

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: DSM NeoResins, Inc.**

**FILE NO.: AIR 10 – 17**

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 Respondent is the operator of the subject facility located at 199 Amaral Street in the city of East Providence, Rhode Island (the “Facility”).
- (2) The Facility is a stationary source of air pollutants subject to the DEM Air Pollution Control (“APC”) Regulations.
- (3) On 4 May 2009, the DEM Office of Air Resources (“OAR”) issued revised Approval No. 1871-1874 (the “Permit”) to the Respondent.
- (4) The Permit requires the Respondent to:
  - (a) not exceed a maximum outlet exhaust gas temperature of fifty degrees Fahrenheit (“50°F”) at the surface condenser;
  - (b) maintain a volatile organic compound (“VOC”) removal efficiency for the carbon adsorption system of at least ninety five percent (“95%”), unless the outlet concentration is less than twenty parts per million volume (“20 ppmv”); and
  - (c) determine, on a monthly basis, no later than ten (10) business days after the first of the month, the total quantity of VOC and the total quantity of each hazardous air pollutant (“HAP”) discharged to the atmosphere from all operations conducted at the Facility, keep records of this determination and provide such records to OAR upon request.
- (5) On 27 January 2010 and 28 January 2010, OAR inspected the records and equipment of the Facility (the “Inspection”).

- (6) On 2 April 2010, OAR received correspondence from Sandra Wyman & Associates on behalf of the Respondent in response to the Inspection.
- (7) The Inspection and correspondence revealed that the Respondent:
  - (a) failed to maintain the outlet gas exhaust temperature from the air pollution control condenser at or below 50°F;
  - (b) failed to maintain a VOC removal efficiency for the carbon adsorption system of at least 95% on 15 June 2009;
  - (c) failed to record all of the individual and total HAP emissions on a monthly basis; and
  - (d) failed to record the total quantity of VOC emissions on a monthly basis, no later than ten (10) business days after the first of the month.

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 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, jointly and severally, against each named respondent:

**Six Thousand Hundred Dollars (\$6,000.00)**

- (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 Notice of Violation (“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.

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  
235 Promenade Street, 3<sup>RD</sup> 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:

Richard M. Bianculli Jr., 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) Richard M. Bianculli Jr., 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

---

David E. Chopy, Chief  
DEM Office of Compliance and Inspection

Date: \_\_\_\_\_

CERTIFICATION

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 2011, the within Notice of Violation was forwarded to:

DSM NeoResins, Inc  
c/o National Registered Agents, Inc., 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 10 – 17

Respondent: DSM NeoResins, 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 comply with permit relating to exhaust gas temperature and VOC removal efficiency	Type I (\$ 10,000 Max. Penalty)*	Moderate	\$ 2,500	2 violations	\$5,000
C (1) – Failure to comply with permit relating to recording HAP and VOC emissions	Type III (\$ 2,500 Max. Penalty)*	Moderate	\$1,000	1 violation	\$1,000
<b>SUB-TOTAL</b>					<b>\$6,000.00</b>

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

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$ 6,000.00**

# PENALTY MATRIX WORKSHEET

CITATION: Failure to comply with permit relating to exhaust gas temperature and VOC removal efficiency  
 VIOLATION NO.: C (1)

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.

**FACTORS CONSIDERED:**

Taken from Section 10 (a) (2) of the DEM *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondent failed to maintain the outlet gas exhaust temperature from the air pollution control condenser at or below 50°F as required by its permit and failed to maintain a 95% removal efficiency from the carbon adsorption system as required by its permit. 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.
- (B) **Environmental conditions:** Not relevant
- (C) **Amount of the pollutant:** Unknown.
- (D) **Toxicity or nature of the pollutant:** Respondent uses solvents including formaldehyde, isopropyl alcohol, methyl ethyl ketone, toluene, toluene diisocyanate, trichloroethylene and triethylamine that are listed toxic air contaminants.
- (E) **Duration of the violation:** Unknown for the outlet gas temperature – a spot check of the records by OAR during the inspection on 28 January 2010 revealed that the outlet gas temperature was not being maintained at or below 50°F. 1-3 days for the removal efficiency – the facility had an equipment malfunction on 11 June 2009 and operated the system on 11 June 2009, 12 June 2009 and 15 June 2009. A test performed on 15 June 2009 documented the violation.
- (F) **Areal extent of the violation:** Not relevant.
- (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 outlet gas temperature violation. The Respondent failed to take reasonable and appropriate steps to mitigate the removal efficiency violation by properly reporting the equipment malfunction to OAR within 24 hours as required by its permit. The Respondent was aware of the equipment malfunction on 11 June 2009 and knew or should have known that the carbon adsorption system would fail; however, the Respondent continued to operate the equipment on 11 June 2009, 12 June 2009 and 15 June 2009 and did not report the noncompliance to OAR until 15 June 2009.

(continued)

(continued from the previous page)

- (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:** Not relevant.
- (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 outlet gas temperature violation as the operator of the facility and the violation was foreseeable. The Respondent reported to OAR that the cause of the removal efficiency violation on 15 June 2009 was an equipment malfunction.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

<b>MAJOR</b>	<u>  X  </u> <b>MODERATE</b>	<b>MINOR</b>
--------------	------------------------------	--------------

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
	<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: Failure to comply with permit related to recording HAP and VOC emissions  
 VIOLATION NO.: C (1)

<b>TYPE</b>		
<p style="text-align: center;"><u>      </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>  <b>X</b>  </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 record all of the individual and total HAP emissions on a monthly basis and failed to record the total quantity of VOC emissions on a monthly basis, no later than 10 business days after the first of the month. The Respondent is a stationary source of air pollutants subject to state air pollution control regulations. Compliance with permitting and operating requirements is of major importance to the regulatory program.</p> <p>(B) <b>Environmental conditions:</b> Not relevant.</p> <p>(C) <b>Amount of the pollutant:</b> Not relevant.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Respondent uses solvents including formaldehyde, isopropyl alcohol, methyl ethyl ketone, toluene, toluene diisocyanate, trichloroethylene and triethylamine that are listed toxic air contaminants.</p> <p>(E) <b>Duration of the violation:</b> 9 months. DEM documented the violation during its inspection on 27 January 2010.</p> <p>(F) <b>Areal extent of the violation:</b> Not relevant.</p> <p>(G) <b>Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:</b> The Respondent failed to take reasonable and appropriate steps to prevent the noncompliance.</p>		
(continued)		

(continued from the previous page)

- (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:** Not relevant.
- (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 violations as the operator of the facility and the violations were foreseeable.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

MAJOR	<u>  X  </u> MODERATE	MINOR
-------	-----------------------	-------

Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 10,000		TYPE I	TYPE II	<i>TYPE III</i>
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	\$1,000 to \$2,500	\$500 to \$1,000 <b>\$1,000</b>
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500