

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Clariant Corporation

**FILE NO.: WP11-023
X- ref RIPDES RI0000132**

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 500 Washington Street, Coventry, Rhode Island (the "Property"). The Property includes a wastewater treatment facility formerly used to treat sanitary and industrial process wastewater generated from manufacturing operations at the Property (the "Facility").
- (2) The Respondent was issued Rhode Island Pollutant Discharge Elimination System ("RIPDES") Permit No. RI0000132 (the "Permit") on December 31, 2001 and became effective on March 1, 2002. The Permit authorized the Respondent to discharge treated wastewater from the Facility to the Pawtuxet River.
- (3) The Permit required the 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.
 - (b) Prohibit any unapproved intentional diversion of wastewater from any portion of the Facility that causes effluent limitations to be exceeded.
 - (c) Properly operate all components of the Facility.
 - (d) Apply for a new permit at least 180 days prior to any change in discharge.
- (4) On November 30, 1999 the DEM approved an Operation and Maintenance Manual for the Facility (the "O&M Manual"). The O&M Manual requires that the wastewater undergo aeration within an aeration basin and that a minimum of two aerators be operated at all times to provide sufficient mixing or dissolved oxygen or both.

- (5) On October 21, 2010 the DEM inspected the Facility. The inspection revealed that wastewater was being discharged to the Pawtuxet River without aeration.
- (6) On November 9, 2010 the DEM advised the Facility site manager, John Paul, in a telephone conversation that it was a violation of the DEM's regulations to discharge wastewater to the Pawtuxet River without aeration. Mr. Paul stated that he would arrange for storage of the wastewater.
- (7) On November 10, 2010 Mr. Paul advised the DEM in a telephone conversation that the Facility had ceased discharging wastewater to the Pawtuxet River. Mr. Paul stated that the wastewater was being diverted to an emergency storage tank (the "Emergency Storage Tank").
- (8) On November 12, 2010 Mr. Paul advised the DEM in a telephone conversation that the wastewater in the Emergency Storage Tank was being pumped by a licensed septage hauler and transported to the Cranston Water Pollution Control Facility. Mr. Paul stated that approximately 350,000 gallons of wastewater in the primary and secondary tanks at the Facility were discharged to the Pawtuxet River on November 11, 2010.
- (9) The DEM received from the Respondent monthly operating reports for the months of December 2009 through November 2010 (the "MORs"). The MORs included the following information:
 - (a) The Facility ceased use of the aerators on December 23, 2009.
 - (b) The Facility discharged 102.95 million gallons of wastewater to the Pawtuxet River from December 23, 2009 through November 10, 2010.
 - (c) The Facility ceased discharging wastewater from the Facility to the Pawtuxet River as of November 11, 2010.
- (10) On January 25, 2011 the Respondent submitted a letter to the DEM. The letter included a table that showed the following:
 - (a) The Respondent ceased all manufacturing operations at the Property as of May 31, 2009.
 - (b) The Respondent diverted approximately 146.2 million gallons of water from the Pawtuxet River through the Facility from June 1, 2009 through November 10, 2010.
 - (c) The Respondent discharged approximately 9.1 million gallons of wastewater from the Facility to the Pawtuxet River from June 1, 2009 through November 10, 2010.
- (11) The Emergency Storage Tank is an onsite wastewater treatment system ("OWTS") as that term is defined in the DEM's Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems (the "OWTS Regulations").
- (12) The Respondent did not apply to the DEM for a new permit for their discharge.

- (13) The Respondent did not receive approval from the DEM to cease aeration and bypass the aeration system.
- (14) The Respondent did not receive approval from the DEM to dilute the wastewater with river water.
- (15) The Respondent did not receive approval from the DEM to discharge partially treated wastewater to the Pawtuxet River.
- (16) The Respondent did not receive approval from the DEM for the OWTS.
- (17) As of the date of this Notice of Violation (“NOV”), the Respondent has failed to comply with the DEM’s OWTS 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) **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) **DEM’s 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’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 14.02(b)** – prohibiting a permittee from achieving any effluent concentration by dilution or by increasing the use of process water or cooling water or otherwise attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve permit limitations or water quality standards.
 - (c) **Rule 14.05** – requiring the permittee to take all reasonable steps to minimize or prevent a discharge in violation of the permit.
 - (d) **Rule 14.06** – requiring the permittee to maintain in good working order and operate as efficiently as possible all treatment works to achieve compliance with the permit.
 - (e) **Rule 14.20(c)** – prohibiting bypass unless the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage.

- (4) **DEM's Rules and Regulations Pertaining to the Operation and Maintenance of Wastewater Treatment Facilities**
 - (a) **Rule 5** – requiring that a facility be maintained in good working order and operated as efficiently as possible.
 - (b) **Rule 7** – requiring a facility to be operated and maintained at all times in accordance with all aspects of an approved plan.
- (5) **DEM's OWTS Regulations, Rule 14.1** – requiring an OWTS that is a type and design that is approved by the DEM.

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 (30) days of receipt of the NOV**, submit to the DEM a written proposal for a permanent solution to the violation, which must include either connection of all the buildings on the Property to the town sanitary sewerage system or the permanent cutting and capping of the plumbing for all the buildings on the Property or some combination of both (the "Proposal"). The Proposal must include the following:
 - (a) A plan for decommissioning pumping and treatment systems that includes: assessment of existing wastewater collection and treatment systems that includes mapping, as built plans and specifications for sewers constructed since 2005, the locations and procedures for necessary plugs or other flow stoppages, and the containment, monitoring, dewatering (and proper disposal thereof) of accumulated or otherwise extraneous groundwater, rainwater or other inflow/infiltration;
 - (b) Identification of all buildings currently connected to the town sanitary sewerage system;
 - (c) Identification of all buildings currently generating wastewater;
 - (d) Identification of all buildings that will be connected to the town sanitary sewerage system; and
 - (e) Identification of all buildings for which the plumbing will be permanently cut and capped and/or plugged and a schedule to complete the work.
- (2) **Within thirty (30) days of receipt of the NOV**, submit to the DEM an application for an Order of Approval ("OA") for all the buildings on the Property currently connected to the town sanitary sewerage system and all the buildings on the Property identified in the Proposal that will be connected to the public sewerage system (the "OA Application"). The OA application must be based on a

design flow rate not to exceed Forty One Thousand (41,000) gallons per day and must include the following:

- (a) Design plans and design specifications for the constructed sewer lines and appurtenances; and
 - (b) A schedule to complete the work.
- (3) The Proposal and the OA Application shall be subject to DEM's review and approval. Upon review, the DEM shall provide written notification to you either granting formal approval or stating the deficiencies therein. Within fourteen (14) days (unless a longer time is specified) of receiving a notification of deficiencies, you must submit to the DEM a modified proposal or additional information necessary to correct the deficiencies.
 - (4) Commence work on the project within thirty (30) days of approval of the Proposal or the OA Application by the DEM (unless otherwise expressly authorized by the DEM in writing to commence work at a later time) and complete such work in accordance with said approval.

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 Twelve Thousand Two Hundred Dollars (\$112,200.00)

- (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 Director within twenty (20) days of your receipt of this 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 the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against the 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 (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
Office of Administrative Adjudication
One Capitol Hill, Second 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) An original signed copy of this NOV is being forwarded to the town of Coventry wherein the Property is located to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and 42-17.1-2(13), as amended.
- (7) 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's 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 extension 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 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:

Clariant Corporation
c/o Corporation Service Company, Registered Agent
222 Jefferson Boulevard, Suite 200
Warwick, RI 02888

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution
 File Nos.: WP11-023 x-ref RIPDES RI0000132
 Respondent: Clariant Corporation

| 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), C(3)(a), C(3)(c)-(e), and C(4) – Failure to aerate the wastewater | Type 1 (\$25,000 Max. Penalty)* | Minor | \$2,500 | 11 months | \$27,500.00 |
| C(1), C(2), C(3)(a) - (d), and C(4) – Dilution of the wastewater with river water | Type 1 (\$25,000 Max. Penalty)* | Minor | \$2,500 | 18 months | \$45,000.00 |
| C(1), C(2), C(3)(a), C(3)(c)-(e), and C(4) – Unauthorized discharge of partially treated wastewater | Type 1 (\$25,000 Max. Penalty)* | Major | \$25,000 | 1 violation | \$25,000.00 |
| SUB-TOTAL | | | | | \$97,500.00 |

*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. | | |
| DESCRIPTION OF BENEFIT | CALCULATION | AMOUNT |
| Cost to have 350,000 gallons of wastewater hauled to a wastewater treatment facility for disposal | Four trucks (total 16,700 gallons combined capacity) @ \$175 per truck per hour for 21 round trips of one hour each round trip = \$14,700. | \$14,700 |
| SUBTOTAL | | \$14,700 |

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$112,200.00

PENALTY MATRIX WORKSHEET

CITATION: Failure to aerate the wastewater

VIOLATION NO.: C(1), C(2), C(3)(a), C(3)(c)-(e), and C(4)

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:** The Respondent failed to properly operate the wastewater treatment facility. The Respondent turned off the aerators eliminating a major component of the approved treatment process. Proper operation of a wastewater treatment facility is a major objective of the DEM's O&M regulations, the DEM's Water Quality Regulations, and the DEM's RIPDES Regulations, and is of major importance to the regulatory program.
- (B) **Environmental conditions:** Partially treated wastewater was discharged to the south branch of the Pawtuxet River. The river is designated as a Class B1 water body and is suitable for primary and secondary contact recreational activities and for fish and wildlife habitat, however, these activities may be impacted due to pathogens from approved wastewater discharges. Class B1 waters shall have good aesthetic value.
- (C) **Amount of the pollutant:** 102.95 million gallons.
- (D) **Toxicity or nature of the pollutant:** Partially treated wastewater can contain 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.
- (E) **Duration of the violation:** Approximately twelve (12) months, from December 23, 2009 to November 10, 2010.
- (F) **Areal extent of the violation:** Not utilized for this calculation.

(continued)

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|-----|--|
| (G) | Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance: The Respondent did not take appropriate steps to prevent or mitigate the violation. The Respondent intentionally turned off the aerators and discharged partially treated wastewater to waters of the State. |
| (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 utilized 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: The Respondent had complete control over the facility operations and violation. |
| (J) | Any other factor(s) that may be relevant in determining the amount of a penalty: Not utilized for this calculation. |

| | | |
|--------------|-----------------|-----------------------|
| 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 |
|---|----------|--------------------------------------|---------------------|--------------------|
| 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: Dilution of the wastewater with river water

VIOLATION NO.: C(1), C(2), C(3)(a)-(d), and C(4)

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:** The Respondent failed to properly operate the wastewater treatment facility. The Respondent diverted river water into the treatment works to dilute the wastewater. Proper operation of a wastewater treatment facility is a major objective of the DEM's O&M regulations, the DEM's Water Quality Regulations, and the DEM's RIPDES Regulations, and is of major importance to the regulatory program.
- (B) **Environmental conditions:** Diluted wastewater was discharged to the south branch of the Pawtuxet River. The river is designated as a Class B1 water body and is suitable for primary and secondary contact recreational activities and for fish and wildlife habitat, however, these activities may be impacted due to pathogens from approved wastewater discharges. Class B1 waters shall have good aesthetic value.
- (C) **Amount of the pollutant:** Approximately 9.1 million gallons of wastewater was diluted with river water.
- (D) **Toxicity or nature of the pollutant:** Not utilized for this calculation.
- (E) **Duration of the violation:** Approximately twenty two (22) months, from June 1, 2009 to November 10, 2010.
- (F) **Areal extent of the violation:** Not utilized for this calculation.

(continued)

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| (G) | Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance: The Respondent did not take appropriate steps to prevent or mitigate the violation. The Respondent intentionally diverted river water into the facility to dilute the wastewater. |
| (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 utilized 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: The Respondent had complete control over the facility operations and violation. |
| (J) | Any other factor(s) that may be relevant in determining the amount of a penalty: Not utilized for this calculation. |

| | | |
|--------------|-----------------|-----------------------|
| 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 |
|---|----------|--------------------------------------|---------------------|--------------------|
| 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: Unauthorized discharge of partially treated wastewater

VIOLATION NO.: C(1), C(2), C(3)(a), C(3)(c)-(e), and C(4)

| TYPE | | |
|---|---|--|
| <u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment. | <u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment. | <u> </u> 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 Section 10(a)(2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i> | | |
| <p>(A) The extent to which the act or failure to act was out of compliance: The Respondent discharge partially treated wastewater from the primary and secondary clarifiers to the south Branch of the Pawtuxet River. The unauthorized discharge of pollutants to the waters of the State is a violation of Rhode Island's Water Pollution Act, the DEM's O&M regulations, the DEM's Water Quality regulations, and the DEM's RIPDES regulations and is of major importance to the regulatory program.</p> <p>(B) Environmental conditions: Partially treated wastewater was discharged to the south branch of the Pawtuxet River. The river is designated as a Class B1 water body and is suitable for primary and secondary contact recreational activities and for fish and wildlife habitat, however, these activities may be impacted due to pathogens from approved wastewater discharges. Class B1 waters shall have good aesthetic value.</p> <p>(C) Amount of the pollutant: Approximately 350,000 gallons.</p> <p>(D) Toxicity or nature of the pollutant: Partially treated wastewater can contain 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.</p> <p>(E) Duration of the violation: Single occurrence. The violation occurred on November 11, 2010.</p> <p>(F) Areal extent of the violation: Not utilized for this calculation.</p> | | |
| (continued) | | |

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| (G) | Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance: The Respondent did not take appropriate steps to prevent the violation. The Respondent intentionally emptied the clarifiers of the partially treated wastewater to the south branch of the Pawtuxet River upon facility shut down as opposed to the proper disposal of the wastewater such as use of a septic hauling company to haul the wastewater to a wastewater treatment facility. |
| (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 utilized 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: The Respondent had complete control over the facility operations and violations. The violation was willful. |
| (J) | Any other factor(s) that may be relevant in determining the amount of a penalty: Two days prior to the violation, on November 9, 2010, DEM notified the Facility manager, John Paul, that bypassing treatment was a violation of State and Federal regulations. |

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|--------------------|----------|-------|
| <u> X </u> MAJOR | MODERATE | MINOR |
|--------------------|----------|-------|

| 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 |