

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Rhode Island Hospital**

**FILE NO.: AIR 10 – 15**

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 593 Eddy Street in Providence, Rhode Island (the “Facility”).
- (2) The Facility is a stationary source of air pollutants subject to the DEM Air Pollution Control (“APC”) Regulations.
- (3) On 11 March 2009, the DEM Office of Air Resources (“OAR”) issued Operating Permit No. RI-02-09 (the “Permit”) to the Respondent.
- (4) The Permit prohibits the use or storage of fuel oil with a sulfur content greater than 1.0% by weight except for use with marine vessels or motor vehicles or unless the Director declares in writing that a shortage of low sulfur fuel exists.
- (5) On 28 April 2010, OAR inspected the Facility. The inspection revealed that the Respondent received nine deliveries of fuel oil with a sulfur content of greater than 1.0% by weight for use in the Facility’s boilers.
- (6) The Director has not declared in writing that a shortage of low sulfur fuel exists.

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) **APC Regulation No. 29, Section 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:

**Twenty Two Thousand Five Hundred Dollars (\$ 22,500.00)**

- (2) The proposed administrative penalty is calculated pursuant to the DEM Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the Director within twenty 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,” 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 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  
235 Promenade Street, 3<sup>RD</sup> Floor  
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 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:

Joseph J. 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 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) 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 E above.

FOR THE DIRECTOR

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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:

Rhode Island Hospital  
c/o Kenneth E. Arnold, Registered Agent  
167 Point Street  
Providence, RI 02903

by Certified Mail.

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## **ADMINISTRATIVE PENALTY SUMMARY**

Program: OFFICE OF COMPLIANCE AND INSPECTION, AIR  
 File No.: AIR 10 – 15  
 Respondent: Rhode Island Hospital

<b>GRAVITY OF VIOLATION</b>					
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 a permit	Type I (\$ 10,000 Max. Penalty)*	Minor	\$ 2,500	9	\$22,500
<b><i>SUB-TOTAL</i></b>					<b>\$22,500.00</b>

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

**PENALTY MATRIX WORKSHEET**

CITATION: Failure to comply with a permit

VIOLATION NO.: C (1)

<b>TYPE</b>		
<p style="text-align: center;"><b><u>X</u> TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><b>TYPE III</b></p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
<p>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</p>		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Section 10 (a) (2) of the DEM <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 accepted nine deliveries of fuel oil containing greater than 1.0% sulfur by weight in violation of its permit. The Respondent is a stationary source of air pollutants subject to federal and state air pollution control regulations. The use of high sulfur fuel is directly related to the protection of public health, safety, welfare or environment.</p> <p>(B) <b>Environmental conditions:</b> Not relevant.</p> <p>(C) <b>Amount of the pollutant:</b> The amount of the pollutant is unknown. The sulfur content of the fuel oil ranged from 1.03% to 1.13% by weight.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> 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) <b>Duration of the violation:</b> The fuel deliveries occurred between 19 December 2009 and 9 January 2010.</p> <p>(F) <b>Areal extent of the violation:</b> Not relevant.</p>		
<p>(continued)</p>		

(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 acceptance of fuel containing greater than 1.0% sulfur by weight.
- (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 relevant.
- (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.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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