

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF COMPLIANCE & INSPECTION

IN RE: CALISE & SONS BAKERY, INC.

FILE NO.: AIR 14 – 01

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 facility is located at 2 Quality Dive in the town of Lincoln, Rhode Island (the “Facility”) and is operated by the Respondent.
- (2) The Facility is a stationary source of air pollutants subject to the DEM’s *Air Pollution Control (“APC”) Regulations*.
- (3) On 22 December 2010, the DEM issued Approval Nos. 2105 - 2108 and 2117 to the Respondent (the “Permit”).
- (4) The Permit requires the Respondent to:
  - (a) Ensure that volatile organic compound (“VOC”) emissions generated by its baking ovens are reduced by 95% or greater through a combination of 100% capture of the VOC and 95% destruction of the VOC; and
  - (b) Shut down the baking ovens in the event of a malfunction of the emission capture system and/or catalytic oxidizer that results in or that could result in emissions in excess of the permit limits. The baking equipment shall remain shut down until the malfunction is identified and corrected.
- (5) On 30 January 2013 the DEM received documents from Alliance Environmental Group, Inc. (“AEG”) on behalf of the Respondent. The documents included the results of a catalytic test performed at the Facility on 18 December 2012. The documents revealed that the Respondent failed to maintain its catalytic oxidizer VOC destruction efficiency at 95% or greater while operating the baking ovens. Test results estimated that the catalytic oxidizer VOC destruction efficiency was approximately 70%.

- (6) On 19 March 2013 the catalytic oxidizer was removed from service for cleaning/reconditioning.
- (7) On 24 April 2013 the Respondent notified the DEM that the catalytic oxidizer had been reconditioned and was back in service at the Facility.
- (8) On 28 October 2013 the DEM received correspondence from AEG on behalf of the Respondent. The correspondence revealed that an excess of 4,666 pounds of VOC were emitted from the Facility from 1 January 2013 through 19 March 2013, in violation of the permit.
- (9) The Respondent operated the catalytic oxidizer below the required 95% VOC destruction efficiency from at least 18 December 2012 to 19 March 2013, in violation of 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.

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, 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 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 the DEM's Administrative Adjudication Division, at the following address, within 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:

Marisa Desautel, 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 the 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 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:

CALISE & SONS BAKERY, INC.  
c/o Michael R. Calise, Registered Agent  
2 Quality Drive  
Lincoln, RI 02865

by Certified Mail.

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## **ADMINISTRATIVE PENALTY SUMMARY**

Program: OFFICE OF COMPLIANCE AND INSPECTION, AIR

File No.: AIR 14 – 01

Respondent: Calise & Sons Bakery, 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(1) – Failure to maintain VOC destruction efficiency as required by permit	Type I <i>(\$ 10,000 Max. Penalty)*</i>	Minor	\$2,500	3 Months	\$7,500.00
<b><i>SUB-TOTAL</i></b>					<b>\$7,500.00</b>

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

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

### **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 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.

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.

### **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 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 = \$ 7,500.00**

**PENALTY MATRIX WORKSHEET**

CITATION: Failure to maintain VOC destruction efficiency as required by permit  
 VIOLATION NO.: C (1)

<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><u>FACTORS CONSIDERED:</u></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 maintain VOC destruction efficiency of at least 95% as required by the permit. The Respondent then continued to operate after failing to maintain said efficiency. The Respondent is a stationary source of air pollutants subject to state air pollution control regulations. Compliance with terms stated in the permit 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 released a total of 4,666 excess pounds of VOCs during 78 days of noncompliance in 2013 as a result of the catalyst functioning at an estimated 70% destruction efficiency.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> 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> Records provided to the DEM by the Respondent indicate that the noncompliance occurred 18 December 2012 through 19 March 2013.</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 initially failed to take reasonable and appropriate steps to prevent the noncompliance. The Respondent mitigated the violation by replacing the original catalyst three months after discovering the violation. The Respondent informed the DEM that it identified the cause of the emission exceedance and implemented corrective actions to prevent recurrence prior to issuance of a notice of alleged violation by the DEM to the Respondent on 14 November 2013.
- (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 NOV and assessed an administrative penalty in calendar year 2010 for a matter unrelated to the violation that is the subject of this NOV. The Respondent paid an administrative penalty to resolve the NOV issued in 2010.
- (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 violation was self-reported by the Respondent through its environmental consultant.

<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>\$2,500</b>	\$500 to \$1,000	\$100 to \$500