

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: DSM NeoResins, Inc.

FILE NO.: AIR 13 – 01

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 199 Amaral Street in the city of East Providence, 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 4 May 2009, the DEM issued Approval No. 1871-1874 (the “Permit”) to the Respondent.
- (4) The Permit requires the Respondent to limit emissions of triethylamine to the atmosphere to 0.15 pounds per hour.
- (5) On 23 October 2012, the DEM received a letter from the Respondent. The letter stated a rupture disc on one of its reactors burst, which caused a release of triethylamine on 24 July 2012 that exceeded the maximum hourly limit of 0.15 pounds per hour. The Respondent later determined that the root cause of the ruptured disc was operator error.

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. 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:

Eight Thousand Five Hundred Dollars (\$8,500.00)

- (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 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
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:

Richard M. Bianculli Jr., 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) Richard Bianculli, 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 _____, 2013, 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 13 – 01

Respondent: DSM NeoResins, 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	
C (1) – Failure to comply with permit	Type I (\$ 10,000 Max. Penalty)*	Major	\$ 8,500	1 violation	\$ 8,500
<i>SUB-TOTAL</i>					\$8,500.00

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

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$ 8,500.00

PENALTY MATRIX WORKSHEET

CITATION: Failure to comply with permit

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.

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 released triethylamine from its facility at a level that exceeded its permitted limit of 0.15 pounds per hour. The Respondent is a stationary source of air pollutants subject to state air pollution control regulations. Compliance with the limits in a permit is of importance to the regulatory program.
- (B) **Environmental conditions:** Weather data from the Providence, RI area airport near the approximate time of release show scattered clouds, light wind ~10 mph from the west southwest, at 77°F.
- (C) **Amount of the pollutant:** 224 pounds of acetone and triethylamine were released to the atmosphere without having been controlled by air pollution control devices. The specific amount of triethylamine is estimated between 0.71 and 1.23 pounds.
- (D) **Toxicity or nature of the pollutant:** Triethylamine is listed as a toxic air contaminant.
- (E) **Duration of the violation:** Instantaneous. The equipment rupture and subsequent release occurred on 24 July 2012.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

(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 violation. The set point of the high pressure alarm on the reactor vessel was set at the same pressure as the design pressure on the rupture disc. This caused the disc to release at the same time as the alarm sounded when the pressure in the reactor rose. The cause of the pressure rise in the reactor vessel was operator error. The operator ignored standard operating procedure and set the temperature of the reactor at 69C rather than 62C so as to heat the batch quicker **AND** manually shut off the temperature control, which shut down the recirculating pump and allowed hot water to keep heating the vessel. No mechanical or electronic interlock was in place to prevent that unauthorized action. The Respondent mitigated the violation by immediately shutting down the reactor operations, reporting the release to the DEM within 24 hours, lowering the set point on the high pressure alarm to warn the operator much earlier of an abnormal situation, and training the operators on the required procedures.
- (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:** The Respondent was cited in 2012 with a formal notice of violation for failure to comply with permit requirements pertaining to exhaust gas temperature, maintaining specified volatile organic compound removal efficiency, and record keeping for hazardous air pollutants and volatile organic compounds. Respondent paid an administrative penalty as a result of the noncompliance.
- (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 process vessel as the operator of the facility, and the violation was foreseeable. The cause of the release was human error. The operator's conduct appears to have been intentional.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** No mechanical or electronic interlock is required by the permit.

<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 \$8,500	\$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	\$500 to \$1,000	\$100 to \$500