

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
ADMINISTRATIVE ADJUDICATION DIVISION**

**RE: MATERIAL SAMPLING TECHNOLOGIES, LLC. AAD NO. 15-001/ARA
REVISED MINOR SOURCE PERMIT NO. 2125**

DECISION AND ORDER

This matter came on before Hearing Officer David Kerins on the Motion to Dismiss filed by the Rhode Island Department of Environmental Management (the "Department" and the Objection thereto filed by the Applicant, Material Sampling Technologies, LLC (the "Applicant" or "MST"). The Department was represented by Susan B. Forcier, Esq. and the Applicant was represented by Jennifer R. Cervenka Esq. The Department filed its Memorandum in Support of Motion to Dismiss on May 7, 2015. Applicant filed its Memorandum in Support of its Objection to Motion to Dismiss on June 18, 2015. The Department filed a Reply Memorandum on July 10, 2015. An Oral Argument was presented on June 24, 2015.

Jurisdiction

The within proceeding was conducted in accordance with the statutes governing the Administrative Adjudication Division for Environmental Matters (R. I. General Laws §42-17.7-1 et. seq.); the *Administrative Procedures Act* (R. I. General Laws §42-35-1 et. seq.); and the *Administrative Rules of Practice and Procedure for the Department of Environmental Management, Administrative Adjudication Division for Environmental Matter* ("AAD Rules").

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Statement of Facts

The parties have presented individually a summary of facts in this matter which are not in dispute.

This matter stems from a prior enforcement action that was resolved by Consent Agreement. On or about March 25, 2011, the Department issued a minor source permit (Approval No. 2125) to Material Sampling Technologies, LLC (the "Permit") for a Penram Model C-700 starved air incinerator. The minor source permit required Materials Sampling Technologies, LLC ("MST") to conduct performance testing to demonstrate compliance with the emissions limits for particulate matter.

A Notice of Violation was issued to the MST on or about December 26, 2012 citing the MST with certain violations of the Air Pollution Control Regulations stemming from exceedances of emissions limits for particulate matter contained in the Permit, based on performance testing results from tests conducted in July of 2011 (the "NOV" was attached to the Department's Memorandum as Exhibit A). The NOV was resolved by Consent Agreement on or about November 21, 2013 (the "Consent Agreement", was attached to the Department's Memorandum as Exhibit B). The Consent Agreement required, among other things, that MST "conduct compliance testing on the Penram Model C-700 starved air incinerator to demonstrate continued compliance with the particulate emission limit in the Permit during the processing of circuit board material." *See Exhibit B, Consent Agreement, Paragraph C(4)(a)*. The Consent Agreement further required that "[s]hould testing results conducted pursuant to this Agreement fail to demonstrate compliance with the particulate emission limit in the Permit during the processing of

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circuit board material, the Petitioner shall immediately discontinue processing circuit board material.” *Id at Paragraph C(4)(d).*

On December 30, 2014, the Department received the results of the testing that was performed in July 2014 in accordance with the Consent Agreement. Those results failed to demonstrate compliance with the particulate emission limits in the Permit while processing circuit board material, and MST ceased processing circuit board material pursuant to the terms of the Consent Agreement. The Department then issued the Revised Minor Source Permit at issue in this appeal, in order to formalize the requirements of the Consent Agreement that the Petitioner entered with the Department by prohibiting the Petitioner from processing circuit board material. Applicant filed its appeal with the AAD on April 13, 2015.

Standard of Proof

The matter before the AAD is entitled a Motion to Dismiss. Counsel for the Applicant argues that the Department’s Motion is more properly considered as a Motion for Summary Judgment.

“A motion to dismiss must be made strictly on the pleadings and a motion to dismiss that relies on facts outside the pleadings must be treated as a motion for summary judgment” *Cipolla V. Rhode Island College*, 742 A.2d 277 (R.I. 1999). In this case it is a distinction without a difference.

Rule 8.00(a)(1) of the *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters* permits a party to file a motion

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that would otherwise be permissible under the Rhode Island Rules of Civil Procedure. Under R.I. Civ. P. 56(c), a party may file a motion for Summary Judgment and Summary Judgment shall be rendered forthwith if the pleadings together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Super. Ct. R. Civ. P. 56(c); *Palmisciano v. Burrillville Racing Ass'n*, 603 A.2d 317, 320 (R.I. 1992). Summary judgment is an extreme and drastic remedy, and should be applied cautiously and judiciously and only when there is clearly no genuine issue of material fact. See *McPhillips v. Zarye Corp.*, 582 A.2d 747 (R.I. 1990) and *Golderese v. Suburban Land Co.*, 590 A.2d 395 (R.I. 1991). "The party opposing the motion for summary judgment carries the burden of proving by competent evidence the existence of a disputed material issue of fact and cannot rest on allegations or denials in the pleadings or on conclusions or legal opinions." *Taylor v. Mass. Flora Realty, Inc.*, 840 A.2d 1126, 1129 (R.I. 2004) (quoting *United Lending Corp. v. Providence*, 827 A.2d 626, 631 (R.I. 2003)). A party opposing summary judgment must affirmatively assert facts that raise a genuine issue to be resolved at trial. *Volino v. General Dynamics*, 539 A.2d 531, 533 (R.I. 1988). When the non-moving party fails to carry its affirmative burden to set forth specific facts to demonstrate there is a genuine material issue of fact to be resolved at trial, Summary Judgment is properly entered. *Grande v. Almac's, Inc.*, 623 A.2d 971, 972 (R.I. 1993).

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Analysis

The Department, in its Motion and Memoranda, argues that the Applicant is not entitled to an appeal to the AAD because the Air Pollution Control Regulations (“Regs” or “Regulations”) provide for an appeal only in the event that “any application is denied”. (Regs Section 9.6.5).

The Applicant contends that it is entitled to an appeal before the AAD because it is contesting the Department’s denial of MST’s authority to incinerate circuit board material. Applicant further suggests that it is entitled to an appeal to the AAD because the tribunal “has broad authority to adjudicate all contested licensing and enforcement proceedings”.

The matter arises as a result of the interpretation of the Department that MST has not complied with the terms and conditions of the Consent Agreement entered into on or about November 19, 2013. A reading of the Consent Agreement entered into by the parties contains the following language on page 2.

“(2) FORCE and EFFECT – This Agreement shall have the full force and effect of a final compliance order issued after a full hearing on the merits pursuant to the Administrative Procedures Act, R.I. Gen. Laws Section 42-35-1 et seq. from which no timely appeal was taken, and which is enforceable in Superior Court in accordance with R.I. Gen. Laws Section 42-17.1-2(21)(v)”.

The Applicant is now seeking further review of the issues agreed to in the Consent Agreement in spite of the express limitations listed above. Although the terms of the Consent Agreement were not raised by the Department it is clear that the matter cannot be brought back before the AAD. The effect of the Consent Agreement closes the door on any further

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consideration by the AAD and places enforceability in the Superior Court in accordance with R.I. Gen. Laws § 42-17.1-2(21)v. Applicants recourse is in the Superior Court.

Conclusion

The terms and conditions of the Consent Agreement are not enforceable in the AAD but in the Superior Court. The AAD is not the proper tribunal for review or enforcement of the terms and conditions of the Consent Agreement and therefore its appeal should be denied.

FINDINGS OF FACT

1. On or about March 25, 2011, the Department issued a minor source permit (Approval No. 2125) to Material Sampling Technologies, LLC (the "Permit") for a Penram Model C-700 starved air incinerator.
2. The minor source permit required Materials Sampling Technologies, LLC ("MST") to conduct performance testing to demonstrate compliance with the emissions limits for particulate matter.
3. A Notice of Violation was issued to the MST on or about December 26, 2012 citing the MST with certain violations of the Air Pollution Control Regulations stemming from

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exceedances of emissions limits for particulate matter contained in the Permit, based on performance testing results from tests conducted in July of 2011 (the "NOV" was attached to the Department's Memorandum as Exhibit A).

4. The NOV was resolved by Consent Agreement on or about November 21, 2013 (the "Consent Agreement", was attached to the Department's Memorandum as Exhibit B).
5. The Consent Agreement required, among other things, that MST "conduct compliance testing on the Penram Model C-700 starved air incinerator to demonstrate continued compliance with the particulate emission limit in the Permit during the processing of circuit board material." *See Deptment's Exhibit B, Consent Agreement, Paragraph C(4)(a).*
6. The Consent Agreement further required that "[s]hould testing results conducted pursuant to this Agreement fail to demonstrate compliance with the particulate emission limit in the Permit during the processing of circuit board material, the Petitioner shall immediately discontinue processing circuit board material." *Id at Paragraph C(4)(d).*
7. On December 30, 2014, the Department received the results of the testing that was performed in July 2014 in accordance with the Consent Agreement.
8. Those results failed to demonstrate compliance with the particulate emission limits in the Permit while processing circuit board material, and MST ceased processing circuit board material pursuant to the terms of the Consent Agreement.

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9. On March 11, 2015 the Department issued the Revised Minor Source Permit at issue in this appeal, in order to formalize the requirements of the Consent Agreement that the Petitioner entered with the Department by prohibiting the Petitioner from processing circuit board material.
10. Applicant filed its appeal with the AAD on April 13, 2015

Conclusions of Law

Based on the Findings of Fact and Memoranda of the parties I make the following
Conclusions of Law.

1. Where a matter is concluded in the AAD by the entry of a Consent Agreement with an agreement that "This Agreement shall have the full force and effect of a final compliance order issued after a full hearing on the merits pursuant to the Administrative Procedures Act, R.I. Gen. Laws Section 42-35-1 et seq. from which no timely appeal was taken, and which is enforceable in Superior Court in accordance with R.I. Gen. Laws Section 42-17.1-2(21)(v)." The recourse for review or enforcement shall be in the Superior Court
2. Where a Consent Agreement invests enforceability in the Superior Court the AAD is not the proper tribunal for review or enforcement.
3. An action brought in the AAD which should, by terms of a Consent Agreement, be enforceable in the Superior Court should be Dismissed.

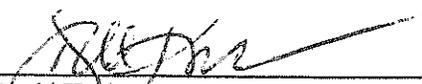
ORDER

The Applicant's Appeal is hereby **DENIED** and **DISMISSED**.

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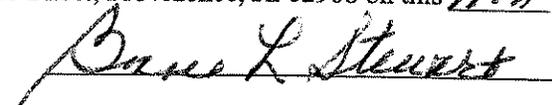
Entered as an Administrative Order this 11th day of September, 2015.



David Kerins
Chief Hearing Officer
Administrative Adjudication Division
One Capitol Hill, 2nd Floor
Providence, RI 02908
(401) 574-8600

CERTIFICATION

I hereby certify that I caused a true copy of the within Order to be forwarded via regular mail, postage prepaid to: Jennifer R. Cervenka, Esquire, Partridge Snow & Hahn, LLP, 40 Westminster Street, Suite 1100, Providence, RI 02903, and via interoffice mail to Susan B. Forcier, Esquire, DEM Office of Legal Services, 235 Promenade Street, Providence, RI 02908 on this 11th day of September, 2015.



Bruce L. Stewart

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NOTICE OF APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Environmental Management pursuant to RI General Laws § 42-35-12. Pursuant to R.I. Gen. Laws § 42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.

EXHIBIT A

12/26/12



RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Office of Compliance and Inspection 235 Promenade Street, Providence, RI 02908-5767
Telephone 401-222-1360 Fax 401-222-3811 TDD 401-222-4462

December 26, 2012

CERTIFIED MAIL

Material Sampling Technologies, LLC
c/o James O. Reavis, Registered Agent
55 Dorrance Street, Suite 200
Providence, RI 02903

RE: NOTICE OF VIOLATION
File No.: AIR 12-02

Dear Mr. Reavis:

Enclosed please find a Notice of Violation ("NOV") relating to air pollution violations at a facility located at 800 Central Street in the town of North Smithfield, Rhode Island.

PLEASE READ THIS DOCUMENT CAREFULLY. Pursuant to R.I. General Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35 each named Respondent is entitled to request an administrative hearing before the Director or his designee regarding the alleged violations, orders, and/or penalties set forth in this NOV. Further details regarding each Respondent's right to an administrative hearing are provided within the NOV.

If Material Sampling Technologies, LLC ("MST") wishes to request an administrative hearing concerning this NOV, the request must be made in writing and be received within twenty (20) days of your receipt of this NOV. A written request for an administrative hearing must be submitted to:

Administrative Clerk
DEM-Administrative Adjudication Division ("AAD")
One Capitol Hill, 2nd Floor
Providence, RI 02903

A copy of the request for an administrative hearing must also be forwarded to:

Marisa Desautel, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4th Floor
Providence, Rhode Island 02908-5767

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Name: Material Sampling Technologies, LLC

RE: Notice of Violation

MST may also wish to arrange for an informal meeting to discuss the NOV with representatives of the Office of Compliance & Inspection ("OC&I"). At that informal meeting, representatives of the OC&I will be prepared to discuss the facts set forth in the NOV, steps that may be necessary to comply with the orders contained therein, pertinent regulatory requirements, as well as issues related to the penalty assessed in this NOV. If agreement on resolution of the enforcement action can be reached, a Consent Agreement may be entered that both resolves the NOV and eliminates the need for an administrative hearing.

Representatives of the OC&I are prepared to discuss a resolution of this matter with MST; however, please be advised that correspondence with the OC&I, including a request for an informal meeting to discuss this NOV, does not constitute a formal request for a hearing and will not protect MST's right to a formal hearing before AAD.

If MST wishes to arrange for an informal meeting to discuss this NOV, please contact:

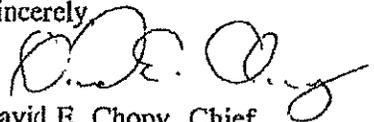
Christopher R. John, Supervising Air Quality Specialist
Office of Compliance and Inspection
235 Promenade Street, Room 220
Providence, Rhode Island 02908-5767
Telephone: (401) 222-1360, ext 7023

Or

Anna Maria Cole, Technical Staff Assistant
Telephone: (401) 222-1360, ext 7431

MST has a right to be represented by legal counsel before AAD or in an informal meeting with the OC&I. MST is not obligated to do so, but if MST plans on having legal representation present at an informal meeting with the OC&I, please inform us at the time of the request for an informal meeting so that we can make arrangements to have legal counsel present.

Sincerely



David E. Chopy, Chief
Office of Compliance and Inspection

Enclosure: Notice of Violation

cc: Doug McVay, Chief, DEM Office of Air Resources
Thomas McCusker, Environmental Protection Agency, Region I

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Material Sampling Technologies, LLC

FILE NO.: AIR 12 - 02

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 800 Central Street in the town of North Smithfield, Rhode Island (the "Facility") and 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 25 March 2011, the DEM issued Permit Approval No. 2125 to the Respondent (the "Permit"). The Permit requires the Respondent to conduct performance (stack) testing to demonstrate compliance with emission limits for particulate matter.
- (4) The Permit sets an emission limit of particulate matter in the incinerator exhaust flue at 0.08 grains per dry standard cubic foot ("gr/dscf") corrected to 12% CO₂.
- (5) On or about 20 October 2011, on behalf of the Respondent, CK Environmental submitted to the DEM the results of stack testing that was conducted on 14 July 2011. The results showed an emissions rate of particulate matter in the incinerator exhaust flue at 0.109 gr/dscf corrected to 12% CO₂ during Run 1.

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 9.6.8 - requiring any person who receives a permit to comply with all conditions in the 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:

- (1) Within sixty (60) of receipt of this NOV, submit a written proposal to the DEM's Office of Air Resources that describes all steps that will be taken to ensure compliance with the Permit emission limit of particulate matter in the incinerator exhaust flue of 0.08 gr/dscf corrected to 12% CO₂.
- (2) The proposal submitted pursuant to Section D.1 above shall be subject to DEM's review and approval. Upon review, the DEM shall provide written notification to you either granting approval or stating the deficiencies and/or concerns therein. Within fourteen (14) days (unless a longer time is specified) of receiving a notification of deficiencies in the proposal, the Respondent shall submit to the DEM a modified proposal or additional information necessary to correct the deficiencies or to address the concerns.

OR

- (3) Submit documentation that the circuit board burning operation has been permanently shut down.

E. Penalty

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:

Two Thousand 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 DEM within thirty (30) 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.

F. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through E above. All requests for hearing MUST:
 - (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);
 - (b) Be **RECEIVED** by DEM's Administrative Adjudication Division, at the following address, within twenty (20) days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
One Capitol Hill, 2ND 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:

Marisa Desautel, 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) Marisa Desautel 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: December 26, 2012

CERTIFICATION

I hereby certify that on the 26th day of December 2012
the within Notice of Violation was forwarded to:

Material Sampling Technologies LLC
c/o James O. Reavis, Registered Agent
55 Dorrance Street, Suite 200
Providence, RI 02903

by Certified Mail.

Lynne DeBritto



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, AIR

File No.: AIR 12 - 02

Respondent: Material Sampling Technologies LLC

GRAVITY OF VIOLATION SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Devlation	Penalty from Matrix	Number or Duration of Violadons	
C (1) - Failure to comply with permit	Type I (\$ 10,000 Max. Penalty)*	Minor	\$ 2,500	1 violation	\$2,500
SUB-TOTAL					\$2,500

*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 comply with permit
 VIOLATION NO.: C (1)

TYPE		
<p style="text-align: center;"><u> X </u> TYPE I</p> <p>DIRECTLY related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> </u> TYPE II</p> <p>INDIRECTLY related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u> </u> TYPE III</p> <p>INCIDENTAL 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.

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM *Rules and Regulations for Assessment of Administrative Penalties*

(A) **The extent to which the act or failure to act was out of compliance:** The Respondent, while conducting stack testing for particulate matter, failed to meet the 0.08 gr/dscf emission limit during Run 1 as required by 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.

(B) **Environmental conditions:** Considered, but not utilized for this calculation.

(C) **Amount of the pollutant:** Considered, but not utilized for this calculation.

(D) **Toxicity or nature of the pollutant:** Exposure to particulate matter can trigger asthma attacks and cause wheezing, coughing and respiratory irritation.

(E) **Duration of the violation:** 1 day. The stack test was performed on 14 July 2011.

(F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

(continued)

(continued from the previous page)

- (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 has not demonstrated compliance with all emission limits set forth in 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:* Considered, but 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:* Considered, but not utilized for this calculation.
- (J) *Any other factor(s) that may be relevant in determining the amount of a penalty:* Considered, but not utilized for this calculation.

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 \$2,500	\$500 to \$1,000	\$100 to \$500

EXHIBIT B

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF COMPLIANCE AND INSPECTION

In Re: Material Sampling Technologies, LLC

File No.: AIR-12-02

AAD No.: 13-001/ARE

CONSENT AGREEMENT

A. INTENT & PURPOSE

This Agreement is entered by and between the Rhode Island Department of Environmental Management's Office of Compliance & Inspection ("RIDEM") and Material Sampling Technologies, LLC (the "Respondent") and LKQ Precious Metals, Inc. This Agreement is entered in accordance with Section 42-17.1-2 *et seq.* of the Rhode Island General Laws ("R.I. Gen. Laws") for the purpose of resolving the administrative enforcement action set forth in a Notice of Violation ("NOV") issued to the Respondent by RIDEM on 26 December 2012.

B. STIPULATED FACTS

- (1) WHEREAS, the subject facility is located at 800 Central Street in the town of North Smithfield, Rhode Island (the "Facility").
- (2) WHEREAS, the Respondent operates the Facility.
- (3) WHEREAS, on 25 March 2011 the RIDEM issued Permit Approval No. 2125 to the Respondent to install and operate an incinerator at the Facility (the "Permit").
- (4) WHEREAS, the Permit sets an emission limit of particulate matter in the incinerator exhaust flue at 0.08 grains per dry standard cubic foot corrected to 12% CO₂ (the "Permit Emission Limit").
- (5) WHEREAS, on 7 June 2012, the Respondent was acquired by LKQ Precious Metals, Inc. ("LKQ").
- (6) WHEREAS, on 26 December 2012, RIDEM issued a NOV to the Respondent alleging certain violations of the RIDEM's *Air Pollution Control Regulations*.
- (7) WHEREAS, the Respondent requested an administrative hearing to contest the NOV.
- (8) WHEREAS, on 7 November 2013, the Respondent notified RIDEM that the Permit was transferred from the Respondent to LKQ on 7 June 2012.

(9) WHEREAS, without admission of liability by Respondent and in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to effect a timely and amicable resolution of the NOV, RIDEM and the Respondent hereby agree that it is in the best interest of the parties and in the public interest to resolve the issues raised in the NOV.

(10) WHEREAS, RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with Rhode Island's Clean Air Act and the RIDEM's *Air Pollution Control Regulations*.

C. AGREEMENT

- (1) JURISDICTION – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over the Respondent.
- (2) FORCE and EFFECT – This Agreement shall have the full force and effect of a final compliance order issued after a full hearing on the merits pursuant to the Administrative Procedures Act, R.I. Gen. Laws Section 42-35-1 et seq. from which no timely appeal was taken, and which is enforceable in Superior Court in accordance with R.I. Gen. Laws Section 42-17.1-2(21)(v).
- (3) APPLICATION – The provisions of this Agreement shall apply to and be binding upon RIDEM, the Respondent and its agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for the Respondent in the performance of work relating to or impacting the requirements of this Agreement.
- (4) CONDITIONS – The Respondent and/or LKQ Precious Metals, Inc. shall complete the following actions to comply with the Order section of the NOV:
 - (a) Within one (1) year of the date of execution of this Agreement, conduct compliance testing on the Penram Model C-700 starved air incinerator to demonstrate continued compliance with the particulate emission limit in the Permit during the processing of circuit board material and submit the results of the testing to the RIDEM.
 - (b) The Respondent shall provide the Office of Air Resources (“OAR”) at least 60 days prior notice of the compliance testing. The requirements contained in conditions D.1.c through D.1.g of the Permit shall apply to this compliance test.
 - (c) For purposes of the compliance testing described in paragraph C(4)(a) above, the Respondent shall comply with RIDEM's approved test protocol dated 18 April 2011 as supplemented by CK Environmental's 27 June 2012 revised testing strategy. Said approval and revised testing strategy are attached hereto and incorporated herein as Attachment A. The parties agree that the order of the two test runs required by the 27 June 2012 revised testing strategy will be reversed for purposes of compliance testing under this Agreement. Any changes to the approved test protocol or to the order of the two test runs approved by this Agreement must be submitted by the Respondent to the OAR to be approved prior to said compliance testing.

- (d) Should testing results conducted pursuant to this Agreement fail to demonstrate compliance with the particulate emission limit in the Permit during the processing of circuit board material, the Respondent shall immediately discontinue processing circuit board material. No processing of circuit board material shall commence until such time that compliance with the particulate emission limit in the Permit can be demonstrated to the RIDEM's satisfaction. Respondent shall not be cited for violation of the particulate emission limit in the Permit or this Consent Agreement or assessed any administrative penalties for particulate emissions associated with the processing of circuit board material prior to the compliance testing that is specifically based upon the results of said compliance testing.
- (e) Penalty – Respondent shall pay to RIDEM the sum of Two Thousand Dollars (\$2,000.00) in settlement of the assessed administrative penalties as follows:
 - (i) Upon execution of the Agreement by the Respondent, the Respondent shall pay to the RIDEM the sum of Two Thousand Dollars (\$2,000.00).
 - (ii) Amounts that the Respondent agrees to pay in this Agreement are amounts payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
 - (iii) All payments shall be in the form of a check payable to the *R.I. General Treasurer – Water and Air Protection Account*. All payments shall be delivered to:

Chief, RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767

D. COMPLIANCE

- (1) EFFECT OF COMPLIANCE – Compliance with and fulfillment of this Agreement shall be deemed to resolve all issues raised in the NOV.
- (2) FAILURE TO COMPLY – In the event that the Respondent fails to comply with the items specified in paragraph C(4)(a) through (c) of the Agreement, the Respondent shall pay a stipulated penalty of One Thousand Dollars (\$1,000.00) per month for each and every month during which the noncompliance continues, except that RIDEM may, for good cause shown, defer or reduce such penalty. The payment of a penalty in accordance with this section shall not preclude RIDEM from seeking any other appropriate remedy (e.g., injunctive relief in Superior Court).
- (3) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve the Respondent of any obligation to comply with any other applicable laws or regulations administered by, through or for RIDEM or any other governmental entity.
- (4) ADDITIONAL ENFORCEMENT ACTIONS – Upon a determination by the Director that there is a threat to the public health or the environment, or upon discovery of any new

information, RIDEM reserves the right to take additional enforcement actions as provided by law or regulation, including, but not limited to, the issuance of "Immediate Compliance Orders" as authorized by R.I. Gen. Laws Section 42-17.1-2(21). This Agreement shall not restrict any right to hearing or other right available by statute or regulation that the Respondent may have regarding any new enforcement action commenced by RIDEM after the execution of this Agreement.

- (5) FUTURE ACTIVITIES AND UNKNOWN CONDITIONS – This Agreement shall not operate to shield the Respondent from liability arising from future activities, as of the date of execution of this Agreement.
- (6) SCOPE OF THE AGREEMENT – The scope of the Agreement is only violations alleged in the NOV.
- (7) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

Christopher John, Supervising Air Quality Specialist
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360

Marisa Desautel, Esquire
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-6607

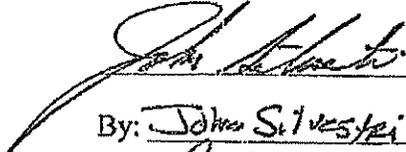
Jennifer R. Cervenka, Esquire
Partridge Snow & Hahn LLP
40 Westminster Street
Providence, RI 02903
(401) 861-8228

All communications regarding compliance with this Agreement shall be forwarded to the above-referenced addressees by certified mail.

- (8) DEFERRAL – The Director may, for good cause shown, defer any of the compliance dates prescribed herein. Good cause for deferral of any compliance date shall be forwarded to RIDEM in writing at least fifteen (15) days prior to the prescribed deadline.
- (9) AMENDMENT – The Agreement may be amended by mutual agreement of the parties in writing.
- (10) EFFECTIVE DATE – This Agreement shall be deemed entered as of the date of execution by all parties.

IN WITNESS WHEREOF, the undersigned consent to this Agreement in substance and in form.

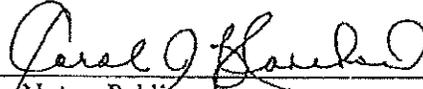
For Material Sampling Technologies, LLC


By: John Silvestri (Print Name)
Its: President (Title)
Dated: 11/01/13

In my capacity as President of Material Sampling Technologies, LLC I hereby aver that I am authorized to enter into this Agreement and thereby bind Material Sampling Technologies, LLC to satisfy any obligation imposed upon it pursuant to said Agreement.

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

In Providence, in said County and State, on this 19th day of November, 2013, before me personally appeared John Silvestri, the President of Material Sampling Technologies, LLC, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of Material Sampling Technologies, LLC, and he acknowledged said instrument by him executed, to be his free act and deed in said capacity and the free act and deed of Material Sampling Technologies, LLC.


Notary Public

My Commission Expires: Carol A. Blanchard
State of Rhode Island
Notary Public No. 33270
My Commission Expires November 20, 2017

IN WITNESS WHEREOF, the undersigned consent to this Agreement in substance and in form.

For LKQ Precious Metals, Inc.

[Signature]
By: John Silvestri (Print Name)
Its: Director (Title)
Dated: 11/19/13

In my capacity as Director of LKQ Precious Metals, Inc., I hereby aver that I am authorized to enter into this Agreement and thereby bind LKQ Precious Metals, Inc. to satisfy any obligation imposed upon it pursuant to said Agreement.

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

In Providence, in said County and State, on this 19th day of November, 2013, before me personally appeared John Silvestri, the Director of LKQ Precious Metals, Inc., a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of LKQ Precious Metals, Inc., and he acknowledged said instrument by him executed, to be his free act and deed in said capacity and the free act and deed of LKQ Precious Metals, Inc.

[Signature]
Notary Public
My Commission Expires: _____

Carol A. Blanchard
State of Rhode Island
Notary Public No. 05270
My Commission Expires November 20, 2017

*For the State of Rhode Island Department of Environmental
Management*



David E. Chopy, Chief
Office of Compliance and Inspection

Dated: 11/21/13