

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Town of Westerly

**FILE NO.: WP10-030
RIPDES NO.: RI0100064**

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. Administrative History

Respondent is being cited for the failure to comply with its permit limits for copper at the wastewater treatment facility. DEM issued a notice to the Respondent on March 8, 2010 requiring that corrective actions be taken to return to compliance. The Respondent submitted a letter to DEM on March 30, 2010 stating that the wastewater treatment facility was not designed to remove copper and that they could not meet the discharge limits for copper by the normal operation of the existing wastewater treatment facility.

C. Facts

- (1) The Respondent is the holder of Rhode Island Pollutant Discharge Elimination System (“RIPDES”) Permit No. RI0100064 (the “Permit”). The Permit was issued to the Respondent by DEM on September 14, 2007, and became effective on October 1, 2007. The Permit authorizes the Respondent to discharge treated domestic and industrial wastewater from the wastewater treatment facility (the “Facility”) to the Pawcatuck River.
- (2) The Permit requires the Respondent to:
 - (a) Comply with the following discharge limits for total copper: daily maximum and monthly average of 23 micrograms per liter (“ug/l”).
 - (b) 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.
 - (c) Summarize monitoring results obtained during the previous month and report these results to DEM in a Discharge Monitoring Report (“DMR”) that must be postmarked no later than the 15th day of the month following the completed reporting period

- (3) The Respondent reported the following monitoring results to DEM on the DMR forms that exceed the discharge limits set forth in the Permit:

PERIOD	COPPER (ug/l)	
	Daily Maximum	Monthly Average
October 2009	31	25.6
November 2009	34.1	30
December 2009	43.4	23.7
January 2010	37	23.9

- (4) The Respondent has failed to install the equipment necessary to comply with the discharge limits for copper.
- (5) As of the date of this Notice of Violation (“NOV”), the Respondent has failed to comply with the Permit.

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) **The Rhode Island 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) **DEM Water Quality Regulations**
- (a) **Rule 11(B)**-requiring the discharge of pollutants into the waters of the State comply with the terms and conditions of a permit issued by DEM.
- (b) **Rule 16(A)**-mandating compliance with all terms, conditions, management practices and operation and maintenance requirements set forth in a permit.
- (3) **DEM RIPDES Regulations**
- (a) **Rule 14.02(a)** – requiring the permittee to comply with all conditions of the permit.
- (b) **Rule 14.05** – requiring the permittee to take all reasonable steps to minimize or prevent a discharge in violation of 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 thirty (30) days of receipt of the NOV**, submit a plan and project schedule to the DEM to achieve compliance with the discharge limits for total copper as specified in the Permit. The submittal is subject to DEM review and approval. Upon review, the DEM shall provide written notification to the Respondent either granting formal approval or stating the deficiencies therein. Within thirty (30) days of receiving a notification of deficiencies (unless a longer time is specified), the Respondent shall submit to the DEM a modified plan or additional information necessary to correct the deficiencies.
- (2) **Within thirty (30) days of DEM approval** (unless otherwise expressly authorized by the Director in writing to commence at a later time) of the plan and project schedule, the Respondent shall commence work on the project in accordance with the method approved by the Director and complete such work in accordance with the DEM approved project schedule or other date specified by the Director.

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:

Ten Thousand Dollars (\$10,000.00)

- (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 (20) 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.

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 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 DEM's Administrative Adjudication Division, at the following address, within twenty (20) 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:

Richard M. Bianculli Jr., 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) Richard M. Bianculli Jr. at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Patrick Hogan of the DEM Office of Compliance and Inspection at (401) 222-1360 ext. 7119.

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

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:

Steven T. Hartford, Esq., Town Manager
Town of Westerly
45 Broad Street
Westerly, RI 02891-1888

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution

File No.: WP10-030, x-ref RIPDES Permit No. RI0100064

Respondent: Town of Westerly

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(3) Failure to comply with the discharge limits for total copper	Type I (\$25,000 Max. Penalty)*	Minor	\$2,500	4 months	\$10,000
<i>SUB-TOTAL</i>					\$10,000

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

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$10,000.00

PENALTY MATRIX WORKSHEET

CITATION: *Failure to comply with the discharge limits for total copper*
 VIOLATION NO.: D(1) – D(3)

TYPE		
<p><u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>____ TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>____ TYPE III <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>FACTORS CONSIDERED: 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: The Respondent violated the discharge limits specified in the Permit for total copper. Compliance with the conditions of a permit is a primary objective of the Water Pollution Act, the DEM Water Quality Regulations, and the DEM RIPDES Regulations and is of major importance to the regulatory program.</p> <p>(B) Environmental conditions: The wastewater is discharged to the Pawcatuck River which is designated as a Class SB1 water body of the State. Class SB1 surface waters are designated for fish and wildlife habitat, primary and secondary contact recreational activities, and shall have good aesthetic value. However, primary contact recreational activities may be impacted due to pathogens from approved wastewater discharges.</p> <p>(C) Amount of the pollutant: The amount of the pollutant is unknown. The monthly average concentrations of copper ranged from 3% to 30% over the permit limit and the daily maximum concentrations of copper ranged from 35% to 89% over the permit limit.</p> <p>(D) Toxicity or nature of the pollutant: The discharge limits for total copper are water quality based. Water quality based limits are only required for those pollutants that have a reasonable potential to cause or contribute to the exceedence of in-stream criteria (and cause acute or chronic effects to the organisms in the water). Discharge of total copper in concentrations that exceed the limits of the Permit may have been acutely or chronically toxic to fish and other aquatic organisms and vegetation.</p> <p>(E) Duration of the violation: The discharge limit violations occurred for the following four (4) monthly periods: October 2009, November 2009, December 2009, and January 2010.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent has stated that the wastewater treatment facility was not designed to remove copper from the waste stream and that they could not meet the discharge limitations for copper as specified in the Permit by the normal operation of the existing wastewater treatment facility. The Respondent has not, however, taken the necessary action, such as installing the necessary equipment, 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:** 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 Respondent has complete control over the Facility and the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** None.

MAJOR	MODERATE	<u> X </u> 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	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250 \$2,500	\$1,250 to \$2,500	\$250 to \$1,250