

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Dry Bridge Sand & Stone, Inc.

FILE NO.: AIR 11 – 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 471 Dry Bridge Road, North Kingstown, Rhode Island (the “Facility”) and it is operated by the Respondent.
- (2) The Facility is a stationary source of air pollutants subject to the DEM Air Pollution Control (“APC”) Regulations.
- (3) On 3 July 2009, the DEM Office of Air Resources (“OAR”) issued Emissions Cap No. 86-2009 to the Respondent (the “Emissions Cap”). The Emissions Cap was issued pursuant to the provisions of APC Regulation No. 29, “*Operating Permits*”.
- (4) The Emissions Cap requires the Respondent to:
 - (a) Keep and maintain records sufficient to determine actual particulate matter emissions for the Facility for the previous twelve (12) months.
 - (b) Determine actual particulate matter emissions on a monthly basis, no later than fifteen (15) days after the first of the month.
- (5) On 8 December 2010, OAR inspected the Facility. The inspection revealed that the Respondent:
 - (a) Failed to determine actual particulate matter emissions on a monthly basis, no later than fifteen (15) days after the first of the month;
 - (b) Failed to maintain records sufficient to determine actual particulate matter emissions for the Facility for the previous twelve months; and

- (c) Failed to submit to OAR its 2008 and 2009 air pollution inventory reports.
- (6) On 6 January 2011 OAR issued a written Notice of Alleged Violations (“NOAV”) to the Respondent. The NOAV required the Respondent to submit its 2008 and 2009 air pollution inventory reports to OAR within thirty (30) days of receipt of the NOAV. The NOAV was delivered to the Respondent on 10 January 2011.
- (7) As of the date of this Notice of Violation (“NOV”), the Respondent has failed to comply with the NOAV.

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) **APC Regulation 29.3.8 (b)** – requiring compliance with an emissions cap issued under the regulation.
- (2) **APC Regulation 14.2.1 and 14.2.2** – requiring the owner or operator of any facility that emits air contaminants to provide data on emissions of air contaminants by 15 April of each year to DEM or upon request by DEM.

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:

- (1) **Immediately** comply with the requirements of the Emission Cap.
- (2) **Within thirty (30) days of receipt of the NOV**, determine actual monthly particulate matter emissions for the time frame of 1 December 2009 through and including 31 March 2011 and submit said records to OAR.
- (3) **Within thirty (30) days of receipt of the NOV**, submit to OAR completed air pollution inventory reports for the calendar years 2008 and 2009.
- (4) The records and reports required to be submitted pursuant to Section D.2 and D.3 above shall be subject to OAR’s review and approval. Within fourteen (14) days (unless a longer time is specified) of receiving a notification of deficiencies in the records or reports, submit to OAR revised records or reports to correct the deficiencies

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:

Ten Thousand Dollars (\$10,000.00)

- (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 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 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
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:
- Joseph J. LoBianco, 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) 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 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:

Dry Bridge Sand & Stone, Inc.
c/o William J. Gallogly, Esq., Registered Agent
1220 Kingstown Road Suite 201
Peace Dale, RI 02879

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, AIR
File No.: AIR 11 – 02
Respondent: Dry Bridge Sand & Stone, Inc.

ADMINISTRATIVE PENALTY SUMMARY *(continued)*

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 determine actual particulate matter emissions on a monthly basis and maintain records on a 12-month rolling basis	Type III (\$ 2,500 Max. Penalty)*	Moderate	\$ 750	12 months	\$9,000
C (2) – Failure to submit annual air pollution inventory reports	Type III (\$ 2,500 Max. Penalty)*	Minor	\$ 500	2 violations	\$1,000
<i>SUB-TOTAL</i>					\$10,000.00

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

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$ 10,000.00

PENALTY MATRIX WORKSHEET

CITATION: Failure to determine actual particulate matter emissions on a monthly basis and maintain records on a 12-month rolling basis

VIOLATION NO.: C (1)

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: The Respondent failed to maintain records of particulate matter emitted from its facility on a 12-month rolling basis as required by the Emissions Cap and failed to determine actual particulate matter emissions on a monthly basis within fifteen days after the first of each month. The Respondent is a stationary source of air pollutants subject to federal and state air pollution control regulations. Compliance with terms stated in the Emissions Cap is of importance to the regulatory program.</p> <p>(B) Environmental conditions: Not relevant.</p> <p>(C) Amount of the pollutant: Unknown. Compliance with the emission limitation of the Emissions Cap could not be determined by OAR.</p> <p>(D) Toxicity or nature of the pollutant: Exposure to particulate matter can trigger asthma attacks and cause wheezing, coughing and respiratory irritation.</p> <p>(E) Duration of the violation: In December 2010, OAR’s inspector determined that the Respondent failed to calculate monthly particulate matter emissions within 15 days after the first of every month and failed to calculate its particulate matter emissions for the preceding twelve months. The duration of the violation is twelve months.</p> <p>(F) Areal extent of the violation: Not relevant.</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 prevent the noncompliance. The Respondent failed to comply with the Notice of Alleged Violations issued by OAR to the Respondent on 6 January 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:** DEM issued informal written notices on 23 July 2003 and 30 November 2005 and a formal written notice of violation on 15 February 2007 to the Respondent for these same violations of the air pollution control regulations.
- (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
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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	\$1,000 to \$2,500	\$500 to \$1,000 \$750
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Failure to submit annual air pollution inventory reports
 VIOLATION NO.: C (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: The Respondent failed to submit its air pollution inventory reports to OAR for calendar years 2008 and 2009. The Respondent is a stationary source of air pollutants subject to state air pollution control regulations. For sources of particulate matter that previously demonstrated compliance with their emissions limitation, compliance with reporting requirements is of minor importance to the regulatory program.</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: Not relevant.</p> <p>(E) Duration of the violation: Two calendar years, 2008 and 2009.</p> <p>(F) Areal extent of the violation: Not relevant.</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:** The Respondent failed to take reasonable and appropriate steps to prevent or mitigate the noncompliance. The Respondent failed to submit its air pollution inventory reports for 2008 and 2009 on 15 April of the subsequent year to OAR and failed to respond to or comply with the Notice of Alleged Violations issued by OAR to the Respondent on 6 January 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:** DEM issued informal written notices on 23 July 2003 and 30 November 2005 and a formal written notice of violation on 15 February 2007 to the Respondent for violations of the air pollution control regulations.
- (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 requirement to submit air pollution inventory reports by 15 April of each year is clearly stated in the cited regulation, so 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	MODERATE	<u> X </u> 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	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500 \$500