

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Quarter Moon, Incorporated**

**FILE NO.: AIR 16 – 10**

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. Facts**

- (1) The facility is located at 200 High Point Avenue in the town of Portsmouth, Rhode Island (the “Facility”) and it 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 24 April 2009, the DEM issued Operating Permit RI-38-09 (the “Permit”) to the Respondent to emit air pollutants from the Facility. The Permit requires the Respondent to submit semiannual compliance reports no later than 45 calendar days after the end of each semiannual reporting period.
- (4) On 24 and 25 September 2015, the DEM inspected the Facility and/or reviewed records from the Facility. The inspection and/or review of records revealed that the Respondent failed to:
  - (a) Submit an air pollution inventory report for the Facility for calendar year 2014 on or before 15 April 2015. The Respondent provided the report to the DEM at the time of inspection.
  - (b) Submit a semiannual compliance report for the period ending 30 June 2015. The Respondent provided the report to the DEM at the time of inspection.

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 14.2.1 and 14.2.2** – requiring the owner or operator of any facility that emits air contaminants to provide data on emissions of air contaminants to the DEM by April 15<sup>th</sup> unless otherwise specified.
- (2) **DEM's APC Regulation No. 29.4.6** – requiring compliance with an operating 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:

**\$1,500**

- (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 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 the 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's 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 the 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  
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'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:
- Joseph LoBianco, 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 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 Joseph LoBianco at the DEM's 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

By: \_\_\_\_\_  
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:

Quarter Moon, Incorporated  
c/o Elle Courtney, Registered Agent  
300 Highpoint Avenue  
Portsmouth, RI 02871

by Certified Mail.

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# ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, AIR  
File No.: AIR 16 – 10  
Respondent: Quarter Moon, Incorporated

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 Submit Annual Air Pollution Inventory Report	Type III (\$2,500 Max. Penalty)*	Minor	\$500	1 violation	\$500
C (2) – Failure to Submit Semi-Annual Compliance Report	Type III (\$2,500 Max. Penalty)*	Moderate	\$1,000	1 violation	\$1,000
<b>SUB-TOTAL</b>					<b>\$1,500</b>

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

## 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 ARE IN COMPLIANCE. 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 the 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 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.

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$ 1,500**

**PENALTY MATRIX WORKSHEET**

CITATION: Failure to Submit Annual Air Pollution Inventory Report

VIOLATION NO.: C (1)

<b>TYPE</b>		
<p style="text-align: center;"><u>      </u> <b>TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u>      </u> <b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u>  <b>X</b>  </u> <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's <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 failed to submit its air pollution inventory report to the DEM for calendar year 2014 at the time specified in the DEM's APC Regulation No. 14. The Respondent is a stationary source of air pollutants subject to federal and state air pollution control regulations. Compliance with reporting requirements is important 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> Considered, but not utilized for this calculation.</p> <p>(E) <b>Duration of the violation:</b> About 5 months. The report was required on or before 15 April 2015 and was provided to the DEM on or about 25 September 2015.</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>		

**PENALTY MATRIX WORKSHEET (continued)**

(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 mitigated the noncompliance by providing the report to the DEM on or about 25 September 2015.
- (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 previously failed to comply with the DEM's APC Regulations. The DEM issued formal written notices of violation on 28 May 2010, 1 October 2011 and 16 September 2015 to the Respondent for 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:** The Respondent had complete control over the violation since the Respondent is the operator of the facility. The requirement to submit air pollution inventory reports by 15 April of each year is clearly stated in the cited regulation, so the violation was foreseeable by the Respondent.
- (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>	<b><u>  X  </u> MINOR</b>
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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
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	<b>MINOR</b>	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500 <b>\$500</b>

**PENALTY MATRIX WORKSHEET**

CITATION: Failure to Submit Semiannual Compliance Report

VIOLATION NO.: C (2)

<b>TYPE</b>		
<p style="text-align: center;"><u>      </u> <b>TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u>      </u> <b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u>  <b>X</b>  </u> <b>TYPE III</b></p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><b><u>FACTORS CONSIDERED:</u></b></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) <b>The extent to which the act or failure to act was out of compliance:</b> The Respondent failed to submit its semiannual compliance report to the DEM as specified in the permit. The Respondent is a stationary source of air pollutants subject to federal and state air pollution control regulations. Compliance with reporting requirements is important 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> Considered, but not utilized for this calculation.</p> <p>(E) <b>Duration of the violation:</b> More than 1 month. The report was required on or before 15 August 2015 and was provided to the DEM on or about 25 September 2015.</p> <p>(F) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</p> <p style="text-align: right;">(continued)</p>		

**PENALTY MATRIX WORKSHEET (continued)**

(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 mitigated the noncompliance by providing the report to the DEM on or about 25 September 2015.
- (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 previously failed to comply with the DEM's APC Regulations. The DEM issued formal written notices of violation on 28 May 2010, 1 October 2011 and 16 September 2015 to the Respondent for 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:** The Respondent had complete control over the violation since the Respondent is the operator of the facility. The requirement to submit its semiannual compliance report within 45 days of the end of each semiannual reporting period is clearly stated in the permit, so the violation was foreseeable by the Respondent.
- (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>	<u>  <b>X</b>  </u> <b>MODERATE</b>	<b>MINOR</b>
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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
	<b>MODERATE</b>	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000 <b>\$1,000</b>
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500