STATE OF RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
BUREAU OF ENVIRONMENTAL PROTECTION
OFFICE OF COMPLIANCE AND INSPECTION
235 Promenade Street, Suite 220
Providence, RI 02908-5767

May 17, 2019

CERTIFIED MAIL

Sprague Operating Resources LLC
c/o Corporation Service Company, Resident Agent
222 Jefferson Boulevard, Suite 200
Warwick, RI 02888

RE: *NOTICE OF VIOLATION*
File No.: OCI-AIR-18-112

Dear Resident Agent,

Enclosed please find a Notice of Violation ("NOV") relating to a violation of the Rhode Island Code of Regulations titled *Odors (250-RICR-120-05-17)* at a facility located at 120 Allens Avenue (also identified as 144 Allens Avenue) in the City of Providence, 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 her designee regarding the alleged violations, orders, and/or penalties set forth in the NOV. Further details regarding each Respondent's right to an administrative hearing are provided within the NOV.

If Sprague Operating Resources LLC ("Sprague") wishes to request an administrative hearing concerning the NOV, the request must **be made in writing and be received within 20 days of your receipt of the NOV**. A written request for an administrative hearing must be submitted to:

Administrative Clerk
DEM-Administrative Adjudication Division ("AAD")
235 Promenade Street, Room 350
Providence, RI 02908-5767

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

Tricia Quest, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, Rhode Island 02908-5767

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

If Sprague wishes to arrange for an informal meeting to discuss the NOV, please contact:

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

Sprague has a right to be represented by legal counsel before the AAD or in an informal meeting with the OC&I. Sprague is not obligated to do so, but if Sprague 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 arrange to have legal counsel present.

Sincerely,

David E. Chopy, Administrator
Office of Compliance and Inspection

enc: Notice of Violation

cc: Laurie Grandchamp, Administrator, DEM Office of Air Resources
Christopher John, Deputy Administrator, 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: Sprague Operating Resources LLC **FILE NO.: OCI-AIR-18-112**

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 the DEM's jurisdiction.

B. Administrative History

On 28 September 2018, the DEM met with Respondent's representatives to discuss odor complaints that the DEM was investigating located in the area surrounding the facility that is the subject of this Notice of Violation ("NOV"). On 11 December 2018, the DEM met again with Respondent's representatives (as the odor complaints continued). At that meeting, Respondent's representatives presented a plan to the DEM to install equipment to control odors from two of the bulk storage tanks located at the facility. The schedule included submission of an application to the DEM for a permit for the equipment by 15 January 2019 and operation of the system by 15 June 2019. Also discussed were other actions that could be taken until the system was in operation, such as cease delivery of product to the tanks and use of chemical agents to reduce odors. On 28 February 2019, the DEM sent electronic correspondence to Respondent's representatives. The correspondence stated that the DEM continued to receive odor complaints and that, based on recent inspections, the DEM had concerns that an additional tank may be the source of the odors and/or contributing to the odors. The DEM asked Respondent whether an investigation of this tank as a source of odors was performed and to provide an update on the schedule to install the equipment. The DEM did not receive a response to this correspondence. On 22 March 2019, the DEM sent electronic correspondence to Respondent's representatives that included a report prepared by the DEM inspectors documenting an objectionable odor from the facility that morning. The DEM requested an update on the schedule to install the equipment. On 27 March 2019, the DEM received electronic correspondence from Jay Leduc, Director of Health, Safety, Environment and Sustainability of Sprague Resources GP, LLC, stating that the project remained on schedule. Mr. Leduc stated that Respondent was waiting for an analysis of the asphalt product from its supplier, Irving Oil, to submit a complete permit application to the DEM for the equipment. On 15 April 2019, in a telephone conversation with the DEM, Mr. Leduc stated that the earliest the air pollution control system would be operational is 30 July 2019. As of the date of the NOV, the DEM has not received an application for a permit for the equipment and Respondent has not taken any other actions to reduce odors.

C. Facts

(1) The subject property is located at 120 Allens Avenue (also identified as 144 Allens Avenue), Assessor's Plat 46, Lot 160 in the City of Providence, Rhode Island (the "Property"). The Property includes a facility that receives and distributes liquid asphalt and other petroleum products that are stored in above ground storage tanks (the "Facility").

(2) The Facility is a stationary source of air pollutants subject to the Rhode Island Code of Regulations titled *Odors (250-RICR-120-05-17).*

(3) Respondent operates the Facility and is registered with the Rhode Island Secretary of State as a wholesale distributor of natural gas, coal and petroleum products.

(4) On or about September 2017, tank number 1 ("Tank 1") and tank number 6 ("Tank 6") at the Facility were converted to store liquid asphalt product (referred to as road grade asphalt). These tanks previously stored petroleum products. Additionally, tank number 5 ("Tank 5") contains a liquid asphalt product (referred to as roofing flux).

(5) Following the conversion of Tank 1 and Tank 6 to the storage of road grade asphalt, the DEM began receiving odor complaints in the area surrounding the Facility that were characterized as petroleum, asphalt and/or sulfur in nature and conducted inspections in response to these complaints.

(6) On 11 December 2018, the DEM met with Respondent's representatives to discuss complaints the DEM had received and the DEM's inspection findings regarding the same. During this meeting, Respondent's representatives presented a plan and implementation schedule to install air pollution control equipment to control odors from Tank 1 and Tank 6. The schedule included submission of an application to the DEM for a permit for the equipment by 15 January 2019 and operation of the system by 15 June 2019.

(7) The DEM continued to receive odor complaints in the area surrounding the Facility that were characterized as petroleum, asphalt and/or sulfur in nature.

(8) On 22 March 2019, the DEM inspectors detected an odor beyond the Property line that was categorized as objectionable. The inspectors were traveling on Allens Avenue under the bridge outside of the Facility. The odor was described as a sulfur odor mixed with an asphalt odor and was determined to be emanating from the Facility.

(9) On 7 May 2019, the DEM inspector detected an odor beyond the Property line that was categorized as objectionable at the entrance gates to Collier Point Park, located on Henderson Street. The odor was described as a sulfur odor mixed with an asphalt odor and was determined to be emanating from the Facility.

(10) On 8 May 2019, the DEM inspector detected an odor beyond the Property line that was categorized as objectionable at the entrance gates to Collier Point Park, located on Henderson Street. An objectionable odor was also detected on Allens Avenue, adjacent to Tank 6. The odors were described as a sulfur odor mixed with an asphalt odor and were determined to be emanating from the Facility.

D. Violation

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

(1) **Rhode Island Code of Regulations titled *Odors (250-RICR-120-05-17)*, Part 17.5** – prohibiting any person from emitting or causing 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.

E. 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) **IMMEDIATELY** cease further delivery of any product to Tank 1 and Tank 6. No product can be delivered to Tank 1 or Tank 6 until equipment to control odors from the tanks is installed in accordance with the conditions of a Preconstruction Permit applied for and obtained from the DEM **OR** the DEM approves an alternate interim method to control odors from the tanks and that method is implemented.

(2) **Within 30 days of receipt of the NOV**, submit a report to the DEM that assesses the need for equipment to control odors and/or other regulated air pollutants from Tank 5. If the report concludes that equipment is needed to control odors and/or other regulated pollutants from Tank 5, the report must describe the equipment to be installed and a schedule to complete the installation.

(3) The report described in subsection E(2) above shall be subject to the DEM's review and approval. Upon review, the DEM shall provide written notification to you either granting formal approval or stating the deficiencies therein. Within 30 days (unless a longer time is specified) of receiving a notification of deficiencies, Respondent must submit to the DEM a modified report or additional information necessary to correct the deficiencies.

F. 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:

$22,500

(2) The proposed administrative penalty is calculated pursuant to the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* and must be paid to the DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a certified check, cashier's 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 the NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

G. 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 F 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 the DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of the 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, Room 350
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 Part 1.7(B) of the Rhode Island Code of Regulations titled *Rules and Regulations for the Administrative Adjudication Division (250-RICR-10-00-1).*

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

Tricia Quest, 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 regarding 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 (vi) and 42-17.6-4(b) and (c).

(5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.

(6) The 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) Tricia Quest of the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Karen Peltier of the DEM's Office of Compliance and Inspection at (401) 222-1360, ext. 7136.

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 G above.

FOR THE DIRECTOR

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

Dated: May 17, 2019

CERTIFICATION

I hereby certify that on the 17th day of May, 2019 the within NOV was forwarded to:

Sprague Operating Resources LLC
c/o Corporation Service Company, Resident Agent
222 Jefferson Boulevard, Suite 200
Warwick, RI 02888

by Certified Mail.

ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, AIR
File No.: OCI-AIR-18-112
Respondent: Sprague Operating Resources LLC

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	
D(1) – Objectionable odors	Type I *($10,000 Max. Penalty)**	Major	$7,500	3 violations	$22,500
				SUB-TOTAL	**$22,500**

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

ECONOMIC BENEFIT FROM NONCOMPLIANCE

COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT COMPLY. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:
- **THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR**
- **THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.**

A review of the record in this matter has revealed that Respondent has either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.

COST RECOVERY

ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.

A review of the record in this matter has revealed that the DEM has not incurred any additional or extraordinary costs during the investigation, enforcement and resolution of this enforcement action (excluding non-overtime personnel costs), for which the State is not otherwise reimbursed.

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = $22,500

PENALTY MATRIX WORKSHEET

CITATION: Objectionable odors
VIOLATION NO.: D (1)

TYPE		
__X__ TYPE I DIRECTLY related to protecting health, safety, welfare or environment.	____TYPE II INDIRECTLY related to protecting health, safety, welfare or environment.	____TYPE III INCIDENTAL 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 Part 1.10(A)(1)(b) of the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)*

(1) **The extent to which the act or failure to act was out of compliance:** Respondent failed to prevent objectionable odors from the Facility from migrating beyond the Property line. The Facility is a stationary source of air pollutants subject to state air pollution control regulations. Compliance with the air pollution control regulations is of major importance to the regulatory program.

(2) **Environmental conditions:** The area surrounding the Facility is a densely developed commercial/industrial/residential neighborhood. A heavily traveled interstate highway corridor (Route I-95 and Route I-195) is located north, south and west of the Facility. The Facility is within 800-1,800 feet of Rhode Island Hospital, Women & Infants Hospital and Hasbro Children's Hospital, and it is within 1,000 feet of the nearest residences. The Facility is in an Environmental Justice Area, which is defined by the DEM as an area where the percent of the block group that is minority OR low-income (under 2x Federal Poverty Level) is high enough to rank in the top 15% of block groups state-wide. Rhode Island has the 9TH highest prevalence of asthma in children in the nation (10.9% of children), and Providence has the highest asthma emergency department rate for children (13.7 per 1000) in Rhode Island. Air pollution is an irritant that can trigger asthma.

(3) **Amount of the pollutant:** Unknown.

(4) **Toxicity or nature of the pollutant:** Volatile organic compounds and sulfur compounds associated with petroleum products. An assessment by the U.S. Department of Health and Human Services Centers for Disease Control and Prevention concluded that asphalt fumes are associated with irritation of the eyes, nose and throat. The objectionable odor was described by the DEM inspector(s) as a sulfur odor mixed with an asphalt odor.

(5) **Duration of the violation:** The Facility emitted an odor that traveled beyond the Property line for sufficient duration and concentration to be objectionable to the DEM inspectors on 22 March 2019, 7 May 2019 and 8 May 2019.

(6) **Areal extent of the violation:** On 22 March 2019, the objectionable odor was detected by the DEM inspectors on Allens Avenue under the bridge outside the Facility. A borderline objectionable odor described as an asphalt/sulfur mix was detected as far south as Public Street. On 7 May 2019 and 8 May 2019, the objectionable odor was detected by the DEM inspector on Henderson Street, at the entrance to Collier Point Park. Additionally, on 8 May 2019, an objectionable odor was detected on Allens Avenue, adjacent to Tank 6. These odors were also characterized as an asphalt/sulfur mix.

(continued)

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(7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance. Respondent converted two storage tanks from heating oil to liquid asphalt in September 2017. Respondent knew that the liquid asphalt product is more volatile than heating oil and knew that emissions from the tanks may be a source of significant odors. Respondent has failed to take reasonable and appropriate steps to mitigate the noncompliance. On 28 September 2018, the DEM met with Respondent's representatives to discuss odor complaints that the DEM was investigating located in the area surrounding the Facility. On 11 December 2018, the DEM met again with Respondent's representatives (as the odor complaints continued). At that meeting, Respondent's representatives presented a plan to the DEM to install equipment to control odors from Tank 1 and Tank 6. The schedule included submission of an application to the DEM for a permit for the equipment by 15 January 2019 and operation of the system by 15 June 2019. Also discussed were other actions that could be taken until the system was in operation, such as cease delivery of product to the tanks and use of chemical agents to reduce odors. On 28 February 2019, the DEM sent electronic correspondence to Respondent's representatives. The correspondence stated that the DEM continued to receive odor complaints and that, based on recent inspections, the DEM had concerns that Tank 5 may be the source of the odors and/or contributing to the odors. The DEM asked Respondent whether an investigation of Tank 5 as a source of odors was performed and to provide an update on the schedule to install the equipment. The DEM did not receive a response to this correspondence. On 22 March 2019, the DEM sent electronic correspondence to Respondent's representatives that included a report prepared by the DEM inspectors documenting an objectionable odor from the Facility that morning. The DEM requested an update on the schedule to install the equipment. On 27 March 2019, the DEM received electronic correspondence from Jay Leduc stating that the project remained on schedule. Mr. Leduc stated that Respondent was waiting for an analysis of the product from its supplier, Irving Oil, to submit a complete permit application to the DEM for the equipment. On 15 April 2019, in a telephone conversation with the DEM, Mr. Leduc stated that the earliest the system would be operational is 30 July 2019. As of the date of the NOV, the DEM has not received an application for a permit for the equipment and Respondent has not taken any other actions to reduce odors.

(8) **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.

(9) **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 has complete control over the violation. Respondent operates the Facility. The violation was foreseeable by Respondent.

(10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

X MAJOR	**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 **$7,500**	$2,500 to $5,000	$1,000 to $2,500
	MODERATE	$2,500 to $5,000	$1,000 to $2,500	$500 to $1,000
	MINOR	$1,000 to $2,500	$500 to $1,000	$100 to $500