

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: FPLE Rhode Island State Energy, L.P.

FILE NO.: AIR 10 - 09

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 24 Shun Pike, Johnston, Rhode Island (the “Facility”) and is operated by the Respondent.
- (2) The Facility is a stationary source of air pollutants subject to the DEM Air Pollution Control (“APC”) Regulations.
- (3) On 31 July 2009, the DEM Office of Air Resources (“OAR”) issued Operating Permit No RI-46-07(R2) to the Respondent (the “Operating Permit”) under their fictitious name, Rhode Island State Energy Center. The Operating Permit authorizes the Respondent to use treated wastewater from the Cranston Water Pollution Control Facility as cooling water for the Facility.
- (4) The Operating Permit requires the Respondent to:
 - (a) comply with a total suspended solids (“TSS”) limit of five (5) milligrams per liter (“mg/l”) at the exit from the tertiary treatment system prior to chlorination;
 - (b) comply with a total chlorine residual limit of one (1) mg/l at the terminal point of the wastewater pipeline; and
 - (c) have no more than five (5) percent of the samples collected during the month be positive for fecal coliform bacteria if at least forty (40) samples per month are collected.
- (5) On 14 August 2009 and 18 August 2009, OAR inspected the Facility. The inspection and subsequent records review revealed that the Respondent:

- (a) failed to comply with the TSS limit on 8 July 2008, 2 June 2009 and 12 June 2009;
- (b) failed to comply with the total chlorine residual limit on 23 September 2008 and failed to report this incident of noncompliance in its semi-annual monitoring report for the period of 1 July 2008 through 31 December 2008 and in its 2008 Annual Compliance Certification; and
- (c) collected at least forty (40) samples for fecal coliform bacteria and reported positive fecal coliform readings from 23 September 2008 through 26 September 2008, which resulted in more than five (5) percent of the samples collected during the month having tested positive for fecal coliform bacteria.

C. Violation

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

- (1) **APC Regulation No. 29, Section 29.4.6** – requiring compliance with an operating permit.

D. Penalty

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

Fifteen Thousand Dollars (\$15,000.00)

- (2) The proposed administrative penalty is calculated pursuant to the DEM Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the Director within twenty (20) days of your receipt of this Notice of Violation (“NOV”). Payment shall be in the form of a certified check or money order made payable to the “General Treasury - Water & Air Protection Program Account” and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against respondent in this NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

E. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM Administrative

Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through D above. All requests for hearing MUST:

- (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b),
- (b) Be **RECEIVED** by DEM's Administrative Adjudication Division, at the following address, within twenty (20) days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
235 Promenade Street, 3RD Floor
Providence, RI 02908-5767

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
- (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Rule 7.00(b) of the DEM Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters.

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

Joseph J. LoBianco, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then this NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (v) and 42-17.6-4(b) and (c).
- (5) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) This NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities

from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Joseph J. LoBianco at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Martha Mulcahey of DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 7032.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section E above.

FOR THE DIRECTOR

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

Date: _____

CERTIFICATION

I hereby certify that on the _____ day of _____
the within Notice of Violation was forwarded to:

FPLE Rhode Island State Energy, L.P.
c/o CT Corporation System, Registered Agent
155 South Main Street, Suite 301
Providence, RI 02903

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, AIR

File No.: 10 - 09

Respondent: FPLE Rhode Island State Energy, L.P.

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
C (1) – Failure to comply with TSS limit as required by the permit	Type I (\$ <u>10,000</u> Max. Penalty)*	Moderate	\$ 2,500	3	\$ 7,500
C (1) – Failure to comply with chlorine residual limit as required by the permit	Type I (\$ <u>10,000</u> Max. Penalty)*	Moderate	\$ 2,500	1	\$ 2,500
C (1) – Failure to comply with fecal coliform bacteria limit as required by the permit	Type I (\$ <u>10,000</u> Max. Penalty)*	Moderate	\$ 5,000	1	\$ 5,000
SUB-TOTAL					\$15,000.00

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

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$ 15,000.00

PENALTY MATRIX WORKSHEET

CITATION: Failure to comply with TSS limit as required by the permit
 VIOLATION NO.: C (1)

TYPE		
<p style="text-align: center;"><u>X</u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">____TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">____TYPE III</p> <p><u>INCIDENTAL</u> 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><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondent failed to comply with Total Suspended Solids limit in effluent as required by Condition I.B.1.e of its Operating Permit. Effluent exceeded the 5 mg/l TSS permit limit on three separate dates in July 2008 and June 2009. Compliance with Title V operating permit requirements is of major importance to the regulatory program and is directly related to protecting health, safety, welfare and the environment.</p> <p>(B) Environmental conditions: Not relevant.</p> <p>(C) Amount of the pollutant: Not relevant.</p> <p>(D) Toxicity or nature of the pollutant: The Facility is authorized to use wastewater from a municipal sewage treatment plant piped to the Facility. Permit conditions regulate the amount of total suspended solids (TSS) contained in the wastewater, which then serves as cooling water in Respondent's cooling towers.</p> <p>(E) Duration of the violation: Data showed noncompliance with permit limits pertaining to TSS. The duration of Respondent's noncompliance spanned at least three days, specifically 8 July 2008, 2 June 2009 and 12 June 2009.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent has a clear responsibility for adhering to the requirements in its operating permit. The Respondent failed to take reasonable and appropriate steps to comply with the terms set forth in its operating permit, but has since taken steps to mitigate its noncompliance.
- (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 was previously cited for this violation in a formal Notice of Violation (see OC&I/Air 04-03).
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the violation since the Respondent is the operator of the Facility. The violation was foreseeable by the Respondent.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Respondent submitted correspondence to OAR stating that they have installed a permanent TSS online probe that is better able to warn operators of upset conditions, and have implemented an automated email to plant management personnel.

MAJOR		<u> X </u> MODERATE	MINOR	
Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000 \$2,500	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Failure to comply with chlorine residual limit as required by the permit

VIOLATION NO.: C (1)

TYPE		
<p style="text-align: center;"><u>X</u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<p><small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small></p>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondent failed to comply with chlorine residual limit of 1 mg/l as required by Condition I.B.1.f of its Operating Permit. The Respondent is a stationary source of air pollutants subject to state air pollution control regulations. Compliance with Title V operating permit requirements is of major importance to the regulatory program.</p> <p>(B) Environmental conditions: Not relevant.</p> <p>(C) Amount of the pollutant: Not relevant.</p> <p>(D) Toxicity or nature of the pollutant: The Facility is authorized to use wastewater from a municipal sewage treatment plant piped to the Facility. Permit conditions specify the minimum amount of chlorine residual contained in the wastewater.</p> <p>(E) Duration of the violation: Respondent's data showed that total chlorine residual fell below the minimum level of 1.0 mg/l on 23 September 2008.</p> <p>(F) Areal extent of the violation: Not relevant.</p> <p style="text-align: right;">(continued)</p>		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent has a clear responsibility for adhering to the requirements stated in its operating permit and failed to take reasonable and appropriate steps to comply with it, but has since taken steps to mitigate its noncompliance.
- (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 has previously failed to comply with permit requirements pertaining to their noncompliance with TSS and fecal coliform exceedances.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the violation since the Respondent is the operator of the Facility. The violation was foreseeable by the Respondent.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Respondent incorrectly certified that the Facility was in compliance with permit Condition I.B.1.f in the 2008 Annual Compliance Certification, which violates Condition II.X.4 of the operating permit.

MAJOR	<u> X </u> MODERATE	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 \$2,500	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

PENALTY MATRIX WORKSHEET

CITATION: Failure to comply with fecal coliform bacteria limit as required by the permit
 VIOLATION NO.: C (1)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.

DEVIATION FROM THE STANDARD
 THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

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:** Respondent failed to comply with the requirement to maintain effluent such that fecal coliform bacteria are non-detectable as required by Condition I.B.1.j of its Operating Permit. The Respondent is a stationary source of air pollutants subject to state air pollution control regulations. Compliance with Title V operating permit requirements is of major importance to the regulatory program.
- (B) **Environmental conditions:** Not relevant.
- (C) **Amount of the pollutant:** The amount of the pollutant is unknown.
- (D) **Toxicity or nature of the pollutant:** The Facility is authorized to use wastewater from a municipal sewage treatment plant piped to the Facility. Wastewater may contain pathogens or disease producing bacteria or viruses.
- (E) **Duration of the violation:** Data showed noncompliance with permit limits pertaining to fecal coliform bacteria in the effluent used in cooling tower(s). The duration of Respondent’s noncompliance spanned 23 September 2008 through 26 September 2008.
- (F) **Areal extent of the violation:** Not relevant.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent has a clear responsibility for adhering to the requirements stated in its operating 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:** Respondent was previously cited for this violation in a formal Notice of Violation (see OC&I/Air 04-03).
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the violation since the Respondent is the operator of the Facility. The violation was foreseeable by the Respondent.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not relevant.

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