

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Quarter Moon, Incorporated

**FILE Nos.: AIR 15 - 03
and OCI-AIR-15-41**

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

The DEM notified the Respondent on numerous occasions of its obligation to submit its air pollution permit renewal application to the DEM. On 24 August 2012, the DEM sent a letter to the plant manager. On 30 July 2013, the DEM sent electronic correspondence to the environmental manager and production manager. On 10 September 2013, the DEM sent a certified letter to the corporate officer that was delivered on 12 September 2013. On 12 February 2015, the DEM issued a Notice of Alleged Violation by certified mail to the corporate officer that was delivered on 19 February 2015. The Respondent submitted its application on 26 February 2015.

C. Facts

- (1) The facility is located at 200 Highpoint Avenue in the town of Portsmouth, Rhode Island (the "Facility").
- (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 became effective on that date and expired on 24 April 2014 (the "Permit Expiration Date").
- (4) In accordance with Section II.B of the Permit, the Respondent's right to emit air pollutants terminates at the Permit Expiration Date unless the Respondent submits a timely and complete renewal application (the "Renewal Application") to the DEM at least 12 months prior to the Permit Expiration Date.

- (5) The Permit required the Respondent to:
 - (a) Submit an Annual Compliance Certification (“ACC”) report for each calendar year no later than 60 days after the end of each calendar year; and
 - (b) Submit semiannual compliance reports no later than 45 calendar days after the end of each semiannual reporting period.
- (6) On 26 February 2015, the Respondent submitted to the DEM:
 - (a) The Renewal Application;
 - (b) The ACC report for calendar year 2013 and calendar year 2014; and
 - (c) The semiannual compliance reports for 1 July 2013 through 31 December 2013 (the "the July-December report"), 1 January 2014 through 30 June 2014 (the "January-June report"), and 1 July 2014 through 31 December 2014.
- (7) The Respondent emitted air pollutants from the Facility without a valid operating permit from the DEM from 25 April 2014 through 25 February 2015.
- (8) The Respondent failed to submit the ACC report for calendar year 2013 to the DEM within 60 calendar days of the end of the calendar year.
- (9) The Respondent failed to submit the July-December report and the January-June report to the DEM within 45 calendar days after the end of each semiannual reporting period.

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 29.4.6** – prohibiting the operation of a stationary source of air pollutants if a timely and complete application is not submitted to the DEM at least 12 months prior to the expiration of the operating permit and requiring compliance with an operating permit.

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:

\$54,000

- (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 or money order made payable to the "General Treasury - Water & Air Protection Program Account/Environmental Response Fund," 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.

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, 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'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 J. LoBianco, 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 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 DEM 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 J. LoBianco 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 F 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:

Quarter Moon, Incorporated
c/o Jim Forrest, Registered Agent
300 Highpoint Avenue
Portsmouth, RI 02871

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, AIR

File Nos.: AIR 15 - 03 and OCI-AIR-15-41

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	
D (1) – Failure to Submit Compliance Reports as Required by Permit	Type III (\$1,000 Max. Penalty)* <i>(annual compliance certification report)</i>	Major	\$ 2,000	1 violation	\$2,000
	Type III (\$1,000 Max. Penalty)* <i>(Semiannual Compliance Report)</i>	Moderate	\$ 1,000	2 violations	\$2,000
D (1) – Operating with an Expired Permit	Type I (\$10,000 Max. Penalty)*	Major	\$ 5,000	10 months	\$50,000
SUB-TOTAL					\$54,000

*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 = \$54,000

PENALTY MATRIX WORKSHEET

CITATION: Failure to Submit Compliance Reports as Required by Permit

VIOLATION NO.: D (1)

TYPE		
<u> </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> X </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
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'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: The Respondent failed to submit timely reports required by the terms set forth 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 stated in the permit 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: The Respondent's annual compliance certification for 2013 was received approximately 12 months late. The Respondent's semiannual compliance report for 1 July through 31 December 2013 was received slightly more than 12 months late. The Respondent's semiannual compliance report for 1 January through 24 April 2014 (when the permit expired) was received more than 8 months late.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent did not take reasonable and appropriate steps to prevent the noncompliance. The Respondent mitigated the noncompliance by submitting the required reports on 26 February 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 was issued a notice of violation and assessed an administrative penalty in calendar year 2009 for the same violations that are the subject of this notice of violation.
- (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:** Negligence is attributable to the Respondent for its failure to comply immediately with the requirements set forth in the permit.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u> </u> MAJOR	<u> </u> 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 \$2,000
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000 \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Operating with an Expired Permit

VIOLATION NO.: D (1)

TYPE		
<p style="text-align: center;"><u>X</u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ 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: The Respondent operated the facility subsequent to the expiration of its permit. The Respondent is a stationary source of air pollutants subject to state air pollution control regulations.</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: About 10 months. The Respondent's permit expired on 24 April 2014; however, the Respondent continued to operate without submitting a permit renewal application until 26 February 2015.</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:** The Respondent failed to take reasonable and appropriate steps to submit its permit renewal application and failed to cease operations that emit air pollutants from the facility on or before the date the permit expired on 24 April 2014. The Respondent mitigated the noncompliance by submitting its permit renewal application on 26 February 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:** Considered, but 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:** Negligence is attributable to the Respondent for its failure to comply immediately with the requirements set forth in the permit and the DEM's Air Pollution Regulation No. 29.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Compliance reports submitted to DEM on 26 February 2015 generally indicated ongoing compliance with the terms of 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 \$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