

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Bristol County Water Authority
Town of Bristol**

FILE NO.: OCI-WP-20-110

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 parties (“Respondents”) have violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Facts

- (1) Bristol County Water Authority (“BCWA”) owns and operates a drinking water supply system that includes a pipe beneath Hopeworth Avenue in the Town of Bristol, Rhode Island (the “Water Pipe”).
- (2) The Town of Bristol (“Bristol”) owns and operates a wastewater collection and treatment system in the Town of Bristol, Rhode Island (the “Facility”). The Facility includes a pipe beneath Hopeworth Avenue in the Town of Bristol, Rhode Island (the “Wastewater Pipe”).
- (3) On 9 September 2016, DEM issued to Bristol RIPDES Permit No. RI0100005 (the “Permit”).
- (4) The Permit authorizes Bristol to discharge treated wastewater from the Facility to Bristol Harbor.
- (5) The Permit does not authorize the discharge of untreated wastewater from the Facility to any waters of the State.
- (6) The Permit became effective on 1 October 2016.
- (7) The State of Rhode Island is a member of the Interstate Shellfish Sanitation Conference and has agreed to abide by and enforce a model ordinance titled *NSSP Guide for the Control of Molluscan Shellfish* (the “Ordinance”) as the requirements that are minimally necessary for the sanitary control of molluscan shellfish to ensure that shellfish harvested, grown, processed and shipped from Rhode Island are safe for direct human consumption and can be sold for interstate

commerce. The Ordinance includes, but is not limited to, the following requirements:

- (a) That DEM classify all waters in Rhode Island to shellfish harvesting. One classification type is Conditionally Approved;
 - (b) That DEM immediately close to shellfish harvesting any waters that are subject to a discharge of partially treated or untreated wastewater from a wastewater treatment facility; and
 - (c) That for the discharge of raw untreated wastewater discharged from a large community wastewater collection system or wastewater system discharge, the waters must remain closed to shellfish harvesting for 21 days.
- (8) Kickemuit River flows into Mount Hope Bay.
- (9) Kickemuit River and Mount Hope Bay are classified as follows in the *Water Quality Regulations* [effective 28 December 2010 through 9 August 2018] (the “Water Quality Regulations”):
- (a) Kickemuit River – Class SA and SA {b}. These waters are designated for shellfish harvesting for direct human consumption, primary and secondary contact recreational activities, and fish and wildlife habitat. These waters shall have good aesthetic value. Seasonal shellfish closures are enacted in SA {b} waters due to concentration of vessels; and
 - (b) Mount Hope Bay - Class SA. Class SA waters are designated for shellfish harvesting for direct human consumption, primary and secondary contact recreational activities, and fish and wildlife habitat, and shall have good aesthetic value.
- (10) DEM classifies Kickemuit River and a portion of Mount Hope Bay as Conditionally Approved to shellfish harvesting.
- (11) On 1 January 2018, at sunrise, as a result of seasonally elevated fecal coliform bacteria levels in the surface waters, DEM enacted a shellfish closure within Kickemuit River, which remained in effect until sunrise on 1 February 2018.
- (12) On 5 January 2018 and 6 January 2018, BCWA repaired the Drinking Water Pipe.
- (13) On 13 January 2018, at sunrise, as a result of rainfall, DEM enacted a shellfish closure within the portion of Mount Hope Bay classified as Conditionally Approved, which remained in effect until sunrise on 20 January 2018.
- (14) On 24 January 2018, at sunrise, as a result of rainfall, DEM enacted a shellfish closure within the portion of Mount Hope Bay classified as Conditionally Approved, which remained in effect until sunrise on 31 January 2018.

- (15) On or about January 24, 2018, Bristol's sewer department notified BCWA that the Wastewater Pipe was blocked. Both Bristol and BCWA subsequently determined that the Wastewater Pipe was crushed during the repair of the Drinking Water Pipe.
- (16) On or about 24 January 2018, Bristol repaired the Wastewater Pipe.
- (17) On or about 25 January 2018, Bristol verbally reported to DEM that, as a result of the crushed Wastewater Pipe, a maximum volume of approximately 265,000 gallons of untreated wastewater discharged from the Facility (the "Overflow") overland and into Bristol's stormwater drainage system that flows to an unnamed tributary to Mount Hope Bay (the "Tributary").
- (18) The Tributary is classified in the Water Quality Regulations as Class A. These waters are designated for primary and secondary contact recreational activities, fish and wildlife habitat, and shall have excellent aesthetic value.
- (19) On 31 January 2018, at sunrise, as a result of the Overflow and consistent with the Ordinance, DEM enacted a shellfish closure within Kickemuit River and the Conditionally Approved waters of Mount Hope Bay, which remained in effect until sunrise on 15 February 2018 (though as a result of rainfall, DEM would have enacted a shellfish closure of these waters at noon on 5 February 2018 that would have remained in effect until noon on 12 February 2018).
- (20) Mount Hope Bay and Kickemuit River do not meet their assigned water quality designations according to DEM's 2014 *Integrated Water Quality Monitoring and Assessment List Final May 2015* and are listed as impaired for not supporting shellfish consumption. The cause of the impairment is fecal coliform bacteria, which is associated with wastewater.
- (21) The Overflow further degraded the water quality of Kickemuit River and Mount Hope Bay.

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) **R.I. Gen. Laws Section 46-12-5(a)** – prohibiting the placement of any pollutant in a location where it is likely to enter the waters of the State.
- (2) **R.I. Gen. Laws Section 46-12-5(b)** – requiring the discharge of any pollutant into waters of the State comply with the terms and conditions of a permit and applicable regulations.

(3) **Water Quality Regulations**

- (a) **Rule 9(A)** — prohibiting the discharge of pollutants into any waters of the State or perform any activities alone or in combination which the Director determines will likely result in the violation of any State water quality criterion or interfere with one or more of the existing or designated uses assigned to the receiving waters or to downstream waters.
- (b) **Rule 9(B)** – prohibiting anyone from discharging pollutants into waters of the State or perform activities alone or in combination which will likely result in the additional degradation of water quality of the receiving waters or downstream waters which are already below the water quality standard.
- (c) **Rule 11(B)** – prohibiting the discharge of pollutants into the waters of the State except as in compliance with the provisions of R.I. Gen. Laws Chapter 46-12, or other applicable chapters, of the Rhode Island General Laws or these regulations, and pursuant to the terms and conditions of an approval issued by DEM thereunder.
- (d) **Rule 13(A)** – prohibiting the discharge of any pollutant into or conducting any activity which will likely cause or contribute pollution to waters of the State.
- (e) **Rule 16(A)** – mandating compliance with all terms, conditions, management practices and operation and maintenance requirements set forth in a permit.

(4) ***Regulations for the Rhode Island Pollutant Discharge Elimination System [effective 25 February 2003 to 7 October 2018] (the “RIPDES Regulations”)***

- (a) **Rule 14.02(a)** – requiring the permittee to comply with all conditions of this permit.
- (b) **Rule 14.05** – requiring the permittee to take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.
- (c) **Rule 14.06** – requiring the permittee to at all times maintain in good working order and operate as efficiently as possible all treatment works, facilities, and systems of treatment and control (and related appurtenances) for collection and treatment which are installed or used by the permittee for water pollution control and abatement to achieve compliance with the terms and conditions of the permit.

D. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), Respondents are hereby ORDERED to:

- (1) **Within 30 days of receipt of this Notice of Violation (“NOV”)**, submit a letter to DEM that includes plans and procedures, and training thereof, either planned and/or previously executed since January 2018, for coordination between Bristol’s Departments of Public Works and Water Pollution Control and BCWA for repairs to underground utilities. The letter must confirm that the GIS maps used by all parties are accurate and should provide examples of said coordination between January 2018 and present.
- (2) The documents required in subsection D (1) above shall be subject to DEM’s review and approval. Upon review, DEM shall provide written notification either granting formal approval or stating the deficiencies therein. Within 14 days (unless a longer time is specified) of receiving a notification of deficiencies in any of the required submittals, submit to DEM additional information necessary to correct the deficiencies.

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 against BCWA:

\$25,000

- (2) The proposed administrative penalty is calculated pursuant to the *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* and must be paid to DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a check made payable to the “General Treasury - Water & Air Protection Program” and shall be forwarded to DEM’s Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against BCWA 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.

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 DEM's 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 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 *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:

Christina Hoefsmit, 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 the 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) Christina Hoefsmit of DEM's Office of Legal Services at (401) 222-6607 or at christina.hoefsmit@dem.ri.gov. All other inquiries should be directed to David E. Chopy of DEM's Office of Compliance and Inspection at (401) 222-1360 extension 7400 or at david.chopy@dem.ri.gov.

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:

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

Dated: _____

CERTIFICATION

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

Town of Bristol
c/o Honorable Steven Contente, Town Administrator
10 Court Street
Bristol, RI 02809

Bristol County Water Authority
c/o Pam Marchand, Executive Director
450 Child Street
Warren, RI 02885

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution
 File No.: OCI-WP-20-110
 Respondent: Bristol County Water Authority

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) and (3)(a), (b), (c) and (d) – Wastewater Overflow	Type I <i>(\$25,000 Max. Penalty) *</i>	Major	\$25,000	1 violation	\$25,000
<i>SUB-TOTAL</i>					\$25,000

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

ECONOMIC BENEFIT FROM NONCOMPLIANCE
<p>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:</p> <ul style="list-style-type: none"> - THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.
<p>A review of the record in this matter has revealed that BCWA 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.</p>

COST RECOVERY
<p>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.</p>
<p>A review of the record in this matter has revealed that 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.</p>

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$25,000

PENALTY MATRIX WORKSHEET

CITATION: Wastewater Overflow
 VIOLATION NOs.: C (1) and (3)(a), (b), (c) and (d)

TYPE		
<u> X </u> TYPE I DIRECTLY related to protecting health, safety, welfare or environment.	<u> </u> TYPE II INDIRECTLY related to protecting health, safety, welfare or environment.	<u> </u> TYPE III INCIDENTAL to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
FACTORS CONSIDERED: Taken from Part 1.10(A)(1)(b) of the <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i>		
(1) The extent to which the act or failure to act was out of compliance: Untreated wastewater was discharged to waters of the State from the Facility. Prevention of unauthorized discharges of pollutants to waters of the State is a major objective of the RIPDES Regulations and the Water Quality Regulations and is of major importance to the regulatory program.		
(2) Environmental conditions: The untreated wastewater discharged overland and into Bristol’s stormwater drainage system to an unnamed tributary of Mount Hope Bay. Kickemuit River also flows into Mount Hope Bay. The affected waters are classified in the Water Quality Regulations as follows: Tributary – Class A; Kickemuit River – SA and SA{b}; and Mount Hope Bay – SA. Class A waters are designated for primary and secondary contact recreational activities, fish and wildlife habitat, and shall have excellent aesthetic value. Class SA waters are designated for shellfish harvesting for direct human consumption and primary and secondary contact recreational activities, and fish and wildlife habitat. Seasonal shellfish closures are enacted in SA{b} waters due to concentration of vessels. At the time of the Overflow, Kickemuit River was classified by DEM as Prohibited for shellfish harvesting from January 1 to February 1 (due to elevated fecal coliform bacteria levels in the surface waters) and Conditional Approved for shellfish harvesting from February 1 to January 1. A portion of Mount Hope Bay was also classified by DEM as Conditionally Approved for shellfish harvesting. Waters classified as Conditionally Approved are subject to periodic shellfish closures caused by high fecal coliform bacteria levels following precipitation events. Mount Hope Bay and Kickemuit River do not meet their assigned water quality designations according to DEM’s 2014 <i>Integrated Water Quality Monitoring and Assessment List Final May 2015</i> and are listed as impaired for not supporting shellfish consumption. The cause of the impairment is fecal coliform bacteria, which is associated with wastewater. The Overflow occurred in January, so it is unlikely any direct contact with the water by humans from recreational activities occurred. Kickemuit River was closed to shellfish harvesting caused by rainfall (and elevated fecal coliform bacteria levels in the surface waters) from sunrise on 1 January 2018 to sunrise on 1 February 2018. Mount Hope Bay was closed to shellfish harvesting caused by rainfall (and elevated fecal coliform bacteria levels in the surface waters) from sunrise on 13 January 2018 to sunrise on 20 January 2018 and from sunrise on 24 January 2018 to sunrise on 31 January 2018. The closure of Mount Hope Bay and Kickemuit River to shellfishing caused by the Overflow lasted for 5½ days (from sunrise on 31 January 2018 to noon on 5 February 2018).		
(3) Amount of the pollutant: Bristol reported to DEM that a maximum volume of 265,000 gallons of wastewater was discharged.		
(4) Toxicity or nature of the pollutant: Wastewater contains many kinds of bacteria, viruses, and parasites and toxic pollutants that can cause serious or fatal diseases in both humans and animals, as well as being the source of objectionable odors.		
(5) Duration of the violation: Full duration unknown – a maximum of 20 days. Bristol reported that the discharge likely began on 5 January 2018 and continued to 24 January 2018, when the Wastewater Pipe was repaired.		
(6) Areal extent of the violation: Approximately 2,071 acres.		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** BCWA failed to take reasonable and appropriate steps to prevent the noncompliance by failing to properly plan and communicate before repairing the Water Pipe. Bristol took reasonable and appropriate steps to mitigate the noncompliance by reporting the Overflow to DEM and promptly repairing the Wastewater Pipe.
- (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:** BCWA had full control over the occurrence of the violation, and the violation was foreseeable.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Based on the date reported by Bristol that the Overflow began (5 January 2018), Mount Hope Bay should also have been closed to shellfish harvesting due to the Overflow from noon on 6 January 2018 to sunset on 12 January 2018 and from sunrise on 20 January 2018 to sunset on 22 January 2018 (10 ½ days). No commercial landings were reported for these periods; however, recreational landings may have occurred. Kickemuit River and Mount Hope Bay contribute approximately .16% of the total quahog landings in Rhode Island annually (which equates to approximately \$10,000 annually). The loss to the shellfishermen for the 5 ½ day closure is approximately \$150.

<u>X</u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000 \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250