

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

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: WATERSON TERMINAL SERVICES, LLC FILE NOs.: OCI-WP-21-1 and
Bristol County Water Authority Order of Approval #RIO-428
Permit Referral #19-03**

NOTICE OF VIOLATION

A. Introduction

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

B. Facts

- (1) On or about 22 April 2019, DEM received an application from WATERSON TERMINAL SERVICES, LLC (“WTS”) to discharge treated groundwater to Providence River (the “Discharge”) associated with the repair of a water pipeline owned by the Bristol County Water Authority (“BCWA”).
- (2) WTS signed the application as the owner of the property, and BCWA signed the application as the operator of the proposed treatment system (the “Treatment System”).
- (3) On 25 April 2019, DEM issued Order of Approval RIO-428 (the “OA”) to WTS for the Discharge from the Treatment System in accordance with Part 1.9(C) of the *Regulations for the Rhode Island Pollutant Discharge Elimination System (250-RICR-150-10-1)* [effective 7 October 2018 to Current] (the “RIPDES Regulations”).
- (4) The OA required Respondents to:
 - (a) Comply with a monthly average Discharge limit for Total Zinc (“Zinc”) and Total Copper (“Copper”) of 68.5 micrograms per liter (“ppb”) and 2.98 ppb, respectively, and a maximum daily Discharge limit for Zinc, Copper and Total Suspended Solids of 76.11 ppb, 4.62 ppb, and 30,000 ppb, respectively (collectively, the “Limits”);
 - (b) Treat the groundwater through a series of tanks and filters (the “Treatment System”) to comply with the Limits;

- (c) If the results show any violations of the Limits, cease operation of the Treatment System, re-evaluate, and if necessary, redesign the Treatment System prior to resuming operation of the Treatment System; and
 - (d) Summarize monitoring results obtained and report these results to DEM in a Discharge Monitoring Report (“DMR”).
- (5) On 14 June 2019, DEM received the DMR for the April and May reporting periods.
- (6) The DMR for April included the following monitoring results (in ppb) that exceeded the Limits:

Parameter	Monthly Average	Daily Maximum
Copper	4.5	7.0 (4/26/19)

- (7) The DMR for May included the following monitoring results (in ppb) that exceeded the Limits:

Parameter	Monthly Average	Daily Maximum
Copper	160.33	
Copper		12.0 (5/3/19)
Copper		184.0 (5/6/19)
Copper		285.0 (5/13/19)
Zinc	325.0	
Zinc		439.0 (5/6/19)
Zinc		507.0 (5/13/19)
TSS		148,000 (5/6/19)
TSS		116,000 (5/13/19)

- (8) Respondents failed to comply with the OA by ceasing operation of the Treatment System. The Treatment System operated for approximately 3 weeks from 25 April 2019 through 14 May 2019 in noncompliance with the Limits.

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) ***Water Quality Regulations (250-RICR-150-05-1)* [effective 19 August 2018 to Current] (the “Water Quality Regulations”)**
 - (a) **Part 1.13(B)** – requiring the discharge of pollutants into the waters of the State comply with the terms and conditions of an approval issued by DEM.

- (b) **Part 1.18(A)** – mandating compliance with all terms, conditions, management practices and operation and maintenance requirements set forth in the approval.
- (3) **RIPDES Regulations, Part 1.9(C)** – requiring that any discharge comply with the instructions of DEM’s on-scene coordinator.

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:

\$8,437

- (2) The proposed administrative penalty is calculated pursuant to the *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* [effective 31 December 2001 to Current] (the “Penalty Regulations”) 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” 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 Respondents 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
DEM - Administrative Adjudication Division
235 Promenade Street, Room 350
Providence, RI 02908-5767

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
 - (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Part 1.7(B) of the *Rules and Regulations for the Administrative Adjudication Division (250-RICR-10-00-1)* [effective 27 November 2014 to Current]
- (2) A copy of each request for hearing must also be forwarded to:
- Christina Hoefsmit, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767
- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
 - (4) Each respondent must file a separate and timely request for an administrative hearing before DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner regarding any violation set forth herein, then the NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (vi) and 42-17.6-4(b) and (c).
 - (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
 - (6) The NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Christina Hoefsmit of DEM's Office of Legal Services at (401) 222-6607 or at christina.hoefsmit@dem.ri.gov. All other inquiries should be directed to David E. Chopy of DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 77400 or at david.chopy@dem.ri.gov.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section E above.

FOR THE DIRECTOR

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

Dated: _____

CERTIFICATION

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

WATERSON TERMINAL SERVICES, LLC
c/o Rickie M. Sonpal, Esquire, Resident Agent
Robinson & Cole LLP
One Financial Plaza, Suite 1430
Providence, RI 02903

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

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution
 File Nos.: OCI-WP-21-1 and RIO-428
 Respondents: WTS and BCWA

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), C (2) and C (3) – Failure to Comply with Approval	Type I (\$25,000 Max. Penalty) *	Moderate	\$6,250	1 violation	\$6,250
<i>SUB-TOTAL</i>					\$6,250

*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.			
DESCRIPTION OF BENEFIT	CALCULATION		AMOUNT
Discharge of contaminated groundwater with inadequate treatment. The cost was calculated using the fee charged by NBC to discharge to its sewerage system. The economic benefit of noncompliance was determined by using an EPA computer model titled <i>BEN</i> that performs a detailed economic analysis. The dates, dollar amounts, and values used in this analysis are listed in this table.	<ul style="list-style-type: none"> ▪ Profit Status ▪ Filing Status ▪ Initial Capital Investment ▪ One-time Non-depreciable Expense ▪ Annual Recurring Cost ▪ First Month of Noncompliance ▪ Compliance Date ▪ Penalty Due Date ▪ Useful Life of Pollution Control ▪ Equipment Annual Inflation Rate ▪ Discount Compound Rate 	For Profit Corporation C Corporation \$0 \$0 \$63,000 May 2019 14 May 2019 31 March 2021 7.6%	
<i>SUB-TOTAL</i>			\$2,187

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 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 = \$8,437

PENALTY MATRIX WORKSHEET

CITATION: Failure To Comply With Approval
 VIOLATION NOs.: C (1), C (2) and C (3)

TYPE		
<u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	___TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	___TYPE III <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 Part 1.10(A)(1)(b) of the Penalty Regulations

- (1) **The extent to which the act or failure to act was out of compliance:** Respondents failed to comply with the Limits. Compliance with the limits in an approval is a primary objective of Rhode Island’s *Water Pollution Act*, the Water Quality Regulations and the RIPDES Regulations.
- (2) **Environmental conditions:** Contaminated groundwater from the water pipeline repair project was directed to Providence River. Providence River in the area of the Discharge is designated as a Class SB1(a) waterbody. Waters classified as SB1{a} are designated for primary and secondary contact recreational activities and fish and wildlife habitat. They shall be suitable for aquacultural uses (other than shellfish for direct human consumption), navigation, and industrial cooling. These waters shall have good aesthetic value. Primary contact recreational activities may be impacted due to pathogens from approved wastewater discharges; however, all Class SB criteria must be met. These waters will likely be impacted by combined sewer overflows. Therefore, primary contact recreational activities; shellfishing uses; and fish and wildlife habitat will likely be restricted. Providence River in the area of the Discharge is in nonattainment for fish and wildlife habitat and primary and secondary contact recreation; however, this is not attributed to metals.
- (3) **Amount of the pollutant:** The monthly average concentrations of Copper in the Discharge for April and May were 4.5 ppb (1.5 times over the Discharge Limit) and 160.33 ppb (53.8 times over the Discharge Limit), respectively. The monthly average concentration of Zinc in the Discharge for May was 325 ppb (4.74 times over the Discharge Limit). The daily maximum concentrations of Copper in the Discharge for April and May were 7.0 ppb (on 4/26/19, which was 1.51 times over the Discharge Limit), 12.0 (on 5/3/19, which was 2.6 times over the Discharge Limit), 184.0 ppb (on 5/6/19, which was 39.8 times over the Discharge Limit), and 285 ppb (on 5/13/19, which was 61.6 times over the Discharge Limit). The daily maximum concentrations of Zinc in the Discharge for May were 439.0 ppb (on 5/6/19, which was 5.76 times over the Discharge Limit) and 507 ppb (on 5/13/19, which was 6.66 times over the Discharge Limit). The daily maximum concentrations of TSS in the Discharge for May were 148,000 ppb (on 5/6/19, which was 4.93 times over the Discharge Limit) and 116,000 ppb (on 5/13/19, which was 3.86 times over the Discharge Limit). The total volume of the Discharge is unknown, but from information provided the flows ranged from 64 gallons per minute (gpm) to 208 gpm (for an 8-hour day this is approximately 30,000 gallons per day to 100,000 gallons per day).
- (4) **Toxicity or nature of the pollutant:** Zinc, Copper and TSS in enough concentrations are toxic to aquatic organisms.
- (5) **Duration of the violation:** Approximately 3 weeks. The Discharge began on 25 April 2019 and ended on 14 May 2019.
- (6) **Areal extent of the violation:** Unknown. DEM has no specific information concerning adverse impacts to the aquatic organisms in Providence River that may have occurred because of the Discharge.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondents did not take reasonable and appropriate steps to prevent and/or mitigate the noncompliance. Respondents were advised by DEM to cease operation of the Treatment System; however, Respondents decided to continue to Discharge despite their knowledge of the requirement in the OA to cease the Discharge.
- (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:** Negligence is attributable to Respondents for their failure to comply with the OA. Respondents had control over the violations and had an obligation to ensure compliance with the OA.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The pipeline that was repaired is the major conduit that provides drinking water to 100,000 residents in the City of East Providence and the surrounding towns. The work was undertaken as an emergency to avoid rupture of the pipeline and the loss of drinking water to the residents.

MAJOR	<u> X </u> 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	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500 \$6,250	\$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