

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Rhode Island Bioenergy Facility, LLC**

**FILE NO.: OCI-AIR-23-80**

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 Rhode Island Department of Environmental Management (“Director” of “RIDEM”) has reasonable grounds to believe that the above-named party (“Respondent”) has violated certain statutes and/or administrative regulations under RIDEM's jurisdiction.

B. ADMINISTRATIVE HISTORY

On 22 September 2023, RIDEM issued an Immediate Compliance Order (“ICO”) to Respondent for the violations that are the subject of this Notice of Violation (“NOV”). The ICO required immediate actions to address the violations. On 28 September 2023, Respondent submitted a *Plan to Remediate Offsite Odor* to RIDEM, which RIDEM approved. On 20 October 2023 and 29 November 2023, RIDEM modified the ICO in response to changes in procedures and equipment that Respondent made to control the odors.

C. FACTS

- (1) The property is located at 289 Scituate Avenue in Johnston, Rhode Island (“Property”).
- (2) The Property includes an anaerobic digester facility that produces natural gas from recycled food and other solid organic waste (“Facility”).
- (3) Respondent operates the Facility.
- (4) The Facility is a stationary source of air pollutants subject to Rhode Island’s Air Pollution Control (“APC”) Regulations (“APC Rules”), including, but not limited to, 250-RICR-120-05-7 (“Part 7”), titled *Emission of Air Contaminants Detrimental to Person or Property* and 250-RICR-120-05-17 (“Part 17”), titled *Odors*.
- (5) On 29 August 2023, RIDEM began receiving odor complaints in the area surrounding the Property that were described as “toxic chemical and gas smell”, “strong toxic smell”, “unbearable odors”, and “horrible odors”. Complainants also stated they had to leave their office building on the adjacent property to avoid

the odors and indicated health impacts due to the odors, including trouble breathing.

- (6) On 13 September 2023, RIDEM inspected the area beyond the Property line in response to the complaints. The inspection revealed the following:
  - (a) The inspectors detected distinct and strong odors that they determined to be objectionable.
  - (b) The odors were described as a rotting, putrid, and rancid.
  - (c) Winds were from the south/southeast, and the odors were determined to be emanating from the Facility.
  - (d) The inspectors stated the odors were present during the entirety of the inspection (9:20 am to 9:50 am).
  - (e) The odors caused the inspectors to want to avoid the area.
- (7) From 14 September 2023 through 18 September 2023, RIDEM received additional odor complaints from the areas surrounding the Facility that were described as “horrible.” Complainants stated that the odors were present inside the office building on the adjacent property.
- (8) On 18 September 2023, RIDEM inspected the area beyond the Property line in response to the complaints. The inspection revealed the following:
  - (a) The inspector detected odors that were determined to be objectionable.
  - (b) The odors were described as strong, putrid, or rotten, and rancid.
  - (c) The odors were so strong the inspector had to return to his car within minutes to avoid the odor.
  - (d) Slight putrid or rotten odors were also detected within the office building on the adjacent property.
  - (e) Winds were from the east, and the odor was determined to be emanating from the Facility.
  - (f) The inspector stated the objectionable odors were present during the entirety of the inspection (12:30 pm to 1:30 pm).

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) **APC Rules, Part 7.6** – prohibiting any person from emitting any contaminant which either alone or in connection with other emissions, by reason of their concentration or duration, may be injurious to human, plant or animal life, or cause damage to property or which unreasonably interferes with the enjoyment of life and property.
- (2) **APC Rules, Part 17.5** – prohibiting any person from emitting or causing to be emitted into the atmosphere any air contaminant or combination of air contaminants which creates an objectionable odor beyond the property line of said person.

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** take all actions necessary to comply with Part 7 and Part 17.
- (2) **IMMEDIATELY** implement the following actions until an odor management plan is approved by RIDEM, and implemented, as described below in sections E(5) and E(6), :
  - (a) Accept up to 8 non-compacted deliveries a day. Doors can be open a maximum of 10 minutes per delivery. Every effort shall be made to space out the deliveries as much as possible so that the doors are closed for a minimum of 30 minutes between deliveries.
  - (b) Accept 1 compacted delivery per day. The doors for the compacted delivery may be open for as long as necessary to unload the delivery. Every effort shall be made to space out the deliveries as much as possible so that the doors are closed for a minimum of 30 minutes between deliveries.
  - (c) When the doors are open the negative pressure system must be in operation.
  - (d) Doors are to remain closed when not accepting deliveries.
  - (e) Assign a 3<sup>rd</sup> party observer to conduct hourly odor checks both upwind and downwind on the Property lines during the hours of operation.
  - (f) For each delivery generate a written report (“Delivery Report”) noting the time of delivery, type of delivery (compacted v. non-compacted; solid v.

liquid), when the doors were opened, when the doors were closed, weather, and wind.

- (g) For each hourly odor check generate a written report (“Odor Check Report”) noting the location, weather, wind, and any odors detected. Each Odor Check Report shall have the Odor Description filled out (attached hereto as Attachment 1) and shall characterize any odor detected by a minimum of type, nature, concentration, location where the odor was detected, duration and source.
  - (h) The Delivery Reports and Odor Check Reports shall be submitted electronically by 11 am the following day to Shawna Smith at [Shawna.smith@dem.ri.gov](mailto:Shawna.smith@dem.ri.gov).
  - (i) At approximately 6am the door for the rejects bin may to be opened, and the bin replaced with an empty bin. Door open time is limited to ten minutes or less.
  - (j) Add odorant to the humidification unit prior to the biofilter to assist in the elimination of odors in the biogas before it gets to the biofilter.
  - (k) Implement the practice of multiple operator daily rounds of the biofilter to confirm no odors are present. A written log of these checks shall be kept on site and available to RIDEM if requested.
  - (l) Liquid haulers cannot clear blockages in their tankers by pulling vacuum back into the tankers with direct air discharge.
  - (m) Provide RIDEM 24 hours’ notice of when the ventilation system will be taken offline and the anticipated duration that it will be offline.
  - (n) In the event that RIDEM detects an objectionable odor Respondent will cease accepting solid deliveries.
- (3) **Within 1 business day of Respondent’s receipt of a complaint about odors at the Property from other than RIDEM**, Respondent shall notify RIDEM by electronic correspondence sent to [DEM.Compliance2@dem.ri.gov](mailto:DEM.Compliance2@dem.ri.gov). The notification shall include the date and time of the complaint, the name of the person that filed the complaint and contact information (if provided) and a description of the complaint.
- (4) **Within 3 business days of Respondent’s receipt of a complaint about odors from RIDEM or complaint pursuant to section E(3) above**, Respondent shall complete an investigation of the complaint and submit a report to RIDEM that includes the following information: a summary of the complaint (including date and time of the complaint, the name of the complainant and contact information if provided, and a description of the complaint); the actions taken to investigate the complaint; the findings of the investigation; and any changes made to the practices or procedures of the Facility resulting from the investigation. Investigations of odor complaints shall include an evaluation of the Facility activities, arrival and type of deliveries, weather conditions at the time of the

complaint (if known), including wind direction and wind speed, an inspection of the Facility and area(s) which were the subject of the odor complaint, and interviews with relevant Facility personnel. Reports submitted to RIDEM pursuant to this paragraph shall be submitted by electronic mail to the Deputy Administrator of RIDEM's Office of Compliance and Inspection ("OC&I") with copies to the air pollution program managers within OC&I. The names and email addresses of the individuals currently in these positions are as follows:

Shawna Smith, Environmental Scientist III  
[shawna.smith@dem.ri.gov](mailto:shawna.smith@dem.ri.gov)

Patrick Hogan, Environmental Engineer IV  
[patrick.hogan@dem.ri.gov](mailto:patrick.hogan@dem.ri.gov)

Christina Hoefsmit, Deputy Administrator  
[christina.hoefsmit@dem.ri.gov](mailto:christina.hoefsmit@dem.ri.gov)

- (5) **Within 30 days of receipt of the NOV** retain a qualified environmental consultant to prepare an odor management plan that includes, but is not limited to, the following:
- (a) A diagram that shows all the major process equipment and components at the Facility.
  - (b) A description of the process and the purpose of each piece of equipment and components at the Facility.
  - (c) Identifies all sources of odors at the Facility.
  - (d) Describes how odors are controlled from each identified source.
  - (e) Assesses the need for equipment and/or process changes to monitor and prevent objectionable odors beyond the Property line.
  - (f) Describes how the plan will be implemented, including a proposed schedule.

The plan shall be submitted to RIDEM **within 60 days of receipt of the NOV**.

- (6) The odor management plan described in section E (5) above shall be subject to RIDEM's review and approval. Upon review, RIDEM shall provide written notification either granting formal approval or stating the deficiencies therein. Within 30 days (unless a longer time is specified) of receiving a notification of deficiencies, Respondent must submit to RIDEM a modified plan 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 Rhode Island's *Rules and Regulations for Assessment of Administrative Penalties* (250-RICR-130-00-1) ("Penalty Rules") and must be paid to RIDEM within 30 days of your receipt of the NOV. Penalty payments shall be by one of two methods:

- (a) By certified check, cashier's check, or money order made payable to the **General Treasury – Water and Air Protection Program** and forwarded to:

Administrator, RIDEM Office of Compliance and Inspection  
235 Promenade Street, Suite 220  
Providence, RI 02908-5767.

- (b) By wire transfer in accordance with instructions provided by RIDEM.

- (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.
- (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 RIDEM 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 RIDEM'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 RIDEM'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  
RIDEM - 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).
  - (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 RIDEM's *Rules and Regulations for the Administrative Adjudication Division* (250-RICR-10-00-1).
- (2) A copy of each request for hearing must also be forwarded to:
- Jenna Giguere, Esquire  
RIDEM - 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 RIDEM'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) Jenna Giguere of RIDEM's Office of Legal Services at (401) 537-4409 or at [jenna.giguere@dem.ri.gov](mailto:jenna.giguere@dem.ri.gov). All other inquiries should be directed to Shawna Smith of RIDEM's Office of Compliance and Inspection at (401) 537-4478 or at [shawna.smith@dem.ri.gov](mailto:shawna.smith@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:

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Christina Hoefsmit, Deputy Administrator  
RIDEM Office of Compliance and Inspection

Dated: \_\_\_\_\_

CERTIFICATION

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

Rhode Island Bioenergy Facility, LLC  
c/o Corporation Service Company, Resident Agent  
222 Jefferson Boulevard, Suite 200  
Warwick, RI 02888

by Certified Mail.





# ADMINISTRATIVE PENALTY SUMMARY

Program: Air Pollution  
 File No.: OCI-AIR-23-80  
 Respondent: Rhode Island Bioenergy Facility, 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 (2) – Objectionable odors on 13 September 2023	Type I (\$10,000 Max. Penalty) *	Major	\$5,000	1 violation	\$5,000
D (1) and D (2) – Objectionable odors on 18 September 2023	Type I (\$10,000 Max. Penalty) *	Major	\$10,000	1 violation	\$10,000
<b>SUB-TOTAL</b>					<b>\$15,000</b>

\*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 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 RIDEM 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 RULES = \$15,000**

# PENALTY MATRIX WORKSHEET

CITATION: Objectionable odors on 13 September 2023

VIOLATION NO.: D (2)

<b>TYPE</b>		
<p style="text-align: center;"><u>  X  </u> <b>TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;"><u>      </u> <b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;"><u>      </u> <b>TYPE III</b></p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b>FACTORS CONSIDERED:</b></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Rules.</p> <ol style="list-style-type: none"> <li>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent failed to prevent objectionable odors from the Facility from migrating beyond the Property line. The Facility is a stationary source of air pollutants subject to state air pollution control regulations. Compliance with the air pollution control regulations is of major importance to the regulatory program.</li> <li>(2) <b>Environmental conditions:</b> The area surrounding the Property is urban and developed with moderate density commercial/industrial including numerous businesses, and a medium low density residential neighborhood. The Facility is within 300 feet of the nearest business and 400 feet of the nearest residences. An interstate highway corridor (Route 295) is located 1,000 feet east of the Facility. The Facility is within 3,000 feet of the Rhode Island Resource Recovery/Central Landfill.</li> <li>(3) <b>Amount of the pollutant:</b> Unknown.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> The objectionable odor was described by RIDEM’s inspectors as rotting, putrid and rancid. The odor caused the inspectors to want to leave the area.</li> <li>(5) <b>Duration of the violation:</b> The odor that traveled beyond the Property line was for sufficient duration (30 minutes) and concentration to be objectionable to RIDEM’s inspectors.</li> <li>(6) <b>Areal extent of the violation:</b> Full areal extent of the violation is not known. The objectionable odor was detected by RIDEM’s inspectors on the property to the west of the Facility.</li> </ol>		
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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. RIDEM is not aware of what steps, if any, were taken to mitigate the noncompliance.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM 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:** Complaints from abutters indicated health impacts including trouble breathing.

<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	<b>MAJOR</b>	\$5,000 to \$10,000 <b>\$5,000</b>	\$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: Objectionable odors on 18 September 2023

VIOLATION NOs.: D (1) and D (2)

## TYPE

  X   **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.

### FACTORS CONSIDERED:

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

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent failed to prevent objectionable odors from the Facility from migrating beyond the Property line. The Facility is a stationary source of air pollutants subject to state air pollution control regulations. Compliance with the air pollution control regulations is of major importance to the regulatory program.
- (2) **Environmental conditions:** The area surrounding the Facility is urban and developed with moderate density commercial/industrial including numerous businesses, and a medium low density residential neighborhood. The Facility is within 300 feet of the nearest business and 400 feet of the nearest residences. An interstate highway corridor (Route 295) is located 1,000 feet east of the Facility. The Facility is within 3,000 feet of the Rhode Island Resource Recovery/Central Landfill.
- (3) **Amount of the pollutant:** Unknown.
- (4) **Toxicity or nature of the pollutant:** The objectionable odor was described by RIDEM's inspector as rotting, putrid, and rancid. The odor was so strong the inspector had to return to his car within minutes to avoid the odor.
- (5) **Duration of the violation:** The odor that traveled beyond the Property line was for sufficient duration (60 minutes) and concentration to be objectionable to RIDEM's inspector.
- (6) **Areal extent of the violation:** Full areal extent of the violation is not known. The objectionable odor was detected by RIDEM's inspector on the property to the west of the Facility.

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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. RIDEM is not aware of what steps, if any, were taken to mitigate the noncompliance.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM 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:** Complaints from abutters indicated health impacts including headaches and nausea. Slight putrid or rotten odors were also detected within the commercial office building on the adjacent property.

<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	<b>MAJOR</b>	\$5,000 to \$10,000 <b>\$10,000</b>	\$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