

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Key Container Corporation**

**FILE NO.: AIR 12 – 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 party (“Respondent”) has violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Administrative History

On 31 January 2001 the DEM inspected the facility that is the subject of this notice and determined that the Respondent did not have a functioning opacity monitor on its boiler. DEM issued a written informal notice to the Respondent on 22 February 2001 and advised the Respondent of its obligation to maintain an operable opacity monitor. The violation that is the subject of this notice is the same as the one the Respondent was cited for in 2001.

C. Facts

- (1) The subject facility is located at 21 Campbell Street in the city of Pawtucket, 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 23 August 2012, DEM inspected the Facility. The inspection revealed the following:
  - (a) Observation of two boilers in operation. The gases from the boilers connect to an exhaust stack that discharges to the atmosphere;
  - (b) Observation of a nonfunctioning opacity monitor hanging from its position on the exhaust stack;
  - (c) Review of inventory records submitted by the Respondent to the DEM that showed that the Facility uses its boilers on a year-round basis, with number 6 oil as the primary liquid fuel; and
  - (d) The boilers are rated at 8.375 million BTU per hour.

- (4) As of the date of this Notice of Violation (“NOV”), the Respondent has failed to install/repair the opacity monitor and audio alarm for the boilers.

D. 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 6.2.2** – requiring any fossil fuel fired steam or hot water generating unit having a heat input capacity of 5.0 million BTU per hour or more burning liquid fuel to be equipped with an opacity monitor with audio alarm.
- (2) **DEM’s APC Regulation 6.2.3** – requiring that the opacity monitor be calibrated to sound the alarm at 20 percent opacity, must be operated continuously during combustion of fuel, and that the alarm must be located in an area where it will be heard by the operator of or other person responsible for the unit/s.

E. 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 forty-five (45) days of receipt of this NOV**, equip the boilers with a properly functioning opacity monitor and audio alarm in accordance with DEM’s APC Regulation 6.2.2 and 6.2.3 and notify the DEM’s Office of Compliance and Inspection in writing of compliance with this order.

F. 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:

**Twelve Thousand Four Hundred Sixty-Five Dollars (\$12,465.00)**

- (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 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.

- (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 DEM determines that reasonable efforts have been made to comply promptly with this NOV.

G. 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 F 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 G 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:

Key Container Corporation  
c/o Robert B. Berkelhammer, Esq, Registered Agent  
One Park Row, Suite 300  
Providence, RI 02903

by Certified Mail.

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## **ADMINISTRATIVE PENALTY SUMMARY**

Program: OFFICE OF COMPLIANCE AND INSPECTION, AIR

File No.: AIR 12 – 10

Respondent: Key Container Corporation

<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	
D (1) and D (2) – Failure to comply with the opacity monitoring requirement	Type II (\$ 5,000 Max. Penalty)*	Major	\$ 5,000	2 years	\$10,000
<b><i>SUB-TOTAL</i></b>					<b>\$10,000.00</b>

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



**PENALTY MATRIX WORKSHEET**

CITATION: Failure to comply with the opacity monitoring requirement  
 VIOLATION NO.: D (1) and (2)

TYPE		
<u>      </u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>  <b>X</b>  </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> The Respondent is a stationary source of air pollutants subject to federal and state air pollution control regulations. The Respondent is operating two boilers rated at greater than 5 million BTU per hour without a compliant opacity monitor and integral audio alarm while firing #6 fuel oil.</p> <p>(B) <b>Environmental conditions:</b> Considered, but not utilized for this calculation.</p> <p>(C) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Particulate pollutants discharged into the atmosphere can be transported long distances depending on atmospheric conditions, and contribute to or cause adverse effects on human health and the environment</p> <p>(E) <b>Duration of the violation:</b> 2 ¼ years. DEM documented the violation on 23 August 2012. On that date, Respondent stated that the opacity monitor had been non-functional since at least October 2010.</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 prevent the noncompliance. The Respondent neglected to have the opacity monitor on and operational at the time its boilers were firing oil.
- (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. The Respondent had previously been informed of the requirement in an informal written letter issued by DEM to the Respondent 22 February 2001.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Respondent's failure to maintain a properly functioning opacity monitor for its boilers while fuel oil was being fired was determined by DEM and was not self-disclosed.

<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	<b>MAJOR</b>	\$5,000 to \$10,000	\$2,500 to \$5,000 <b>\$5,000</b>	\$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