

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE:   Town of Smithfield  
          Smithfield School Department**

**FILE NO.: AIR 11 – 08**

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 parties (“Respondents”) have violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B.    Facts

- (1)    The subject facility is the Smithfield High School located at 90 Pleasant View Avenue in the town of Smithfield, Rhode Island (the “Facility”).
- (2)    The Town of Smithfield owns the Facility.
- (3)    The Smithfield School Department operates the Facility.
- (4)    The Facility is (and has been) subject to the DEM Air Pollution Control (“APC”) Regulations, including but not limited to APC Regulation No. 9, entitled “Air Pollution Control Permits” (“APC Regulation No. 9”).
- (5)    On 17 December 2010, the Smithfield School Department submitted a letter to DEM’s Office of Air Resources (“OAR”). The letter stated that two boilers are in operation at the Facility (the “Boilers”).
- (6)    On or about 25 March 2011, the OAR was informed in a telephone conversation with a Smithfield School Department representative of the following:
  - (a)    The Boilers burn #2 fuel oil;
  - (b)    The Boilers have a maximum heat input capacity of 6.95 million British thermal units (“Btus”) per hour; and
  - (c)    The Boilers were installed in April 1999.
- (7)    As of the date of this Notice of Violation (“NOV”), the Respondents have failed to submit an application to OAR to obtain a permit for the Boilers.

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 9.2.1(a)** – requiring that no person install any stationary source subject to the provisions of the regulation without obtaining permit from the DEM for each proposed installation described in Subsection 9.3.1.
- (2) **APC Regulation 9.3.1(a)** – requiring a permit for any fuel burning device designed to burn residual oil or solid fossil fuels having a heat input capacity of one million Btus or more per hour or all other liquid fuels having a heat input capacity of five million Btus or more per hour.

D. 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) **Within thirty (30) days of receipt of this NOV**, submit to OAR a complete minor source permit application for each of the Boilers in accordance with APC Regulation No. 9 and associated permit application fees in accordance with the DEM's Rules and Regulations Governing the Establishment of Various Fees.
- (2) **Within thirty (30) days of receipt of any correspondence from OAR regarding deficiencies in the minor source permit applications**, correct all deficiencies and resubmit the permit applications to OAR.

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:

**Two Thousand Three Hundred Eighty Eight Dollars (\$2,388.00)**

- (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 (20) days of your receipt of the NOV. Payment shall be in the form of a check 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 respondents 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.

- (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 the Director determines that reasonable efforts have been made to comply promptly with this NOV.

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 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 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  
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:

Richard M. Bianculli Jr., 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) Richard M. Bianculli Jr. 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:

Town of Smithfield  
c/o Dennis G. Finlay, Town Manager  
64 Farnum Pike  
Esmond, RI 02917

Smithfield School Department  
c/o Robert M. O'Brien, Superintendent  
49 Farnum Pike  
Smithfield, RI 02917

by Certified Mail.

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## **ADMINISTRATIVE PENALTY SUMMARY**

Program: OFFICE OF COMPLIANCE AND INSPECTION, AIR

File No.: AIR 11 – 08

Respondents: Town of Smithfield and Smithfield School Department

<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) and C (2) - Failure to obtain a permit	Type I (\$ 10,000 Max. Penalty)*	Minor	\$1,000	2 violations	\$2,000
<b>SUB-TOTAL</b>					<b>\$2,000.00</b>

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

**ADMINISTRATIVE PENALTY SUMMARY** (continued)

<b>ECONOMIC BENEFIT FROM NONCOMPLIANCE</b>		
<p><b>COSTS OF COMPLIANCE, EQUIPMENT, O&amp;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:</b></p> <ul style="list-style-type: none"> <li>- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR</li> <li>- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.</li> </ul>		
<i>DESCRIPTION OF BENEFIT</i>	<i>CALCULATION</i>	<b>AMOUNT</b>
<p>Economic Benefit of noncompliance realized by the Respondents for failing to apply for an air pollution permit for two boilers subject to permitting requirements was calculated by utilizing an EPA program called "BEN". BEN calculated the economic gain of noncompliance based upon a detailed economic analysis. Dates, dollar amounts, and values utilized in the BEN Program are as listed.</p>	<p>Minor Source Permit: \$1,271 Due: April 30, 1999<sup>1</sup></p> <p>Assumed receipt of application fee by OAR (economic benefit compliance date): May 31, 2011</p>	<p>\$ 388.00</p>
<b>SUB-TOTAL</b>		<b>\$ 388.00</b>

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$ 2,388.00**

**PENALTY MATRIX WORKSHEET**

CITATION: Failure to obtain a permit

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

<b>TYPE</b>		
<p><u>  X  </u> <b>TYPE I</b>  <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>      </u> <b>TYPE II</b>  <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u>      </u> <b>TYPE III</b>  <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 <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 Respondents failed to apply for or obtain a minor source permit prior to its installation of the Boilers. The facility is a stationary source of air pollutants subject to state air pollution control regulations. Compliance with permitting and operating requirements is of importance to the regulatory program.</p> <p>(B) <b>Environmental conditions:</b> Not relevant.</p> <p>(C) <b>Amount of the pollutant:</b> Not relevant.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Not relevant.</p> <p>(E) <b>Duration of the violation:</b> Not relevant.</p> <p>(F) <b>Areal extent of the violation:</b> Not relevant.</p> <p style="text-align: right;">(continued)</p>		



(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondents failed to take reasonable and appropriate steps to obtain the required permit.
- (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 Respondents had complete control over the violation since the Respondents own/operate the facility. The violation was foreseeable by the Respondents.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The Smithfield School Department self disclosed to OAR its failure to apply for and obtain a minor source permit prior to the installation of the Boilers.

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