

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Medical Homes of Rhode Island, Inc.

**FILE NOs.: WP-12-94 and
WP12-076**

RIPDES NO.: RI0020168

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 facility is located at 49 Old Pocasset Road in the town of Johnston, Rhode Island (the “Facility”).
- (2) Medical Homes of Rhode Island, Inc. (“Medical Homes”) is the holder of Rhode Island Pollutant Discharge Elimination System (“RIPDES”) Permit No. RI0020168 (the “Permit”). The Permit was issued to Medical Homes by the DEM on May 18, 2011, and became effective on August 1, 2011. The Permit authorizes Medical Homes to discharge treated sanitary wastewater from the Facility through outfall 001A to an unnamed stream tributary to Dry Brook.
- (3) The Permit requires Medical Homes to:
 - (a) Comply with the following discharge limits for Total Ammonia: 1.66 milligrams per liter (“mg/l”) as a monthly average (“MA”) from May 1 to October 31; 3.38 mg/l as a MA from November 1 to April 30; and 10.6 mg/l as a daily maximum (“DM”);
 - (b) Comply with the following discharge limits for biological oxygen demand (“BOD”): 15 mg/l as a MA, 25 mg/l as a weekly average (“WA”), and 25 mg/l as a DM;
 - (c) Comply with the following discharge limits for total suspended solids (“TSS”): 15 mg/l as a MA, 25 mg/l as a WA, and 25 mg/l as a DM; and
 - (d) Report any violation of a maximum daily discharge limit to the DEM within twenty-four (24) hours.

- (4) Medical Homes reported the following monitoring results to the DEM, which results exceed the discharge limits set forth in the Permit:

PERIOD	BOD (mg/l)			TSS (mg/l)			Total Ammonia (mg/l)	
	DM	WA	MA	DM	WA	MA	DM	MA
May 2011								3.21
June 2011								3.02
July 2011								2.89
February 2012	70.0	70.0	37.8	27.0	27.0	21.0		4.20
March 2012	44.0	44.0	19.2	41.0	41.0	26.8	19.0	19.0
April 2012	60.0	60.0	30.3				20.0	20.0

- (5) Medical Homes also failed to notify the DEM of the maximum daily discharge violations within twenty four (24) hours.

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) **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) **DEM’s Water Quality Regulations**
 - (a) **Rule 11(B)** – requiring the discharge of pollutants into the waters of 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’s Regulations for the Rhode Island Pollutant Discharge Elimination System**

- (a) **Rule 14.02(a)** – requiring the permittee to comply with all conditions of the permit.
- (b) **Rule 14.18** – requiring the permittee to immediately report any maximum daily discharge limit violations.

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 against each named respondent:

Thirty One Thousand Two Hundred Fifty Dollars (\$31,250.00)

- (2) The proposed administrative penalty is calculated pursuant to the DEM’s *Rules and Regulations for Assessment of Administrative Penalties*, as amended, and must be paid to the DEM within thirty (30) days of your receipt of this Notice of Violation (“NOV”). Payment shall be in the form of a certified check, cashiers 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 this 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 the DEM 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 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
One Capitol Hill, 2ND Floor
Providence, RI 02903

- (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 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 E above.

FOR THE DIRECTOR

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

Date: _____

CERTIFICATION

I hereby certify that on the day of _____, 2013 the within Notice of Violation was forwarded to:

Medical Homes of Rhode Island, Inc.
c/o Akshay K. Talwar, Registered Agent
49 Old Pocasset Road
Johnston, RI 02919

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution

File Nos.: WP-12-94 and WP 12-076, X-ref RIPDES NO.: RI0020168

Respondent: Medical Homes of Rhode Island, Inc.

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)(a), C(2)(b), & C(3)(a) Failure to comply with the discharge limit for total ammonia (May, June & July 2011)	Type I (\$25,000 Max. Penalty)*	Minor	\$2,500	3 violations	\$7,500
C(1), C(2)(a), C(2)(b), & C(3)(a) Failure to comply with discharge limits for total ammonia, TSS & BOD (February, March & April 2012)	Type I (\$25,000 Max. Penalty)*	Moderate	\$6,250	3 violations	\$18,750
C(3)(b) - Failure to report violations within 24 hours (March & April 2012)	Type I (\$25,000 Max. Penalty)*	Minor	\$2,500	2 violations	\$5,000
SUB-TOTAL					\$31,250

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

ADMINISTRATIVE PENALTY SUMMARY *(continued)*

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.

A review of the record in this matter has revealed that the 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 can not 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 = \$31,250.00

PENALTY MATRIX WORKSHEET

CITATION: *Failure to comply with the monthly average discharge limit for total ammonia (May, June & July 2011)*

VIOLATION NO.: *C(1), C(2)(a), C(2)(b) & C(3)(a)*

TYPE

<p><u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
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DEVIATION FROM THE STANDARD

THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** Medical Homes violated the discharge limits specified in its permit for total ammonia. 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.

- (B) **Environmental conditions:** The wastewater is discharged to an unnamed stream tributary to Dry Brook which is designated as a Class B1 water body of the State. Class B1 waters are designated for primary and secondary contact recreational activities and fish and wildlife habitat. These waters shall have good aesthetic value. Primary contact recreational activities may be impacted due to pathogens from approved wastewater discharges. However all Class B criteria must be met.

- (C) **Amount of the pollutant:** The monthly average concentrations of total ammonia ranged from 74% to 93% over the permit.

- (D) **Toxicity or nature of the pollutant:** The discharge limits for total ammonia 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 ammonia in concentrations that exceed the limits of the permit may have been acutely or chronically toxic to fish and other aquatic organisms and vegetation.

- (E) **Duration of the violation:** The discharge limit violations occurred for the following three (3) monthly periods: May 2011, June 2011 and July 2011.

- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Medical Homes did not take reasonable steps to prevent the violation. Medical Homes stated that the violations were due to the use of the wrong discharge monitoring reports, lack of proper dissolved oxygen level recording, and lack of proper aeration blower maintenance.
- (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:** Considered, but not used for this calculation.
- (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:** Medical Homes had complete control over the facility and the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not used for this calculation.

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

PENALTY MATRIX WORKSHEET

CITATION:	Failure to comply with discharge limits for total ammonia, TSS & BOD (February, March & April 2012)
VIOLATION NO.:	C(1), C(2)(a), C(2)(b), & C(3)(a)

TYPE

X TYPE I
DIRECTLY related to protecting health, safety, welfare or environment.

TYPE II
INDIRECTLY related to protecting health, safety, welfare or environment.

TYPE III
INCIDENTAL 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 Section 10 (a) (2) of the DEM *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** Medical Homes violated the daily maximum and monthly average discharge limits specified in its permit for total ammonia, TSS and BOD. Medical Homes also violated the weekly average discharge limits specified in its permit for TSS and BOD. 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.
- (B) **Environmental conditions:** The wastewater is discharged to an unnamed stream tributary to Dry Brook which is designated as a Class B1 water body of the State. Class B1 waters are designated for primary and secondary contact recreational activities and fish and wildlife habitat. These waters shall have good aesthetic value. Primary contact recreational activities may be impacted due to pathogens from approved wastewater discharges. However all Class B criteria must be met.
- (C) **Amount of the pollutant:** The monthly average concentrations of BOD ranged from 28% to 152% over the permit limit. The weekly average and daily maximum concentrations of BOD ranged from 76% to 180% over the permit limit. The monthly average concentrations of TSS ranged from 40% to 79% over the permit limit. The weekly average and daily maximum concentrations of TSS ranged from 8% to 64% over the permit limit. The daily maximum concentrations of total ammonia ranged from 79% to 89% over the permit limit. The monthly average concentrations of total ammonia ranged from 24% to 492% over the permit limit.
- (D) **Toxicity or nature of the pollutant:** The discharge limits for total ammonia 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 ammonia in concentrations that exceed the limits of the Permit may have been acutely or chronically toxic to fish and other aquatic organisms and vegetation. The discharge limits for TSS and BOD are technology based, which exceedences thereof do not necessarily cause or contribute directly to exceedence of any in-stream criteria.
- (E) **Duration of the violation:** The discharge limit violations occurred for the following three (3) monthly periods: February 2012, March 2012 and April 2012.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

(continued)

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

PENALTY MATRIX WORKSHEET

CITATION:	Failure to report violations for total ammonia (February, March & April 2012)
VIOLATION NO.:	C(3)(b)

TYPE		
<u> X </u> TYPE I DIRECTLY related to protecting health, safety, welfare or environment.	___ TYPE II INDIRECTLY related to protecting health, safety, welfare or environment.	___ TYPE III INCIDENTAL 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.		
<p>FACTORS CONSIDERED: Taken from Section 10 (a) (2) of the DEM Rules and Regulations for Assessment of Administrative Penalties</p> <p>(A) The extent to which the act or failure to act was out of compliance: Medical Homes failed to report the discharge limit violations for total ammonia to DEM within 24 hours as required by its permit. Timely reporting of discharge limit violations are very important to the program as it enables program staff to require specific actions to mitigate additional violations.</p> <p>(B) Environmental conditions: Considered, but not utilized for this calculation.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.</p> <p>(E) Duration of the violation: The daily maximum discharge limit violations for total ammonia were not timely reported to DEM for the months of March 2012 and April 2012.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p> <p>(G) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance: Medical Homes did not take steps to prevent the non-compliance or mitigate the noncompliance.</p> <p>(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: Considered, but not utilized for this calculation.</p> <p>(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: Medical Homes had complete control over the reporting violation. The violation was foreseeable.</p> <p>(J) Any other factor(s) that may be relevant in determining the amount of a penalty: Considered, but not utilized for this calculation.</p>		
MAJOR	MODERATE	<u> X </u> MINOR

Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000	TYPE I	TYPE II	TYPE III
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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