

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: University of Rhode Island

FILE NO.: AIR 10 – 12

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 523 Plains Road, Kingston, Rhode Island (“the Facility”) and is operated by the Respondent.
- (2) The Facility is a stationary source of air pollutants subject to the DEM Air Pollution Control (“APC”) Regulations.
- (3) On 23 August 2006, the DEM Office of Air Resources (“OAR”) issued Operating Permit No. 13-06 to the Respondent for the Facility (the “Permit”).
- (4) The Permit requires the Respondent to:
 - (a) Provide contemporaneous notice to the OAR prior to making changes that are not addressed or prohibited by the Permit, except for changes that qualify as exempt activities. The notice shall describe each change, including the date, and change in emissions, pollutants emitted, and any applicable requirement that would apply as a result of the change (the “Notice Requirements”).
 - (b) Obtain a minor source permit from OAR prior to constructing, installing, modifying or causing the construction, installation or modification of any stationary source subject to the provisions of APC Regulation No. 9.
 - (c) Submit reports to OAR for the semiannual period ending 30 June of each calendar year no later than forty-five days after the end of the reporting period.
- (5) On 10 April 2008, the Respondent submitted a letter to OAR that disclosed the installation of fossil fuel burning equipment at the Facility between October 2006

and March 2008. One piece of equipment installed was a diesel fired 350 kW emergency generator (the “350 kW generator”).

- (6) On 17 April 2008, OAR issued a letter to the Respondent advising the Respondent that:
 - (a) the installation of the fossil fuel burning equipment, with the exception of two natural gas fired water heaters, did not qualify as an exempt activity;
 - (b) the Respondent was required to provide written notice to OAR to satisfy the Notice Requirements; and
 - (c) the 350 kW generator has a heat input capacity above 350,000 British thermal units per hour (“BTUs/hr”) and requires a minor source permit from OAR pursuant to the provisions of APC Regulation No. 9.
- (7) On 23 November 2009, OAR inspected the Facility. The inspection revealed that the Respondent failed to submit its semi-annual monitoring report for the reporting period ending 30 June 2009.
- (8) On 10 March 2010, the Respondent submitted the semi-annual monitoring report to OAR.
- (9) On 12 April 2010, the Respondent submitted a letter to OAR that satisfied the Notice Requirements.
- (10) On 12 April 2010, the Respondent submitted a permit application to OAR for a fuel oil fired 800 kW emergency generator installed in April 2009. The application stated that the maximum heat input rating for the generator is 7.782 million Btus/hr.
- (11) As of the date of this Notice of Violation (“NOV”), the Respondent has failed to submit a permit application to OAR for the 350 kW generator and upon information and belief, continues to operate the generator.

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. 9, Section 9.2.1 (a)** – prohibiting the construction, installation or modification of any stationary source without obtaining a minor source permit from DEM for each proposed installation or modification described in APC Regulation 9.3.1
- (2) **APC Regulation No. 9, Section 9.31 (a)** – requiring a minor source permit for any fuel burning device designed to burn residual oil having a heat input capacity of one million BTU/hr or more.

- (3) **APC Regulation No. 9, Section 9.31 (b)** – requiring a minor source permit for any emergency generator with a heat input capacity of 350,000 BTUs/hr or more and the date of initial startup is on or after November 15, 2007.
- (4) **APC Regulation No. 29, Section 29.4.6** – requiring compliance with an operating permit.

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 **within forty-five days of receipt of the NOV**, submit a permit application to the OAR for the 350 kW generator that satisfies APC Regulation No. 9.

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:

Three Thousand One Hundred Ninety-Nine Dollars (\$ 3,199.00)

- (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 NOV. Payment shall be in the form of a 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.
- (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 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, 3RD 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, 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 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 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:

Dr. David M. Dooley, President
University of Rhode Island
35 Campus Avenue, Green Hall
Kingston, RI 02881-1303

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, AIR

File No.: AIR 10 – 12

Respondent: University of Rhode Island

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	
C (1), C(2), and C (3) – Failure to obtain a permit	Type I (\$ 10,000 Max. Penalty)*	Minor	\$ 1,000	2	\$2,000
C (4) – Failure to comply with an operating permit	Type III (\$ 2,500 Max. Penalty)*	Minor	\$ 500	2	\$1,000
SUB-TOTAL					\$3,000.00

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

ADMINISTRATIVE PENALTY SUMMARY (continued)

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.		
DESCRIPTION OF BENEFIT	CALCULATION	AMOUNT
Economic Benefit of noncompliance realized by the Respondent for failing to apply for an air pollution permit for equipment subject to permitting requirements was calculated using 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.	Minor Source Permit \$ 1,271 ¹ Due: 1 December 2007 Receipt of application fee by OAR (economic benefit compliance date): Estimated as 1 October 2010	\$ 199.00
SUB-TOTAL		\$ 199.00

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$ 3,199.00

¹ For installation of a 350 kW emergency generator that commenced approximately in March 2008.

PENALTY MATRIX WORKSHEET

CITATION: Failure to obtain a permit
 VIOLATION NO.: C (1), (2) and (3)

TYPE		
<u> X </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> </u> TYPE III <u>INCIDENTAL</u> 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:</p> <p>Taken from Section 10 (a) (2) of the DEM <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 apply for or obtain a minor source permit prior to its installation of a 350 kW emergency generator in March 2008 and an 800 kW emergency generator in April 2009. The Respondent 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) Environmental conditions: Not relevant.</p> <p>(C) Amount of the pollutant: Not relevant.</p> <p>(D) Toxicity or nature of the pollutant: Not relevant.</p> <p>(E) Duration of the violation: The Respondent has not, to date, submitted a permit application and processing fee to the DEM Office of Air Resources (OAR) for the 350 kW generator. The duration of the violation is about twenty-nine months.</p> <p style="padding-left: 40px;">The duration of the violation for the failure to submit a permit application for the 800 kW emergency generator was about twelve months.</p> <p>(F) Areal extent of the violation: Not relevant.</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 obtain the required permit for the 350 kW emergency generator. OAR issued a Notice of Alleged Violations (NOAV) to the Respondent on 3 March 2010 requiring submission of a permit application and processing fee. To date, the Respondent has failed to comply with the NOAV.

In April 2010, the Respondent self-disclosed its installation of an 800 kW emergency generator in April 2009 and submitted a general permit application to OAR.

- (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 violations were foreseeable by the Respondent.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The installation of the 350 kW emergency generator and 800 kW emergency generator were self disclosed by the Respondent.

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 \$1,000	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Failure to comply with an operating permit
 VIOLATION NO.: C (4)

TYPE		
<p style="text-align: center;"><u> </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> </u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> X </u> TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
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 <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 its required semi-annual monitoring report for 2009 no later than forty-five days following the end of the reporting period pursuant to its permit. The Respondent also failed to contemporaneously notify the DEM Office of Air Resources (OAR) of the installation of equipment pursuant to its permit (Respondent disclosed the installation of multiple pieces of fossil fuel burning equipment to OAR in a letter in April 2008).</p> <p>The Respondent is a stationary source of air pollutants subject to federal and state air pollution control regulations. Compliance with the requirements pertaining to monitoring reports and notifications about the installation of additional equipment not addressed in the operating permit is of importance to the regulatory program.</p> <p>(B) Environmental conditions: Not relevant.</p> <p>(C) Amount of the pollutant: Not relevant.</p> <p>(D) Toxicity or nature of the pollutant: Not relevant.</p> <p style="text-align: right;">(continued)</p>		

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- (E) **Duration of the violation:** OAR received the semi-annual monitoring report for the reporting period ending 30 June 2009 on 10 March 2010, which is approximately seven months past the 15 August 2009 date due.

On 12 April 2010, OAR determined that the Respondent had satisfied the requirement to provide written notice for all the equipment installed at the facility as listed in the correspondence of 10 April 2008, about two years after disclosing it to OAR.

- (F) **Areal extent of the violation:** Not relevant.
- (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 failed to comply with the terms of its permit until after it received a Notice of Alleged Violations issued by OAR to the Respondent on 3 March 2010
- (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 previously cited for noncompliance with the requirement to submit a semi-annual monitoring report within forty-five days following the end of the six month reporting period. DEM had previously advised the Respondent of its responsibility to comply with APC Regulations.
- (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 violations since the Respondent is the operator of the Facility. The violations were 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	\$500 to \$1,000	\$100 to \$500 \$500