

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: P.J. Keating Company

**FILE NOs.: OCI-AIR-18-111, OCI-AIR-19-57,
OCI-AIR-19-88 & OCI-WP-18-134
X-ref RIPDES RI0023761**

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” or “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. Administrative History

Water Pollution

On 12 June 2018, DEM issued a Significant Non-Compliance (“SNC”) letter to Respondent for the water pollution violations that are the subject of this Notice of Violation (“NOV”). Respondent submitted correspondence to DEM dated 3 July 2018 in response to the SNC letter. Respondent stated that it met with the operator of the concrete facility regarding its activities (and had the operator cease discharging sediment laden water) and cleaned a sediment basin. In response to additional violations, on 12 September 2018, DEM issued a Notice of Referral (“NOR”) letter to Respondent. Respondent submitted correspondence to DEM dated 11 October 2018 in response to the NOR letter. Respondent stated that it cleaned catch basins and increased the frequency of street sweeping. On 23 December 2019, DEM issued a Letter of Noncompliance (“LNC”) to Respondent for violations observed during an inspection on 17 December 2019.

Air Pollution

On 1 August 2018, 8 August 2018, 9 August 2018, 28 August 2018, 26 March 2019 and 10 July 2019, DEM’s inspector spoke with Respondent’s agents regarding the air pollution violations that are the subject of the NOV. On each occasion, the inspector informed the agent that the measures being taken were not adequate. A Notice of Non-Compliance and Requirements for Corrective Actions was issued to Respondent on the 8 August 2018, 9 August 2018, 28 August 2018, 26 March 2019 and 10 July 2019 inspections.

C. Facts

- (1) The property is located at 875 Phenix Avenue in the City of Cranston, Rhode Island (the “Property”). The Property includes a facility engaged in the mining and processing of rock, sand and gravel (the “Quarry Facility”) and a facility that manufactures concrete (the “Concrete Facility”) (collectively, the “Facility”).
- (2) Respondent operates the Quarry Facility.
- (3) Respondent leases a portion of the Property to Cullion Concrete, which operates the Concrete Facility.

Water Pollution

- (4) On 23 September 2014, DEM issued Permit No. RI0023761 to Respondent (the “Permit”) to discharge stormwater from the Property from outfall pipe 002 (“Outfall 002”) to an unnamed tributary flowing into Furnace Hill Brook.
- (5) The Permit requires Respondent to meet limits for the monthly average and maximum daily concentrations for total suspended solids (“TSS”) of 25 milligrams per liter (“mg/l”) and 45 mg/l, respectively, from Outfall 002.
- (6) The Permit requires Respondent to maintain all equipment necessary to achieve compliance with the Permit in good working order.
- (7) Discharge Monitoring Reports submitted by Respondent via the “NetDMR” system for quarters ending 31 December 2017, 31 March 2018, 30 June 2018 and 30 September 2018 and 31 December 2018 revealed exceedances of the monthly average and/or the maximum daily TSS limits. Specifically, Respondent reported the following:
 - (a) A monthly average and daily maximum TSS concentration for the quarter ending 31 December 2017 of 64 mg/l;
 - (b) A monthly average TSS concentration for the quarter ending 31 March 2018 of 39 mg/l;
 - (c) A monthly average and daily maximum TSS concentration for the quarter ending 30 June 2018 of 122 mg/l;
 - (d) A monthly average TSS concentration for the quarter ending 30 September 2018 of 31 mg/l; and
 - (e) A monthly average TSS concentration for the quarter ending 31 December 2018 of 31 mg/l.

- (8) On 17 December 2019, DEM inspected the Property in response to complaints of impacts to surface waters from the Property. The inspection revealed that the pump that conveys water from a stormwater pond identified as pond #4 in the Permit (the “Pond 4 Pump”) was removed. Respondent’s agent informed DEM’s inspectors of the following:
- (a) The Pond 4 Pump became inoperable and was removed and sent out of State for repair on December 6, 2019;
 - (b) No backup pump was available on the Property; and
 - (c) If there was a need to pump pond #4, Respondent would rent a pump to prevent the pond from overtopping.
- (9) Based on DEM inspectors’ observations, if pond #4 overtopped it would discharge to the unnamed tributary to Furnace Hill Brook.
- (10) Respondent failed to comply with the Permit as described in subsections C (7) and C (8) above.

Air Pollution

- (11) The Facility is a stationary source of air pollutants subject to the Rhode Island Code of Regulations titled *Fugitive Dust (250-RICR-120-05-5)* (the “Fugitive Dust Regulation”) and *Emissions of Air Contaminants Detrimental to Person or Property (250-RICR-120-05-7)* (the “Emissions Regulation”).
- (12) DEM conducted air compliance inspections of the Facility (the “inspections”) on 31 July 2018, 1 August 2018, 8 August 2018, 9 August 2018, 28 August 2018, 26 March 2019 and 10 July 2019.
- (13) During the inspections, violations of the Fugitive Dust Regulation and Emissions Regulation were observed. Specifically, DEM made the following observations:
- (a) On 31 July 2018, dust was observed traveling onto Phenix Avenue, as trucks exited the Property. Although a water truck was in-use, it was ineffective in preventing dust from migrating beyond the Property;
 - (b) On 1 August 2018, dust was observed traveling onto Phenix Avenue, as trucks exited the Facility. Although a water truck was in-use, it was ineffective in preventing dust from migrating beyond the Property. DEM observed dust from the entrance of the Property to at least the entrance of the Cranston Ice Rink, approximately 300 yards on Phenix Avenue. According to Respondent’s Yard Manager, Phenix Avenue had been swept the night prior;

- (c) On 8 August 2018, dust was observed at the entrance to the Property and on Phenix Avenue. Trucks exiting the Property were observed carrying material in the grooves of their tires onto Phenix Avenue. DEM's inspector noted that this material caused dust as vehicles drove over the material causing dust to migrate beyond the Property;
 - (d) On 9 August 2018, dust was observed at the entrance to the Property and on Phenix Avenue. Trucks exiting the Property were observed carrying material in the grooves of their tires onto Phenix Avenue. DEM's inspector noted that this material caused dust as the vehicles drove over the material causing dust to migrate beyond the Property;
 - (e) On 28 August 2018, dust was observed at the entrance to the Property and on Phenix Avenue. The water truck was watering the inside of the Property and the sweeper truck was sweeping up and down Phenix Avenue; however, these measures were ineffective in preventing dust from migrating beyond the Property; and
 - (f) On 26 March 2019, dust was observed blowing onto the Cranston DPW facility, coming from the processing equipment operating along the Property. After about an hour into the inspection, DEM's inspector noted a light accumulation of dust on the driver's door armrest and windshield of his vehicle. The dust began to irritate the inspector's eyes, and he began to feel and taste the dust on his teeth, in his nose and mouth. The inspector noticed a sporadic plume of dust coming from the top of the conveyor belts of the stone processing equipment closest to the Cranston DPW facility that was heading towards the Cranston DPW facility.
- (14) On 8 April 2019, DEM received, via electronic mail correspondence, a plan from Respondent for corrective action to prevent dust from migrating from the Property. The plan included the following measures:
- (a) Installation of water lines for a sprinkler system to be located at the scale house to keep the entry/exit area wetted down to minimize fugitive dust from migrating from the Property; and
 - (b) Installation of a remote switch inside the scale house that could be activated by the attendant to operate the sprinklers.
- (15) On 10 July 2019, DEM inspected the Property and observed dust at the entrance to the Facility and on Phenix Avenue. Trucks exiting the Property were carrying material in the grooves of their tires onto Phenix Avenue.
- (16) Respondent failed to comply with the Fugitive Dust Regulation as described in subsection C (13) above.
- (17) Respondent failed to comply with the Emission Regulation as described in subsection C (13)(f) above.

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) **R.I. Gen. Laws Section 46-12-5(b)** – requiring the discharge of any pollutant into waters of the State comply with the terms and conditions of a permit and applicable regulations.
- (2) **Rhode Island Code of Regulations titled *Water Quality Regulations* (250-RICR-150-05-1)** (the “Water Quality Regulations”)
 - (a) **Rule 11(B) (recently amended to Part 1.13(B))** – requiring the discharge of pollutants into the waters of the State that comply with the terms and conditions of a permit issued by DEM.
 - (b) **Rule 16(A) (recently amended to Part 1.18(A))** – mandating compliance with all terms, conditions, management practices and operation and maintenance requirements set forth in a permit.
- (3) **Rhode Island Code of Regulations titled *Regulations for the Rhode Island Pollutant Discharge Elimination System* (250-RICR-150-10-1)**
 - (a) **Rule 14.02(a) (recently amended to Part 1.14(B))** – requiring the permittee to comply with all conditions of the permit.
 - (b) **Rule 14.05 (recently amended to Part 1.14(E))** – requiring the permittee to take all reasonable steps to minimize or prevent a discharge in violation of the permit.
 - (c) **Rule 14.06 (recently amended to Part 1.14(F))** – requiring the permittee to maintain in good working order and operate as efficiently as possible all treatment works to achieve compliance with the permit.
- (4) **Fugitive Dust Regulation, Part 5.6(A)** – prohibiting any person to cause or permit any materials, including but not limited to sand, gravel, soil, aggregate and any other organic or inorganic solid matter capable of releasing dust, to be handled, transported, mined, quarried, stored or otherwise utilized in any way so as to cause airborne particulate matter to travel beyond the property line of the emission source without taking adequate precautions to prevent particulate matter from becoming airborne. Such precautions shall be in accordance with good industrial practice as determined by DEM and/or shall be other reasonable fugitive dust prevention measures as determined by DEM.
- (5) **Emissions Regulation, Part 7.6** – prohibiting the emission of air contaminants which may be injurious to human, plant or animal life, or cause property damage or which unreasonably interferes with the enjoyment of life and property.

E. 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) **IMMEDIATELY** implement necessary corrective actions to ensure airborne particulate matter/fugitive dust is not migrating beyond the Property's boundary from all operations, including but not limited to, crushing and conveying operations conducted at the Facility.
- (2) **Within 7 days of receipt of the NOV**, install a backup pump until the Pond 4 Pump is repaired and returned to service and submit documentation to OC&I, including photographs, showing that the backup pump is installed and operational.
- (3) **Within 30 days of receipt of the NOV**, submit a comprehensive Particulate Matter Control Plan to DEM's Office of Compliance and Inspection ("OC&I") that identifies all potential sources of airborne particulate matter associated with the operations at the Facility and identifies the best management practices, procedures and other actions that can be taken to prevent dust from the migrating beyond the Property.
- (4) The plan required in subsection E (3) above shall be subject to OC&I's review and approval. Upon review, OC&I shall provide written notification to you either granting formal approval or stating the deficiencies therein. Within 14 days (unless a longer time is specified) of receiving a notification of deficiencies in the plan, you must submit to OC&I a modified proposal or additional information necessary to correct the deficiencies.
- (5) Commence work in implementing the plan within 20 days of approval (unless otherwise expressly authorized by OC&I in writing to commence work later), and complete such work within 60 days of said approval or other date specified by OC&I.

F. 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:

\$66,250

- (2) The proposed administrative penalty is calculated pursuant to the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties* (250-RICR-130-00-1) and must be paid to DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a certified check, cashier's check or money order made payable to the "General Treasury - Water & Air Protection Program" and shall be forwarded to OC&I, 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.
- (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 DEM determines that reasonable efforts have been made to comply promptly with the NOV.

G. 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 DEM's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through F 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 20 days of your receipt of the NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
 DEM - Administrative Adjudication Division
 235 Promenade Street, Room 350
 Providence, RI 02908-5767

- (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 Part 1.7(B) of the Rhode Island Code of Regulations titled *Rules and Regulations for the Administrative Adjudication Division* (250-RICR-10-00-1).

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

Christina 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 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 regarding 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 Hoefsmit of DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Karen Peltier of OC&I at (401) 222-1360, ext. 7136.

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 G above.

FOR THE DIRECTOR

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

Dated: _____

CERTIFICATION

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

P.J. Keating Company
c/o Corporation Service Company, Registered Agent
222 Jefferson Boulevard
Warwick, RI 02888

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Programs: OFFICE OF COMPLIANCE AND INSPECTION, AIR AND WATER POLLUTION

File Nos.: OCI-AIR-18-111, OCI-AIR-19-57, OCI-Air-19-88 and OCI-WP-18-134
X-ref RIPDES RI0023761

Respondent: P.J. Keating Company

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), D (2) and D (3) – Failure to comply with TSS limit, as required by Permit	Type I <i>(>\$25,000 Max. Penalty) *</i>	Moderate	\$6,250	5 quarters	\$31,250
D (4) and D (5) – Failure to prevent fugitive dust/particulate matter from traveling beyond the Property	Type I <i>(>\$10,000 Max. Penalty) *</i>	Major	\$5,000	7 days	\$35,000
SUB-TOTAL					\$66,250

*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 COMPLY. 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.

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 cannot be quantified.

COST RECOVERY

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.

A review of the record in this matter has revealed that 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.

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$66,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to comply with TSS limit, as required by Permit
VIOLATION NOs.: D (1), D (2) and D (3)

TYPE		
<input checked="" type="checkbox"/> TYPE I	<input type="checkbox"/> TYPE II	<input type="checkbox"/> TYPE III
<u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>INCIDENTAL</u> to protecting health, safety, welfare or environment.

DEVIATION FROM THE STANDARD

THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)*

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent failed to comply with its monthly average and/or maximum daily discharge permit limits for TSS as required by the Permit. Compliance with permit limits is of major importance to the regulatory program
- (2) **Environmental conditions:** The effluent from Outfall 002 discharges to an unnamed tributary flowing into Furnace Hill Brook, which is designated as a Class B water body according to the Water Quality Regulations. Class B waters are designated for fish and wildlife habitat and primary and secondary contact recreational activities. They shall be suitable for compatible industrial processes and cooling, hydropower, aqua-cultural uses, navigation and irrigation and other agricultural uses. These waters shall have good aesthetic value. The permit limits for TSS are based on best professional judgement and the effluent limitations established for Mine Dewatering Discharges specified in Rhode Island's Multi-Sector General Permit.
- (3) **Amount of the pollutant:** Unknown. Respondent reported that for the quarters ending December 2017, March 2018, June 2018, September 2018 and December 2018, the monthly and/or daily maximum TSS concentrations measured from Outfall 002 exceeded permitted limits. It is unknown the quantity of water that was discharged from this outfall during this time-frame. The concentrations ranged from approximately .24 to 1.5 times over the monthly average TSS permitted limit and from approximately .42 to 1.7 times over the daily maximum TSS permitted limit.
- (4) **Toxicity or nature of the pollutant:** Considered, but not utilized for this calculation.
- (5) **Duration of the violation:** Full duration unknown – at least 5 days. The discharge consists of stormwater. TSS sampling is performed quarterly. For quarters ending December 2017, March 2018, June 2018, September 2018 and December 2018, Respondent reported exceedances of the monthly average and/or the maximum daily quarterly effluent TSS limits. The total number of days that the effluent exceeded the TSS maximum daily permitted limits is unknown.
- (6) **Areal extent of the violation:** Unknown.

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- (7) **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. TSS exceedances occurred for 5 consecutive quarters. Respondent has not reported any TSS exceedances in 2019.
- (8) **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.
- (9) **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 violations since Respondent operates the Quarry Facility and subleases the Concrete Facility. The violation was foreseeable by Respondent. There were 5 consecutive quarters of non-compliance, during which Respondent could have implemented corrective actions to prevent reoccurrence.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR		<u>X</u> MODERATE		MINOR
Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to 12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500 \$6,250	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1, 250

PENALTY MATRIX WORKSHEET

CITATION: Failure to prevent fugitive dust/particulate matter from traveling beyond the Property
 VIOLATION NOs.: D (4) and D (5)

TYPE		
<input checked="" type="checkbox"/> TYPE I	<input type="checkbox"/> TYPE II	<input type="checkbox"/> TYPE III
DIRECTLY related to protecting health, safety, welfare or environment.	INDIRECTLY related to protecting health, safety, welfare or environment.	INCIDENTAL to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
FACTORS CONSIDERED:		
Taken from Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties</i> (250-RICR-130-00-1)		
<ul style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Respondent failed to take necessary precautions to prevent airborne particulate matter from traveling beyond the Property. Compliance with the Fugitive Dust Regulation and Emission Regulation is of major importance to the regulatory program (2) Environmental conditions: The Property is located on Phenix Avenue, a heavily traveled road and close to the Cranston DPW facility. (3) Amount of the pollutant: Unknown. During inspections conducted by DEM on 31 July 2018, 1 August 2018, 8 August 2018, 9 August 2018, 28 August 2018, 26 March 2019 and 10 July 2019, dust was observed beyond the Property. (4) Toxicity or nature of the pollutant: Inhalation of dust can be injurious to humans and animals. During DEM's inspection on 26 March 2019, after about an hour into the inspection, DEM's inspector noted a light accumulation of dust on the driver's door armrest and windshield of his vehicle. The dust began to irritate the inspector's eyes, and he began to feel and taste the dust on his teeth, in his nose and mouth. (5) Duration of the violation: Full duration unknown. Based on observations by DEM, the violations were observed on 7 separate days. (6) Areal extent of the violation: Full extent unknown – at least approximately 300 yards on Phenix Avenue based on DEM inspector's observations on 1 August 2018. 		
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- (7) **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 and/or mitigate the noncompliance. During 7 inspections by DEM from 31 July 2018 through 10 July 2019, DEM's inspector issued verbal and/or written field citations to Respondent.
- (8) **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.
- (9) **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 operates the Quarry Facility and subleases the Concrete Facility. The violation was foreseeable by Respondent. 5 written field citations were issued to Respondent. Respondent was initially notified, via verbal warning, during the 31 July 2018 inspection conducted by DEM. Despite numerous verbal warnings and field citations issued by DEM during subsequent inspections, Respondent continued to have numerous instances of non-compliance, which Respondent could have implemented corrective actions to prevent.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The Cranston DPW facility is located close to the Property, and DEM has received numerous complaints from the DPW employees of adverse effects from dust from the Property.

<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 \$5,000	\$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