

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: New England Petroleum Terminal, LLC

FILE NO.: AIR 11 – 09

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 29 Terminal Road in the city of Providence, Rhode Island (the “Facility”) and is operated by the Respondent.
- (2) The Respondent stores petroleum products at the Facility.
- (3) The Facility is subject to the DEM’s Air Pollution Control (“APC”) Regulations.
- (4) On 2 March 2010 the DEM inspected the Facility. The inspection revealed that the Respondent was storing high sulfur fuel in bulk storage tanks.
- (5) On 26 March 2010 the DEM received a letter dated 23 March 2010 from M.J. Bradley & Associates on behalf of the Respondent. The letter stated the following:
 - (a) The Facility stores high sulfur fuel in one 100,000 barrel tank; and
 - (b) High sulfur fuel from the Facility is delivered to customers in Massachusetts.

The letter requested approval from the DEM to store high sulfur (2%) residual oil at the Facility as required by DEM’s APC Regulation No. 8.

- (6) The DEM has not declared that a shortage of low sulfur fuel exists in Rhode Island during 2010 or 2011, pursuant to the DEM’s APC Regulation No. 8, Section 8.2.
- (7) The Respondent did not receive approval from the DEM to use, store, sell or deliver high sulfur fuel at or from the Facility.

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 No. 8, Section 8.2** – requiring that no person shall use or store high sulfur fuel except as provided in Section 8.3, unless the DEM declares that a shortage of low sulfur fuel exists.
- (2) **DEM's APC Regulation No. 8, Section 8.3.5** – requiring that any person seeking to store, sell or deliver high sulfur fuel for use in Rhode Island or for use outside of Rhode Island obtain prior written approval of the DEM.

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:

Ten Thousand Dollars (\$ 10,000.00)

- (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 Director 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 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 Capital Hill, 2RD 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, 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) 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 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 _____
the within Notice of Violation was forwarded to:

New England Petroleum Terminal, LLC
c/o James H. Reilly, Registered Agent
146 Westminster Street
Providence, RI 02903

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, AIR

File No.: AIR 11 – 09

Respondent: New England Petroleum Terminal, 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) and C (2) – Storage of high sulfur fuel without DEM approval	Type I (\$ 10,000 Max. Penalty)*	Major	\$ 10,000	1 violation	\$10,000
SUB-TOTAL					\$10,000.00

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

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$ 10,000.00

PENALTY MATRIX WORKSHEET

CITATION: Storage of high sulfur fuel without DEM approval

VIOLATION NO.: C (1) and (2)

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		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>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: The Respondent failed to obtain prior written approval from the DEM to store, sell or deliver high sulfur fuel for use in or out of Rhode Island. The Respondent is a stationary source of air pollutants subject to federal and state air pollution control regulations. Having regulated facilities comply with applicable sulfur content of fuel requirements is of major importance to DEM's regulatory efforts and is directly related to protecting health, safety, welfare and the environment.</p> <p>(B) Environmental conditions: Not utilized for this calculation.</p> <p>(C) Amount of the pollutant: Unknown.</p> <p>(D) Toxicity or nature of the pollutant: The burning of fuels containing sulfur creates sulfur dioxide, a criteria pollutant. Exposure to sulfur dioxide may cause respiratory distress. Atmospheric sulfur dioxide may combine with water vapor to create acid rain causing structural and plant damage as well as the acidification of water bodies.</p> <p>(E) Duration of the violation: Unknown. The DEM first became aware that the Respondent was storing high sulfur fuels during an inspection on 2 March 2010.</p> <p>(F) Areal extent of the violation: Not utilized for this calculation.</p> <p>(G) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance: The Respondent submitted a request to DEM in a letter dated 23 March 2010 for approval to store high sulfur fuel to mitigate its noncompliance.</p>		
(continued)		

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- (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:** 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 requirements of DEM's APC Regulation No. 8 have been long-standing.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** To date, the DEM has not acted upon the Respondent's request for approval to store high sulfur fuel. The penalty is being assessed for the violations that occurred prior to the 2 March 2010 inspection.

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