

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: The Narragansett Bay Commission

**FILE NOs.: OCI-WP-15-80
and RIPDES RI0100072**

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Department of Environmental Management (the “Director” of “DEM”) has reasonable grounds to believe that the above-named party (“Respondent”) has violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Facts

- (1) Respondent owns and operates a wastewater collection and treatment system in the City of East Providence, Rhode Island (the “Facility”).
- (2) On 31 December 2001, DEM issued Rhode Island Pollutant Discharge Elimination System Permit No. RI0100072 (the “Permit”) to Respondent.
- (3) The Permit authorized Respondent to discharge wastewater from combined sewer outfall (“CSO”) 203A to the waters of the State.
- (4) On 1 February 2007, the Permit expired.
- (5) Respondent submitted a timely and complete Permit reapplication, and pursuant to Part 1.13 of the Rhode Island Code of Regulations titled *Regulations for the Rhode Island Pollutant Discharge Elimination System (250-RICR-150-10-1)* (the “RIPDES Regulations”) the expired Permit remained in full force and effect and was fully enforceable.
- (6) The Permit required Respondent to:
 - (a) Take all reasonable steps to minimize or prevent any discharge in violation of the Permit which has a reasonable likelihood of adversely affecting human health or the environment; and
 - (b) Properly operate and maintain all components of the Facility to achieve compliance with the conditions of the Permit.
- (7) The Permit prohibited a dry weather overflow (“DWO”) from CSO 203A.
- (8) The City of Pawtucket (“Pawtucket”) owns and operates a wastewater collection system that discharges wastewater to the Facility.

- (9) On 15 October 2014, DEM received a written report from Respondent. The report stated that:
- (a) From 6 October 2014 through 8 October 2014, approximately 1,468,700 gallons of wastewater overflowed (the “DWO”) from CSO 203A;
 - (b) The wastewater entered Blackstone River;
 - (c) The overflow was caused by a blockage within Pawtucket’s wastewater collection system;
 - (d) The overflow was observed by Respondent’s operator during an inspection; and
 - (e) The flow meter at CSO 203A was inoperable, which prevented the Facility from receiving an alarm of the overflow.
- (10) The DWO impacted the water quality of Blackstone River, Seekonk River, Providence River and upper Narragansett Bay (the “Upper Bay”).
- (11) The DWO required DEM to implement a 7-day shellfish closure of Conditional Area “A” and Conditional Area “Conimicut Triangle” in Upper Bay beginning at noon on 9 October 2014 and ending at sunrise on 16 October 2014. Ultimately, the shellfish closure lasted 3 days and re-opened at sunrise on 11 October 2014.
- (12) Blackstone 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{a}. Class B1{a} waters are designated for primary and secondary contact recreational activities and fish and wildlife habitat and have good aesthetic value. Primary contact recreational activities may be impacted due to pathogens from approved wastewater discharges. Also, primary contact recreational activities, shellfishing uses and fish and wildlife habitat will likely be restricted from approved CSOs.
- (13) Seekonk River and the northern portion of Providence River are classified in the Water Quality Regulations as Class SB1{a}. Class SB1{a} waters are designated for primary and secondary contact recreational activities and fish and wildlife habitat and have good aesthetic value. Primary contact recreational activities may be impacted due to pathogens from approved wastewater discharges. Also, primary contact recreational activities, shellfishing uses and fish and wildlife habitat will likely be restricted from approved CSOs.
- (14) The southern portion of Providence River is classified in the Water Quality Regulations as Class SB{a}. Class SB{a} waters are designated for primary and secondary contact recreational activities and fish and wildlife habitat and have good aesthetic value. Primary contact recreational activities, shellfishing uses and fish and wildlife habitat will likely be restricted from approved CSOs.
- (15) Upper Bay is classified in the Water Quality Regulations as 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 have good aesthetic value.

- (16) Blackstone River, Seekonk River, Providence River and Upper Bay do not meet their assigned water quality designations according to DEM's *2014 Integrated Water Quality Monitoring and Assessment List Final May 2015*. Among the causes of the impairments are pathogens and fecal coliform bacteria, which are associated with wastewater.
- (17) The DWO further degraded Blackstone River, Seekonk River, Providence River and Upper 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) **Rhode Island's Water Pollution Act, 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 1.11(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) [recently amended to Part 1.11(B)]** – prohibiting the discharge of pollutants in concentrations that will further degrade the water quality of an impaired waterbody.
 - (c) **Rule 11(B) [recently amended to Part 1.13(B)]** – requiring the discharge of pollutants into the waters of the State comply with the terms and conditions of a permit issued by DEM.
 - (d) **Rule 13(A) [recently amended to Part 1.15(A)]** – prohibiting the discharge of any pollutant into or conducting any activity which will likely cause or contribute pollution to the waters of the State.
 - (e) **Rule 16(A) [recently amended to Part 1.18(A)]** – mandating compliance with all terms, conditions, management practices and operation and maintenance requirements set forth in a permit.

(3) **RIPDES Regulations**

- (a) **Rule 14.02(a) [recently amended to Part 1.14(B)(1)]** – requiring the permittee to comply with all conditions of the permit.
- (b) **Rule 14.05 [recently amended to Part 1.14(E)]** – requiring the permittee to take all reasonable steps to minimize or prevent a discharge in violation of the permit.
- (c) **Rule 14.06 [recently amended to Part 1.14(F)]** – 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. 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:

\$25,000

- (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 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 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 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 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
Administrative Adjudication Division
235 Promenade Street, Room 350
Providence, RI 02908-5767

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
- (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Part 1.7(B) of the Rhode Island Code of Regulations titled *Rules and Regulations for the Administrative Adjudication Division (250-RICR-10-00-1)*.

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

Susan Forcier, Esq.
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) Susan Forcier of DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to David E. Chopy of DEM's Office of Compliance and Inspection at (401) 222-1360 extension 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, Administrator
DEM Office of Compliance and Inspection

Dated: _____



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution
 File Nos.: OCI-WP-15-80 X-ref RIPDES RI0100072
 Respondent: The Narragansett Bay Commission

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), (2) and (3) – DWO	Type I (\$25,000 Max. Penalty) *	Major	\$25,000	1 violation	\$25,000
SUB-TOTAL					\$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 Respondent has either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.</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: DWO

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

TYPE		
<p style="text-align: center;"><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10(A)(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: A DWO from CSO 203A entered Blackstone River in violation of the Permit. The cause of the DWO was a blockage within the wastewater collection system owned and operated by Pawtucket. Protection of designated and existing water quality uses 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 DWO impacted Blackstone River, Seekonk River, Providence River and Upper Bay. Blackstone River, Seekonk River and Providence River are classified in the Water Quality Regulations as Class B or SB. Class B/SB waters are designated for primary and secondary contact recreational activities and fish and wildlife habitat and have good aesthetic value. Primary contact recreational activities may be impacted in some of these waters due to pathogens from approved wastewater discharges. Also, primary contact recreational activities, shellfishing uses and fish and wildlife habitat will likely be restricted in these waters from approved CSOs. Upper Bay is classified in the Water Quality Regulations as 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 have good aesthetic value. Blackstone River, Seekonk River, Providence River and Upper Bay do not meet their assigned water quality designations according to DEM's <i>2014 Integrated Water Quality Monitoring and Assessment List Final May 2015</i>. Among the causes of the impairments are pathogens and fecal coliform bacteria, which are associated with wastewater. Upper Bay is managed as a conditionally approved shellfish area. The DWO resulted in the closure of Conditional Area "A" and Conditional Area "Conimicut Triangle" in Upper Bay. The shellfish closure was implemented for 3 days beginning at noon on 9 October 2014 and ending at sunrise on 11 October 2014. (3) Amount of the pollutant: 1,468,700 gallons. (4) Toxicity or nature of the pollutant: Wastewater contains many kinds of bacteria, viruses, and parasites that can cause serious or fatal diseases in both humans and animals, as well as being the source of extremely objectionable odors. Also, the wastewater collection system includes waste from commercial and industrial operations, which can contain toxics (metal and organic compounds), phosphorous and nitrogen. (5) Duration of the violation: 3 days – the DWO began on 6 October 2014 and ended on 8 October 2014. (6) Areal extent of the violation: Blackstone River, Seekonk River, Providence River and Upper Bay. 		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to minimize the noncompliance by properly maintaining the flowmeter for CSO 203A – had this meter been functioning properly, Respondent would have received an alarm of the DWO and promptly responded and ceased the DWO (perhaps preventing the shellfish closure). Respondent took reasonable and appropriate steps to mitigate the noncompliance by repairing the flowmeter and promptly acting to cease the DWO.
- (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:** For October 2014, shellfish landings in Conditional Area "A" in Upper Bay totaled \$121,335 (or \$5,056 per day). The loss to the shellfishermen for the 3-day closure was approximately \$15,168.

<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