

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Sprague Operating Resources LLC

**FILE NOs.: OCI-AIR-18-112
and OCI-AIR-19-58**

AAD NO.: 19-001/ARE

AMENDED 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. Administrative History

On 28 September 2018, DEM met with Respondent’s representatives to discuss odor complaints that DEM was investigating located in the area surrounding the facility that is the subject of this Notice of Violation (“NOV”). On 11 December 2018, DEM met again with Respondent’s representatives (as the odor complaints continued). At that meeting, Respondent’s representatives presented a plan to DEM to install equipment to control odors from two of the bulk storage tanks located at the facility. The schedule included submission of an application to DEM for a permit for the equipment by 15 January 2019 and operation of the system by 15 June 2019. Also discussed were other actions that could be taken until the system was in operation, such as cease delivery of product to the tanks and use of chemical agents to reduce odors. On 28 February 2019, DEM sent electronic correspondence to Respondent’s representatives. The correspondence stated that DEM continued to receive odor complaints and that, based on recent inspections, DEM had concerns that a third tank may be the source of the odors and/or contributing to the odors. DEM asked Respondent whether an investigation of this tank as a source of odors was performed and to provide an update on the schedule to install the equipment. DEM did not receive a response to this correspondence. On 22 March 2019, DEM sent electronic correspondence to Respondent’s representatives that included a report prepared by DEM’s inspector documenting an objectionable odor from the facility that morning. DEM requested an update on the schedule to install the equipment. On 27 March 2019, DEM received electronic correspondence from Jay Leduc, Director of Health, Safety, Environment and Sustainability of Sprague Resources GP, LLC, stating that the project remained on schedule. Mr. Leduc stated that Respondent was waiting for an analysis of the asphalt product from its supplier, Irving Oil, to submit a complete permit application to DEM for the equipment. On 15 April 2019, in a telephone conversation with DEM, Mr. Leduc stated that the earliest the air pollution control system would be operational is 30 July 2019. On 17 May 2019, DEM issued the NOV to Respondent. Respondent timely filed an appeal of the NOV with DEM’s Administrative

Adjudication Division. On 21 June 2019, Respondent applied to DEM for a permit for the equipment. On 26 August 2019, DEM issued a letter to Respondent authorizing Respondent to install the equipment prior to obtaining a permit from DEM. On 5 September 2019, Respondent notified DEM that the equipment was operational. DEM continued to receive complaints about odors and forwarded the complaints to Respondent. On 25 March 2020, Respondent advised DEM that it intended to expand the air pollution control system to the third tank. On 8 April 2020, DEM sent electronic correspondence to Respondent's representatives that included a report prepared by DEM's inspector documenting an objectionable odor from the facility the previous morning. DEM stated in the correspondence that DEM believed the source of the objectionable odor was the third tank. On 28 April 2020, Mr. Leduc submitted electronic correspondence to DEM stating that the system was operational for the third tank. On 7 October 2020, Respondent applied to DEM for a permit for the equipment.

C. Facts

- (1) The subject property is located at 120 Allens Avenue (also identified as 144 Allens Avenue), Assessor's Plat 46, Lot 160 in the City of Providence, Rhode Island (the "Property"). The Property includes a facility that receives and distributes liquid asphalt and other petroleum products that are stored in above ground storage tanks (the "Facility").
- (2) The Facility is a stationary source of air pollutants subject to regulations titled *Odors (250-RICR-120-05-17)* [effective 19 July 2007 to Current] (the "Odor Rules")
- (3) Respondent operates the Facility and is registered with the Rhode Island Secretary of State as a wholesale distributor of natural gas, coal and petroleum products.
- (4) On or about September 2017, tank number 1 ("Tank 1") and tank number 6 ("Tank 6") at the Facility were converted to store liquid asphalt product (referred to as road grade asphalt). These tanks previously stored petroleum products. Additionally, tank number 5 ("Tank 5") contains a liquid asphalt product (referred to as roofing flux).
- (5) Following the conversion of Tank 1 and Tank 6 to the storage of road grade asphalt, DEM began receiving odor complaints in the area surrounding the Facility that were characterized as petroleum, asphalt and/or sulfur in nature and conducted inspections in response to these complaints.
- (6) On 11 December 2018, DEM met with Respondent's representatives to discuss complaints DEM had received and DEM's inspection findings regarding the same. During this meeting, Respondent's representatives presented a plan and implementation schedule to install air pollution control equipment (the "Air Pollution System") to control odors from Tank 1 and Tank 6. The schedule included submission of an application to DEM for a permit for the system by 15 January 2019 and operation of the system by 15 June 2019.

- (7) DEM continued to receive odor complaints in the area surrounding the Facility that were characterized as petroleum, asphalt and/or sulfur in nature.
- (8) On 22 March 2019, DEM inspectors detected an odor beyond the Property line that was categorized as objectionable. The inspectors were traveling on Allens Avenue under the bridge outside of the Facility. The odor was described as a sulfur odor mixed with an asphalt odor and was determined to be emanating from the Facility.
- (9) On 7 May 2019, DEM's inspector detected an odor beyond the Property line that was categorized as objectionable at the entrance gates to Collier Point Park, located on Henderson Street. The odor was described as a sulfur odor mixed with an asphalt odor and was determined to be emanating from the Facility.
- (10) On 8 May 2019, DEM's inspector detected an odor beyond the Property line that was categorized as objectionable at the entrance gates to Collier Point Park, located on Henderson Street. An objectionable odor was also detected on Allens Avenue, adjacent to Tank 6. The odors were described as a sulfur odor mixed with an asphalt odor and were determined to be emanating from the Facility.
- (11) On 21 June 2019, Respondent applied to DEM's Office of Air Resources ("OAR") for a permit for the Air Pollution System (the "Application").
- (12) On 26 August 2019, OAR issued a letter to Respondent authorizing Respondent to install the Air Pollution System prior to obtaining a permit from OAR.
- (13) On 5 September 2019, Respondent notified DEM that the Air Pollution System was operational.
- (14) DEM continued to receive complaints about odors and forwarded the complaints to Respondent.
- (15) On 7 April 2020, DEM's inspector detected an odor beyond the Property line that was categorized as objectionable on Allens Avenue outside the Facility and near Champion Salt. These odors were characterized as an asphalt/sulfur mix.
- (16) On 8 April 2020, DEM sent electronic correspondence to Respondent's representatives that included a report prepared by DEM's inspector documenting the objectionable odor from the Facility the previous morning. DEM stated in the correspondence that DEM believed the source of the objectionable odor was Tank 5.
- (17) On 28 April 2020, Mr. Leduc submitted electronic correspondence to DEM stating that the Air Pollution System was operational for Tank 5.
- (18) On 7 October 2020, Respondent submitted an amended Application to OAR for Tank 1, Tank 5 and Tank 6 (the "Amended Application").

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) **Odor Rules, Part 17.5** – prohibiting any person from emitting or causing to be emitted into the atmosphere any air contaminant or combination of air contaminants which creates an objectionable odor beyond the property line of said person.

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 **within 30 days (unless a longer time is specified) of receiving a notification of deficiencies with the Amended Application**, submit to OAR a modified application or additional information to correct the deficiencies.

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:

\$30,000

- (2) The proposed administrative penalty is calculated pursuant to the *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* [effective 31 December 2001 to Current] (the “Penalty Regulations”) 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 DEM’s Office of Compliance and Inspection, 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.

G. Response to Amended Notice of Violation

- (1) A response, by each Respondent, to this Amended NOV shall be in accordance with Rule 15 of the Superior Court Rules of Civil Procedure.
- (2) In accordance with Rule 15 of the Superior Court Rules of Civil Procedure, each Respondent shall have ten (10) days after service of the Amended NOV, unless otherwise ordered or agreed upon, to file a response to the Amended NOV with DEM's Administrative Adjudication Division:

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

- (3) A copy of the response to the Amended NOV must also be forwarded to:

Tricia Quest, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767

- (4) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (5) Failure to comply with the Amended NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) The Amended 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) Tricia Quest of DEM's Office of Legal Services at (401) 222-6607 or at tricia.quest@dem.ri.gov. All other inquiries should be directed to David E. Chopy of DEM's Office of Compliance and Inspection at (401) 222-1360, ext. 7400 or at david.chopy@dem.ri.gov

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

David E. Chopy, Administrator
DEM Office of Compliance and Inspection

Dated: _____

CERTIFICATION

I hereby certify that on the _____ day of _____
the within Amended NOV was forwarded to:

Michael J. Daly, Esq.
Pierce Atwood, LLP
One Financial Plaza 26th Floor
Providence, RI 02903

Michelle N. O'Brien, Esq.
Pierce Atwood, LLP
100 Summer Street, Suite 2250
Boston, MA 02110



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, AIR
 File Nos.: OCI-AIR-18-112 and OCI-AIR-19-58
 Respondent: Sprague Operating Resources LLC

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) – Objectionable odors	Type I <i>(\$10,000 Max. Penalty) *</i>	Major	\$7,500	4 violations	\$30,000
SUB-TOTAL					\$30,000

*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 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 = \$30,000

PENALTY MATRIX WORKSHEET

CITATION: Objectionable odors
 VIOLATION NO.: D (1)

TYPE		
<u> X </u> TYPE I DIRECTLY related to protecting health, safety, welfare or environment.	_____TYPE II INDIRECTLY related to protecting health, safety, welfare or environment.	_____TYPE III INCIDENTAL to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED: Taken from Part 1.10(A)(1)(b) of the Penalty Regulations.</p> <p>(1) The extent to which the act or failure to act was out of compliance: Respondent failed to prevent objectionable odors from the Facility from migrating beyond the Property line. The Facility is a stationary source of air pollutants subject to state air pollution control regulations. Compliance with the air pollution control regulations is of major importance to the regulatory program.</p> <p>(2) Environmental conditions: The area surrounding the Facility is a densely developed commercial/industrial/residential neighborhood. A heavily traveled interstate highway corridor (Route I-95 and Route I-195) is located north, south and west of the Facility. The Facility is within 800-1,800 feet of Rhode Island Hospital, Women & Infants Hospital and Hasbro Children’s Hospital, and it is within 1,000 feet of the nearest residences. The Facility is in an Environmental Justice Area, which is defined by DEM as an area where the percent of the block group that is minority OR low-income (under 2x Federal Poverty Level) is high enough to rank in the top 15% of block groups state-wide. Rhode Island has the 9TH highest prevalence of asthma in children in the nation (10.9% of children), and Providence has the highest asthma emergency department rate for children (13.7 per 1000) in Rhode Island. Air pollution is an irritant that can trigger asthma.</p> <p>(3) Amount of the pollutant: Unknown.</p> <p>(4) Toxicity or nature of the pollutant: Volatile organic compounds and sulfur compounds associated with petroleum products. An assessment by the U.S. Department of Health and Human Services Centers for Disease Control and Prevention concluded that asphalt fumes are associated with irritation of the eyes, nose and throat. The objectionable odor was described by DEM inspectors as a sulfur odor mixed with an asphalt odor.</p> <p>(5) Duration of the violation: The Facility emitted an odor that traveled beyond the Property line for sufficient duration and concentration to be objectionable to DEM inspectors on 22 March 2019, 7 May 2019, 8 May 2019 and 7 April 2020.</p> <p>(6) Areal extent of the violation: On 22 March 2019, the objectionable odor was detected by DEM inspectors on Allens Avenue under the bridge outside the Facility. A borderline objectionable odor described as an asphalt/sulfur mix was detected as far south as Public Street. On 7 May 2019 and 8 May 2019, the objectionable odor was detected by DEM’s inspector on Henderson Street, at the entrance to Collier Point Park. Additionally, on 8 May 2019, an objectionable odor was detected on Allens Avenue, adjacent to Tank 6. These odors were also characterized as an asphalt/sulfur mix. On 7 April 2020, the objectionable odors were detected by DEM’s inspector on Allens Avenue outside the Facility and near Champion Salt. These odors were characterized as an asphalt/sulfur mix.</p>		
(continued)		

(continued from the previous page)

- (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. Respondent converted 2 storage tanks from heating oil to liquid asphalt in September 2017. Respondent knew that the liquid asphalt product is more volatile than heating oil and knew that emissions from the tanks may be a source of significant odors. On 28 September 2018, DEM met with Respondent’s representatives to discuss odor complaints that DEM was investigating located in the area surrounding the Facility. On 11 December 2018, DEM met again with Respondent’s representatives (as the odor complaints continued). At that meeting, Respondent’s representatives presented a plan to DEM to install the Air Pollution System for Tank 1 and Tank 6. The schedule included submission of an application to DEM for a permit for the system by 15 January 2019 and operation of the system by 15 June 2019. Also discussed were other actions that could be taken until the system was in operation, such as cease delivery of product to the tanks and use of chemical agents to reduce odors. On 28 February 2019, DEM sent electronic correspondence to Respondent’s representatives. The correspondence stated that DEM continued to receive odor complaints and that, based on recent inspections, DEM had concerns that Tank 5 may be the source of the odors and/or contributing to the odors. DEM asked Respondent whether an investigation of Tank 5 as a source of odors was performed and to provide an update on the schedule to install the system. DEM did not receive a response to this correspondence. On 22 March 2019, DEM sent electronic correspondence to Respondent’s representatives that included a report prepared by DEM inspectors documenting an objectionable odor from the Facility that morning. DEM requested an update on the schedule to install the system. On 27 March 2019, DEM received electronic correspondence from Jay Leduc stating that the project remained on schedule. Mr. Leduc stated that Respondent was waiting for an analysis of the product from its supplier, Irving Oil, to submit a complete permit application to DEM for the system. On 15 April 2019, in a telephone conversation with DEM, Mr. Leduc stated that the earliest the system would be operational is 30 July 2019. On 21 June 2019, Respondent applied to OAR for a permit for the system for Tank 1 and Tank 6. On 26 August 2019, OAR issued a letter to Respondent authorizing Respondent to install the system prior to obtaining a permit from OAR. On 5 September 2019, Respondent notified DEM that system was operational. DEM continued to receive complaints about odors and forwarded the complaints to Respondent. On 8 April 2020, DEM sent electronic correspondence to Respondent’s representatives that included a report prepared by DEM’s inspector documenting an objectionable odor from the Facility the previous morning. DEM stated in the correspondence that DEM believed the source of the objectionable odor was Tank 5. On 28 April 2020, Mr. Leduc submitted electronic correspondence to DEM stating that the system was operational for Tank 5. Respondent took measures to mitigate the noncompliance by installing the Air Pollution System for Tank 1, Tank 5 and Tank 6 and on 7 October 2020 submitted the Amended Application.
- (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 has complete control over the violation. Respondent operates the Facility. The violation was foreseeable by Respondent.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

 X MAJOR

MODERATE

MINOR

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 \$7,500	\$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