

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Mel-Co-Ed, Inc.

FILE NO.: AIR 16 – 307

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 the DEM's jurisdiction.

B. Administrative History

On 28 September 2016, the DEM issued to Respondent a Notice of Intent to Enforce (“NIE”) for the violations that are the subject of this Notice of Violation (“NOV”). The NIE required Respondent to take specific actions to correct the violations. Respondent failed to comply with the NIE. On 7 December 2016, the DEM issued to Respondent an Expedited Citation Notice (“ECN”). The ECN required Respondent to take specific actions to correct the violations and included an administrative penalty of \$2,500 that was to be paid to the DEM within 30 days of receipt of the ECN. On 12 December 2016, the ECN was delivered to Respondent. Respondent completed the actions to correct the violations, but failed to pay the administrative penalty.

C. Facts

- (1) The facility is located at 381 Roosevelt Avenue in the city of Pawtucket (the “Facility”) and it is operated by Respondent.
- (2) The Facility is a stationary source of air pollutants subject to the DEM's Air Pollution Control (“APC”) Regulations, including but not limited to, DEM's APC Regulation No. 36 entitled “*Control of Emissions from Organic Solvent Cleaning*”.
- (3) On 3 July 2009, the DEM issued Emissions Cap No. 90-2009 to Respondent to cap emissions of hazardous air pollutants (“HAP”) from the Facility (the “Cap”). The Cap was issued pursuant to Section 29.3 of the DEM's APC Regulation No. 29 entitled, “*Operating Permits*”.
- (4) The Cap requires that Respondent maintain records sufficient to determine actual HAP emissions for the Facility for the previous 12 months, to be determined on a monthly basis, no later than 15 days after the first of the month.

- (5) On 8 September 2016, the DEM inspected the Facility. As a result of the inspection, the DEM determined that Respondent failed to:
- (a) Determine the HAP emissions from the Facility on a monthly basis for the previous 12 months;
 - (b) Determine and record trichloroethylene (“TCE”) use on a monthly basis pursuant to the DEM’s APC Regulation No. 36;
 - (c) Monitor and record the speed of its automated parts handling system pursuant to the DEM’s APC Regulation No. 36; and
 - (d) Submit to the DEM semiannual Exceedance Reports pursuant to the DEM’s APC Regulation No. 36.
- (6) On 10 January 2017, the DEM received the documents listed in Section C (5).

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 29.3.9** – requiring compliance with an emissions cap as it relates to determining HAP emissions on a monthly basis;
- (2) **DEM’s APC Regulation 36.9.2** – requiring monitoring of the speed of automated parts handling equipment on a monthly basis;
- (3) **DEM’s APC Regulation 36.10.2** – requiring recording of the speed of automated parts handling equipment on a monthly basis and determining and maintaining records related to TCE use on a monthly basis; and
- (4) **DEM’s APC Regulation 36.11** – requiring the submission of exceedance reports to the DEM semiannually.

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:

\$2,500

- (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 30 days of your receipt of the 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 the 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's 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 the DEM's Administrative Adjudication Division, at the following address, within 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, 4TH 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's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters*.

- (2) A copy of each request for hearing must also be forwarded to:

Christina A. Hoefsmit, 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 the 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 the 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 (vi) and 42-17.6-4(b) and (c).
- (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) The 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) Christina A. Hoefsmit of the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Martha Mulcahey of the 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

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

Dated: _____

CERTIFICATION

I hereby certify that on the _____ day of _____
the within Notice of Violation was forwarded to:

Mel-Co-Ed, Inc.
c/o Brian LaPlante, Esq., Registered Agent
272 West Exchange Street
Providence, RI 02903

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, AIR
 File No.: AIR 16 – 307
 Respondent: Mel-Co-Ed, Inc.

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	
D (1) through D (4) – Recordkeeping and Reporting	Type III (\$10,000 Max. Penalty)*	Major	\$2,500	1 violation	\$2,500
SUB-TOTAL					\$2,500

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

ECONOMIC BENEFIT FROM NONCOMPLIANCE
<p>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:</p> <ul style="list-style-type: none"> - THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.
<p>A review of the record in this matter has revealed that Respondent has either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted can not be quantified.</p>

COST RECOVERY
<p>ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.</p>
<p>A review of the record in this matter has revealed that the DEM has not incurred any additional or extraordinary costs during the investigation, enforcement and resolution of this enforcement action (excluding non-overtime personnel costs), for which the State is not otherwise reimbursed.</p>

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$ 2,500

PENALTY MATRIX WORKSHEET

CITATION: Recordkeeping and Reporting

VIOLATION NO.: D (1) through D (4)

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's <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 determine the Facility's HAP emissions on a monthly basis for the previous 12 months as required by its Cap, failed to determine its TCE use on a monthly basis, failed to monitor and record the speed of the hoist for its automated parts handling system, and failed to submit a semi-annual exceedance report to the DEM. Respondent is a stationary source of air pollutants subject to Federal and State air pollution control regulations. Compliance with terms of the Cap and with reporting requirements is of importance to the regulatory program.</p> <p>(B) Environmental conditions: Considered, but not utilized for this calculation.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.</p> <p>(E) Duration of the violation: Considered, but not utilized for this calculation.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</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:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance and failed to comply with the NIE issued by the DEM to Respondent on 28 September 2016 and received by Respondent on 3 October 2016. Respondent did mitigate the noncompliance after it received the ECN.
- (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:** Respondent previously failed to comply with the DEM's APC Regulations. The DEM issued informal Letters of Noncompliance on 11 July 2005 and 29 February 2012 to Respondent for similar violations of the DEM's APC 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:** Respondent had complete control over the violation since Respondent is the operator of the Facility. The violation was foreseeable by Respondent.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<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	MAJOR	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500 \$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