

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Cardi Corporation**

**FILE NOs.: OCI-WP-15-73 and OCI-WP-17-10  
X-ref RIPDES RIR100847 and  
RIG85G017 and FWW 11-0099**

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. Facts

- (1) The Department of Transportation (“DOT”) awarded a contract to Respondent to reconstruct the Apponaug Circulator in the city of Warwick (the “Apponaug Circulator Project”).
- (2) On 8 October 2013, the DEM authorized the DOT to discharge storm water associated with the Apponaug Circulator Project to waters of the State affected by the project under the 2013 General Permit for Stormwater Discharge Associated with Construction Activity. The permit authorization number is RIPDES No. RIR100847 (the “Storm Water Permit”).
- (3) Respondent certified that it is responsible for complying with the Storm Water Permit.
- (4) The Storm Water Permit requires the following:
  - (a) Install, inspect and maintain effective erosion, runoff and sediment controls;
  - (b) Install perimeter controls and sediment barriers along areas that will receive stormwater from earth disturbing activities;
  - (c) Install controls that will be used to divert flows from exposed soils, retain or detain flows or otherwise limit runoff and the discharge of pollutants from exposed areas of the site;

- (d) Initiate soil stabilization of disturbed areas whenever any clearing, grading, excavating or other earth disturbing activities have permanently ceased on any portion of the site or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 days;
  - (e) Install and maintain inlet protection practices that remove sediment from the discharge prior to entry into storm drain inlets;
  - (f) Minimize sediment track out onto off-site streets, other paved areas and sidewalks from vehicles exiting the construction site by using properly designed and constructed construction entrances at all points that exit onto paved roads;
  - (g) Protect stockpiled sediment and soil from contact with stormwater, including run on, using a temporary perimeter barrier;
  - (h) Provide cover or appropriate temporary vegetative or structural stabilization where practicable to avoid direct contact with precipitation or to minimize the discharge of sediments;
  - (i) Initiate work to fix any problems noted during site inspections immediately after discovering the problem and complete such work by the close of the next work day, if the problem does not require significant repair or replacement or within 7 days if the problem does require significant repair or replacement;
  - (j) Perform weekly inspections and prepare reports of the inspections that include the operator's name, signature and date;
  - (k) Document all corrective actions on the inspection reports on the date when the actions were completed; and
  - (l) Amend the Soil Erosion Sediment Control ("SESC") Plan within 7 days of completing actions that result in a change to any of the storm water control measures and maintain a log of the amendments.
- (5) Stormwater from the Apponaug Circulator Project discharged to Hardig Brook.
  - (6) A portion of Hardig Brook as shown on the plans for the Apponaug Circulator Project is referenced as Apponaug River.
  - (7) Hardig Brook is classified as B. Waters classified as B are designated for primary and secondary contact recreational activities and fish and wildlife habitat as defined by the DEM's Water Quality Regulations Rule 8(B)(1)(c).
  - (8) Hardig Brook does not meet its assigned water quality designation according to the most recent DEM report of impaired waters entitled "STATE OF RHODE ISLAND 2014 303(d) LIST OF IMPAIRED WATERS FINAL May 2015". The causes of this impairment are lead and fecal coliform bacteria.
  - (9) Lead and fecal coliform bacteria are common pollutants found in soil.

- (10) On 20 February 2015, the DEM issued a permit to the DOT and Respondent to discharge treated groundwater associated with the Apponaug Circulator Project to Hardig Brook. The permit authorization number is RIPDES No. RIG85G017 (the “Groundwater Permit”).
- (11) The Groundwater Permit requires the following:
- (a) Treat the groundwater using a system described in the plans submitted to the DEM on 20 January 2015 and amended per the 19 February 2015 comments from the DEM (the “Treatment System”);
  - (b) Inspect the Treatment System twice per month to assure that the system is operating efficiently and document the findings of the inspections;
  - (c) Comply with a monthly average discharge limit for lead of 2.2 micrograms per liter (“ppb”);
  - (d) Summarize monitoring results obtained during the previous 3 months and report these results to the DEM in a Discharge Monitoring Report (“DMR”) that must be postmarked no later than the 15<sup>th</sup> day of the month following the completed reporting period;
  - (e) Monitor flow with a meter that records the instantaneous gallons per minute and total gallons discharged from the Treatment System and submit a flow log with the DMR;
  - (f) Collect effluent samples once each day on the first, third and sixth day of the discharge during the first week of the discharge and collect weekly samples for the first month thereafter, if there is no detection of contaminants during the first week;
  - (g) Cease the discharge from the Treatment System if there is a violation of a discharge limit and notify the DEM within 24 hours; and
  - (h) Redesign the Treatment System and request a modification of the permit from the DEM if there are any violations of a permit limit for metals. No discharge is allowed until the modification of the system is approved by the DEM.

- (12) On 30 September 2015, the DEM inspected the Apponaug Circulator Project during a rain storm and reviewed records associated with the Storm Water Permit and the Groundwater Permit. The inspection and review of records revealed the following:

Storm Water Permit

- (a) Inadequate/absent erosion, runoff or sediment controls at the following locations:
- (i) The edge of the articulated blocks forming the base of the relocated Apponaug River and exposed soils north and south of the AOC-3 bridge structure for Veterans Memorial Drive;
  - (ii) The edge of the limits of disturbance where slope stabilization was underway along the northeastern portion (AOC-6) of the site adjacent to Kettle Street;
  - (iii) The southern portion of the Post Road Extension slope at the recommended intervals; and
  - (iv) Along the bottom of the retaining wall at the National Grid substation;
- (b) No stabilization of exposed soils at the following locations:
- (i) Along the banks of the relocated Apponaug River, particularly at the edge of the articulated blocks located north of the AOC-3 bridge structure. Sediment was observed along the top of the articulated blocks toward the river; and
  - (ii) The National Grid substation slope and the steep slope along the southern entrance of the Post Road Extension;
- (c) No installation of storm drain inlet protection at numerous locations along Post Road in the vicinity of the National Grid substation and former Bank of America building and along the southern portion of the Post Road Extension. A significant quantity of sediment was observed in the catch basin structures;
- (d) Lack of proper construction entrance to the Mill site along Centerville Road;
- (e) Lack of proper construction entrance to the staging and vehicle/equipment/material storage area located at the former Bank of America building (the “Staging Area”);
- (f) No installation of temporary perimeter sediment barriers for numerous soil stockpiles at the Mill site and the Staging Area;

- (g) Deficiencies identified during weekly inspections were not addressed over multiple inspections for the 6 months of reports that were reviewed. Specifically, no installation of temporary perimeter sediment barriers for soil stockpiles, no installation of storm drain inlet protection, improper construction of the construction entrances and no washing of vehicle wheels at the Mill site;
- (h) The inspection reports for July 2015 and August 2015 were unsigned and undated by Respondent;
- (i) Logs of corrections to the storm water controls were not being kept and amendments to the SESC Plan were not documented;

Groundwater Permit

- (j) The Treatment System began operating on or about 18 March 2015 and continued to operate until on or about 21 September 2015;
- (k) No records of inspection, maintenance, monitoring and performance of the Treatment System were available at the time of the inspection. A log provided to the DEM inspector during an inspection on 2 November 2015 failed to document specific actions taken at the time of maintenance and was therefore incomplete;
- (l) No flow log was provided to the DEM with the DMRs for the quarters ending March 2015, June 2015 and September 2015. The DEM was unable to verify whether the flow rates from the Treatment System complied with the limits for flow in the Groundwater Permit;
- (m) Samples were not collected of the effluent from the Treatment System for the minimum number of days for March 2015, June 2015 and August 2015 (as shown in the table below);

<b>Month</b>	<b>Sampling Required (in days)</b>	<b>Sampling Performed (in days)</b>
March	5	4
June	5	2
August	2	1

- (n) The DMRs for July 2015, August 2015 and September 2015 showed exceedances of the monthly average discharge limit for lead (the “Permit Exceedances”). The reported results were 3.6 ppb for July, 2.4 ppb for August and 5.1 ppb for September;
- (o) The DEM was not notified of the Permit Exceedances within 24 hours. The DEM was unaware of the Permit Exceedances until the DMRs for the

quarter ending September 2015 were received to the DEM on 16 October 2015;

- (p) No redesign of the Treatment System was submitted to the DEM; and
  - (q) No request was made to the DEM to modify the Groundwater Permit.
- (13) On 8 October 2015, the DEM issued a Notice of Referral (“NOR”) to the DOT for the violations that are the subject of this Notice of Violation (“NOV”). A copy of the NOR was sent to Respondent. The NOR advised the DOT and Respondent of the specific actions required to address the NOR and required a written response within 14 days.
  - (14) On 28 December 2015, the DEM received a letter from the DOT in response to the NOR. The letter documented the actions the DOT required Respondent to perform to address the violations. The DEM received no response from Respondent.
  - (15) Respondent failed to comply with the Storm Water Permit for the findings described in subsections 12(a) through (i) above.
  - (16) Respondent failed to comply with the Groundwater Permit for the findings described in subsections 12(j) through (q) above.

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) **Rhode Island’s Water Pollution Act Section 46-12-5(b)** – requiring the discharge of any pollutant into the waters comply with the terms and conditions of a permit and applicable regulations.
- (2) **DEM’s Water Quality Regulations**
  - (a) **Rule 9(A)** – prohibiting the discharge of pollutants into any waters of the State 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.
  - (b) **Rule 9(B)** – prohibiting the discharge of pollutants into any waters of the State which the Director determines will likely result in the additional degradation of water quality of the receiving waters which are already below the water quality standard assigned to such waters.
  - (c) **Rule 11(B)** – requiring the discharge of pollutants into the waters of the State comply with the terms and conditions of an approval issued by the DEM.

- (d) **Rule 16(A)** – mandating compliance with all terms, conditions, management practices and operation and maintenance requirements set forth in the approval.
- (3) **DEM’s Regulations for the Rhode Island Pollutant Discharge Elimination System**
  - (a) **Rule 14.02(a)** – requiring the permittee to comply with all conditions of a permit issued by the DEM.
  - (b) **Rule 14.05** – requiring the permittee to take all reasonable steps to minimize or prevent a discharge in violation of the permit.
  - (c) **Rule 14.06** – requiring the permittee to maintain in good working order and operate as efficiently as possible all treatment works to achieve compliance with the permit.
  - (d) **Rule 14.18** – requiring the permittee to immediately report any violation or noncompliance which may endanger health or the environment.

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:

**\$204,630**

- (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 30 days of your receipt of the 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 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.

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's 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 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  
One Capitol Hill, 2<sup>ND</sup> 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 Part 1.7(B) of the DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters*.

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

Tricia Quest, Esquire  
DEM - Office of Legal Services  
235 Promenade Street, 4<sup>TH</sup> 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 the 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 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) Tricia Quest at the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to David E. Chopy of the DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 7400.

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

By: \_\_\_\_\_  
David E. Chopy, Chief  
DEM Office of Compliance and Inspection

Dated: \_\_\_\_\_

CERTIFICATION

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

Cardi Corporation  
c/o Steven A. Cardi, Registered Agent  
400 Lincoln Avenue  
Warwick, RI 02888

by Certified Mail.

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## ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution

File Nos.: OCI-WP-15-73 and OCI-WP-17-10

X-ref RIPDES RIR100847 and RIG85G017 and FWW 11-0099

Respondent: Cardi Corporation

<b>GRAVITY OF VIOLATION</b>					
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), C(2) and C(3)(a), (b) and (c) – Failure To Install And Maintain Erosion Controls (Storm Water Permit)	Type I (\$25,000 Max. Penalty)*	Major	\$12,500	7 violations	\$87,500
C(2)(d) and C(3)(a) – Failure to Keep and Properly Maintain Records (Storm Water Permit)	Type III (\$6,250 Max. Penalty)*	Major	\$6,250	1 violation	\$6,250
C(1), C(2) and C(3) – Failure To Comply With Discharge Limits (Groundwater Permit)	Type I (\$25,000 Max. Penalty)*	Major	\$25,000	3 violations	\$75,000
C(1), C(2)(c) and (d) and C(3)(a) – Failure To Perform Adequate Sampling (Groundwater Permit)	Type I (\$25,000 Max. Penalty)*	Major	\$25,000	1 violation	\$25,000
C(2)(d) and C(3)(a) – Failure to Keep and Properly Maintain Records (Groundwater Permit)	Type III (\$6,250 Max. Penalty)*	Major	\$6,250	1 violation	\$6,250
<b>SUB-TOTAL</b>					<b>\$200,000</b>

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

## **ADMINISTRATIVE PENALTY SUMMARY (continued)**

<b>ECONOMIC BENEFIT FROM NONCOMPLIANCE</b>		
COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT ARE IN COMPLIANCE. 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.		
<b>DESCRIPTION OF BENEFIT</b>	<b>CALCULATION</b>	<b>AMOUNT</b>
<p>Economic benefit of noncompliance identified by the DEM for the failure to perform sampling for the minimum number of days required by the Groundwater Permit.</p> <p>The expense associated with performing the analysis were obtained from the State's master price agreement with one of its analytical laboratories.</p> <p>The economic benefit was calculated by utilizing an EPA computer model entitled "BEN" that performs a detailed economic analysis. The dates, dollar amounts and values used in this analysis are as listed in this table.</p>	<ul style="list-style-type: none"> <li>• Profit Status                      C-Corporation</li> <li>• Filing Status                        C-Corporation</li> <li>• Initial Capital Investment        \$0</li> <li>• One-time Non-depreciable Expense    \$6,290 [The laboratory cost to analyze the pollutants listed on the permit @\$1,258 per sampling event] X 5 missed sampling events</li> <li>• Annual Expense                        \$0</li> <li>• First Month of Non-Compliance        18 March 2015</li> <li>• Compliance Date                        21 September 2015</li> <li>• Penalty Due Date                        31 May 2017</li> <li>• Useful Life of Pollution Control        N/A</li> <li>• Equipment Annual Inflation Rate        N/A</li> <li>• Discount/Compound Rate                N/A</li> </ul>	<p>\$4,630</p>
<b>SUB-TOTAL</b>		<b>\$4,630</b>

<b>COST RECOVERY</b>
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>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.</p>

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$204,630**

**PENALTY MATRIX WORKSHEET**

CITATION: Failure To Install And Maintain Erosion Controls (Storm Water Permit)  
 VIOLATION NOs.: C (1), C(2), and C(3)(a), (b) and (c)

<b>TYPE</b>		
<u>  X  </u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE III</b> <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's *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 permit by installing and maintaining effective erosion, runoff and sediment (ERS) controls as described in subsections B(12)(a) through (g). Compliance with the conditions of a permit is a primary objective of Rhode Island's Water Pollution Act, the DEM's Water Quality Regulations and the DEM's RIPDES Regulations.
- (B) **Environmental conditions:** The Apponaug Circulator Project occurred in close proximity to and within Hardig Brook/Apponaug River. Storm water from the project was directed to the brook. The brook is designated as a Class B waterbody. Waters classified as B are designated for primary and secondary contact recreational activities and fish and wildlife habitat. The brook does not meet its assigned water quality designation according to the most recent DEM report of impaired waters entitled "STATE OF RHODE ISLAND 2014 303(d) LIST OF IMPAIRED WATERS FINAL May 2015". The causes of this impairment are lead and fecal coliform bacteria. The DEM's inspection on 30 September 2015 occurred after a recent rain storm and the inspector observed a significant quantity of sediment in the catch basin structures on the Post Road Extension and evidence of sediment having entered Hardig Brook/Apponaug River. The National Weather Service data indicated that 2.5 inches of rain fell on 29 September 2015 and 30 September 2015.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** Soil contains, among other pollutants, lead and fecal coliform bacteria.
- (E) **Duration of the violation:** Full duration unknown - the DEM observed the noncompliance during an inspection of the Apponaug Circulator Project on 30 September 2015. Some of the ERS controls were not installed/maintained for 6 months based on a review of weekly inspection reports maintained by the DOT and/or its consultants. The inspector observed Respondent's workers installing ERS controls in several locations at the time of the inspection.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent did not take reasonable and appropriate steps to prevent the noncompliance. Some of the same noncompliance was noted on weekly inspection reports going back 6 months. The inspector observed Respondent's workers installing ERS controls in several locations at the time of the inspection. The 28 December 2015 letter that the DEM received from the DOT identified some further actions that were taken to mitigate the 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 an extensive history of noncompliance with the environmental laws and the DEM's regulations. Since 2002, the DEM has issued 7 notices of violations that included the assessment of administrative penalties. On **19 September 2002**, the DEM issued an NOV to Respondent for the release of fugitive dust associated with the construction of Post Road/Route 403 in North Kingstown (Route 403 Project). A penalty of \$5,000 was assessed. On **5 January 2004**, the DEM issued an NOV to Respondent for numerous underground storage tank violations at its facility on Lincoln Avenue in Warwick. A penalty of \$9,275 was assessed. On **18 November 2004**, the DEM issued an NOV to the DOT for the failure to comply with a Remedial Action Work Plan (RAWP) to properly remove and dispose of contaminated soils associated with the Route 403 Project. Respondent was the contractor responsible for implementing the RAWP. A penalty of \$35,669 was assessed. On **1 March 2007**, the DEM issued an NOV to the DOT and Respondent for unauthorized alterations to wetlands and the failure to comply with numerous conditions of the permit issued to the DOT associated with the Route 403 Project. A penalty of \$35,000 was assessed. On **15 January 2008**, the DEM issued an NOV to the DOT for the failure to comply with a RIPDES permit for the discharge of contaminated groundwater to the Providence River associated with the Route I-195 construction project (I-195 Project). Respondent was the contractor responsible for complying with the permit (which is the same violation that is the subject of this NOV). A penalty of \$62,500 was assessed. On **13 June 2008**, the DEM issued an NOV to the DOT and Respondent for the failure to comply with an approval from the DEM to properly manage contaminated soils associated with the I-195 Project. Respondent improperly removed and disposed of the contaminated soil at a school in Glocester. A penalty of \$251,546 was assessed. On **17 April 2015**, the DEM issued an NOV to Respondent for unauthorized alterations to wetlands and the failure to comply with numerous conditions of the permit issued to the DOT for the same construction project that is the subject of this NOV. A penalty of \$20,000 was assessed. In total, for these 7 notices of violation, the DEM has assessed penalties of \$418,990.
- (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:** Negligence is attributable to Respondent for its failure to comply with the permit.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u>  </u> <b>MAJOR</b>	<b>MODERATE</b>	<b>MINOR</b>
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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	<b>MAJOR</b>	\$12,500 to \$25,000 <b>\$12,500</b>	\$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

**PENALTY MATRIX WORKSHEET**

CITATION: Failure To Keep and Properly Maintain Records (Storm Water Permit)  
 VIOLATION NOS.: C(2)(d) and C(3)(a)

<b>TYPE</b>		
<u>      </u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>  <b>X</b>  </u> <b>TYPE III</b> <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's *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 permit by properly signing and dating weekly inspection reports, maintaining logs of corrections to storm water controls and amending the SESC Plan as described in subsections B(12)(h) and (i). Compliance with the conditions of a permit is a primary objective of Rhode Island's Water Pollution Act, the DEM's Water Quality Regulations and the DEM's RIPDES Regulations.
- (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:** Considered, but not utilized for this calculation.
- (E) **Duration of the violation:** Full duration unknown - the DEM's review of records revealed that none of the weekly inspection reports for July 2015 and August 2015 (8 total) were signed and dated, no logs of corrections to storm water controls were maintained and no amendments were made to the SESC Plan.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent did not take reasonable and appropriate steps to prevent the noncompliance. The 28 December 2015 letter that the DEM received from the DOT identified some actions that were taken to mitigate the 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 an extensive history of noncompliance with the environmental laws and the DEM's regulations. Since 2002, the DEM has issued 7 notices of violations that included the assessment of administrative penalties. On **19 September 2002**, the DEM issued an NOV to Respondent for the release of fugitive dust associated with the construction of Post Road/Route 403 in North Kingstown (Route 403 Project). A penalty of \$5,000 was assessed. On **5 January 2004**, the DEM issued an NOV to Respondent for numerous underground storage tank violations at its facility on Lincoln Avenue in Warwick. A penalty of \$9,275 was assessed. On **18 November 2004**, the DEM issued an NOV to the DOT for the failure to comply with a Remedial Action Work Plan (RAWP) to properly remove and dispose of contaminated soils associated with the Route 403 Project. Respondent was the contractor responsible for implementing the RAWP. A penalty of \$35,669 was assessed. On **1 March 2007**, the DEM issued an NOV to the DOT and Respondent for unauthorized alterations to wetlands and the failure to comply with numerous conditions of the permit issued to the DOT associated with the Route 403 Project. A penalty of \$35,000 was assessed. On **15 January 2008**, the DEM issued an NOV to the DOT for the failure to comply with a RIPDES permit for the discharge of contaminated groundwater to the Providence River associated with the Route I-195 construction project (I-195 Project). Respondent was the contractor responsible for complying with the permit (which is the same violation that is the subject of this NOV). A penalty of \$62,500 was assessed. On **13 June 2008**, the DEM issued an NOV to the DOT and Respondent for the failure to comply with an approval from the DEM to properly manage contaminated soils associated with the I-195 Project. Respondent improperly removed and disposed of the contaminated soil at a school in Glocester. A penalty of \$251,546 was assessed. On **17 April 2015**, the DEM issued an NOV to Respondent for unauthorized alterations to wetlands and the failure to comply with numerous conditions of the permit issued to the DOT for the same construction project that is the subject of this NOV. A penalty of \$20,000 was assessed. In total, for these 7 notices of violation, the DEM has assessed penalties of \$418,990.
- (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:** Negligence is attributable to Respondent for its failure to comply with the permit.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<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	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250 <b>\$6,250</b>
	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



**PENALTY MATRIX WORKSHEET**

CITATION: Failure To Comply With Discharge Limits (Groundwater Permit)  
 VIOLATION NOS.: C(1), C(2) and C(3)

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

**FACTORS CONSIDERED:**

Taken from Section 10 (a) (2) of the DEM's *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 discharge limits in the permit as described in subsection B(12)(n). Compliance with the conditions of a permit is a primary objective of the Water Pollution Act, the DEM's Water Quality Regulations and the DEM's RIPDES Regulations.
- (B) **Environmental conditions:** The Apponaug Circulator Project occurred in close proximity to and within Hardig Brook/Apponaug River. Groundwater from the project was directed to the brook. The brook is designated as a Class B waterbody. Waters classified as B are designated for primary and secondary contact recreational activities and fish and wildlife habitat. The brook does not meet its assigned water quality designation for fish and wildlife habitat according to the most recent DEM report of impaired waters entitled "STATE OF RHODE ISLAND 2014 303(d) LIST OF IMPAIRED WATERS FINAL May 2015". The cause of this impairment is lead.
- (C) **Amount of the pollutant:** The monthly average concentrations were 3.6 ppb for July (4.7 ppb on 1 July and 2.4 ppb on 14 July), 2.4 ppb for August (2.4 ppb on 14 August) and 5.1 ppb for September (12 ppb on 1 September, 1.7 ppb on 11 September, and 1.6 ppb on 21 September). The monthly concentrations were 1.6 times over the permit limit for July, 1.1 times over the permit limit for August, and 2.3 times over the permit limit for September.
- (D) **Toxicity or nature of the pollutant:** The permit limit of 2.2 ppb as a monthly average is a water quality based limit. The discharge of lead at levels above these limits is harmful to aquatic organisms in the brook.
- (E) **Duration of the violation:** 3 months – the monthly average concentrations exceeded the permit limits in July 2015, August 2015 and September 2015.
- (F) **Areal extent of the violation:** Unknown. The DEM has no specific information concerning adverse impacts to the aquatic organisms in the brook that may have occurred because of these discharges.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent did not take reasonable and appropriate steps to prevent and/or mitigate the noncompliance. Respondent failed to properly operate and maintain the Treatment System to ensure compliance with the permit. The permit required Respondent to cease the discharge from the system if there is a violation of a discharge limit and notify the DEM within 24 hours, redesign the system and request a modification of the permit from the DEM if there are any violations of a permit limit for metals and not begin discharging until the modification of the system is approved by the DEM. Respondent failed to comply with any of these requirements as described in subsections B(12)(o), (p) and (q). The DEM was not aware of the noncompliance until the DMRs were submitted on 16 October 2015. Respondent continued to operate the system for 2 months after it became aware of the noncompliance with the permit limit in mid-July. The system ceased operating on or about 21 September 2015.
- (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 an extensive history of noncompliance with the environmental laws and the DEM's regulations. Since 2002, the DEM has issued 7 notices of violations that included the assessment of administrative penalties. On **19 September 2002**, the DEM issued an NOV to Respondent for the release of fugitive dust associated with the construction of Post Road/Route 403 in North Kingstown (Route 403 Project). A penalty of \$5,000 was assessed. On **5 January 2004**, the DEM issued an NOV to Respondent for numerous underground storage tank violations at its facility on Lincoln Avenue in Warwick. A penalty of \$9,275 was assessed. On **18 November 2004**, the DEM issued an NOV to the DOT for the failure to comply with a Remedial Action Work Plan (RAWP) to properly remove and dispose of contaminated soils associated with the Route 403 Project. Respondent was the contractor responsible for implementing the RAWP. A penalty of \$35,669 was assessed. On **1 March 2007**, the DEM issued an NOV to the DOT and Respondent for unauthorized alterations to wetlands and the failure to comply with numerous conditions of the permit issued to the DOT associated with the Route 403 Project. A penalty of \$35,000 was assessed. On **15 January 2008**, the DEM issued an NOV to the DOT for the failure to comply with a RIPDES permit for the discharge of contaminated groundwater to the Providence River associated with the Route I-195 construction project (I-195 Project). Respondent was the contractor responsible for complying with the permit (which is the same violation that is the subject of this NOV). A penalty of \$62,500 was assessed. On **13 June 2008**, the DEM issued an NOV to the DOT and Respondent for the failure to comply with an approval from the DEM to properly manage contaminated soils associated with the I-195 Project. Respondent improperly removed and disposed of the contaminated soil at a school in Glocester. A penalty of \$251,546 was assessed. On **17 April 2015**, the DEM issued an NOV to Respondent for unauthorized alterations to wetlands and the failure to comply with numerous conditions of the permit issued to the DOT for the same construction project that is the subject of this NOV. A penalty of \$20,000 was assessed. In total, for these 7 notices of violation, the DEM has assessed penalties of \$418,990.
- (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:** Negligence is attributable to Respondent for its failure to comply with the permit. Respondent had control over the violations and had an obligation to ensure compliance with the permit.
- (J) **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 \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$12,500 to \$25,000 <b>\$25,000</b>	\$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

# PENALTY MATRIX WORKSHEET

CITATION: Failure to Perform Adequate Sampling (Groundwater Permit)

VIOLATION NOs.: C(1), C(2)(c) and (d) and C(3)(a)

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

**FACTORS CONSIDERED:**

Taken from Section 10 (a) (2) of the DEM's *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 permit by sampling on a sufficient number of days as described in subsection B(12)(m). Compliance with the conditions of a permit is a primary objective of Rhode Island's Water Pollution Act, the DEM's Water Quality Regulations and the DEM's RIPDES Regulations.
- (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:** Considered, but not utilized for this calculation.
- (E) **Duration of the violation:** The DEM's review of records revealed that Respondent failed to collect samples for the minimum number of days in March 2015 (1 day missed), June 2015 (3 days missed) and August 2015 (1 day missed). In total, for March, June and August, samples were collected on 7 days.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent did not take reasonable and appropriate steps to prevent the noncompliance. The permit clearly stated the minimum number of days that samples were required to be collected.
- (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 an extensive history of noncompliance with the environmental laws and the DEM's regulations. Since 2002, the DEM has issued 7 notices of violations that included the assessment of administrative penalties. On **19 September 2002**, the DEM issued an NOV to Respondent for the release of fugitive dust associated with the construction of Post Road/Route 403 in North Kingstown (Route 403 Project). A penalty of \$5,000 was assessed. On **5 January 2004**, the DEM issued an NOV to Respondent for numerous underground storage tank violations at its facility on Lincoln Avenue in Warwick. A penalty of \$9,275 was assessed. On **18 November 2004**, the DEM issued an NOV to the DOT for the failure to comply with a Remedial Action Work Plan (RAWP) to properly remove and dispose of contaminated soils associated with the Route 403 Project. Respondent was the contractor responsible for implementing the RAWP. A penalty of \$35,669 was assessed. On **1 March 2007**, the DEM issued an NOV to the DOT and Respondent for unauthorized alterations to wetlands and the failure to comply with numerous conditions of the permit issued to the DOT associated with the Route 403 Project. A penalty of \$35,000 was assessed. On **15 January 2008**, the DEM issued an NOV to the DOT for the failure to comply with a RIPDES permit for the discharge of contaminated groundwater to the Providence River associated with the Route I-195 construction project (I-195 Project). Respondent was the contractor responsible for complying with the permit (which is the same violation that is the subject of this NOV). A penalty of \$62,500 was assessed. On **13 June 2008**, the DEM issued an NOV to the DOT and Respondent for the failure to comply with an approval from the DEM to properly manage contaminated soils associated with the I-195 Project. Respondent improperly removed and disposed of the contaminated soil at a school in Glocester. A penalty of \$251,546 was assessed. On **17 April 2015**, the DEM issued an NOV to Respondent for unauthorized alterations to wetlands and the failure to comply with numerous conditions of the permit issued to the DOT for the same construction project that is the subject of this NOV. A penalty of \$20,000 was assessed. In total, for these 7 notices of violation, the DEM has assessed penalties of \$418,990.
- (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:** Negligence is attributable to Respondent for its failure to comply with the permit.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<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	<b>MAJOR</b>	\$12,500 to \$25,000 <b>\$25,000</b>	\$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

**PENALTY MATRIX WORKSHEET**

CITATION: Failure To Keep and Properly Maintain Records (Groundwater Permit)

VIOLATION NOS.: C(2)(d) and C(3)(a)

<b>TYPE</b>		
<u>      </u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>  <b>X</b>  </u> <b>TYPE III</b> <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's *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 permit by keeping records of inspection, maintenance, monitoring and performance of the Treatment System and a flow log of discharges from the system as described in subsections B(12)(k) and (l). Compliance with the conditions of a permit is a primary objective of Rhode Island's Water Pollution Act, the DEM's Water Quality Regulations and the DEM's RIPDES Regulations.
- (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:** Considered, but not utilized for this calculation.
- (E) **Duration of the violation:** Approximately 6 months – the system began operation on or about 18 March 2015 and ceased operation on or about 18 September 2015.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent did not take reasonable and appropriate steps to prevent the noncompliance. The 28 December 2015 letter that the DEM received from the DOT identified some actions that were taken to mitigate the 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 an extensive history of noncompliance with the environmental laws and the DEM's regulations. Since 2002, the DEM has issued 7 notices of violations that included the assessment of administrative penalties. On **19 September 2002**, the DEM issued an NOV to Respondent for the release of fugitive dust associated with the construction of Post Road/Route 403 in North Kingstown (Route 403 Project). A penalty of \$5,000 was assessed. On **5 January 2004**, the DEM issued an NOV to Respondent for numerous underground storage tank violations at its facility on Lincoln Avenue in Warwick. A penalty of \$9,275 was assessed. On **18 November 2004**, the DEM issued an NOV to the DOT for the failure to comply with a Remedial Action Work Plan (RAWP) to properly remove and dispose of contaminated soils associated with the Route 403 Project. Respondent was the contractor responsible for implementing the RAWP. A penalty of \$35,669 was assessed. On **1 March 2007**, the DEM issued an NOV to the DOT and Respondent for unauthorized alterations to wetlands and the failure to comply with numerous conditions of the permit issued to the DOT associated with the Route 403 Project. A penalty of \$35,000 was assessed. On **15 January 2008**, the DEM issued an NOV to the DOT for the failure to comply with a RIPDES permit for the discharge of contaminated groundwater to the Providence River associated with the Route I-195 construction project (I-195 Project). Respondent was the contractor responsible for complying with the permit (which is the same violation that is the subject of this NOV). A penalty of \$62,500 was assessed. On **13 June 2008**, the DEM issued an NOV to the DOT and Respondent for the failure to comply with an approval from the DEM to properly manage contaminated soils associated with the I-195 Project. Respondent improperly removed and disposed of the contaminated soil at a school in Glocester. A penalty of \$251,546 was assessed. On **17 April 2015**, the DEM issued an NOV to Respondent for unauthorized alterations to wetlands and the failure to comply with numerous conditions of the permit issued to the DOT for the same construction project that is the subject of this NOV. A penalty of \$20,000 was assessed. In total, for these 7 notices of violation, the DEM has assessed penalties of \$418,990.
- (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:** Negligence is attributable to Respondent for its failure to comply with the permit.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<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	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250 <b>\$6,250</b>
	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