

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: ACN – Providence, LLC

FILE NO.: AIR 10 – 10

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 Office of Air Resources (“OAR”) issued a Notice of Alleged Violation (“NOAV”) to the Respondent on 11 August 2009 for the violations. The Respondent submitted a letter to OAR on 3 September 2009 describing the actions taken to comply with the NOAV. The actions taken by the Respondent fully resolved the violations.

C. Facts

- (1) The subject facility is located at 455 George Washington Highway, Smithfield, Rhode Island (the “Facility”) and has been operated by the Respondent since July 30, 2004.
- (2) The Respondent reconditions metal drums at the Facility using various surface coating operations.
- (3) The Facility is a major stationary source of volatile organic compounds (“VOCs”) and is subject to the DEM Air Pollution Control (“APC”) Regulations. As a major stationary source of VOCs, the Facility emits greater than fifteen pounds of VOCs in any one day from its entire surface coating operations.
- (4) On 17 February 2009, OAR inspected the Facility. The inspection revealed that the Respondent was using a miscellaneous metal parts surface coating called “Ring Dip” (the “Ring Dip Coating”).
- (5) On or about 27 October 2009, the Respondent provided documents to OAR that revealed the following:

- (a) the Ring Dip Coating process was installed at the Facility in or prior to calendar year 1990;
 - (b) the Ring Dip Coating used in calendar years 2004 and 2005 had a VOC content of 4.19 pounds per gallon of coating minus water, as applied;
 - (c) the Ring Dip Coating used in calendar years 2006 and 2007 had a VOC content of 4.33 pounds per gallon of coating minus water, as applied; and
 - (d) the Ring Dip Coating used in calendar year 2008 had a VOC content of 4.31 pounds per gallon of coating minus water, as applied.
- (6) On 3 December 2004, the Respondent submitted to OAR a renewal application for its operating permit (the “Renewal Application”).
 - (7) The Respondent failed to include the Ring Dip Coating process on the Renewal Application.

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 Regulation No. 19, Section 19.3.1** – requiring surface coatings for miscellaneous metal parts to meet an emission limit of no more than three pounds of VOCs per gallon of coating (minus water).
- (2) **APC Regulation No. 29, Section 29.4.1** – requiring all stationary sources to submit a timely and complete permit application.

E. 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:

Fifteen Thousand Dollars (\$ 15,000.00)

- (2) The proposed administrative penalty is calculated pursuant to the DEM Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the Director within twenty (20) days of your receipt of this Notice of Violation (“NOV”). Payment shall be in the form of a certified 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.

F. 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 E 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
235 Promenade Street, 3RD Floor
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 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 M. Bianculli Jr., 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 M. Bianculli Jr. 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 F 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:

ACN – Providence, LLC
c/o CT Corporation System, Registered Agent
155 South Main Street, Suite 301
Providence, RI 02903

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, AIR

File No.: AIR 10 – 10

Respondent: ACN – Providence, 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 use compliant surface coating	Type I (\$ 10,000 Max. Penalty)*	Minor	\$ 2,000	5 years	\$10,000
D (2) – Failure to submit a complete permit application	Type I (\$ 10,000 Max. Penalty)*	Moderate	\$ 5,000	1 violation	\$5,000
<i>SUB-TOTAL</i>					\$15,000.00

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

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$ 15,000.00

PENALTY MATRIX WORKSHEET

CITATION: Failure to use compliant surface coating
 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>FACTORS CONSIDERED:</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: The Respondent failed to use a compliant surface coating for coating miscellaneous metal parts as required by APC Regulation No. 19. The Respondent is a major stationary source of air pollutants subject to federal and state air pollution control regulations. Having regulated facilities comply with regulatory requirements is of importance to DEM's regulatory efforts and is directly related to protecting health, safety, welfare and the environment.</p> <p>(B) Environmental conditions: Not relevant.</p> <p>(C) Amount of the pollutant: OAR determined that excess VOC emissions from the Ring Dip coating ranged from about 677 pounds per year to 1217 pounds per year between calendar years 2004 and 2008.</p> <p>(D) Toxicity or nature of the pollutant: The Facility applies surface coatings to metal parts and emits volatile organic compounds (VOCs). VOCs, after their release during certain atmospheric conditions in the presence of sunlight and other pollutants, contribute to the formation of ozone.</p> <p>(E) Duration of the violation: Data show that the Ring Dip coating has been reformulated, but that the coating contained more than the required 3.0 pounds of VOC per gallon of coating (minus water) in 2004 and up to and including 2008.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
(continued)		

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to take reasonable and appropriate steps to prevent the noncompliance. The VOC emission limits required by APC Regulation No. 19 have been long-standing. The Respondent mitigated the violation by replacing the Ring Dip coating with a coating that complies with the emissions limit in APC Regulation No. 19.
- (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 has previously failed to comply with other air pollution control regulations and was issued a Notice of Violation and assessed an administrative penalty in December of 2006.
- (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 Respondent had complete control over the violation since the Respondent is the operator of the Facility. The violation was foreseeable by the Respondent.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The Respondent did make written reports of its surface coating formulations to OAR on each year's air pollution inventory forms.

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

PENALTY MATRIX WORKSHEET

CITATION: Failure to submit a complete permit application
 VIOLATION NO.: D (2)

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: The Respondent failed to include the Ring Dip coating process in the renewal application for its operating permit as required by APC Regulation No. 29. The Respondent is a major stationary source of air pollutants subject to federal and state air pollution control regulations. Having regulated facilities comply with permitting requirements is a matter of importance to DEM's regulatory efforts and is directly related to protecting health, safety, welfare and the environment.</p> <p>(B) Environmental conditions: Not relevant.</p> <p>(C) Amount of the pollutant: Not relevant.</p> <p>(D) Toxicity or nature of the pollutant: The Facility applies surface coatings to metal parts and emits volatile organic compounds (VOCs). VOCs, after their release during certain atmospheric conditions in the presence of sunlight and other pollutants, contribute to the formation of ozone.</p> <p>(E) Duration of the violation: The renewal application was submitted in 2004.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
(continued)		

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to take reasonable and appropriate steps to prevent the noncompliance.
- (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 has previously failed to comply with other air pollution control regulations and was issued a Notice of Violation and assessed an administrative penalty in December of 2006.
- (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 Respondent had complete control over the violation since the Respondent is the operator of the Facility. The violation was foreseeable by the Respondent.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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