

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Aspen Aerogels, Inc.

FILE NO.: AIR 13 – 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. Facts

- (1) The subject facility is located at 3 Dexter Road in the city of East Providence, Rhode Island (the “Facility”).
- (2) The Facility is (and has been) a stationary source of air pollutants subject to the DEM’s Air Pollution Control (“APC”) Regulations, including but not limited to, DEM’s APC Regulation No. 9 entitled *Air Pollution Control Permits* (“APC Regulation No. 9”).
- (3) On 3 August 2011, the DEM issued revised Approval Nos. 1890, 1893 and 2111-2113 to the Respondent (the “Permit”).
- (4) The Permit requires the Respondent to:
 - (a) Capture all volatile organic compound (“VOC”) and ammonia emissions generated at the two casting tables and roll windup areas and discharge them to an air pollution control system consisting of a wet scrubber and thermal oxidizer (the “Air Pollution Control System”); and
 - (b) Capture all VOC, ammonia and particulate matter emissions generated from the two heat treatment ovens and discharge them to the Air Pollution Control System.

- (5) On 22 September 2011 and 26 September 2011, the DEM inspected the Facility. The inspection revealed the following:
- (a) The installation of a baghouse associated with the heat treatment ovens and four dust collectors in the heat treatment room (the “Baghouse/Collectors”).
 - (b) The failure to capture all of the VOC and ammonia emissions generated at two casting tables and roll wind-up areas and discharge them to the Air Pollution Control System, as evidenced by:
 - (i) Observation of a six-inch gap between the outlet of the oven and the retractable cover located on top of the rewind enclosure; and
 - (ii) Observation of five rooftop blowers that discharge exhaust air from each of the casting/production areas, louver exhaust panels (some equipped with fans), and overhead doors.
 - (c) The failure to capture all of the particulate matter, ammonia and/or VOC emissions generated from the heat treatment ovens in the vicinity of the unwind area/inlet to the ovens and discharge them to the Air Pollution Control System as evidenced by:
 - (i) Observation of haze in the heat treatment room observed from a distance, and the presence of airborne particulate matter and an ammonia odor interior to the room;
 - (ii) Observation of particulate matter on the floor beneath the unwind/feed station to the ovens; and
 - (iii) Observation of particulate material falling off the product as it was unwound and fed into the heat treatment oven. A notable amount of particulate matter was observed to have not been captured by a local exhaust vent;
- (6) On 12 October 2011 the Respondent submitted to the DEM registration forms for the Baghouse/Collectors.
- (7) As of the date of this Notice of Violation (“NOV”), the Respondent continues to operate in noncompliance with the Permit.

C. 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 No. 9.6.8** – requiring any person who receives a permit to comply with all conditions in the permit.
- (2) **DEM's APC Regulation No. 9.6.9** – stating that the failure to comply with all conditions in the permit is a violation of the regulations.
- (3) **DEM's APC Regulation No. 9.3.1(h)** – requiring a minor source permit for any air pollution control systems and appurtenances
- (4) **DEM's APC Regulation No. 9.2.1(a)** - requiring that no person shall construct, install or modify or cause the construction, installation or modification of any stationary source subject to the provisions of the regulation without obtaining a minor source permit from the DEM for each proposed installation or modification described in Subsection 9.3.1.
- (5) **DEM's APC Regulation No. 9.2.2** - requiring that no person that is required to obtain a permit under this regulation shall operate the emission units for which the permit is required without obtaining the required permit.

D. 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 **within thirty (30) days of receipt of this NOV**, submit to the DEM's Office of Air Resources evidence of having constructed/installed permanent total enclosures for each and every casting table, roll wind-up area, heat treatment oven, and unwind/feed area/inlet to each oven.

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 against each named respondent:

Seven Thousand Five Hundred Dollars (\$7,500.00)

- (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's Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.

- (3) Penalties assessed against the 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.

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
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:

Marisa Desautel, 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) Marisa Desautel, Esq. 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:

Aspen Aerogels, Inc.
c/o Corporation Service Company, Registered Agent
222 Jefferson Boulevard, Suite 200
Warwick, RI 02888

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, AIR

File No.: AIR 13 – 02

Respondent: Aspen Aerogels, Inc.

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	
C (1) – Failure to capture all VOC and ammonia emissions generated at two casting tables and roll windup areas as required by permit.	Type I (\$ 10,000 Max. Penalty)*	Moderate	\$2,500	1 violation	\$2,500
C (1) – Failure to capture all VOC, ammonia and particulate matter emissions generated from two heat treatment ovens as required by permit.	Type I (\$ 10,000 Max. Penalty)*	Moderate	\$2,500	1 violation	\$2,500
C (3) – Failure to submit registration forms.	Type I (\$ 10,000 Max. Penalty)*	Moderate	\$2,500	1 violation	\$2,500
SUB-TOTAL					\$7,500.00

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

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$ 7,500.00

PENALTY MATRIX WORKSHEET

CITATION: Failure to capture all VOC and ammonia emissions generated at two casting tables and roll windup areas as required by permit

VIOLATION NO.: C (1)

TYPE		
<p style="text-align: center;"><u>X</u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<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 capture all VOC and ammonia emissions generated at two casting tables and roll windup areas as required by the subject permit. The Respondent is a stationary source of air pollutants subject to federal and state air pollution control regulations. Compliance with terms of the subject permit is of major importance to the regulatory program.</p> <p>(B) Environmental conditions: Considered, but not utilized for this calculation.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.</p> <p>(E) Duration of the violation: Total duration unknown. DEM documented the violation on one day.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p> <p style="text-align: right; margin-top: 20px;">(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 failed to take reasonable and appropriate steps to prevent the noncompliance. Despite notifying DEM that it had entered into discussions with a consultant to design and construct a permanent total enclosure even before the issuance of a Notice of Alleged Violations by DEM to the Respondent on 2 November 2011, the Respondent failed to correct the emissions issue.
- (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:** Considered, but 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 Respondent had complete control over the violation since the Respondent is the operator of the facility.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

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
	MODERATE	\$2,500 to \$5,000 \$2,500	\$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 capture all VOC, ammonia and particulate matter emissions generated from two heat treatment ovens as required by permit

VIOLATION NO.: C (1)

TYPE		
<p style="text-align: center;"><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
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- (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. Despite notifying DEM that it had entered into discussions with a consultant to design and construct a permanent total enclosure even before the issuance of a Notice of Alleged Violations by DEM to the Respondent on 2 November 2011, the Respondent failed to correct the emissions issue.
- (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:** Considered, but 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 Respondent had complete control over the violation since the Respondent is the operator of the facility.
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	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Failure to submit registration forms

VIOLATION NO.: C (3)

TYPE		
<p style="text-align: center;"><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
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	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500