

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Bruin Plastics Co., Inc.**

**FILE NO.: AIR 13 – 09**

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 61 Joslin Road in the town of Burrillville, Rhode Island (the “Facility”). The Facility manufactures vinyl reinforced laminated and coated fabric and mesh products.
- (2) The Facility is operated by the Respondent.
- (3) The Facility is a stationary source of air pollutants subject to the DEM’s Air Pollution Control (“APC”) Regulations.
- (4) On 19 July 2012, the DEM inspected the Facility. The inspection and review of correspondence submitted by the Respondent to the DEM on 21 November 2012 and 5 April 2013 revealed the following:
  - (a) Three (3) laminators numbered 1, 2 and 3 were installed and placed into operation between 1972 and 1980. Each laminator applies a coating with a volatile organic compound (“VOC”) maximum application rate of two hundred eighty four (284) pounds of VOC per hour.
  - (b) Two (2) laminators numbered 4 and 5 were installed and placed into operation in 1984 and 1993. Each laminator applies a coating with a VOC maximum application rate of greater than one hundred (100) pounds of VOC per day.
- (5) The Respondent failed to obtain an operating permit or emissions cap from the DEM for each of the five (5) laminators (collectively, the “Laminators”).

- (6) On May 22, 2013 the DEM issued a Notice of Alleged Violation (“NOAV”) to the Respondent. The NOAV stated that the Respondent may apply to the DEM for an emissions cap in lieu of a permit for the Laminators.
- (7) On 24 July 2013, the Respondent submitted an application to the DEM for an emissions cap for the Laminators along with the required application fee.

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) **R.I. Gen. Laws Section 23-23-5(19)** – prohibiting any person from operating any machine, facility, or device which is subject to approval or permit by the DEM without any approval or permit of the DEM.
- (2) **DEM’s APC Regulation 9.2.1 (a)** – prohibiting the construction, installation or modification of any stationary source without obtaining a minor source permit from DEM for each proposed installation or modification described in DEM’s APC Regulation 9.3.1.
- (3) **DEM’s APC Regulation 9.3.1 (g)** – requiring a minor source permit for any stationary source or process having the potential to emit one hundred (100) pounds or more per day, or ten (10) pounds or more per hour of any air contaminant or combination of air contaminants into the atmosphere.
- (4) **DEM’s APC Regulation 9.2.2** – prohibiting the operation of emission units for which a permit is required without obtaining the required permit.
- (5) **DEM’s APC Regulation 29.3.8** – requiring that no stationary source may operate after the time it is required to submit a timely and complete application under the operating permit program except in compliance with an operating permit issued under this regulation or an emissions cap issued under this regulation.

D. 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:

**Twenty-Two Thousand Three Hundred and Seven Dollars (\$22,307.00)**

- (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 Notice of Violation (“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 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.

E. 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 D 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 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 E 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:

Bruin Plastics Co., Inc.  
c/o John G. Hines, Esq., Registered Agent  
935 Jefferson Boulevard, Suite 2003  
Warwick, RI 02886

by Certified Mail.

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## ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, AIR

File No.: AIR 13 – 09

Respondent: Bruin Plastics Co., Inc.

<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	
C (2) and (3) – Failure to obtain a permit	Type I (\$ 10,000 Max. Penalty)*	Moderate	\$ 2,500	5 violations	\$12,500
C (1), (4) and (5) – Operating equipment without permits	Type I (\$ 10,000 Max. Penalty)*	Minor	\$1,500	5 violations	\$7,500
<b>SUB-TOTAL</b>					<b>\$20,000.00</b>

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

## **ADMINISTRATIVE PENALTY SUMMARY (continued)**

<b>ECONOMIC BENEFIT FROM NONCOMPLIANCE</b>		
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: - THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.		
<b>DESCRIPTION OF BENEFIT</b>	<b>CALCULATION</b>	<b>AMOUNT</b>
Economic benefit of noncompliance realized by the Respondent for failing to apply for an air pollution permit for equipment subject to permitting requirements was calculated using an EPA Program called "BEN". BEN calculated the economic gain of noncompliance based upon a detailed economic analysis. Dates, dollar amounts, and values utilized in the BEN Program are as listed.	Minor Source Permit fee \$ 1,271 Due: 18 February 1993 <sup>1</sup>  Receipt of application fee by DEM (economic benefit compliance date): Estimated as 1 September 2013	\$ 2,307.00
<b>SUB-TOTAL</b>		<b>\$ 2,307.00</b>

<b>COST RECOVERY</b>
<b>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.</b>
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.

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$ 22,307.00**

<sup>1</sup> For failing to submit an application for a preconstruction permit for laminator 5 that commenced approximately on 1 May 1993. No preconstruction permit fee was required prior to 1990. Since the BEN model accepts a noncompliance date only if less than eighteen years prior to the compliance date, calendar year 1996 was substituted for 1993 (the year of noncompliance).

**PENALTY MATRIX WORKSHEET**

CITATION: Failure to obtain a permit

VIOLATION NO.: C (2) and (3)

<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>		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><b>FACTORS CONSIDERED:</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> The Respondent failed to apply for or obtain a minor source permit prior to its installation of the laminators. The Respondent is a stationary source of air pollutants subject to state air pollution control regulations. Compliance with permitting and operating requirements is of importance to the regulatory program.</p> <p>(B) <b>Environmental conditions:</b> Considered, but not utilized for this calculation.</p> <p>(C) <b>Amount of the pollutant:</b> Laminators numbered 1, 2 and 3 apply coating with a maximum VOC application rate that exceeded the permit threshold of 10 pounds of VOC per hour. Laminators numbered 4 and 5 apply coating with a maximum VOC application rate that exceeded the permit threshold of 100 pounds of VOC per day.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Volatile organic compounds (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) <b>Duration of the violation:</b> Respondent ought to have submitted complete applications for the laminators in 1972, 1977, 1979, 1984 and 1993.</p> <p>(F) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</p>		
(continued)		

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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 obtain the required permits. On 18 July 2013, the Respondent submitted an application for an emissions cap to the DEM.
- (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. The threshold for permit applicability in the subject regulation, although revised years ago, 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:** DEM discovered that the Respondent failed to apply for and obtain minor source permits prior to the installation of its laminators, which have a maximum VOC application rate greater than the permitting threshold at the time.

<b>MAJOR</b>	<u>  <b>X</b>  </u> <b>MODERATE</b>	<b>MINOR</b>
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 10,000		<b>TYPE I</b>	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

**PENALTY MATRIX WORKSHEET**

CITATION: Operating equipment without permits  
 VIOLATION NO.: C (1), (4) and (5)

TYPE		
<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.
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b>FACTORS CONSIDERED:</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 operated its laminators prior to having been issued minor source permits from DEM. The Respondent is a stationary source of air pollutants subject to state air pollution control regulations. Compliance with permitting and operating requirements is of importance to the regulatory program.</p> <p>(B) <b>Environmental conditions:</b> Considered, but not utilized for this calculation.</p> <p>(C) <b>Amount of the pollutant:</b> The Respondent's records for 2007 through 2011 indicate that the laminators and cleaning have had the potential to emit 38.1 tons of VOC per year. Actual emissions ranged from about 8 to 11 tons of VOC during those years.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Volatile organic compounds (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) <b>Duration of the violation:</b> The Respondent's records indicate that each of its laminators has been operated from the time of installation to present, ranging between 20 to 41 years.</p> <p>(F) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</p>		
(continued)		

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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 obtain the required permits prior to operating the laminators.
- (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. The violation was foreseeable by the Respondent.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** DEM determined that the Respondent's actual VOC emissions have not been in excess of 50 tons per year.

<b>MAJOR</b>	<b>MODERATE</b>	<u>  <b>X</b>  </u> <b>MINOR</b>
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 10,000		<b>TYPE I</b>	TYPE II	TYPE III
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	<b>MODERATE</b>	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	<b>MINOR</b>	\$1,000 to \$2,500 <b>\$1,500</b>	\$500 to \$1,000	\$100 to \$500