

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Copar Quarries of Westerly, LLC

FILE NO.: OC&I/AIR 13-07

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

DEM issued an informal written notice to the Respondent on May 24, 2013 for the violation. The notice required that specific actions be taken to correct the violation. Thus far, the Respondent has failed to respond to the notice.

C. Facts

- (1) The subject facility is located at 271 Church Street in the town of Westerly, Rhode Island (the “Facility”) and is operated by the Respondent.
- (2) The Respondent mines and processes rock at the Facility.
- (3) The Facility is a stationary source of air pollutants subject to the DEM’s Air Pollution Control (“APC”) Regulations.
- (4) On 7 May 2013, DEM responded to complaints regarding fugitive dust allegedly having travelled beyond the property line of the Facility. The inspector determined that fugitive dust from the Facility had travelled beyond the property line of the Facility as evidenced by the following:
 - (a) The inspector positioned his State vehicle downwind of the Facility along Quarry Road facing the Facility. The vehicle was positioned such that the windshield could collect any fugitive dust from the Facility that carried on the wind;
 - (b) The windshield of the inspector’s vehicle was fully cleaned to prepare for a “before and after” comparison;

- (c) After the time lapse of forty-five (45) minutes, the inspector evaluated a short hand swipe over the prepared windshield surface and noted that his hand had glistening particles that he attributed to dust from the quarry, based on his prior observations of material on site; and
 - (d) Based upon the wind direction and location of the vehicle, the Facility was the only source of the fugitive dust detected on the vehicle's windshield during the forty-five (45) minute timeframe.
- (5) The Respondent has failed to take adequate measures to prevent fugitive dust as evidenced by the DEM inspector's 7 May 2013 observations of significant amounts of dust being generated from vehicular movement from on-site roadways and parking areas.

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 5.3** – requiring that no person shall cause or permit any materials, including but not limited to sand, gravel, soil, aggregate and any other organic or inorganic solid matter capable of releasing dust, to be handled, transported, mined, quarried, stored or otherwise utilized in any way so as to cause airborne particulate matter to travel beyond the property line of the emission source without taking adequate precautions to prevent particulate matter from becoming airborne. Such precautions shall be in accordance with good industrial practice as determined by the Director and/or shall be other reasonable fugitive dust prevention measures as determined by the Director.

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** develop and implement a written plan to reduce the emission of fugitive dust in such a way so as to comply with the requirements set forth in DEM's APC Regulation No. 5, entitled "*Fugitive Dust*" including, but not limited to, operational equipment, material storage piles, and on-site roadways and parking areas (the "Written Plan").
- (2) **Within two (2) weeks of receipt of this Notice of Violation**, submit the Written Plan to the DEM.
- (3) **Within one (1) week of receipt of comments from DEM**, implement the Written Plan taking into consideration DEM's comments.

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:

One Thousand Five Hundred Dollars (\$1,500.00)

- (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 thirty (30) days of your receipt of this NOV. Payment shall be in the form of a certified check, cashiers check or money order 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.

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, 2ND 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:

Richard Bianculli, 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 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) Richard Bianculli 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

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:

Copar Quarries of Westerly, LLC
c/o Randal S. Roberge, Registered Agent
P.O. Box 291
Bradford, RI 02808

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, AIR SECTION
 File No.: SECTION 13 – 07
 Respondent: Copar Quarries of Westerly, 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) – Failure to prevent fugitive dust	Type I (\$ 10,000 Max. Penalty)*	Minor	\$ 1,500	1 violation	\$1,500.00
SUB-TOTAL					\$1,500.00

*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 ARE IN COMPLIANCE. 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 the 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.</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 the 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 = \$ 1,500.00
PENALTY MATRIX WORKSHEET

CITATION: *Failure to prevent fugitive dust*
 VIOLATION NO.: D (1)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondent was out of compliance for its failure to take reasonable measures to prevent air contaminants from traveling beyond the property line of the quarry. The Respondent failed to comply with a regulation adopted for the prevention of harm to the public health, safety, welfare or the environment.</p> <p>(B) Environmental conditions: Air currents were such that a substance that appeared to DEM's inspector to be fine dust from the quarry and/or quarry operations deposited beyond the property line of the quarry. The quarry is in close proximity to residential areas.</p> <p>(C) Amount of the pollutant: The amount of pollutant that was deposited beyond the property line of the quarry left a dusty residue on the windshield of a vehicle.</p> <p>(D) Toxicity or nature of the pollutant: Fugitive dust from the quarry operations and/or storage piles of product on site, when emitted into the atmosphere, may have posed an actual or potential for harm to the public health, safety, welfare or the environment. Fine particles of particulate matter are easily inhaled deep into the lungs where they may accumulate, react, be cleared or absorbed. Studies have linked particle pollution, especially fine particles, with a series of significant health problems, including increased respiratory symptoms, such as irritation of the airways, coughing or difficulty breathing.</p> <p>(E) Duration of the violation: Full duration unknown. The quarry operations and/or storage piles of product on site that caused the violation occurred on 7 May 2013 as witnessed by the DEM's inspector. The duration was less than one hour.</p> <p>(F) Areal extent of the violation: Fugitive dust was observed having deposited on one cleaned section of a windshield on an automobile that had been parked along a neighborhood street within ten feet of the property line of the quarry.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take adequate precautions to prevent fugitive dust from becoming airborne and travelling beyond the property line of the quarry. The DEM issued a Notice of Alleged Violation (NOAV) to the Respondent on 24 May 2013 for the violation. The NOAV required the Respondent to take immediate action to prevent dust from migrating beyond the property line. The Respondent failed to respond to the NOAV.
- (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:** The Respondent was issued a warning letter in April 2012 regarding DEM's APC Regulation No. 5. Respondent was issued a formal notice of violation by DEM on 12 July 2012 for alleged violations of environmental regulations pertaining to freshwater wetlands, water pollution and solid waste at the quarry.
- (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:** Negligence is attributable to the Respondent for its failure to comply with the requirements set forth in DEM's APC Regulation No. 5.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Requirements stated in DEM's APC Regulation No. 5 have been unchanged since July 2007.

MAJOR	MODERATE	<u> X </u> 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
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500 \$1,500	\$500 to \$1,000	\$100 to \$500