

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Toray Plastics (America), Inc.

FILE NO.: AIR 11 – 16

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 50 Belver Avenue in the town of North Kingstown, 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 31 March 2010, the DEM issued Operating Permit No. RI-28-08(R5) to the Respondent (the “Permit”). The Permit authorizes the Respondent to emit air pollutants from a turbine at the Facility (“Emission Unit P107”).
- (4) The Permit requires the Respondent to achieve an emissions rate of nitrogen oxides from Emission Unit P107 at or below 35.3 pounds per hour when firing fuel oil with the duct burners fired.
- (5) On 11 February 2011 the Respondent submitted to the DEM the results of stack testing of Emissions Unit P107 that was conducted on 10 December 2010. The results showed that the emissions rate of nitrogen oxides from Emission Unit P107 when firing fuel oil with the duct burners fired was 35.9 pounds per hour.

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 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:

**Two Thousand Five Hundred Dollars (\$ 2,500.00)**

- (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 Director within twenty (20) 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's 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 (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, Second 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 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:

Toray Plastics (America), Inc.  
c/o William F. Paquin, Esq., Registered Agent  
2348 Post Road, Suite 19  
Warwick, RI 02886

by Certified Mail.

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## ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, AIR

File No.: AIR 11 – 16

Respondent: Toray Plastics (America), Inc.

<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 achieve a NO <sub>x</sub> emission limitation as required by permit	Type I (\$ 10,000 Max. Penalty)*	Minor	\$ 2,500	1 violation	\$2,500
<b>SUB-TOTAL</b>					<b>\$2,500</b>

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

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$ 2,500.00**

**PENALTY MATRIX WORKSHEET**

CITATION: Failure to achieve a NO<sub>x</sub> emission limitation as required by the permit

VIOLATION NO.: C (1)

<b>TYPE</b>		
<p style="text-align: center;"><u>  X  </u> <b>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>		
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 <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, while conducting stack testing for NO<sub>x</sub>, failed to operate specific equipment in compliance with its NO<sub>x</sub> emissions limit in its permit. The Respondent is a stationary source of air pollutants subject to federal and state air pollution control regulations. Compliance with emissions limitations of the permit is of essential importance to the regulatory program.</p> <p>(B) <b>Environmental conditions:</b> Respondent's stack testing in December 2010 indicated an exceedance of NO<sub>x</sub>, a pollutant that contributes to ozone formation in the presence of volatile organic compounds and sunlight. Rhode Island is classified as a nonattainment area for ozone National Ambient Air Quality Standards.</p> <p>(C) <b>Amount of the pollutant:</b> The emission limit in the permit is 35.3 pounds NO<sub>x</sub> per hour while the turbine is firing oil with the duct burner operating. Data from the December 2010 stack testing indicated that the equipment averaged 35.9 pounds NO<sub>x</sub> per hour, about a 1.7% excess.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Nitrogen oxides (NO<sub>x</sub>), gases that form when fossil fuel is burned at high temperatures, contribute to acid rain, to eutrophication in coastal waters, and to the formation of ozone in ambient air.</p> <p>(E) <b>Duration of the violation:</b> 1 day. The stack test was performed on 10 December 2010.</p> <p>(F) <b>Areal extent of the violation:</b> 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 failed to take reasonable and appropriate steps to prevent the noncompliance. The Respondent mitigated the violation by retesting the turbine after issuance of a Notice of Alleged Violations by DEM to the Respondent on 8 April 2011. On 6 June 2011, Respondent conducted a supplementary stack test of the turbine. According to a summary of results submitted to DEM, the stack test documented compliance with the NOx emissions limit of the 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 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:** Not utilized for this calculation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not utilized for this calculation.

<b>MAJOR</b>	<b>MODERATE</b>	<u>  <b>X</b>  </u> <b>MINOR</b>
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 10,000		<b>TYPE I</b>	TYPE II	TYPE III
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$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>MINOR</b>	\$1,000 to \$2,500 <b>\$2,500</b>	\$500 to \$1,000	\$100 to \$500