

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: City of Cranston

**File Nos.: OCI-WP-18-46
X-ref RIPDES RI0100013 and
RIPDES Referral #17-02**

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, 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 8 February 2016, the DEM issued a significant noncompliance (“SNC”) letter to the City of Cranston, Rhode Island (the “City” or “Cranston”) for its failure to meet the toxicity limits in its wastewater treatment facility permit. The SNC letter required Cranston to perform a Toxicity Identification Evaluation (“TIE”) study to determine the cause of the violations. In response to the SNC letter and after the submittal and review of multiple interim reports, on 4 October 2016, Cranston submitted the final results of the study to the DEM. The findings revealed that a cause of the violations were detergents present in wastewater that Falvey Linen Supply, Inc. (“Falvey”) was discharging to Cranston’s wastewater treatment facility. On 9 December 2016 and 9 May 2017, the DEM issued letters to Cranston reminding the City of its obligation to take corrective action. In response to the letters, Cranston provided information to the DEM on the efforts by Cranston and Falvey to address the violations. After review of the information provided by Cranston, the DEM determined that Cranston failed to properly enforce violations of its pretreatment standards against Falvey. Cranston’s failure to comply with its permit and its failure to properly enforce against Falvey is the subject of this Notice of Violation (“NOV”).

C. Facts

- (1) Cranston owns a wastewater collection and treatment system (the “Facility”). The Facility treats wastewater generated from, among others, industrial users (“IUs”).
- (2) On 30 September 2008, the DEM issued to Cranston Rhode Island Pollutant Discharge Elimination System (“RIPDES”) Permit No. RI0100013 (the “Permit”), which became effective on 1 December 2008.
- (3) The Permit authorizes Cranston to discharge treated wastewater from the Facility to Pawtuxet River through outfall 001A.

- (4) The Permit requires Cranston to:
- (a) Comply with a maximum daily Chronic – No Observed Effect Concentration toxicity limit of 50% or greater for the species *Ceriodaphnia sp.* (the “Toxicity Limit”);
 - (b) Fully and effectively exercise and implement its approved industrial pretreatment program (“IPP”);
 - (c) Implement its approved enforcement response plan (“ERP”);
 - (d) Identify each instance of IU noncompliance with any pretreatment standard and/or requirement and take formal documented action for each instance of noncompliance;
 - (e) Require IUs to comply with applicable categorical pretreatment standards and all applicable pretreatment standards and requirements; and
 - (f) Summarize monitoring results obtained during the previous month and report these results to the DEM in a Discharge Monitoring Report (“DMR”).
- (5) On 10 March 2009, the DEM approved an ERP revised in March 2008 that was submitted by Tutela Engineering Associates, Inc. (“Tutela”) on behalf of Cranston (the “Approved ERP”).
- (6) The Approved ERP requires Cranston to take enforcement action (in the form of an administrative order with a penalty, a show cause order, a civil action or a termination of service) against an IU within 60 days of the initial enforcement response for permit exceedances that are recurring, significant and cause harm to the Facility or the environment.
- (7) Falvey is an IU and is authorized to discharge wastewater to the Facility.
- (8) Cranston reported the following monitoring results for toxicity to the DEM on the DMRs that exceeded the Toxicity Limit:

REPORTING PERIOD	RESULT (in %)
2 ND Quarter 2015	13
3 RD Quarter 2015	25
4 TH Quarter 2015	38
3 RD Quarter 2016	25
4 TH Quarter 2016	25

- (9) On 4 October 2016, the DEM received a report titled *TIE STUDY RESULTS CRANSTON WPCF* dated September 2016 that was prepared by Ramboll Environ on behalf of Cranston. The report stated that the Toxicity Limit exceedances are due to various surfactant compounds that are present in high concentrations in the discharge from Falvey.

- (10) On 1 March 2017, Tutela issued a letter to Falvey on behalf of Cranston. The letter stated that Falvey is:
- (a) A contributing source to the Toxicity Limit exceedances that began in January 2015;
 - (b) Prohibited in accordance with Cranston’s sewer use ordinance the discharge of wastewater causing, alone or in conjunction with other sources, a failure of a toxicity test; and
 - (c) Using a product that is designated as toxic to aquatic life.

The letter required Falvey to submit by 3 April 2017 proposed corrective measures, including milestone dates, to mitigate the Toxicity Limit exceedances.

- (11) Cranston reported the following monitoring result for toxicity to the DEM on the DMR that exceeded the Toxicity Limit:

REPORTING PERIOD	RESULT (in %)
2 ND Quarter 2017	25

- (12) On 28 July 2017, the DEM received a letter from Tutela on behalf of Cranston. The letter stated that Tutela received a status report from Falvey’s environmental consultant outlining tasks and corrective actions to evaluate the toxicity issues. The consultant stated that the proposed pretreatment measures are pending based on the results of additional toxicity and alternative chemical testing. Tutela stated that it expected Falvey to submit a follow up to the report in the next month.

- (13) Cranston reported the following monitoring results for toxicity to the DEM on the DMR that exceed the Toxicity Limit:

REPORTING PERIOD	RESULT (in %)
4 TH Quarter 2017	25

- (14) Pawtuxet River is classified in the Rhode Island Code of Regulations titled *Water Quality Regulations (250-RICR-150-05-1)* (the “Water Quality Regulations”) as Class B1. Class B1 waters are designated for primary and secondary contact recreational activities and fish and wildlife habitat and have good aesthetic value.

- (15) The Toxicity Limit is a water quality-based limit established to meet the water quality standards in the Water Quality Regulations for Pawtuxet River.

- (16) As of the date of the NOV, the DEM is unaware of any Falvey submittal that delineates the proposed corrective measures and milestone dates which were required as identified in subsection C (10) above.

- (17) As of the date of the NOV, Cranston has failed to take any further enforcement action against Falvey for the Toxicity Limit exceedances as required under its IPP and ERP.

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) **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.
- (2) **Water Quality Regulations**
 - (a) **Rule 9(A) (recently amended to Part 1.11A)** – prohibiting the discharge of pollutants into any waters of the State or any activity alone or in combination which the DEM 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 11(B) (recently amended to Part 1.13B)** – requiring the discharge of pollutants into the waters of the State comply with the terms and conditions of a permit issued by the DEM.
 - (c) **Rule 13(A) (recently amended to Part 1.15A)** – prohibiting the discharge of any pollutant into or conducting any activity which will likely cause or contribute pollution to the waters of the State.
 - (d) **Rule 16(A) (recently amended to Part 1.18A)** – mandating compliance with all terms, conditions, management practices and operation and maintenance requirements set forth in a permit.
- (3) **Rhode Island Code of Regulations titled *Regulations for the Rhode Island Pollutant Discharge Elimination System (250-RICR-150-10-1)* (the “RIPDES Regulations”)**
 - (a) **Rule 14.02(a) (recently amended to Part 1.14B.1)** – requiring the permittee to comply with all conditions of the permit.
 - (b) **Rule 14.05 (recently amended to Part 1.14E)** – requiring the permittee to take all reasonable steps to minimize or prevent a discharge in violation of the permit which has a reasonable likelihood of adverse affect to human health or the environment
 - (c) **Rule 14.06 (recently amended to Part 1.14F)** – requiring the permittee to maintain in good working order and operate as efficiently as possible all treatment works to achieve compliance with the permit.

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) **Within 30 days of receipt of the NOV**, act against Falvey in accordance with the IPP and ERP and submit evidence of this action to the DEM.
- (2) All reports and other documents required in Section D above shall be subject to the DEM's review and approval. Upon review, the 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, you must submit to the DEM 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:

\$112,500

- (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.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if the DEM determines that reasonable efforts have been made to comply promptly with the NOV.

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's 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 1.7B 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 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 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 DEM 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 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 G above.

FOR THE DIRECTOR

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

Dated: _____

CERTIFICATION

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

City of Cranston
c/o The Honorable Allan W. Fung, Mayor
869 Park Avenue
Cranston, RI 02910

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution
 File No.: OCI-WP-18-46, x-ref RIPDES No. RI0100013
 Respondent: City of Cranston

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), D (2) and D (3)(a) – Toxicity Limit Exceedances	Type I (\$25,000 Max. Penalty) *	Major	\$12,500	7 violations	\$87,500
D (2)(d) and D (3) – Enforcement Against Falvey	Type I (\$25,000 Max. Penalty) *	Major	\$25,000	1 violation	\$25,000
SUB-TOTAL					\$112,500

*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 Cranston 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 = \$112,500

PENALTY MATRIX WORKSHEET

CITATION: Toxicity Limit Exceedances
 VIOLATION NO.: D (1), D (2) and D (3)(a)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10A.1.b of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Cranston failed to comply with its discharge permit limit for toxicity. Compliance with permit limits 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 wastewater discharged to Pawtuxet River, which is designated as a Class B1 water body of the State. Class B1 waters are designated for fish and wildlife habitat, primary and secondary contact recreational activities, and shall have good aesthetic value. The permit limit for toxicity is a water quality-based limit established to meet the water quality standards in the Water Quality Regulations for Pawtuxet River. (3) Amount of the pollutant: Unknown. Cranston reported that for the quarters ending June 2015, September 2015, December 2015, September 2016, December 2016, June 2017 and December 2017 the toxicity of the wastewater was 13%, 25%, 38%, 25%, 25%, 25%, and 25%, respectively. The wastewater exceeded the maximum daily toxicity limit of 50% or greater for the species <i>Ceriodaphnia sp.</i> by 1.3 to 3.8 times the allowable limit. Cranston is authorized to discharge 20.2 million gallons per day of wastewater to Pawtuxet River - so it is likely that hundreds of millions of gallons of wastewater was discharged to Pawtuxet River each quarter that had toxicity that exceeded the permit limits. (4) Toxicity or nature of the pollutant: Toxicity in a water body is injurious or lethal to fish and wildlife. The DEM has no information regarding injuries or death to fish or wildlife. (5) Duration of the violation: Full duration unknown. Toxicity testing is performed quarterly – given the consecutive quarters the wastewater exceeded the maximum daily limit, it is likely that the wastewater violated the toxicity limit for 90 days in each quarter. (6) Areal extent of the violation: Unknown. 		
(continued)		

(continued from the previous page)

- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Considered, but not utilized for this calculation
- (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:** Considered, but not utilized for this calculation.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u> </u> 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	MAJOR	\$12,500 to \$25,000 \$12,500	\$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: Enforcement Against Falvey

VIOLATION NO.: D (2)(d) and D (3)

TYPE		
<p style="text-align: center;">___X___ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10A.1.b of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: Cranston failed to take formal documented action against Falvey for Falvey’s failure to comply with its pretreatment permit limits. Cranston is required under its permit to properly enforce its pretreatment program and to take formal documented action against an IU for each instance of noncompliance. Compliance with the pretreatment requirements of the permit 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: Considered, but not utilized for this calculation. (3) Amount of the pollutant: Unknown. Falvey discharges over 200,000 gallons per day of wastewater to Cranston’s wastewater treatment facility and is a significant industrial user. (4) Toxicity or nature of the pollutant: The DEM received documents from Cranston stating that various surfactant compounds are present in Falvey’s wastewater that are causing the permit limit exceedances for toxicity and that Falvey is using a product that is designated as toxic to aquatic life. (5) Duration of the violation: Full duration unknown – at least from 1 March 2016 to present. Cranston performed the first round of testing of Falvey’s wastewater on March 1, 2016 – the results of this testing revealed that Falvey’s wastewater was causing toxicity. (6) Areal extent of the violation: Considered, but not utilized for this calculation. 		
(continued)		

(continued from the previous page)

- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Cranston failed to take reasonable and appropriate steps to prevent the noncompliance. The DEM issued notices or letters to Cranston on 8 February 2016, 9 December 2016 and 9 May 2017 informing Cranston of its obligation to enforce its pretreatment standards against Falvey; however, as of the date of the NOV, Cranston has failed to act.
- (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:** Cranston had complete control over the occurrence of the violation. Under the terms of its permit and approved pretreatment program, Cranston is required to take formal documented action against an IU for each instance of noncompliance.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u> </u> 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	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