply with all conditions of the permit.
- (b) **Part 1.14(C)** – requiring the permittee to apply for and obtain a new permit after the expiration date of the permit.
- (c) **Part 1.14(K)(4)** – requiring the permittee to analyze effluent samples using methods approved under 40 CFR §136 or as established by the EPA.
- (d) **Part 1.14(M)** – requiring the permittee to maintain records of the date, exact place and time of sampling, the individual performing the sampling, and the analytical techniques or methods used.
- (e) **Part 1.14(N) and Part 1.14(Q)(4)** – requiring the permittee to report monitoring results on a DMR at the intervals specified 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:

- (1) **IMMEDIATELY** cease the Discharge. No discharge is allowed until such time as a permit is issued by DEM.
- (2) **Within 15 days receipt of the NOV**, submit the Q2 DMR and the Q3 DMR to DEM's Office of Water Resources – RIPDES Program.

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:

\$5,000

- (2) The proposed administrative penalty is calculated pursuant to the *Rules and Regulations for Assessment of Administrative Penalties* [effective 19 March 2021 to Current] (the “Penalty Regulations”) and must be paid to DEM within 30 days of your receipt of the NOV. Penalty payments shall be by one of two methods:
1. By certified check, cashier’s check, or money order made payable to the **General Treasury – Water and Air Protection Program** and forwarded to:

Administrator, DEM Office of Compliance and Inspection
235 Promenade Street, Suite 220
Providence, RI 02908-5767
 2. By wire transfer in accordance with instructions provided by DEM.
- (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* [effective 27 November 2014 to Current]

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

Tricia Quest, 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) Tricia Quest of DEM's Office of Legal Services at (401) 222-6607 or at tricia.quest@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 extension 2777400 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:

Twin Oaks Restaurant
c/o William DeAngelus, III
100 Sabra Street
Cranston, RI 02910

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution
 File Nos.: OCI-WP-20-48 X-ref RIPDES Permit RIG250021 and
 RIPDES Referral #19-02
 Respondent: Twin Oaks Restaurant

| 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), D (2), D (3) and D (4)(a), (c), (d) and (e) – Failure to Comply with Permit | Type I <i>(\$25,000 Max. Penalty) *</i> | Minor | \$2,500 | 1 violation | \$2,500 |
| D (1), D (3)(a) and D (5)(b) – Unauthorized Discharge | Type I <i>(\$12,500 Max. Penalty) *</i> | Minor | \$2,500 | 1 violation | \$2,500 |
| <i>SUB-TOTAL</i> | | | | | \$5,000 |

*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 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 can not 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 = \$5,000

PENALTY MATRIX WORKSHEET

CITATION: Failure to Comply with Permit
 VIOLATION NOs.: D (1), D (2), D (3) and D (4)(a), (c), (d) and (e)

| TYPE | | |
|---|--|---|
| <u> X </u> TYPE I DIRECTLY related to protecting health, safety, welfare, or environment. | ___ TYPE II INDIRECTLY related to protecting health, safety, welfare, or environment. | ___ TYPE III INCIDENTAL to protecting health, safety, welfare, or environment. |
| DEVIATION FROM THE STANDARD THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED. | | |
| <p>FACTORS CONSIDERED: 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 comply with the Permit by submitting the DMRs, sampling using approved test methods and maintaining records. Compliance with these aspects of the Permit is important to the 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: The Discharge consists of noncontact cooling water from compressors and ice machines. (5) Duration of the violation: Full duration unknown – at least approximately 2½ years. The Q2 DMR was due by 15 July 2018 and the Q3 DMR was due by 15 October 2018. (6) Areal extent of the violation: Considered, but not utilized for this calculation. (7) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance: Respondent did not take reasonable and appropriate steps to prevent and/or mitigate the non-compliance, despite receiving notices from DEM on 12 June 2018 and 19 September 2018 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, the violation was foreseeable, and Respondent is aware of the action necessary to correct the violation. (10) 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 |

| Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000 | | TYPE I | TYPE II | TYPE III |
|---|--------------|--------------------------------------|---------------------|--------------------|
| DEVIATION FROM STANDARD | MAJOR | \$12,500 to \$25,000 | \$6,250 to \$12,500 | \$2,500 to \$6,250 |
| | MODERATE | \$6,250 to \$12,500 | \$2,500 to \$6,250 | \$1,250 to \$2,500 |
| | MINOR | \$2,500 to \$6,250 \$2,500 | \$1,250 to \$2,500 | \$250 to \$1,250 |

PENALTY MATRIX WORKSHEET

CITATION: Unauthorized Discharge
 VIOLATION NOs.: D (1), D (3)(a) and D (5)(b)

| TYPE | | |
|---|--|--|
| <u> </u> X TYPE I | <u> </u> TYPE II | <u> </u> TYPE III |
| <u>DIRECTLY</u> related to protecting health, safety, welfare, or environment. | <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment. | <u>INCIDENTAL</u> to protecting health, safety, welfare, or environment. |
| DEVIATION FROM THE STANDARD | | |
| THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED. | | |
| <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 is discharging water containing pollutants to the waters of the State without a permit from DEM. (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: The Discharge consists of noncontact cooling water from compressors and ice machines. (5) Duration of the violation: Approximately 2 ¼ years. The Permit expired on 30 September 2018. (6) Areal extent of the violation: Considered, but not utilized for this calculation. (7) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance: Respondent did not take reasonable and appropriate steps to prevent and/or mitigate the non-compliance, despite receiving a notice from DEM on 15 January 2019 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, the violation was foreseeable, and Respondent is aware of the action necessary to correct the violation. (10) 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> X MINOR |

| Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000 | | TYPE I | TYPE II | TYPE III |
|---|--------------|--------------------------------------|---------------------|--------------------|
| DEVIATION FROM STANDARD | MAJOR | \$12,500 to \$25,000 | \$6,250 to \$12,500 | \$2,500 to \$6,250 |
| | MODERATE | \$6,250 to \$12,500 | \$2,500 to \$6,250 | \$1,250 to \$2,500 |
| | MINOR | \$2,500 to \$6,250 \$2,500 | \$1,250 to \$2,500 | \$250 to \$1,250 |