

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: City of Cranston and
Veolia Water North America Operating
Services, LLC**

FILE NO.: AIR 11 – 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 parties (“Respondents”) have violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Facts

- (1) The subject facility is located at 140 Pettaconsett Avenue in the city of Cranston, Rhode Island (the “Facility”).
- (2) The city of Cranston (“Cranston”) owns the Facility.
- (3) Veolia Water North America Operating Services, LLC (“Veolia”) operates the Facility.
- (4) The Facility is a stationary source of air pollutants subject to the DEM’s Air Pollution Control (“APC”) Regulations.
- (5) On 22 April 2008, the DEM issued to Cranston Approval Nos. 647, 648, 649 and 1818 (the “Minor Source Permit”) pursuant to the DEM’s APC Regulations for air pollution control equipment at the Facility.
- (6) On 19 September 2008, the DEM issued to the Facility Operating Permit No. RI-40-04(R1) (the “2008 Operating Permit”) pursuant to the DEM’s APC Regulations.
- (7) On 21 July 2009, DEM issued to the Facility revised Operating Permit No. RI-40-09 (the “2009 Operating Permit”) pursuant to the DEM’s APC Regulations. The 2009 Operating Permit expires on 21 July 2014.
- (8) The Minor Source Permit, the 2008 Operating Permit and the 2009 Operating Permit required/require the City of Cranston to:

- (a) Conduct a minimum of one visible emissions test (the “Opacity Observations”) for each four-hour period of operation for each incinerator on any day that the incinerator is operating; and
 - (b) Ensure that all observers qualify pursuant to Title 40 of the Code of Federal Regulations 60, Appendix A, Method 9 (the “Certification Protocol”).
- (9) The 2008 Operating Permit and the 2009 Operating Permit required/require the City of Cranston to:
- (a) Submit to the DEM a true, accurate, and complete semi-annual monitoring report (“SAMR”) for the periods ending 30 June and 31 December each year; and
 - (b) Clearly identify in such reports all deviations from the permit.
- (10) On 21 December 2010 and 6 January 2011 DEM inspected the Facility (the “Inspections”).
- (11) On 7 March 2011, Veolia submitted electronic correspondence to the DEM (the “March Correspondence”).
- (12) The Inspections and DEM’s review of the March Correspondence revealed that certain Veolia employees not qualified pursuant to the Certification Protocol made Opacity Observations as specified in the table below:

Opacity Certification Interval	Number of Veolia Employees not Qualified Pursuant to the Certification Protocol
14 April 2008 through 12 October 2008	8
15 October 2008 through 14 April 2009	3
20 April 2009 through 18 October 2009	3
15 October 2009 through 14 April 2010	3
14 April 2010 through 12 October 2010	1
13 October 2010 through 7 March 2011	1

- (13) The SAMR submitted to the DEM for the period ending 31 December 2008 (the “December 2008 SAMR”) failed to identify that some of the Opacity Observations from 19 September 2008 through 31 December 2008 were

performed by employees who were not qualified pursuant to the Certification Protocol.

- (14) The SAMR submitted to the DEM for the period ending 30 June 2009 (the “June 2009 SAMR”) failed to identify that some of the Opacity Observations from 1 January 2009 through 30 June 2009 were performed by employees who were not qualified pursuant to the Certification Protocol.
- (15) The SAMR submitted to the DEM for the period ending 31 December 2009 (the “December 2009 SAMR”) failed to identify that some of the Opacity Observations from 1 July 2009 through 31 December 2009 were performed by employees who were not qualified pursuant to the Certification Protocol.
- (16) The SAMR submitted to the DEM for the period ending 30 June 2010 (the “June 2010 SAMR”) failed to identify that some of the Opacity Observations from 1 January 2010 through 30 June 2010 were performed by employees who were not qualified pursuant to the Certification Protocol.
- (17) As of the date of this Notice of Violation (“NOV”), the Respondents have failed to submit true, accurate and complete SAMRs to the DEM.

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 9.6.8** – requiring any person who receives a permit to comply with all conditions in the permit.
- (2) **DEM’s APC Regulation 29.4.6** – requiring compliance with an operating 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 a revised December 2008 SAMR, June 2009 SAMR, December 2009 SAMR and June 2010 SAMR to the DEM Office of Air Resources and the U.S. Environmental Protection Agency that addresses the following deficiencies:

- (1) Identify the deviations from conditions I.C.3.m and I.D.3.m of the 2008 Operating Permit and the 2009 Operating Permit pertaining to the Opacity Observations performed by Veolia employees that were not qualified pursuant to the Certification Protocol.
- (2) Each revised report shall also include a certification statement, signed by a responsible official in accordance with condition II.X.4 of the 2008 Operating Permit and the 2009 Operating Permit. This certification shall state that, based on

information and belief formed after reasonable inquiry, the statements and information in the certification are true, accurate, and complete.

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:

Seventeen Thousand Five Hundred Dollars (\$ 17,500.00)

- (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 Director within twenty (20) 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 Respondents 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 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, 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 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:

City of Cranston
c/o The Honorable Allan Fung, Mayor
869 Park Avenue
Cranston, RI 02910

Veolia Water North America Operating Services, LLC
c/o CT Corporation System, Registered Agent
10 Weybosset Street
Providence, RI 02903

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, AIR
 File No.: AIR 11 – 10
 Respondent: City of Cranston
 Veolia Water North America Operating Services, 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) and (2) – Failure to comply with the opacity monitoring requirement	Type II (\$ 5,000 Max. Penalty)*	Moderate	\$ 2,500	1 violation Certification interval commencing April 2008	\$2,500.00
		Minor	\$ 1,000	5 violations Certification intervals commencing October 2008	\$5,000.00
D (2) – Failure to submit true, accurate, and complete semi-annual monitoring reports	Type III (\$ 2,500 Max. Penalty)*	Major	\$ 2,500	4 violations	\$10,000.00
SUB-TOTAL					\$17,500.00

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

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$ 17,500.00

PENALTY MATRIX WORKSHEET

CITATION: Failure to comply with the opacity monitoring requirement

VIOLATION NO.: D (1) and (2)

TYPE		
<p style="text-align: center;">___ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u>X</u> 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		
<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: Respondents failed to comply with the opacity monitoring requirement for one or more multiple hearth incinerators while sludge was being charged to the incinerator/s. Respondents failed to have the emissions monitored by personnel qualified for such observations.</p> <p>(B) Environmental conditions: Up to eight observers were not validly qualified to observe opacity during the first six-month interval of 14 April 2008 through 12 October 2008. During the next five six-month intervals, from 15 October 2008 through 7 March 2011, one to three observers were not validly qualified to observe opacity.</p> <p>(C) Amount of the pollutant: Not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Not utilized for this calculation.</p> <p>(E) Duration of the violation: About 3 years. From 14 April 2008 through 7 March 2011.</p> <p>(F) Areal extent of the violation: Not utilized for this calculation.</p> <p>(G) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance: Respondents have the responsibility of compliance with the permits. The Respondents failed to take reasonable and appropriate steps to prevent the noncompliance. Veolia submitted correspondence to DEM indicating that a form for recording opacity readings has been improved to include the opacity reader's certification that he or she has been certified within the prior six months.</p>		
(continued)		

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- (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:** In previous years, the Respondents failed to comply with operating permit requirements pertaining to semi-annual monitoring reports and the annual compliance certifications. DEM issued informal notices and formal notices of violation and the Respondents have paid administrative penalties as a result of their noncompliance.
- (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 Respondents for their failure to comply with the opacity monitoring requirement in the permits by having only currently-qualified personnel record opacity. The Respondents had complete control over the violation and the violation was foreseeable.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Respondents, during every six-month interval, did have qualified opacity readers among the listed personnel that performed opacity observations according to documents sent to DEM.

MAJOR	<u> X </u> MODERATE	<u> X </u> MINOR
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Pertaining to Monitoring Period commencing 14 April 2008

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 \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

Pertaining to Monitoring Periods commencing 15 October 2008

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	\$500 to \$1,000 \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Failure to submit true, accurate, and complete semi-annual monitoring reports

VIOLATION NO.: D (2)

TYPE		
<p style="text-align: center;"><u> </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> X </u> 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: Respondents failed to submit true, accurate, and complete semi-annual monitoring reports as required by the permit. Having regulated facilities submit true, accurate and complete reports is essential to the regulatory program.</p> <p>(B) Environmental conditions: Not utilized for this calculation.</p> <p>(C) Amount of the pollutant: Not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Not utilized for this calculation.</p> <p>(E) Duration of the violation: 4 semi-annual monitoring reports submitted by the Respondents for the second half of 2008, 2009 and the first half of 2010 were inaccurate as to their monitoring of opacity only with qualified observers.</p> <p>(F) Areal extent of the violation: Not utilized for this calculation.</p> <p style="text-align: right; margin-top: 20px;">(continued)</p>		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents have the responsibility of assembling data and documentation pertaining to compliance with the operating permit. The Respondents failed to comply with the Notice of Alleged Violations issued by DEM on 6 April 2011.
- (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:** In previous years, the Respondents failed to comply with operating permit requirements pertaining to semi-annual monitoring reports and the annual compliance certifications. DEM issued informal notices and formal notices of violation and the Respondents have paid administrative penalties as a result of their noncompliance.
- (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 Respondents for their failure to prepare and submit true, accurate, and complete reports to DEM.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not utilized for this calculation.

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