

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Town of Portsmouth

FILE NO.: WP 10-076

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) The subject property is located at the northern end of the town of Portsmouth, Rhode Island (“Portsmouth”) in neighborhoods commonly known as Island Park and Portsmouth Park.
- (2) The northern end of Portsmouth includes two saltwater bodies known as the Sakonnet River and The Cove. The Sakonnet River and The Cove are classified as SA water bodies pursuant to the DEM Water Quality Regulations.
- (3) The designated uses for Class SA water bodies as specified in the DEM Water Quality Regulations include shellfish harvesting for direct human consumption and primary contact recreation, among others.
- (4) Sewage is defined in R.I. Gen. Laws Section 46-12-1(21) and is defined as a pollutant in R.I. Gen. Laws Section 46-12-1(15) and both terms are defined in Rule 7 of the DEM Water Quality Regulations.
- (5) Island Park lies between the Sakonnet River to the south, Boyd’s Lane to the west, and The Cove to the north. Seven storm water drainage pipes convey storm water from throughout the neighborhood to The Cove (the “Cove pipes”) and six storm water drainage pipes convey storm water from throughout the neighborhood to the Sakonnet River (the “Island Park pipes”).
- (6) Portsmouth Park lies between Morningside Lane to the south, East Main Road and Chase Road to the west, Boyds Lane to the north, and the Sakonnet River to the east. Five storm water drainage pipes convey storm water from throughout the neighborhood to the Sakonnet River (the “Portsmouth Park pipes”).
- (7) The Respondent is the owner of the Cove pipes, the Island Park pipes, and the Portsmouth Park pipes.

- (8) Rhode Island is a member of the Interstate Shellfish Sanitation Conference (“ISSC”) and is required to follow specific guidelines adopted by the ISSC and the United States Food and Drug Administration (“FDA”) to maintain its license to ship and commercially sell its shellfish to other States. The guidelines are contained in a document entitled *National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish* (the “ISSC Manual”).
- (9) DEM is responsible for the classification and survey of the State’s marine waters for shellfish harvesting. DEM uses the ISSC Manual and the DEM Water Quality Regulations to determine whether Rhode Island waters are suitable for shellfish harvesting for direct human consumption.
- (10) The ISSC Manual requirements include:
 - (a) performing a periodic survey of the shoreline (the “sanitary shoreline survey”); and
 - (b) prohibiting shellfish harvesting for direct human consumption when the sanitary shoreline survey reveals one of the following:
 - (i) the area is subject to contamination from human or animal fecal matter at levels that, in the judgment of DEM or FDA, presents an actual or potential public health hazard;
 - (ii) the waters are adjacent to a pipe with public health significance; or
 - (iii) pollution sources that may unpredictably contaminate the waters.
- (11) DEM or FDA performed a sanitary shoreline survey of Island Park or Portsmouth Park or both in 1965, 1968, 1970, 1974, 1979, and 1987-1988 (collectively, the “1965 through 1988 surveys”). The 1965 through 1988 surveys resulted in shellfish closures based on the following:
 - (a) evidence of inadequate sewage disposal;
 - (b) actual and potential sources of sewage;
 - (c) proximity of sources of sewage;
 - (d) the large number of potential sources of sewage;
 - (e) the history of problems every time the area is surveyed;
 - (f) odors associated with sewage in the Portsmouth Park pipes;
 - (g) elevated levels of fecal coliform bacteria in water samples collected in 1987 from eight discharge pipes along the shore in Portsmouth Park and Island Park; and
 - (h) illicit sewage connections observed in 1987 in the Portsmouth Park pipes.

- (12) DEM prohibited shellfish harvesting for direct human consumption in portions of the Sakonnet River and The Cove (the “Prohibited Waters”) in accordance with the ISSC Manual based on the findings of the 1965 through 1988 surveys as described below (collectively, the “Prohibitions”):
- (a) in 1973 the Sakonnet River in the vicinity of Island Park north of a line from the southern end of Mason Avenue to the northeast point of Gould Island and north of a line from the northeast point of Gould Island to the northwest point of Nannaquaket Neck;
 - (b) in 1980, The Cove in the vicinity of Island Park south of line from the southern end of Hummuck Point to the DEM range marker located at the eastern extremity of a point of land on the western shore of The Cove; and
 - (c) in 1988, the Sakonnet River in the vicinity of Island Park and Portsmouth Park north of a line extending from the southwestern-most corner of the stone bridge in the town of Tiverton, Rhode Island to the eastern-most extension of Morningside Lane in Portsmouth.
- (13) The Respondent received a report dated October 2002 that was prepared on its behalf by The Louis Berger Group, Inc. entitled *Draft Wastewater Facility Plan Update Island Park Portsmouth Park and the Hummuck Town of Portsmouth, Rhode Island* (the “Berger Report”). The Berger Report included an analysis of wastewater alternatives in Island Park and Portsmouth Park and made the following findings and conclusions:
- (a) Island Park is a high-density residential neighborhood in a flat, seaside area; specifically, it has:
 - (i) a total of six hundred eighty seven lots, of which five hundred and sixty-nine have residential or commercial structures;
 - (ii) an average lot size of eight thousand two hundred square feet, with approximately fifty-two percent of the lots less than five thousand square feet;
 - (iii) an average housing stock that was constructed prior to 1945;
 - (iv) on-site wastewater treatment systems (“septic systems” or “cesspools”) that are subject to frequent failure; and
 - (v) highly permeable soils (with percolation rates ranging from two to fifteen minutes per inch, with a majority of the rates being five minutes per inch or less). The rate of less than five minutes per inch would indicate that the soils within the septic systems or cesspools would provide a lesser degree of treatment following subsurface disposal and the residence time may not be adequate to allow pathogen decay prior to groundwater flow to either The Cove or the Sakonnet River.

- (b) Portsmouth Park is a medium to medium/high density residential neighborhood on a hillside; specifically, it has:
 - (i) a total of three hundred twenty two lots, of which two hundred ninety one have residential or commercial structures;
 - (ii) an average lot size of thirteen thousand square feet, with forty-four percent of the residential lots between seven thousand and ten thousand square feet;
 - (iii) an average housing stock that was constructed prior to 1946;
 - (iv) septic systems or cesspools that are subject to frequent failure;
 - (v) soils with percolation rates ranging from fifteen to thirty minutes per inch along sloped areas that can lead to surface breakout and create a perched saturated zone flowing at the interface of the subsoil and substratum soil layers; and
 - (vi) the presence of dry weather flow in the Portsmouth pipes throughout a majority of the year indicating a water table close to the ground surface or the presence of a perched zone of saturation along the interface of the subsoil and substratum soil layers. The elevated ground water table or perched zone of saturation can serve as a conduit for untreated or undertreated sewage to flow downhill into the Portsmouth pipes.

- (14) The Respondent received a report dated May 16, 2003 and revised August 25, 2003 that was prepared on its behalf by Lombardo Associates, Inc. entitled *On-Site Wastewater Management Plan For Town of Portsmouth, RI* (the “Lombardo Report”). The Lombardo Report included an analysis of wastewater needs in Island Park and Portsmouth Park and made the following conclusions:
 - (a) an off-site (i.e. sewer) solution is needed for Island Park and Portsmouth Park;
 - (b) approximately ninety-two percent of the lots in Island Park have a severe or high need for an off-site solution; and
 - (c) approximately eight-eight percent of the lots in Portsmouth Park have a severe or high need for an off-site solution.

- (15) In July, 2007 the Respondent performed a survey of all storm water drainage pipes throughout Portsmouth. The survey revealed that a water sample collected at one of the Portsmouth Park pipes had a fecal coliform bacteria value of six hundred MPN per 100 ml.

- (16) DEM performed a sanitary shoreline survey of Island Park or Portsmouth Park or both in 2003, 2006, 2007, 2008, and 2010 (collectively, the “2003 through 2010 surveys”). The 2003 through 2010 surveys revealed the following:

Year	Portsmouth Park
2003	<u>Wet weather:</u> water samples collected at four Portsmouth Park pipes had fecal coliform bacteria values that ranged from four thousand three hundred MPN per 100 ml to seventy-five thousand MPN per 100 ml <u>Dry weather:</u> a water sample collected at one of the Portsmouth Park pipes had a fecal coliform bacteria value of two thousand four hundred MPN per 100 ml
2006	<u>Wet/dry weather:</u> water samples collected at three of the Portsmouth Park pipes had fecal coliform bacteria values that ranged from four hundred thirty MPN per 100 ml to twenty three thousand MPN per 100 ml
2007	<u>Dry weather:</u> a water sample collected at one of the Portsmouth Park pipes had a fecal coliform bacteria value of fifteen thousand MPN per 100 ml
2008	<u>Dry weather:</u> a water sample collected at one of the Portsmouth Park pipes had a fecal coliform bacteria value of two thousand three hundred MPN per 100 ml
2010	<u>Wet weather:</u> a water sample collected at one of the Portsmouth Park pipes had a fecal coliform bacteria value of four thousand three hundred MPN per 100 ml

Year	Island Park
2003	<u>Wet weather:</u> water samples collected at three Cove pipes had fecal coliform bacteria values that ranged from two hundred thirty thousand MPN per 100 ml to four hundred sixty thousand MPN per 100 ml <u>Wet weather:</u> water samples collected at three Island Park pipes had fecal coliform bacteria values that ranged from twenty three thousand MPN per 100 ml to forty six thousand MPN per 100 ml
2010	<u>Wet weather:</u> water samples collected at two Cove pipes had fecal coliform bacteria values of two thousand three hundred MPN per 100 ml and nine thousand three hundred MPN per 100 ml

(17) On March 15, 2009 the Respondent initiated an Illicit Discharge Detection and Elimination (“IDDE”) program for the Cove pipes, the Island Park pipes, and the Portsmouth Park pipes. On or about March 26, 2010 the Respondent submitted to DEM the IDDE field investigation data sheets. The data sheets revealed the following:

- (a) seventy storm water drainage structures were inspected in Portsmouth Park, of which three pipes may be discharging sewage, two pipes were discharging sewage (in the form of laundry waste), and twenty eight pipes were from unknown sources; and

- (b) eleven storm water drainage structures were inspected in Island Park, of which one structure had sewage (in the form of laundry waste) and two pipes were from unknown sources.
- (18) The Respondent received a report dated December 2009 that was prepared on its behalf by Woodward & Curran entitled *Wastewater Facilities Plan Town of Portsmouth, RI December 2009* (the “Wastewater Facilities Plan”). A public meeting on the Wastewater Facilities Plan was held on October 1, 2009 (the “Public Meeting”) and a public hearing on the Wastewater Facilities Plan was held on December 2, 2009 (the “Public Hearing”). The Wastewater Facilities Plan included an evaluation of wastewater management needs and alternatives in Island Park and Portsmouth Park and made the following conclusions:
 - (a) the “No Action” Alternative, under which nothing is done, is not an acceptable alternative to address the fecal coliform contamination and environmental degradation associated with continued use of septic systems and cesspools;
 - (b) the “No-Build Alternative”, under which cesspools would be removed and replaced with upgraded systems, conventional septic systems in areas of high risk of contamination would be upgraded, and a Wastewater Management District would be implemented, will likely result in continued fecal coliform contamination in the Sakonnet River and The Cove; and
 - (c) the “Build Alternative”, under which gravity sewers, low pressure sewers, and a wastewater treatment facility would be constructed, was the recommended alternative.
- (19) On August 26, 2010 DEM inspected a property located at 71 Aquidneck Avenue in Portsmouth. The inspection revealed that sewage from the on site wastewater treatment system at the property was discharging onto the ground and into one of the Portsmouth Park pipes. The inspector observed evidence that the sewage was directly entering into the Sakonnet River.
- (20) The evidence of sewage in the drainage pipes and groundwater seeps along the shorelines of Island Park and Portsmouth Park resulted in the issuance of an advisory by the Rhode Island Department of Health not to swim within two hundred feet of the drainage pipes and in the vicinity of areas where water seeps from the ground (the “Swimming Advisory”). The Swimming Advisory includes all Prohibited Waters.
- (21) The Prohibitions and Swimming Advisory have interfered with the existing and designated uses assigned to the Sakonnet River and The Cove.
- (22) The Respondent has not received approval from DEM to place or discharge sewage into the Sakonnet River or The Cove.
- (23) As of the date of this Notice of Violation (“NOV”), the Respondent has failed to comply with the DEM Water Quality Regulations.

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) **The Rhode Island Water Pollution Act Section 46-12-5(a)** – prohibiting the placement of any pollutant from any person in a location where it is likely to enter the waters.
- (2) **The Rhode Island Water Pollution Act Section 46-12-5(b)** – prohibiting the discharge of any pollutant from any person into the waters except as in compliance with any rules and regulations promulgated hereunder and pursuant to the terms and conditions of a permit.
- (3) **DEM Water Quality Regulations**
 - (a) **Rule 9(A)** – prohibiting the discharge of pollutants into any waters of the State that 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 13(A)** – prohibiting the discharge of any pollutant and/or conducting any activity which will likely cause or contribute pollution into the waters of the State without having obtained all required approvals from the Director.

D. 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 thirty days of receipt of the NOV**, submit a final report of the findings of the IDDE program to DEM (the “IDDE Final Report”). The IDDE Final Report must include the following:
 - (a) a map that identifies the Cove pipes, the Island Park pipes, the Portsmouth Park pipes and all storm water drainage piping and structures associated with said pipes (the “Island Park/Portsmouth Park storm water drainage system”);
 - (b) identification of all confirmed and suspected sewage connections to the Island Park/Portsmouth Park storm water drainage system;
 - (c) a description of the plan that will be followed to investigate all suspected sewage connections to the Island Park/Portsmouth Park storm water drainage system and a schedule to complete the investigation; and
 - (d) a description of the plan that will be followed to eliminate all confirmed sewage connections to the Island Park/Portsmouth Park storm water drainage system, including the issuance of notices of violation and orders

to the responsible parties with reasonable deadlines to implement short term disposal options, and a schedule to complete the work.

- (2) **Within thirty days of receipt of the NOV**, revise and submit to DEM the Lombardo Report so that it is consistent with the Wastewater Facilities Plan; specifically, the identification of areas that need sewer solutions and the areas that can continue using on-site wastewater treatment systems and addresses the DEM comments transmitted in letters dated June 30, 2004 and February 10, 2005.
- (3) **Within thirty days of receipt of the NOV**, submit to DEM the Wastewater Facilities Plan and a responsive summary to the comments received during the Public Meeting and the Public Hearing.
- (4) **Within two years of DEM approval of the Wastewater Facilities Plan (the “Approved Wastewater Facilities Plan”)**, submit an Order of Approval application, including final plans and specifications for a sewerage system and wastewater treatment facility serving Island Park and Portsmouth Park that is consistent with the Approved Wastewater Facilities Plan, including a schedule for completion of construction. The construction schedule shall not exceed three years from DEM issuance of an Order of Approval (the “Approval”).
- (5) Upon issuance of the Approval, complete all construction in accordance with the approved deadline.
- (6) The reports, plans and other documents specified in Sections E (1) through E (4) above shall be subject to DEM review and approval. Upon review, DEM shall provide written notification to the Respondent either granting approval or stating the deficiencies therein. **Within fourteen days (unless a longer time is specified) of receiving a notification of deficiencies**, the Respondent shall submit to the DEM modified reports, plans or other documents to correct the deficiencies.

E. Penalty

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:

One Hundred Eighty Six Thousand and Nineteen Dollars (\$186,019.00)

- (2) The proposed administrative penalty is calculated pursuant to the DEM Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the Director within twenty days of your receipt of this NOV. Payment shall be in the form of a check 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 this 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 Director determines that reasonable efforts have been made to comply promptly with this NOV.

F. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through E above. All requests for hearing MUST:
 - (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b),
 - (b) Be **RECEIVED** by DEM's Administrative Adjudication Division, at the following address, within twenty days of your receipt of this 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, 3RD Floor
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 Rule 7.00(b) of the DEM Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters.
- (2) A copy of each request for hearing must also be forwarded to:

Marisa Desautel, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.

- (4) Each respondent must file a separate and timely request for an administrative hearing before DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then this NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (v) and 42-17.6-4(b) and (c).
- (5) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) This 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) Marisa Desautel at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to David E. Chopy of the DEM 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 F above.

FOR THE DIRECTOR

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

Date: _____

CERTIFICATION

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

Robert Driscoll, Town Administrator
Town of Portsmouth
2200 East Main Road
Portsmouth, RI 02871

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution
File No.: WP10 – 076
Respondent: Town of Portsmouth

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) through C (3) – Discharge of pollutants to the waters of the State	Type I (\$25,000 Max. Penalty)*	Major	\$ 25,000	7 years	\$175,000.00
SUB-TOTAL					\$175,000.00

*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 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.

DESCRIPTION OF BENEFIT	CALCULATION	AMOUNT
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<p>Economic Benefit of noncompliance identified by the State of Rhode Island for failing to submit a comprehensive wastewater facilities plan to DEM. The Economic Benefit gained was calculated using an EPA computer model entitled "BEN". The model calculates the economic benefit of noncompliance by performing 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"> • Profit Status • Filing Status • Initial Capital Investment • One-time Non-depreciable Expense • Annual Expense • First Month of Non-Compliance • Compliance Date • Penalty Due Date • Useful Life of Pollution Control • Equipment Annual Inflation Rate • Discount/Compound Rate 	<p>Municipality</p> <p>Municipality</p> <p>\$0</p> <p>\$150,000</p> <p>\$0</p> <p>January 1, 2007</p> <p>October 15, 2010</p> <p>October 15, 2010</p> <p>N/A</p> <p>PCI</p> <p>4.2%</p>	
SUB-TOTAL			\$11,019.00

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS =\$186,019.00

PENALTY MATRIX WORKSHEET

CITATION: Discharge of pollutants to the waters of the State

VIOLATION NO.: 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		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondent discharged pollutants (in the form of sewage) to waters of the State identified as The Cove and the Sakonnet River without approval by DEM that resulted in the prohibition of shellfishing for direct human consumption in portions of The Cove and the Sakonnet River and an impact to primary contact recreation (based on _____ and an advisory by the Department of Health to not swim in the waters subject to the shellfishing prohibition).</p> <p>(B) Environmental conditions: Pollutant discharge to class SA surface water bodies (The Cove and Sakonnet River). The designated uses for Class SA water bodies include shellfish harvesting for direct human consumption and primary contact recreation.</p> <p>Rhode Island is a member of the Interstate Shellfish Sanitation Conference (ISSC) and is required to follow specific guidelines adopted by the ISSC and the United States Food and Drug Administration (FDA) to maintain its license to ship and commercially sell its shellfish to other States. The guidelines are contained in a document entitled <i>National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish</i> (ISSC Manual).</p> <p>The ISSC Manual requires Rhode Island to perform a periodic survey of the shoreline and prohibit shellfish harvesting for direct human consumption when the sanitary shoreline survey reveals one of the following: the area is subject to contamination from human or animal fecal matter at levels that, in the judgment of DEM or FDA, presents an actual or potential public health hazard; the waters are adjacent to a pipe with public health significance; or pollution sources that may unpredictably contaminate the waters.</p> <p>(C) Amount of the pollutant: Unknown-varies with rainfall.</p> <p>(D) Toxicity or nature of the pollutant: Sewage contains many kinds of bacteria, viruses, and parasites that can cause serious or fatal diseases in both humans and animals.</p>		
(continued)		

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- (E) **Duration of the violation:** The violations were first documented by DEM or FDA in 1965 during a shoreline survey of Island Park and Portsmouth Park. Surveys conducted from 1965 to present continue to document violations. DEM is only assessing a penalty for the violations that occurred from 2003 to present.
- (F) **Areal extent of the violation:** The shellfishing prohibitions and swimming advisory have affected one hundred and nine acres in The Cove and one hundred and eighty acres in the Sakonnet River.
- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent and/or mitigate the noncompliance. Respondent failed to prevent the noncompliance by constructing a wastewater treatment facility and collection system for Island Park and Portsmouth Park and failed to mitigate the noncompliance by identifying and eliminating the illicit sewage connections.
- (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:** Not relevant
- (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:** The violation was foreseeable. The Respondent received reports in 2002, 2003, and 2009 from engineering consultants that described the nature and extent of the sewage problems in Island Park and Portsmouth Park and the actions needed to address the problems. To date, the Respondent has failed to take any action to eliminate the illicit sewage connections or construct a wastewater treatment facility and collection system for Island Park and Portsmouth Park.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** DEM has advised the Respondent on numerous occasions in letters and at public meetings that failure to act may result in the assessment of substantial administrative penalties.

<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