

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Town of West Warwick**

**FILE NO.: AIR 11 – 18**

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

The DEM met with the Town’s agents after the March/April 2010 floods and explained that permits are required from DEM prior to the installation of new or rebuilt/repared emergency generators. DEM learned in June 2011 that the Town installed emergency generators at its wastewater treatment facility in January 2011 and April 2011 without required permits from DEM. DEM issued a letter to the Town requesting information on all emergency generators installed at its wastewater treatment facility and pumping stations. The information provided by the Town revealed that the Town also installed an emergency generator in 2003 at one of its wastewater pumping stations without a required permit from DEM.

C. Facts

- (1) The facility is a wastewater treatment plant located at 1 Pontiac Avenue in the town of West Warwick, Rhode Island (the “Facility”). The Facility includes a wastewater pumping station identified as the Maisie Quinn Pumping Station located on Duke Street in the town of West Warwick (the “Maisie Quinn Station”).
- (2) The Facility is operated by the Respondent.
- (3) The Facility is (and has been) subject to DEM’s Air Pollution Control (“APC”) Regulations.
- (4) On 15 June 2011 and 29 June 2011 DEM received letters from James J. Geremia & Associates, Inc. on behalf of the Respondent regarding the installation and operation of emergency engine/generator sets. The letters stated that:

- (a) Three diesel fired 1,214 horsepower (“HP”) emergency engine/generator sets with a maximum heat input capacity of 8.41 million British thermal units per hour (“BTUs/hour”) were installed at the Facility. One emergency engine/generator set was installed on or about 14 January 2011 and the other two emergency engine/generator sets were installed on or about 3 April 2011; and
- (b) One diesel fired 1,180 HP emergency engine/generator set with a maximum heat input capacity of 6.79 million BTUs/hour was installed at the Masie Quinn Station in calendar year 2003.
- (5) The Respondent did not receive approval from DEM to install the emergency engine/generators sets at the Facility (collectively, the “Emergency Generators”).
- (6) As of the date of this Notice of Violation (“NOV”), the Respondent has failed to apply for permits from DEM for the Emergency Generators.

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) **DEM’s 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) **DEM’s APC Regulation 9.3.1(a)** – requiring a minor source permit for any fuel burning device designed to burn liquid fuels having a heat input capacity of 5.0 million BTUs or more per hour.
- (3) **DEM’s 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.

E. Order

Based on the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), you are hereby ORDERED to:

- (1) **Within thirty (30) days of receipt of the NOV**, submit to DEM a completed minor source permit application, accompanied with the associated permit application fee, for each of the Emergency Generators.

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:

**Ten Thousand Dollars (\$10,000.00)**

- (2) The proposed administrative penalty is calculated pursuant to the DEM's Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the DEM within twenty (20) days of your receipt of this NOV. Payment shall be in the form of a check 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.
- (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 this 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 the DEM 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 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  
One Capitol Hill, 2<sup>nd</sup> Floor  
Providence, RI 02903

- (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, 4<sup>TH</sup> 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 G above.

FOR THE DIRECTOR

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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:

Malcolm Moore, Interim Town Manager  
Town of West Warwick  
1170 Main Street  
West Warwick, RI 02893-4829

by Certified Mail.

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## ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, AIR

File No.: AIR 11 – 18

Respondent: Town of West Warwick

<b>GRAVITY OF VIOLATION</b>					
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 obtain a permit – generator at the pumping station	Type I (\$ <u>10,000</u> Max. Penalty)*	Moderate	\$ 2,500	1 violation	\$2,500.00
D (1), D (2) and D (3) – Failure to obtain a permit – generators at the WWTF	Type I (\$ <u>10,000</u> Max. Penalty)*	Moderate	\$ 2,500	3 violations	\$7,500.00
<b><i>SUB-TOTAL</i></b>					\$10,000.00

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

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$ 10,000.00**

**PENALTY MATRIX WORKSHEET**

CITATION: Failure to obtain a permit - generator at pumping station  
 VIOLATION NO.: D (1) and (2)

<b>TYPE</b>		
<u>  X  </u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE III</b> <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
<b>DEVIATION FROM THE STANDARD</b>		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent failed to apply for and obtain minor source permit from DEM prior to its installation of an emergency generator subject to State air pollution control regulations. Compliance with permitting and operating requirements is of major importance to the regulatory program.</p> <p>(B) <b>Environmental conditions:</b> Not utilized for this calculation.</p> <p>(C) <b>Amount of the pollutant:</b> Not utilized for this calculation.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Not utilized for this calculation.</p> <p>(E) <b>Duration of the violation:</b> 8 years. The generator was installed at the Maisie Quinn pumping station in calendar year 2003.</p> <p>(F) <b>Areal extent of the violation:</b> Not utilized for this calculation.</p> <p style="text-align: right;">(continued)</p>		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent has failed to date to submit the minor source permit application for the generator.
- (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 utilized for this calculation.
- (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 by the DEM.

<b>MAJOR</b>	<b><u>X</u> MODERATE</b>	<b>MINOR</b>
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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
	<b><i>MODERATE</i></b>	\$2,500 to \$5,000 <b><i>\$2,500</i></b>	\$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: Failure to obtain a permit – generators at the WWTF  
 VIOLATION NO.: D (1), (2), and (3)

<b>TYPE</b>		
<p><u>  X  </u> <b>TYPE I</b>  <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>      </u> <b>TYPE II</b>  <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>      </u> <b>TYPE III</b>  <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
<b>DEVIATION FROM THE STANDARD</b> <small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> 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) <b>Environmental conditions:</b> Not utilized for this calculation.</p> <p>(C) <b>Amount of the pollutant:</b> Not utilized for this calculation.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Not utilized for this calculation.</p> <p>(E) <b>Duration of the violation:</b> 7 months to 10 months. One generator was installed at the WWTF on or about 14 January 2011 and two generators were installed at the WWTF on or about 3 April 2011.</p> <p>(F) <b>Areal extent of the violation:</b> Not utilized for this calculation.</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:** The Respondent has failed to date to submit the minor source permit applications for the generators.
- (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 utilized for this calculation.
- (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 violations were discovered by the DEM.

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
	<b>MODERATE</b>	\$2,500 to \$5,000 <b>\$2,500</b>	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500