

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF COMPLIANCE & INSPECTION

IN RE: Alton Realty Corp.
NFA Corp.

No.: OC&I/FW/C99-0088; OC&I/WP/04-11;
OC&I/ISDS/C104-36; OC&I/SW/04-026;
OWM/SR/99-037; OC&I/AIR/04-06

NOTICE OF VIOLATION

A. Introduction

Pursuant to *Sections 42-17.1-2(u) and 42-17.6-3 of the Rhode Island General Laws, as amended*, 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 property is located at the confluence of the Wood and Pawcatuck Rivers, at 299 Church Street, in the Town of Richmond, Assessor's Plat 11A, Lots 6 and 42 (the "Property").
- (2) The Property is owned by Alton Realty Corp. and includes a textile manufacturing facility (the "Manufacturing Facility"). Charbert Inc. was the prior owner of the Property. Charbert, Inc. purchased the Property on September 11, 1962 and transferred the Property to Alton Realty Corp. on December 18, 1991.
- (3) The Manufacturing Facility is currently operated by Respondent NFA Corp. ("NFA"). Charbert, Inc. and Alton Operating Corp. were prior operators of the Manufacturing Facility.
- (4) **Underground Injection Control (UIC)-Unauthorized Wastewater Lagoon and Unauthorized Discharge of Boiler Blowdown to Wastewater Lagoons**
 - (a) Charbert, Inc. received approval from the Department of Health on July 12, 1976 and the Department of Natural Resources on August 5, 1976 to construct 2 wastewater lagoons on the Property ("Lagoon #1 and Lagoon #2"). The wastewater lagoons were designed to allow process wastewater to infiltrate into the underlying soil.
 - (b) The Department of Health advised Charbert, Inc. on July 11, 1978 that the construction of a proposed third lagoon, to be located south of Lagoon #2 ("Lagoon #3"), was authorized under the Department of Health approval issued on July 12, 1976.
 - (c) Aerial photographs reveal that Charbert, Inc. constructed Lagoon #3 as of April 1981.

- (d) Alton Operating Corp submitted an application to DEM on April 30, 1992 for an Underground Injection Control ("UIC") approval to discharge process wastewater from the Manufacturing Facility into Lagoon #1, Lagoon #2, and Lagoon #3 (collectively, the "Wastewater Lagoons"). DEM approved the discharge of process wastewater to the Wastewater Lagoons on December 3, 1992 (UIC Order of Approval #1108).
- (e) Inspections by DEM on December 23, 1998, December 24, 1998, and December 31, 1998 revealed that process wastewater from the Manufacturing Facility was being discharged to an unauthorized wastewater lagoon (the "Holding Pond") as evidenced by:
 - (i) visual observations of an excavated pond located immediately east of the Wastewater Lagoons;
 - (ii) visual observations of water with a dark tint in the Holding Pond;
 - (iii) photographs taken on December 24, 1998 showing water with a dark tint in the Holding Pond;
 - (iv) laboratory results of water samples that were collected of the Holding Pond which revealed the presence of nickel, barium, chromium, copper, lead, and zinc; and
 - (v) verbal statements from William Rowan, Vice President of Operations for Respondent NFA, Corp., on December 23, 1998 that process wastewater from the Wastewater Lagoons is pumped into the Holding Pond for infiltration into the underlying soil when maintenance of the Wastewater Lagoons is required.
- (f) Aerial photographs reveal that Charbert, Inc. constructed the Holding Pond between April 1981 and April 1985.
- (g) The Respondents do not have approval from DEM to discharge process wastewater into the Holding Pond.
- (h) DEM issued a Notice of Intent to Enforce to NFA on April 13, 1999 for the unauthorized discharge of process wastewater to the Holding Pond (the "UIC NOI"). The UIC NOI required NFA to provide DEM with a description of all current wastewater discharges (and volumes) to the Wastewater Lagoons and Holding Pond.
- (i) In letters that were submitted to DEM by NFA's consultant, Clayton Environmental Consultants ("Clayton"), on May 3, 1999 and William Rowan of NFA on July 21, 1999 (in response to the UIC NOI), DEM was provided a description of all current wastewater discharges to the Wastewater Lagoons and Holding Pond. DEM was advised that boiler blowdown condensate is discharged into the Wastewater Lagoons.
- (j) Underground Injection Control Order of Approval #1108 does not authorize the Respondents to discharge boiler blowdown condensate to the Wastewater Lagoons.

- (k) Clayton submitted a proposed remedial action plan to DEM on August 12, 1999 on behalf of NFA. The plan described two options, which were either the closure of the Holding Pond and the construction of a new lagoon or the partial closure of the Holding Pond and continued use of the remaining portion of the Holding Pond. The plan also described testing of the sediment in the Holding Pond to determine if the sediment had to be removed prior to closure of the Holding Pond.
- (l) DEM issued a letter to NFA on November 2, 2000 on the proposed remedial action plan. DEM requested further information on the boiler blowdown condensate, a detailed site plan of the Wastewater Lagoons and Holding Pond, and additional testing of the sediment in the Holding Pond to properly characterize the material.
- (m) William Rowan of NFA submitted a letter to DEM on December 20, 2000 in response to the November 2, 2000 letter.
- (n) DEM issued a letter to NFA on January 11, 2001 in response to the December 20, 2000 letter. DEM advised NFA that the information on the boiler blowdown condensate and proposed sediment testing was acceptable.
- (o) William Rowan of NFA submitted the detailed site plan to DEM on February 16, 2001 and a revised site plan on April 12, 2001.
- (p) Upon information and belief, as of November 2000, NFA ceased using the Holding Pond as a regular part of its process water discharge. NFA has discharged process water to the Holding Pond in 2004 for emergency purposes to prevent a breach in the Wastewater Lagoons (see related Fact 13 below).

(5) **Surface Water -Leachate Discharge to Pawcatuck River**

- (a) Inspections by DEM on December 23, 1998, December 24, 1998, and December 31, 1998 revealed that pollutants (in the form of dye waste) were discharged from the Property to the waters of the State identified as the Pawcatuck River as evidenced by:
 - (i) visual observations of water with a dark tint and foam leaching out of the ground east of the Holding Pond (the "Leachate") and entering the Pawcatuck River.
 - (ii) visual observations showing that the Holding Pond contained water with a dark tint and was at a higher elevation than the area of the Leachate.
 - (iii) odors detected in the Leachate that was the same as the odors detected in the Holding Pond.
 - (iv) photographs taken on December 24, 1998 and December 31, 1998 showing the Leachate entering the Pawcatuck River.

- (v) laboratory results of water samples that were collected of the Leachate, the Pawcatuck River, and the Holding Pond. The results revealed that the Leachate contained chromium, lead, zinc, and naphthalene; the Pawcatuck River upstream of the Leachate contained cadmium, nickel, barium, chromium, copper, lead, and zinc; the Pawcatuck River downstream of the Leachate contained cadmium, chromium, and lead; and the Holding Pond contained nickel, barium, chromium, copper, lead, and zinc.
- (b) The Pawcatuck River is designated by DEM as a Class B water. Class B water is designated for fish and wildlife habitat and primary and secondary contact recreational activities.
- (c) The Respondents do not have approval from DEM to discharge Leachate to the waters of the State.
- (d) DEM issued a Notice of Intent to Enforce to NFA on April 13, 1999 for the discharge of Leachate to the Pawcatuck River (the "Water Pollution NOI").
- (e) The Water Pollution NOI required NFA to submit a plan to cease the discharge of Leachate.
- (f) In letters that were submitted to DEM by Clayton on May 3, 1999 and William Rowan of NFA on July 21, 1999 (in response to the Water Pollution NOI) DEM was advised that NFA would be installing a water recycling system to reduce the process wastewater discharges into the Wastewater Lagoons and Holding Pond.
- (g) Clayton submitted a proposed remedial action plan to DEM on August 12, 1999 on behalf of NFA. The plan described two options, which were either the closure of the Holding Pond and the construction of a new lagoon or the partial closure of the Holding Pond and continued use of the remaining portion of the Holding Pond.
- (h) An inspection by DEM on May 2, 2000 revealed no evidence of Leachate. The Holding Pond was dry at the time of the inspection and NFA was in the process of installing the new process water system to reduce the amount of process water discharged to the Wastewater Lagoons.
- (i) In a telephone discussion between William Rowan and a DEM representative on October 23, 2000, DEM was advised that the new process water system was in operation and that reduction in water usage of 30% to 40% had been achieved. Mr. Rowan further stated that NFA no longer had a need to discharge process wastewater to the Holding Pond.
- (j) DEM issued a letter to NFA on November 2, 2000 advising NFA that based on the inspection findings on May 2, 2000 and the agreement by NFA to cease further use of the Holding Pond that DEM considered the water pollution violation resolved.

(6) **Solid Waste-Stockpiling of Lagoon Scrapings**

- (a) The approval from the Department of Health on July 12, 1976 and the Department of Natural Resources on August 5, 1976 to construct Lagoon #1 and Lagoon #2 allowed for periodic removal of the surface layer of accumulated organic material from the wastewater lagoons (the "Lagoon Scrapings") and stockpiling of the Lagoon Scrapings on the Property.
- (b) Rizzo and Associates, Inc. ("Rizzo") prepared a Phase I Environmental Audit/Investigative report on August 8, 1991 for NFA ("Phase I Report"). The Phase I Report summarized the findings of an audit performed by Rizzo on June 11 and 12, 1991. The report stated that no Lagoon Scrapings were visibly discernible on the Property; however, it had been reported to Rizzo that Lagoon Scrapings had been pushed up on the banks of the Wastewater Lagoons on a few occasions.
- (c) DEM received a copy of a Phase I Report on March 19, 1997.
- (d) The Phase I Report stated that the Lagoon Scrapings are considered solid waste and the disposal of the Lagoon Scrapings is regulated by DEM. The Phase I Report stated that the Lagoon Scrapings could be managed by landfilling off-site.
- (e) Inspection by DEM on April 13, 1999 and September 8, 1999 revealed that Lagoon Scrapings were being stockpiled on the Property as evidenced by:
 - (i) visual observations of sand piles immediately north of a utility casement on the Property.
 - (ii) photographs taken on September 8, 1999 showing sand piles immediately north of the a utility casement on the Property.
- (f) In a letter submitted to DEM on July 21, 1999 from William Rowan of NFA, DEM was advised that the practice of storing Lagoon Scrapings on the Property has occurred over the 23 years the Wastewater Lagoons have been in operation. Mr. Rowan further stated that DEM has been aware of and has sanctioned this practice. NFA agreed to submit a testing plan to properly characterize the Lagoon Scrapings as required by DEM.
- (g) Clayton submitted a proposed testing plan to DEM on August 12, 1999. The plan described testing of the Lagoon Scrapings and a proposal to reuse the Lagoon Scrapings for the closure or partial closure of the Holding Pond and restoration of the altered freshwater wetlands (see related Facts 4 and 7 below).
- (h) DEM issued a letter to NFA on November 2, 2000 on the proposed testing plan. DEM advised NFA that additional testing of the Lagoon Scrapings must be conducted to determine if the material is suitable for use.

- (i) Clayton submitted a revised testing plan to DEM on November 30, 2000. Clayton stated in the letter that approximately 3,800 cubic yards of Lagoon Scrapings are stockpiled on the Property.
- (j) DEM issued a letter to NFA on December 18, 2000 in response to the revised testing plan submitted by Clayton on November 30, 2000. DEM advised NFA that the proposed testing plan was unacceptable and offered an alternate testing plan to characterize the Lagoon Scrapings.
- (k) William Rowan of NFA submitted a letter to DEM on December 20, 2000, which provided the information requested by DEM in its November 2, 2000 letter.
- (l) DEM issued a letter to NFA on January 11, 2001 in response to the December 20, 2000 letter. DEM advised NFA that the testing of the Lagoon Scrapings had to comply with the letter sent by DEM on December 18, 2000.
- (m) Clayton submitted a revised testing plan to DEM on May 17, 2001, which was approved by DEM.
- (n) DEM evaluated the results of Clayton's testing and determined that the Lagoon Scrapings met the definition of solid waste based upon DEM's Rules and Regulations for Composting Facilities and Solid Waste Management Facilities (see related Facts 8, 10 and 11 below).

(7) **Freshwater Wetland-Unauthorized Lagoon Construction and Other Activity in Riverbank Wetland**

- (a) DEM advised Charbert, Inc. on October 3, 1979 and January 14, 1980 that construction of Lagoon #3 and a proposed fourth lagoon was considered a significant alteration of freshwater wetlands and would require the submission of an application to alter freshwater wetlands.
- (b) Inspection by DEM on April 13, 1999 revealed that alterations of freshwater wetlands were conducted on the Property by undertaking the following activities (the "activities"):
 - (i) excavating, filling (in the form of soil material), creating soil disturbance, and clearing within a 200-foot Riverbank Wetland. These alterations are associated with the gravel excavation/borrow/fill area located to the northeast of the Wastewater Lagoons. The work resulted in the alteration of approximately 30,000 square feet of Freshwater Wetland.
 - (ii) excavating, filling (in the form of soil material), clearing, grading, and creating soil disturbance to create Lagoon #3 and the Holding Pond and the installation of chain link fence, in a separate portion of the 200-Foot Riverbank Wetland. The work resulted in the alteration of approximately 44,000 square feet of Freshwater Wetland.
- (c) Aerial photographs reveal that the activities identified in Fact (7) (b) (i) and (ii) above were present as of April 1981. These activities were

extended further into the 200-foot Riverbank Wetland between April 1981 and April 1988 and represent extant conditions to date.

- (d) The Respondents authorized or allowed the discharge of processed wastewater into the Holding Pond that was constructed within the 200-Foot Riverbank Wetland and allowed piles of Lagoon Scrapings to remain in the 200-Foot Riverbank Wetland in the vicinity of the Holding Pond and the excavation/borrow/fill area to the northeast of the Wastewater Lagoons.
- (e) Charbert, Inc. did not submit an application to alter freshwater wetlands to DEM and was never issued a permit from the Director to alter freshwater wetlands. The Respondents did not submit an application to alter freshwater wetlands to DEM for the purpose of discharging processed wastewater into the Holding Pond within the 200-Foot Riverbank Wetland and were never issued a permit from the Director to use the 200-Foot Riverbank Wetland for such a purpose.
- (f) DEM issued a Notice of Intent to Enforce to the Respondents on June 24, 1999 for certain unauthorized freshwater wetland violations (the "Freshwater Wetland NOI").
- (g) The Freshwater Wetland NOI required the Respondents to restore all altered freshwater wetlands on the Property.
- (h) Clayton submitted a proposed remedial action plan to DEM on August 12, 1999 on behalf of NFA. The plan described testing of the Lagoon Scrapings and a proposal to reuse the Lagoon Scrapings for the restoration of the altered freshwater wetlands.
- (i) DEM and Clayton met on September 8, 1999 at the Property to identify and delineate the limits of the 200-foot Riverbank Wetland on the Property. Detailed on-site measurements performed during the inspection revealed that Lagoon #3 and the chain link fence were constructed outside the Riverbank Wetland; therefore, Lagoon #3 and the chain link fence were not in violation of DEM regulations.
- (j) DEM issued a letter to NFA on November 2, 2000 on the proposed remedial action plan. DEM requested that NFA perform additional testing of the Lagoon Scrapings to determine if the material is suitable for use. NFA was advised that if the Lagoon Scrapings are not suitable, NFA must complete the wetland restoration with suitable fill material.
- (k) Clayton submitted a revised testing plan to DEM on November 30, 2000.
- (l) DEM issued a letter to NFA on December 18, 2000 in response to the revised testing plan submitted by Clayton on November 30, 2000. DEM advised NFA that the proposed testing plan was unacceptable and offered an alternate testing plan to characterize the Lagoon Scrapings.
- (m) William Rowan of NFA submitted a letter to DEM on December 20, 2000, which provided the information requested by DEM in its November 2, 2000.

- (n) DEM issued a letter to NFA on January 11, 2001 in response to the December 20, 2000 letter. DEM advised NFA that the testing of the Lagoon Scrapings had to comply with the letter sent by DEM on December 18, 2000. NFA was further advised that the wetland restoration could not commence until the sampling results were reviewed and approved by DEM.
- (o) Clayton submitted a revised testing plan to DEM on May 17, 2001, which was approved by DEM.
- (8) Clayton submitted letters to DEM on July 18, 2001, September 12, 2001, and October 5, 2001 on the findings of the testing of the Lagoon Scrapings and sediment in the Holding Pond. Clayton concluded that:
 - (a) an elevated concentration of an unknown hydrocarbon was detected in the Lagoon Scrapings; however, the hydrocarbon was not consistent with petroleum.
 - (b) the unknown hydrocarbon appeared to be a silicone-based compound, most likely a silicone-based lubricant.
 - (c) silicone is a common component of many compounds used during the finishing of fabric and is found in many softeners used by NFA and would likely be the source.
 - (d) DEM has no standards for silicone based lubricants in soil.
 - (e) an additional compound, para-tertiary-butylphenol ("PTBP"), was identified in the soil sample and is typically used as a soap antioxidant.
 - (f) PTBP is insoluble in water and cannot migrate from the soil to groundwater.
 - (g) DEM has no standards for PTBP in soil or groundwater.
- (9) Clayton requested on behalf of NFA that DEM approve the use of the Lagoon Scrapings for the partial closure of the Holding Pond and for the wetland restoration.
- (10) DEM issued a letter to NFA on December 27, 2001 advising NFA that DEM determined that the Lagoon Scrapings are considered solid waste and did not meet the criteria to allow its use for the closure of the Holding Pond and the wetland restoration. DEM based this determination on the presence of a non-petroleum hydrocarbon (silicon oil) in the Lagoon Scrapings.
- (11) DEM advised NFA in the December 27, 2001 letter that the Lagoon Scrapings must be disposed in accordance with the solid waste regulations within thirty (30) days and the wetland restoration must be completed using other suitable soil/fill material. DEM offered to consider alternative proposals to minimize the need to use large quantities of fill material for the wetland restoration.

- (12) William Rowan of NFA submitted a letter to DEM on January 31, 2002 in response to the December 27, 2001 letter. Mr. Rowan stated that removal of the Lagoon Scrapings as solid waste would pose a financial hardship and that NFA did not believe there was any technical, regulatory, scientific, or public health reason why the material could not be reused and requested that DEM reconsider its determination.
- (13) NFA requested approval from DEM in April 2004 to use the Holding Pond on an emergency basis to prevent the overtopping of the Wastewater Lagoons caused by heavy rainfall. DEM gave verbal authorization to NFA to use the Holding Pond.
- (14) NFA advised DEM that removal of the surface layer of accumulated organic material from the Wastewater Lagoons and stockpiling of the Lagoon Scrapings on the Property was completed in June and July 2004.
- (15) **Groundwater- Volatile Organic Compound Contamination**
 - (a) DEM received the following reports that document concentrations of hazardous substances in groundwater on the Property, including chlorinated volatile organic compounds:
 - (i) The Phase I Environmental Audit/Investigative report prepared by Rizzo on August 8, 1991.
 - (ii) A UIC status report prepared by Clayton on March 19, 1997.
 - (iii) Quarterly groundwater monitoring reports submitted by NFA to DEM.
 - (b) The groundwater on the Property is designated as a Class GA by DEM. Class GA water is designated as suitable for public or private drinking water use without treatment.
 - (c) The volatile organic compounds in the groundwater on the Property exceed the GA standards.
 - (d) DEM issued a Letter of Responsibility to NFA on October 18, 2000 for the release of hazardous substances that constitutes a source area of contamination.
 - (e) DEM determined that the current process water system uses contaminated groundwater, which is pumped from a source area, and discharges it still contaminated with chlorinated volatile organic compounds into the Wastewater Lagoons.
 - (f) DEM determined that the process water system is acting as a source of contamination to the Wastewater Lagoons.
 - (g) The Letter of Responsibility required NFA to complete a Site Investigation and submit a Site Investigation Report that proposes two remedial alternatives in addition to natural attenuation.

- (h) Clayton submitted a Site Investigation Work Plan to DEM on May 23, 2003 that was approved by DEM on June 30, 2003 (the "Work Plan").
- (i) Clayton submitted a Groundwater Sampling Report to DEM on February 17, 2004. DEM provided a response to the report on March 12, 2004 requesting that NFA provide a comprehensive Site Project Schedule of upcoming events and document submittal dates.
- (j) Clayton submitted a letter to DEM on April 2, 2004 in response to the March 12, 2004 letter. Clayton stated that a comprehensive Site Project Schedule would be provided to DEM.
- (k) Clayton submitted a Interim Site Investigation Report to DEM on May 13, 2004. The report stated that additional investigations are ongoing, however, no Site Project Schedule was provided in the report.
- (l) DEM issued a letter to Clayton on June 11, 2004 providing comments on the Proposed Deep Aquifer Investigation dated April 23, 2004 and the Addendum dated May 19, 2004. DEM advised Clayton and NFA that DEM still has not received a comprehensive Site Project Schedule.
- (m) GZA GeoEnvironmental, Inc. submitted to DEM on August 3, 2004 on behalf of NFA a comprehensive Site Project Schedule.

(16) **ISDS- Bacterial Contamination of Drinking Water Well**

- (a) DEM received the following reports that summarize the findings of groundwater monitoring and studies performed on the Property and adjacent residential properties:
 - (i) Groundwater Sampling Report prepared by Clayton on February 17, 2004 (the "Groundwater Sampling Report").
 - (ii) Interim Site Investigation Report prepared by Clayton on May 13, 2004 (the "Interim Site Investigation Report").
- (b) The Groundwater Sampling Report revealed that the drinking water well for residential property at 18 River Street, Richmond, RI contained fecal coliform bacteria, which is indicative of sewage contamination. The report also provided information that showed three septic systems located within 140 feet of the drinking water well.
- (c) The Interim Site Investigation Report revealed that only one septic system is upgradient of the drinking water well for 18 River Street based on the direction of groundwater flow, which is the septic system located on the Property.
- (d) DEM collected water samples of the drinking water wells for residential properties at 16 and 18 River Street on June 18, 2004. The results revealed the presence of fecal coliform bacteria for 18 River Street.
- (e) DEM issued a Notice of Intent to Enforce ("ISDS NOI") to NFA on June 23, 2004 for a failed septic system at the Property.

- (f) The ISDS NOI required NFA to reduce the discharge of sewage to the septic system and submit a plan to DEM to correct the violation (including an inspection and repair of the septic system, if necessary) and provide an alternate supply of potable water to the residents at 18 River Street.
- (g) In a letter that was submitted to DEM by NFA's legal counsel on July 20, 2004 (in response to the ISDS NOI), DEM was advised of the actions NFA was taking to comply with the ISDS NOI, which included an evaluation of water usage, an inspection of the septic system, and the construction of a bedrock well on the 18 River Street property.

(17) **Air- Opacity Monitors**

- (a) On 13 July 2004, an inspector from DEM inspected the Manufacturing Facility to determine compliance with state and federal air pollution regulations. Pursuant to that inspection:
 - (i) An Eclipse boiler rated at 12.5 million BTU per hour was not equipped with an opacity monitor with audio alarm that was operational, and
 - (ii) A Konus oil heater # 2 was not equipped with an opacity monitor with audio alarm that was operational.
- (b) The DEM inspector observed that NFA operates/has operated a 12.5 million BTU per hour boiler and Konus oil heater # 2 in noncompliance with air pollution regulations of the State of Rhode Island and the Rhode Island State Implementation Plan. Said boiler and oil heater burned liquid fuel and neither one was equipped with a fully-operational, calibrated opacity monitor with an alarm audible by the operator or any other person responsible for the boiler or heater when the opacity monitor gauge indicated twenty percent or higher opacity.

(18) **Air- Objectionable Odor**

- (a) On 30 July 2004, an inspector from DEM detected an odor emitting from the Property that was objectionable beyond the property line of the Manufacturing Facility.
- (b) The Respondents are subject to Air Pollution Control Regulation No. 17, entitled "Odors".

C. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes, regulations, and/or other requirements:

- (1) *RI General Laws §2-1-21* and Rule 7.01 of the *Freshwater Wetland Regulations*, prohibiting any activity which may alter freshwater wetlands without a permit from the DEM.
- (2) *The Rhode Island Water Pollution Act*
 - (a) R.I.G.L. 46-12-5(a) - prohibiting the placing of a pollutant in a location where it is likely to enter the waters of the state.
 - (b) R.I.G.L. 46-12-5(b) - prohibiting the discharge of any pollutant into the waters of the state except as in compliance with any regulations and pursuant to the terms and conditions of a permit.
- (3) *DEM's Water Quality Regulations*
 - (a) Rule 11(B)-prohibiting the discharge of any pollutant into any water of the state except as in compliance with the law or regulations and pursuant to the terms and conditions of a permit.
 - (b) Rule 13 (A)-prohibiting the discharge of any pollutant into, or conduct any activity which will likely cause or contribute pollution to the waters of the State without having obtained all required approvals from DEM.
- (4) *DEM's Air Pollution Control Regulation No. 6, entitled "Continuous Emissions Monitors"*
 - (a) Section 6.2.2 -relating to the requirement that any fossil fuel fired steam or hot water generating unit having a heat input capacity of five million BTU per hour or more burning liquid fuel shall be equipped with an opacity monitor with audio alarm.
 - (b) Section 6.2.3- specifying that the required opacity monitor must be calibrated to sound the alarm at 20 percent opacity, must be operated continuously during combustion of fuel, and the audio alarm must be located in an area where it will be heard by the operator of or other person responsible for the unit(s).
- (5) *DEM's Groundwater Quality Regulations*
 - (a) Section 8.02 -prohibiting the discharge of any pollutant to groundwater without the approval of the DEM.
 - (b) Section 8.04 - prohibiting the operation of a facility in a manner that is likely to result in a discharge of a pollutant to groundwater without approval from the DEM.
- (6) *DEM's Underground Injection Control Regulations*
 - (a) Section 5.03 (a) - prohibiting the operation of a facility which pollutes or endangers the groundwater quality of the State.
 - (b) Section 5.03 (b) - prohibiting the operation of a facility which violates any regulation of any State agency.
 - (c) Section 6.03 - prohibiting the discharge of fluid into the ground without first obtaining an approval from DEM.
 - (d) Section 6.04 – prohibiting any person from installing or constructing a subsurface disposal system used to dispose of waste of a non-domestic

nature without written approval of the plans and specifications of the work from the DEM.

- (7) *DEM's Rules and Regulations Establishing Minimum Standards Relating to Location, Design, Construction, and Maintenance of Individual Sewage Disposal Systems (the "ISDS Regulations")*
 - (a) Section SD 2.11- requiring maintenance of a septic system in good repair.
- (8) *RI General Laws §23-18.9-5* relating to the disposal of solid waste at other than a licensed solid waste management facility.
- (9) *RI General Laws §23-18.9-8* relating to operating a solid waste management facility without a license.
- (10) *DEM's Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases (the "Remediation Regulations")*
 - (a) Section 4.01-prohibiting any release of hazardous material in any manner which may impact the classification of land, ground water, or surface water without complying with all applicable rules and regulations.
 - (b) Section 4.02-requiring any responsible party who is notified of the release or presence of hazardous materials to initiate investigations and actions as specified in the regulations.
 - (c) Section 7.01-relating to the requirement that the owner of a contaminated site, when required by DEM, conduct an investigation to assess the nature and extent of the contamination and design a proposed remedy in a specified amount of time.
- (11) *DEM's Air Pollution Control Regulation No. 17, entitled "Odors", Section 17.1* relating to the requirement that no person shall emit or cause 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.

D. Order:

Based upon the violations alleged above and pursuant to *R.I. Gen. Laws §42-17.1-2(u)*, you are hereby **ORDERED** to:

- (1) IMMEDIATELY cease and desist from any further alteration of the above-described freshwater wetlands.
- (2) IMMEDIATELY cease and desist any further use of the Holding Pond.
- (3) IMMEDIATELY take steps to reduce the discharge of sewage to the septic system at the Property, such as through the use of water conservation devices and maintain the reduction of sewage to the septic system until such time that an evaluation has been completed that shows that the system is working properly or a repair to the septic system on the Property is complete, functional and a letter of conformance has been issued by the DEM for the system repair.
- (4) WITHIN THIRTY (30) DAYS OF RECEIPT OF THE NOV, Respondent NFA shall take any and all actions required to achieve and maintain compliance with

Rhode Island Air Pollution Control Regulation 6, "Continuous Emissions Monitors" by ensuring that Respondent's Eclipse boiler(s) and Konus heater(s) are each equipped with a fully operational and compliant opacity monitor and audio alarm.

- (5) WITHIN TEN (10) DAYS OF ACHIEVING COMPLIANCE WITH ITEM D (4) ABOVE, Respondent NFA shall document to DEM in writing all actions taken to achieve compliance with this order
- (6) WITHIN THIRTY (30) DAYS OF RECEIPT OF THE NOV, Respondent NFA shall take any and all actions required to achieve and maintain compliance with Rhode Island Air Pollution Control Regulation 17, "Odors".
- (7) WITHIN THIRTY (30) DAYS OF RECEIPT OF THE NOV, the Respondents shall revise the Site Plan of the Property that was prepared by Clayton and dated February 17, 2004 to show the following:
 - (a) Property lines.
 - (b) Existing dimensions and depths of the Wastewater Lagoons and Holding Pond, including cross sections.
 - (c) Existing Lagoon Scraping stockpiles, including cross sections, that specify the location of the Lagoon Scrapings that are stockpiled on the Property.
 - (d) Existing structures, buildings, process wells, drinking wells, and monitoring wells.
 - (e) The extent and location of all regulated freshwater wetlands on the Property.

The revised Site Plan must be stamped and signed by a Rhode Island Registered Professional Land Surveyor.

- (8) WITHIN THIRTY (30) DAYS OF RECEIPT OF THE NOV, the Respondents shall submit a proposed sampling plan to DEM to characterize the Lagoon Scrapings that are stockpiled on the Property. The sampling plan shall follow the protocol described by Clayton in the May 17, 2001 letter submitted to DEM and include blueprint plans showing the proposed sampling locations (the "Lagoon Scraping Sampling Plan"). The sampling plan must also further characterize any total petroleum hydrocarbon present and determine what fraction is silicone based and what fraction is petroleum based.
- (9) WITHIN THIRTY (30) DAYS OF RECEIPT OF WRITTEN APPROVAL FROM DEM OF THE LAGOON SCRAPING SAMPLING PLAN, the Respondents shall complete the sampling and provide a written report to DEM of the findings, including copies of all analytical results.
- (10) WITHIN SIXTY (60) DAYS OF RECEIPT OF A WRITTEN LETTER FROM DEM CHARACTERIZING THE LAGOON SCRAPINGS AS SOLID WASTE OR HAZARDOUS WASTE, the Respondents shall properly dispose of all the Lagoon Scrapings either at a licensed solid waste management facility or at a licensed hazardous waste disposal facility.

- (11) WITHIN TEN (10) DAYS OF COMPLETION OF THE DISPOSAL OF THE LAGOON SCRAPINGS, the Respondents shall submit documentation of disposal (manifests, receipts, bills, weight slips, etc.) to DEM.
- (12) WITHIN THIRTY (30) DAYS OF RECEIPT OF THE NOV, the Respondents shall submit a proposed sampling plan to characterize the sediment in the Holding Pond (the "Holding Pond Sediment"). The plan must include the collection of three (3) discrete samples from representative locations along the bottom of the Holding Pond. The proposed sampling locations must be shown on blueprint plans of the Holding Pond. These samples must be analytically tested for volatile organic compounds (EPA method 8260), total petroleum hydrocarbons (EPA method 8100M), and TCLP metals (the "Sediment Sampling Plan"). The plan must include notification to DEM at least three working days prior to the collection of the samples. The sampling plan must also further characterize any total petroleum hydrocarbon present and determine what fraction is silicone based and what fraction is petroleum based.
- (13) WITHIN THIRTY (30) DAYS OF RECEIPT OF WRITTEN APPROVAL FROM DEM OF THE SEDIMENT SAMPLING PLAN, the Respondents shall complete the sampling and submit a UIC Closure Application to DEM for the complete closure of the Holding Pond. The UIC Closure Application must include:
 - (a) A written report characterizing the findings of the sampling, including copies of all analytical results.
 - (b) A narrative plan describing the proper method and disposal location of the sediment, if necessary, based on the characterization of the sediment.
 - (c) A narrative closure plan describing the type of fill material and volume, grading, best management practices to prevent erosion and sediment transport to the Pawcatuck River and undisturbed vegetated riverbank wetland, vegetative cover, and schedule for completion of the closure.
 - (d) A proposed final Site Plan stamped and signed by a Rhode Island registered Professional Engineer showing final grades and vegetative cover.
- (14) WITHIN FOURTEEN (14) DAYS OF RECEIPT OF WRITTEN APPROVAL OF THE UIC CLOSURE APPLICATION, the Respondents shall initiate the closure of the Holding Pond and complete the closure in accordance with the approved schedule.
- (15) WITHIN ONE HUNDRED EIGHTY (180) DAYS OF RECEIPT OF WRITTEN APPROVAL OF THE UIC CLOSURE APPLICATION, the Respondents shall restore all freshwater wetlands in accordance with the restoration requirements set forth below.
 - (a) Complete requirements (i) through (ix) below.
 - (i) Prior to the commencement of restoration, install a continuous uninterrupted line of staked haybales between the undisturbed wetlands and all areas of unauthorized alterations.

- (ii) Remove all unauthorized fill material from the 200-foot Riverbank Wetland. All fill material that is removed must be deposited outside any and all wetlands.
- (iii) Backfill all excavated areas within the 200-foot Riverbank Wetland to match the surrounding undisturbed grade. All fill placed into the excavated holes must be the same or similar to the material which was excavated from the wetland.
- (iv) Regrade all slopes resulting from fill removal to match the surrounding undisturbed grade. All regraded areas must be stabilized by seeding with a wildlife conservation grass seed mixture and by mulching all disturbed areas with a mat of loose hay.
- (v) Plant all unauthorized clear areas within the 200-foot Riverbank Wetland with trees and shrubs.

Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, ten feet (10') on center, four feet (4') tall after planting, throughout the area defined above. Tree species must include an equal distribution of at least three (3) of the following selections:

White pine, *Pinus strobus*;
 Pitch pine, *Pinus rigida*;
 Northern red oak, *Quercus rubra*;
 White oak, *Quercus alba*;
 Sassafras, *Sassafras albidum*;
 White spruce, *Picea glauca*;
 Black cherry, *Prunus serotina*; and
 American beech, *Fagus grandifolia*.

Balled and burlapped or transplanted shrub species must be planted in an interspersed fashion, ten feet (10') on center, three feet (3') tall after planting throughout the area defined above. Shrub species must include an equal distribution of at least four (4) of the following selections:

Mountain laurel, *Kalmia latifolia*;
 Flowering dogwood, *Cornus florida*;
 Sheepshead laurel, *Kalmia angustifolia*;
 Bayberry, *Myrica pensylvanica*;
 Tatarian honeysuckle, *Lonicera tatarica*;
 Lowbush blueberry, *Vaccinium angustifolium*
 Witchhazel, *Hamamelis virginiana*; and
 Great rhododendron, *Rhododendron maximum*

- (vi) If any or all of the required plantings fail to survive at least one (1) full growing season from the time they have been planted, you shall be responsible for replanting and maintaining the same plant species until such time that survival is maintained over one (1) full growing season.
- (vii) All restored disturbed areas, including replanted areas, must be allowed to revegetate to a natural wild state.

- (viii) All disturbed soil shall be loamed if necessary, and seeded with a wildlife conservation grass seed mixture and mulched with a mat of loose hay and, if necessary covered with excelsior matting or jute mesh.
- (ix) Upon stabilization of all disturbed areas all erosion and sedimentation controls must be removed from the freshwater wetland. Prior to the removal of the controls all accumulated sediment must be removed to a suitable upland area.
- (b) Contact Mr. Bruce Ahern of this Office at (401) 222-4700, extension 7703, prior to the commencement of restoration to ensure proper supervision and to obtain required restoration details. No work shall commence until such time that you have met in the field with a representative of this Office.
- (16) WITHIN FIFTEEN (15) DAYS OF RECEIPT OF THE NOV, the Respondents shall have the septic system at the Property inspected by a licensed designer to determine the cause of the system's failure and shall submit to DEM a Septic System Functional Inspection Report prepared by the licensed designer.
- (17) WITHIN THIRTY (30) DAYS OF THE COMPLETION OF THE SEPTIC SYSTEM FUNCTIONAL INSPECTION REPORT, the Respondents shall have the licensed designer submit a formal Application to Repair the septic system in accordance with the ISDS Regulations if the Functional Inspection Report concludes that a repair is necessary.
- (18) WITHIN TWENTY (20) DAYS OF APPROVAL OF THE ISDS APPLICATION BY DEM, the Respondents shall commence work on the septic system repair in accordance with the method approved by DEM and shall complete such work within one hundred twenty (120) days of said approval.
- (19) WITHIN FIFTEEN (15) DAYS OF RECEIPT OF THE NOV, the Respondents shall submit to DEM a plan to provide an alternate supply of potable water to the residence at 18 River Street, Richmond, RI so that the occupants of this dwelling can have a reliable source of clean water for drinking, bathing, and other uses. The work must be completed within thirty (30) days of receiving approval of the plan from DEM.
- (20) ON OR BEFORE MARCH 18, 2005, the Respondents shall submit to DEM a Final Site Investigation Report in accordance with Rule 7.08 of the Remediation Regulations, which at a minimum proposes two remedial alternatives in addition to natural attenuation for each area of concern identified in the Site Investigation Report.
- (21) The plans and documents required in paragraphs D (7), D (8), D (9), D (11), D (12), D (13), D (16), D (17), D (19), and D (20) above shall be subject to DEM review and approval. Upon review, DEM shall provide written notification to the Respondents either granting approval or stating the deficiencies therein. Within fourteen (14) days (unless a longer time is specified by the DEM) of receiving a notification of deficiencies, the Respondents shall submit to DEM a modified plan or additional information necessary to correct the deficiencies.

* * * * *

E. Assessment of Penalty:

- (1) Pursuant to *R.I. Gen. Laws §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:

Nine Thousand Five Hundred Dollars (\$9,500.00)

- (2) The proposed administrative penalty is calculated pursuant to the *Rules and Regulations for Assessment of Administrative Penalties*, as amended, and must be paid to the Director within 20 days of your receipt of this NOV. **Payment shall be in the form of a certified check or money order for \$9,500.00 made payable to "General Treasury-Water & Air Protection Program Account"**, and shall be forwarded to the DEM, Office of Management Services, 235 Promenade Street, Providence, Rhode Island 02908-5767, along with a copy of this NOV.
- (3) 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 §§42-17.1-2(u)(1), 42-17.6-4 and Chapter 42-35*, each named respondent is entitled to request a hearing before the Director or his designee regarding the allegations, orders and/or penalties set forth in Paragraphs B through E, above. **All requests for hearing MUST:**
- (a) Be in writing. *See* *R.I. Gen. Laws §§42-17.1-2(u)(1) and 42-17.6-4(a)*;
 - (b) Be **RECEIVED** by DEM's Administrative Adjudication Division within twenty (20) days of your receipt of this NOV. *See* *R.I. Gen. Laws Sections 42-17.1-2(u)(1), 42-17.1-2(u)(3), 42-17.6-4(a), and 42-17.7-9*;
 - (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*; **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 *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters*.

- (2) All written requests for hearing must be forwarded to:

Bonnie Stewart, Clerk
Department of Environmental Management
Administrative Adjudication Division
235 Promenade Street, Room 310
Providence, RI 02908

- (3) A copy of each request for hearing must also be forwarded to:

Bret Jedele, Esq.
DEM - Office of Legal Services
235 Promenade Street, Room 450
Providence, RI 02908

- (4) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (5) 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(u)(5) and 42-17.6-4(b).*
- (6) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
- (7) An original signed copy of this NOV is being forwarded to the Town of Richmond wherein the Property is located to be recorded in the land evidence records pursuant to R.I. General Laws Chapter 34-13 and Sections 2-1-24 and 23-18.9-13.
- (8) 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, please contact Attorney Bret Jedele of DEM's Office of Legal Services at (401) 222-4700 ext. 2312. Technical questions should be directed to Mr. David Chopy of DEM's Office of Compliance and Inspection at (401) 222-4700 ext. 7257.

FOR THE DIRECTOR


Dean Albro, Chief
Office of Compliance & Inspection
Department of Environmental Management

Date August 13, 2004

CERTIFICATION

I hereby certify that on the 13th day of August, 2004, a copy of the Notice of Violation and Order was forwarded to:

NFA Corp.
c/o CT Corporation System, Registered Agent
10 Weybosset Street
Providence, RI 02903

Alton Realty Corp.
c/o Adler, Pollock & Sheehan, Registered Agent
2300 Bank Boston Plaza
Providence, RI 02903

by Certified Mail, return receipt requested.





ADMINISTRATIVE PENALTY SUMMARY

Program: Office of Compliance and Inspection; Air and Freshwater Wetlands

File No.: OC&I/FW/C99-0088 and OC&I/AIR/04-06

File Name: Charbert, Division of NFA Corp.

| 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 (4) R.I. Air Pollution Control Regulation 6, Sections 6.2.2 and 6.2.3 | Type II <i>(\$ 5,000 Max. Penalty)*</i> | Moderate | \$ 2,500 | 2 | \$ 5,000 |
| # C (1) R.I. Freshwater Wetland Act, Alteration of Riverbank Wetland, Fact 7 (b)(i) | Type I <i>(\$1,000 Max. Penalty)*</i> | Major | \$1,000 | 1 event | \$1,000 |
| # C (1) R.I. Freshwater Wetland Act, Alteration of Riverbank Wetland, Fact 7 (b)(ii) | Type I <i>(\$1,000 Max. Penalty)*</i> | Major | \$1,000 | 1 event | \$1,000 |
| # C (11) R.I. Air Pollution Control Regulation 17, Section 17.1 | Type I <i>(\$ 10,000 Max. Penalty)*</i> | Moderate | \$ 2,500 | 1 | \$ 2,500 |
| SUB-TOTAL. | | | | | \$9,500.00 |

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

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$ 9,500.00

PENALTY MATRIX WORKSHEET

CITATION: R.I. Air Pollution Control Regulation 6, Sections 6.2.2 and 6.2.3
 VIOLATION NO.: C (4)

| TYPE | | |
|--|--|--|
| <p><u> </u> TYPE I <i>DIRECTLY</i> related to protecting health, safety, welfare or environment.</p> | <p><u> X </u> TYPE II <i>INDIRECTLY</i> related to protecting health, safety, welfare or environment.</p> | <p><u> </u> TYPE III <i>INCIDENTAL</i> to protecting health, safety, welfare or environment.</p> |
| 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 Rules and Regulations for Assessment of Administrative Penalties</p> <p>(A) The extent to which the act or failure to act was out of compliance: The Manufacturing Facility is out of compliance for operating one of the 12.5 million BTU per hour boilers and the Konus oil heater #2 without a compliant opacity monitor and integral audio alarm while firing #2 fuel oil. Preventing potential emissions of heavy smoke is a fundamental requirement of DEM's air pollution program for the State of Rhode Island.</p> <p>(B) Environmental conditions: Particulate emissions, among the products of combustion from the subject boiler and oil heater, contribute to lung disease in humans.</p> <p>The Facility may be characterized as industrial, with boilers and textile processing equipment emitting air pollution. The Facility borders residential neighborhoods primarily with single-family homes in a rural setting.</p> <p>(E) The duration of the violation: The date on which DEM documented noncompliance with these sections of Regulation 6 was 13 July 2004.</p> <p>(G) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance: The Respondents had taken reasonable and appropriate steps to install new opacity monitors on boilers and oil heaters at the Facility in mid-2000. The Respondents neglected to have the opacity monitors on and operational at the time one of its boilers and one of its oil heaters were firing oil.</p> <p>(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: Respondent NFA was advised by DEM Office of Air Resources of the requirement for the opacity monitors both verbally and in writing and Respondent NFA received a formal Notice of Violation by DEM Office of Compliance and Inspection in 2001 for similar violations.</p> <p style="text-align: right;">(Continued)</p> | | |

(Continued from the previous page)

- (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:** Respondent violation of Regulation 6 was foreseeable. An industrial boiler and oil heater should not be ignited with liquid fuel as its fuel source until the opacity monitoring equipment is verified as being calibrated and fully functional as to its light transmitter, light receiver and audio alarm.

Particulate pollutants discharged into the atmosphere can be transported long distances depending on atmospheric conditions (depending on particle size), and contribute to or cause adverse effects on human health and the environment. Smoky emissions from a boiler's or oil heater's fuel combustion are among the fundamental controllable air pollutants. The faster a boiler's attendant can be alerted to increased particulate matter in the boiler stack, the faster the problem causing the boiler to smoke can be corrected or curtailed. Similar reasons apply to their Konus oil heater.

- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The Deviation from the Standard is moderate because the Facility repeated noncompliance with Regulation 6 since being cited in a formal enforcement action in 2001.

MINOR MODERATE MAJOR

| 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 | \$ 10,000 to \$ 5,000 | \$ 5,000 to \$ 2,500 | \$ 2,500 to \$ 1,000 |
| | MODERATE | \$ 5,000 to \$ 2,500 | \$ 2,500 to \$ 1,000 \$ 2,500 | \$ 1,000 to \$ 500 |
| | MINOR | \$ 2,500 to \$ 1,000 | \$ 1,000 to \$ 500 | \$ 500 to \$ 100 |

PENALTY MATRIX WORKSHEET

CITATION: Alteration of 200-foot Riverbank Wetland, Fact 7 (b)(i)
 VIOLATION NO.: C (1)

| TYPE | | |
|--|--|---|
| <input checked="" type="checkbox"/> TYPE I <i>DIRECTLY</i> related to protecting health, safety, welfare or environment. | <input type="checkbox"/> TYPE II <i>INDIRECTLY</i> related to protecting health, safety, welfare or environment. | <input type="checkbox"/> TYPE III <i>INCIDENTAL</i> 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. | | |
| FACTORS CONSIDERED: Taken from Section 10 (a) (2) of the Rules and Regulations for Assessment of Administrative Penalties | | |
| (A) The extent to which the act or failure to act is out of compliance. The Respondents altered wetlands by excavating, filling (in the form of soil material), creating soil disturbance, and clearing in a 200-foot Riverbank Wetland. The severity of the alteration and the extent of noncompliance was determined to be of major significance to the regulatory program. | | |
| (B) Environmental conditions. The 200-foot Riverbank Wetland on this section of the Pawcatuck River was previously an undisturbed forest prior to the unauthorized alterations. | | |
| (E) The duration of the violation. Portions of the violation have been present for more than 23 years. | | |
| (F) The areal extent of the violation. The areal extent of the violation within the 200-foot Riverbank Wetland was approximately 30,000 square feet. | | |
| (G) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance. The Respondents failed to obtain the appropriate permit from DEM. | | |
| (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 project and had an obligation to protect the wetlands on the Property. | | |
| <input type="checkbox"/> MINOR | <input type="checkbox"/> MODERATE | <input checked="" type="checkbox"/> MAJOR |

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| Penalty Matrix where the applicable statute provides for a civil penalty up to \$1,000 | | TYPE I | TYPE II | TYPE III |
|--|----------|--------------------------------------|------------------|------------------|
| DEVIATION FROM STANDARD | MAJOR | \$800 -to- \$1,000 <u>\$1,000</u> | \$600 -to- \$800 | \$400 -to- \$600 |
| | MODERATE | \$600 -to- \$800 | \$400 -to- \$600 | \$200 -to- \$400 |
| | MINOR | \$400 -to- \$600 | \$200 -to- \$400 | \$100 -to- \$200 |

PENALTY MATRIX WORKSHEET

CITATION: Alteration of 200-foot Riverbank Wetland, Fact 7 (b)(ii)
 VIOLATION NO.: C (1)

| TYPE | | |
|--|--|---|
| <u>X</u> TYPE I <i>DIRECTLY</i> related to protecting health, safety, welfare or environment. | TYPE II <i>INDIRECTLY</i> related to protecting health, safety, welfare or environment. | TYPE III <i>INCIDENTAL</i> 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: Section 10(a)(2)</p> <p>(A) The extent to which the act or failure to act is out of compliance. The Respondents altered wetlands by excavating, filling (in the form of soil material), clearing, grading, and creating soil disturbance, to create seepage lagoons, along with the discharge of wastewater to the lagoons in a separate portion of the 200-foot Riverbank Wetland. Respondent NFA was informed prior to the alteration that a permit for lagoon construction was required. The severity of the alteration and the extent of noncompliance was determined to be of major significance to the regulatory program.</p> <p>(B) Environmental conditions. The 200-foot Riverbank Wetland on this section of the Pawcatuck River was previously an undisturbed forest prior to the unauthorized alterations.</p> <p>(E) The duration of the violation. Portions of the violation have been present for more than 23 years.</p> <p>(F) The areal extent of the violation. The areal extent of the violation within this area of the 200-foot Riverbank Wetland resulted in the unauthorized alteration of approximately 44,000 square feet of Freshwater Wetland.</p> <p>(G) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance. The Respondents failed to obtain the appropriate permit from DEM.</p> <p>(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 project and had an obligation to protect the wetlands on the Property.</p> | | |
| ___ MINOR | ___ MODERATE | <u>X</u> MAJOR |

(Continued)

(Continued from the previous page)

| Penalty Matrix where the applicable statute provides for a civil penalty up to \$1,000 | | TYPE I | TYPE II | TYPE III |
|--|----------|--------------------------------------|------------------|------------------|
| DEVIATION FROM STANDARD | MAJOR | \$800 -to- \$1,000 <u>\$1,000</u> | \$600 -to- \$800 | \$400 -to- \$600 |
| | MODERATE | \$600 -to- \$800 | \$400 -to- \$600 | \$200 -to- \$400 |
| | MINOR | \$400 -to- \$600 | \$200 -to- \$400 | \$100 -to- \$200 |

PENALTY MATRIX WORKSHEET

CITATION: R.I. Air Pollution Control Regulation No. 17, Section 17.1
 VIOLATION NO.: C (11)

| TYPE | | |
|--|--|---|
| <u> X </u> TYPE I <i>DIRECTLY</i> related to protecting health, safety, welfare or environment. | <u> </u> TYPE II <i>INDIRECTLY</i> related to protecting health, safety, welfare or environment. | <u> </u> TYPE III <i>INCIDENTAL</i> 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><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the Rules and Regulations for Assessment of Administrative Penalties</p> <p>(A) The extent to which the act or failure to act was out of compliance: Failure to prevent objectionable odors caused by Respondent NFA's Manufacturing Facility from migrating beyond the property line on 30 July 2004. This prohibition is clearly stated in DEM's air pollution regulations. The extent of noncompliance is direct due to complainants reporting physical symptoms of illness following exposure to Respondent NFA's Manufacturing Facility's odor. Prior to the violation, Respondent NFA was advised of its obligation to comply with Air Pollution Control Regulation No. 17, entitled, "Odors".</p> <p>(B) Environmental conditions: Respondent NFA's Manufacturing Facility may be characterized as industrial, with boilers and textile processing equipment emitting air pollution. The Manufacturing Facility borders residential neighborhoods primarily with single-family homes in a rural setting.</p> <p>(C) Amount of the pollutant: The actual amount of the pollutant(s) is unknown.</p> <p>(E) Duration of the violation: Respondent NFA's Facility emitted odors for sufficient duration to be objectionable to the DEM inspector.</p> <p>(F) Areal extent of the violation: Respondent NFA's Manufacturing Facility's objectionable odor was confirmed in a nearby residential neighborhood in the vicinity of Respondent NFA's Manufacturing Facility.</p> <p>(G) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance: To the best knowledge of DEM, Respondent NFA operated textile processing equipment and wastewater lagoons but failed to take reasonable and appropriate steps to prevent objectionable odors from traveling beyond the Respondent NFA's Manufacturing Facility's property line.</p> <p style="text-align: right;">(Continued)</p> | | |

(Continued from previous page)

- (II) **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:** Respondent NFA has previously failed to comply with other air pollution control regulations and received an enforcement action and assessment of penalties as a result of noncompliance. Respondent NFA was issued a Letter of Noncompliance for a previous objectionable odor.
- (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 violation was foreseeable to Respondent NFA. Respondent NFA's representatives attended at least one meeting with regulatory officials from DEM where at the issue of potentially increased odors from Respondent NFA's Lagoon # 1 might occur after activating aeration devices on its surface.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Since the beginning of 2004, DEM's OC&I has received one hundred forty-two (142) odor, emissions and/or smoke and odor complaints against Respondent NFA's Manufacturing Facility. In 2004, odor complaints against the Respondent NFA's Facility were received during every calendar month to date. Upon information and belief, Respondent NFA was aware of community objections to odors emanating from the Property. DEM's Office of Air Resources documented an objectionable odor emitted from the Respondent NFA's Facility on 30 July 2004. On that date, DEM's OC&I received eleven (11) odor complaints against Respondent NFA's Manufacturing Facility.

| | | |
|-----------|--------------|-----------|
| ___ MINOR | _X_ MODERATE | ___ MAJOR |
|-----------|--------------|-----------|

| 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 | \$ 10,000 to \$ 5,000 | \$ 5,000 to \$ 2,500 | \$ 2,500 to \$ 1,000 |
| | MODERATE | \$ 5,000 to \$ 2,500 <u>\$ 2,500</u> | \$ 2,500 to \$ 1,000 | \$ 1,000 to \$ 500 |
| | MINOR | \$ 2,500 to \$ 1,000 | \$ 1,000 to \$ 500 | \$ 500 to \$ 100 |