

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Material Sampling Technologies, LLC**

**FILE NO.: AIR 12 – 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 800 Central Street in the town of North Smithfield, 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 25 March 2011, the DEM issued Permit Approval No. 2125 to the Respondent (the “Permit”). The Permit requires the Respondent to conduct performance (stack) testing to demonstrate compliance with emission limits for particulate matter.
- (4) The Permit sets an emission limit of particulate matter in the incinerator exhaust flue at 0.08 grains per dry standard cubic foot (“gr/dscf”) corrected to 12% CO<sub>2</sub>.
- (5) On or about 20 October 2011, on behalf of the Respondent, CK Environmental submitted to the DEM the results of stack testing that was conducted on 14 July 2011. The results showed an emissions rate of particulate matter in the incinerator exhaust flue at 0.109 gr/dscf corrected to 12% CO<sub>2</sub> during Run 1.

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.

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) **Within sixty (60) of receipt of this NOV**, submit a written proposal to the DEM's Office of Air Resources that describes all steps that will be taken to ensure compliance with the Permit emission limit of particulate matter in the incinerator exhaust flue of 0.08 gr/dscf corrected to 12% CO<sub>2</sub>.
- (2) The proposal submitted pursuant to Section D.1 above shall be subject to DEM's review and approval. Upon review, the DEM shall provide written notification to you either granting approval or stating the deficiencies and/or concerns therein. Within fourteen (14) days (unless a longer time is specified) of receiving a notification of deficiencies in the proposal, the Respondent shall submit to the DEM a modified proposal or additional information necessary to correct the deficiencies or to address the concerns.

**OR**

- (3) Submit documentation that the circuit board burning operation has been permanently shut down.

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:

**Two Thousand Five Hundred Dollars (\$2,500.00)**

- (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 DEM within thirty (30) days of your receipt of this Notice of Violation ("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 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.

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, 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:

Marisa Desautel, 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) 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

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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:

Material Sampling Technologies LLC  
c/o James O. Reavis, Registered Agent  
55 Dorrance Street, Suite 200  
Providence, RI 02903

by Certified Mail.

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## **ADMINISTRATIVE PENALTY SUMMARY**

Program: OFFICE OF COMPLIANCE AND INSPECTION, AIR

File No.: AIR 12 – 02

Respondent: Material Sampling Technologies LLC

<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	Type I (\$ 10,000 Max. Penalty)*	Minor	\$ 2,500	1 violation	\$2,500
<b><i>SUB-TOTAL</i></b>					<b>\$2,500</b>

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

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$ 2,500.00**

**PENALTY MATRIX WORKSHEET**

CITATION: Failure to comply with permit

VIOLATION NO.: C (1)

<b>TYPE</b>		
<p style="text-align: center;"><u>  X  </u> <b>TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ <b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ <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, while conducting stack testing for particulate matter, failed to meet the 0.08 gr/dscf emission limit during Run 1 as required by its permit. The Respondent is a stationary source of air pollutants subject to federal and state air pollution control regulations. Compliance with emissions limitations of the permit is of essential importance to the regulatory program.</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> Exposure to particulate matter can trigger asthma attacks and cause wheezing, coughing and respiratory irritation.</p> <p>(E) <b>Duration of the violation:</b> 1 day. The stack test was performed on 14 July 2011.</p> <p>(F) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</p> <p style="text-align: right; margin-top: 20px;">(continued)</p>		

(continued from the previous page)

- (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 has not demonstrated compliance with all emission limits set forth in the Permit.
- (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:** Considered, but not utilized for this calculation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<b>MAJOR</b>	<b>MODERATE</b>	<u>  <b>X</b>  </u> <b>MINOR</b>
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 10,000		<b>TYPE I</b>	TYPE II	TYPE III
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$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>MINOR</b>	\$1,000 to \$2,500 <b>\$2,500</b>	\$500 to \$1,000	\$100 to \$500