

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Kisco LLC

FILE NO.: AIR 11 – 20

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 957 Broad Street in the city of Central Falls, Rhode Island (the “Facility”) and is owned and 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 or about 6 June 2011, the DEM received a report, prepared by Compliance Solutions, Inc. on behalf of the Respondent, on the results of testing of the Stage II vapor recovery system at the Facility (the “Vapor Recovery System”). The report stated that the system failed tests identified as the “Blockage Test” and “A/L Ratio Test” (the “Failed Tests”).
- (4) On 6 June 2011 and 20 September 2011, the DEM issued letters to the Respondent in response to the Failed Tests. The letters required the Respondent to repair the Vapor Recovery System and conduct the Blockage Test and the A/L Ratio Test immediately or remove from service the gasoline dispenser/s associated with the Vapor Recovery System (the “Dispensers”).
- (5) On 7 October 2011 and 11 October 2011, the DEM observed customers of the Facility dispensing fuel into motor vehicles from the Dispensers.

- (6) As of the date of this Notice of Violation (“NOV”), the Respondent has failed to repair the Vapor Recovery System and conduct the Blockage Test and the A/L Ratio Test or remove the Dispensers from service.

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 11.10.2.1** – requiring any person who owns, leases, operates, or controls a gasoline dispensing facility to remove from service any dispenser if any part of the Stage II vapor recovery system associated with that dispenser fails a compliance test and that any dispenser removed from service be kept out of service until it has been demonstrated by retesting that the dispenser is in compliance.

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 **IMMEDIATELY** remove the Dispensers from service and keep the Dispensers out of service until the Vapor Recovery System is in compliance with the DEM’s APC Regulation 11.

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 Nine Hundred Ninety-Six Dollars (\$ 10,996.00)

- (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 DEM 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 Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against 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
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:

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:

Kisco LLC
c/o Joseph Raheb, Esq., Registered Agent
650 Washington Highway
Lincoln, RI 02865

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, AIR

File No.: AIR 11 – 20

Respondent: Kisco 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	
C (1) – Use of dispenser with malfunctioning vapor recovery system	Type I (\$ <u>10,000</u> Max. Penalty)*	Minor	\$ 2,500	4 months	\$10,000.00
<i>SUB-TOTAL</i>					\$10,000.00

*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.		
<i>DESCRIPTION OF BENEFIT</i>	<i>CALCULATION</i>	<i>AMOUNT</i>
Economic benefit of noncompliance realized by the Respondent for failing to repair gasoline vapor recovery equipment was calculated by utilizing an EPA program called "BEN". BEN calculated the economic gain of noncompliance based upon a detailed economic analysis. Dates, dollar amounts, and values utilized in the BEN program are as listed.	Capital Investment: \$14,704	
	One Time Expenditure: \$200	
	Annual Recurring Costs: \$800	
	Noncompliance Date: 2 June 2011¹	
	Compliance Date (est.): 1 March 2012	\$996.00
<i>SUB-TOTAL</i>		\$ 996.00

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$ 10,996.00

¹ For failing required annual testing of Stage II vapor recovery equipment at the Facility and continuing to allow customers to dispense gasoline with malfunctioning vapor recovery equipment.

PENALTY MATRIX WORKSHEET

CITATION: Use of dispenser with malfunctioning vapor recovery system

VIOLATION NO.: C (1)

TYPE		
<p><u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE III <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>FACTORS CONSIDERED: 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: Respondent failed to remove from service gasoline dispenser/s with malfunctioning vapor recovery system. Compliance with air pollution regulations is a fundamental requirement of the regulatory program.</p> <p>(B) Environmental conditions: The facility is a combination retail convenience store and gasoline dispensing facility in the city of Central Falls. Central Falls is within a potential environmental justice area. Upon information and belief, the malfunctioning gasoline dispensers were available to the public during the summer ozone season.</p> <p>(C) Amount of the pollutant: The exact amount of excess pollution is unknown.</p> <p>(D) Toxicity or nature of the pollutant: Volatile organic compounds (VOCs), after their release during certain atmospheric conditions in the presence of sunlight and other pollutants, contribute to the formation of ozone. Hazardous air pollutants in gasoline include benzene, toluene, ethyl benzene, and xylene.</p> <p style="text-align: right;">(continued)</p>		

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- (E) **Duration of the violation:** 4 months. Tests on the equipment occurred on 2 June 2011. Observations on 7 October and 11 October 2011 by DEM verified that the Respondent failed to remove from service the dispenser/s that failed the 2 June 2011 tests.
- (F) **Areal extent of the violation:** Not utilized for this calculation.
- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to remove dispensers from service following the documented noncompliance, failed to repair the Stage II vapor recovery system, and failed to retest. The Respondent failed to take reasonable and appropriate steps to prevent the ongoing noncompliance.

Respondent failed to comply with the Notice of Alleged Violations issued by DEM on 20 September 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 has issued informal notices and formal notices of violation to the Respondent. The Respondent has paid administrative penalties as a result of its noncompliance pertaining to underground storage tanks 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:** Negligence is attributable to the Respondent for its failure to comply immediately with the requirements set forth in the DEM's APC Regulation No. 11. The requirement to suspend use of any gasoline dispensers following failure of annual compliance tests are clearly established in the regulation. Respondent, as owner and operator of the facility, had complete control over the occurrence of the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not utilized for this calculation.

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