

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Manafort Brothers Incorporated**

**FILE NOs.: OCI-WP-18-166  
and RIG85G029  
Permit Referral #18-02**

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 the DEM's jurisdiction.

B. Facts

- (1) On 13 July 2017, the DEM issued a permit to the University of Rhode Island (“URI”) and Respondent to discharge treated groundwater associated with the University of Rhode Island College of Engineering Building Project to White Horn Brook (the “Discharge”). The permit authorization number was RIPDES No. RIG85G029 (the “Permit”).
- (2) The Permit required Respondent to:
  - (a) Comply with a monthly average Discharge limit for the Total Suspended Solids (“TSS”) and Total Phthalates (“Phthalates”) of 30,000 micrograms per liter (“ppb”) and 5 ppb, respectively, and a maximum daily Discharge limit for Total Chromium VI (“Chromium”) and Total Copper (“Copper”) of 130.3 ppb and 30.3 ppb, respectively; and
  - (b) Summarize monitoring results obtained during the previous 3 months and report these results to the DEM in a Discharge Monitoring Report (“DMR”) that must be postmarked no later than the 15<sup>th</sup> day of the month following the completed reporting period.
- (3) On 12 January 2018, the DEM received a Notification of Termination of the Permit and the DMRs for the quarters ending on 30 September 2017 and 30 December 2017 from Respondent.

- (4) On 30 March 2018, the DEM received electronic correspondence from URI (the “March Correspondence”). The correspondence included the monitoring results of the Discharge for each sample collected from July 2017 through November 2017.
- (5) Respondent reported the following monitoring results (in ppb) to the DEM in the DMRs or March Correspondence or both that exceed the discharge limits set forth in the Permit:

<b>Parameter</b>	<b>July</b>	<b>August</b>	<b>October</b>	<b>November</b>
TSS	111,333	97,333		
Phthalates	30	85	147	30
Chromium		220		
Copper		44		

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) **Rhode Island Code of Regulations titled *Water Quality Regulations (250-RICR-150-05-1)***
  - (a) **Rule 11(B) [recently amended to 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 the DEM.
  - (b) **Rule 16(A) [recently amended to Part 1.18(A)]** – mandating compliance with all terms, conditions, management practices and operation and maintenance requirements set forth in the approval.
- (3) **Rhode Island Code of Regulations titled *Regulations for the Rhode Island Pollutant Discharge Elimination System (250-RICR-150-10-1)*, Rule 14.02(a) [recently amended to Part 1.14(B)(1)]** – requiring the permittee to comply with all conditions of a permit issued by the DEM.

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:

**\$27,500**

- (2) The proposed administrative penalty is calculated pursuant to the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* and must be paid to the DEM within 30 days of your receipt of the 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’s Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against Respondent 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 the 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 the 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 Rhode Island Code of Regulations titled *Rules and Regulations for the Administrative Adjudication Division (250-RICR-10-00-1)*.
- (2) A copy of each request for hearing must also be forwarded to:
- Christina Hoefsmit, Esquire  
DEM - Office of Legal Services  
235 Promenade Street, 4<sup>TH</sup> 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 the 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 the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to David E. Chopy of the DEM's 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 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:

Manafort Brothers Incorporated  
c/o CORPORATION SERVICE COMPANY, Registered Agent  
222 Jefferson Boulevard, Suite 200  
Warwick, RI 02888

by Certified Mail.

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## ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution  
 File Nos.: OCI-WP-18-166 and RIG85G029  
 Respondent: Manafort Brothers Incorporated

<b>GRAVITY OF VIOLATION</b>					
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 Permit – July 2017	Type I <i>(\$25,000 Max. Penalty)*</i>	Moderate	\$6,250	1 month	\$6,250
C(1), C(2) and C(3) – Failure to Comply with Permit – August 2017	Type I <i>(\$25,000 Max. Penalty)*</i>	Major	\$12,500	1 month	\$12,500
C(1), C(2) and C(3) – Failure to Comply with Permit – October 2017	Type I <i>(\$25,000 Max. Penalty)*</i>	Moderate	\$6,250	1 month	\$6,250
C(1), C(2) and C(3) – Failure to Comply with Permit – November 2017	Type I <i>(\$25,000 Max. Penalty)*</i>	Minor	\$2,500	1 month	\$2,500
<b><i>SUB-TOTAL</i></b>					<b>\$27,500</b>

\*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.

A review of the record in this matter has revealed that 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 cannot 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 = \$27,500**

# PENALTY MATRIX WORKSHEET

CITATION: Failure To Comply With Permit – July 2017  
 VIOLATION NOs.: C(1), C(2) and C(3)

TYPE		
<b><u> X </u> TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<b>___TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<b>___TYPE III</b> <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 Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)*.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent failed to comply with the Discharge limits in the Permit for July 2017. Compliance with the limits in a permit is a primary objective of Rhode Island’s *Water Pollution Act*, the Rhode Island Code of Regulations titled *Water Quality Regulations (250-RICR-150-05-1)* and the Rhode Island Code of Regulations titled *Regulations for the Rhode Island Pollutant Discharge Elimination System (250-RICR-150-10-1)*.
- (2) **Environmental conditions:** Contaminated groundwater from the University of Rhode Island College of Engineering Building Project was directed to White Horn Brook through the storm water drainage system at the University of Rhode Island campus. The brook upgradient of Route 138 (and the point of entry for the contaminated groundwater) is designated as a Class A waterbody, and the brook downgradient of Route 138 is designated as a Class B waterbody. Waters classified as A or B are designated for primary and secondary contact recreational activities and fish and wildlife habitat. The Class A portion of the brook has not been assessed by the DEM. The Class B portion of the brook was assessed by the DEM in 2011, and it is in nonattainment for enterococcus. The DEM did not consider this nonattainment in the assessment of the penalty.
- (3) **Amount of the pollutant:** The monthly average concentrations of TSS and Phthalates in the Discharge were 111,333 ppb (3.7 times over the Discharge limit) and 30 ppb (6.0 times over the Discharge limit), respectively. On 19 July 2017, the concentration of TSS was 255,000 ppb (approximately 8.5 times over the Discharge limit), and the concentration of Phthalates was 48 ppb (approximately 9.6 times over the Discharge limit). On 24 July 2017, the concentration of TSS was 67,000 ppb (approximately 2.2 times over the Discharge limit), and the concentration of Phthalates was 42 ppb (approximately 8.4 times over the Discharge limit). The volume of the Discharge for July 2017 was approximately 74,400 gallons.
- (4) **Toxicity or nature of the pollutant:** TSS and Phthalates are toxic to aquatic organisms.
- (5) **Duration of the violation:** Considered, but not utilized for this calculation.
- (6) **Areal extent of the violation:** Unknown. The DEM has no specific information concerning adverse impacts to the aquatic organisms in the brook 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:** Considered, but not utilized for this calculation.
- (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 Respondent for its failure to comply with the Permit. Respondent had control over the violations and had an obligation to ensure compliance with the Permit.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<b>MAJOR</b>	<u>  X  </u> <b>MODERATE</b>	<b>MINOR</b>
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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	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	<b>MODERATE</b>	\$6,250 to \$12,500 <b>\$6,250</b>	\$2,500 to \$6,250	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

# PENALTY MATRIX WORKSHEET

CITATION: Failure To Comply With Permit – August 2017

VIOLATION NOs.: C(1), C(2) and C(3)

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

**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 Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)*.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent failed to comply with the Discharge limits in the Permit for August 2017. Compliance with the limits in a permit is a primary objective of Rhode Island’s *Water Pollution Act*, the Rhode Island Code of Regulations titled *Water Quality Regulations (250-RICR-150-05-1)* and the Rhode Island Code of Regulations titled *Regulations for the Rhode Island Pollutant Discharge Elimination System (250-RICR-150-10-1)*.
- (2) **Environmental conditions:** Groundwater from the University of Rhode Island College of Engineering Building Project was directed to Contaminated groundwater from the University of Rhode Island College of Engineering Building Project was directed to White Horn Brook through the storm water drainage system at the University of Rhode Island campus. The brook upgradient of Route 138 (and the point of entry for the contaminated groundwater) is designated as a Class A waterbody, and the brook downgradient of Route 138 is designated as a Class B waterbody. Waters classified as A or B are designated for primary and secondary contact recreational activities and fish and wildlife habitat. The Class A portion of the brook has not been assessed by the DEM. The Class B portion of the brook was assessed by the DEM in 2011, and it is in nonattainment for enterococcus. The DEM did not consider this nonattainment in the assessment of the penalty.
- (3) **Amount of the pollutant:** The monthly average concentrations of TSS and Phthalates in the Discharge were 97,333 ppb (3.2 times over the Discharge limit) and 85 ppb (17 times over the Discharge limit), respectively. The daily maximum concentrations of Chromium and Copper in the Discharge were 220 ppb (1.7 times over the Discharge limit) and 44 ppb (1.5 times over the Discharge limit), respectively. On 1 August 2017, the concentration of TSS was 74,000 ppb (approximately 2.5 times over the Discharge limit), the concentration of Phthalates was 93 ppb (approximately 18.6 times over the Discharge limit), and the concentration of Copper was 44 ppb (approximately 1.5 times over the Discharge limit). On 8 August 2017, the concentration of TSS was 213,000 ppb (approximately 7.1 times over the Discharge limit), the concentration of Phthalates was 87 ppb (approximately 17.4 times over the Discharge limit), and the concentration of Chromium was 220 ppb (approximately 1.7 times over the Discharge limit). On 15 August 2017, the concentration of Phthalates was 75 ppb (approximately 15 times over the Discharge limit). The volume of the Discharge for August 2017 was approximately 88,900 gallons.
- (4) **Toxicity or nature of the pollutant:** TSS, Phthalates, Chromium and Copper are toxic to aquatic organisms.
- (5) **Duration of the violation:** Considered, but not utilized for this calculation.
- (6) **Areal extent of the violation:** Unknown. The DEM has no specific information concerning adverse impacts to the aquatic organisms in the brook 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:** Considered, but not utilized for this calculation.
- (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 Respondent for its failure to comply with the Permit. Respondent had control over the violations and had an obligation to ensure compliance with the Permit.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<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	<b>MAJOR</b>	\$12,500 to \$25,000 <b>\$12,500</b>	\$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

# PENALTY MATRIX WORKSHEET

CITATION: Failure To Comply With Permit – October 2017

VIOLATION NOS.: C(1), C(2) and C(3)

<b>TYPE</b>		
<u>  X  </u> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>      </u> <b>TYPE III</b> <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 Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)*.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent failed to comply with the Discharge limits in the Permit for October 2017. Compliance with the limits in a permit is a primary objective of Rhode Island’s *Water Pollution Act*, the Rhode Island Code of Regulations titled *Water Quality Regulations (250-RICR-150-05-1)* and the Rhode Island Code of Regulations titled *Regulations for the Rhode Island Pollutant Discharge Elimination System (250-RICR-150-10-1)*.
- (2) **Environmental conditions:** Contaminated groundwater from the University of Rhode Island College of Engineering Building Project was directed to White Horn Brook through the storm water drainage system at the University of Rhode Island campus. The brook upgradient of Route 138 (and the point of entry for the contaminated groundwater) is designated as a Class A waterbody, and the brook downgradient of Route 138 is designated as a Class B waterbody. Waters classified as A or B are designated for primary and secondary contact recreational activities and fish and wildlife habitat. The Class A portion of the brook has not been assessed by the DEM. The Class B portion of the brook was assessed by the DEM in 2011, and it is in nonattainment for enterococcus. The DEM did not consider this nonattainment in the assessment of the penalty.
- (3) **Amount of the pollutant:** The monthly average concentration of Phthalates in the Discharge was 147 ppb (17 times over the Discharge limit). One sample was collected in October (on 24 October 2017). The volume of the Discharge for October 2017 was approximately 143,400 gallons.
- (4) **Toxicity or nature of the pollutant:** Phthalates is toxic to aquatic organisms.
- (5) **Duration of the violation:** Considered, but not utilized for this calculation.
- (6) **Areal extent of the violation:** Unknown. The DEM has no specific information concerning adverse impacts to the aquatic organisms in the brook that may have occurred because of these discharges.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Considered, but not utilized for this calculation.
- (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 Respondent for its failure to comply with the Permit. Respondent had control over the violations and had an obligation to ensure compliance with the Permit.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<b>MAJOR</b>	<u>  X  </u> <b>MODERATE</b>	<b>MINOR</b>
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		<b>TYPE I</b>	<b>TYPE II</b>	<b>TYPE III</b>
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	<b>MODERATE</b>	\$6,250 to \$12,500 <b>\$6,250</b>	\$2,500 to \$6,250	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

# PENALTY MATRIX WORKSHEET

CITATION: Failure To Comply With Permit – November 2017  
 VIOLATION NOs.: C(1), C(2) and C(3)

TYPE		
<input checked="" type="checkbox"/> <b>TYPE I</b> <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<input type="checkbox"/> <b>TYPE II</b> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<input type="checkbox"/> <b>TYPE III</b> <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 Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)*.

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent failed to comply with the Discharge limits in the Permit for November 2017. Compliance with the limits in a permit is a primary objective of Rhode Island's *Water Pollution Act*, the Rhode Island Code of Regulations titled *Water Quality Regulations (250-RICR-150-05-1)* and the Rhode Island Code of Regulations titled *Regulations for the Rhode Island Pollutant Discharge Elimination System (250-RICR-150-10-1)*.
- (2) **Environmental conditions:** Contaminated groundwater from the University of Rhode Island College of Engineering Building Project was directed to White Horn Brook through the storm water drainage system at the University of Rhode Island campus. The brook upgradient of Route 138 (and the point of entry for the contaminated groundwater) is designated as a Class A waterbody, and the brook downgradient of Route 138 is designated as a Class B waterbody. Waters classified as A or B are designated for primary and secondary contact recreational activities and fish and wildlife habitat. The Class A portion of the brook has not been assessed by the DEM. The Class B portion of the brook was assessed by the DEM in 2011, and it is in nonattainment for enterococcus. The DEM did not consider this nonattainment in the assessment of the penalty.
- (3) **Amount of the pollutant:** The monthly average concentration of Phthalates in the Discharge was 30 ppb (6 times over the Discharge limit). One sample was collected in November (on 6 November 2017). The volume of the Discharge for November 2017 was approximately 60,000 gallons.
- (4) **Toxicity or nature of the pollutant:** Phthalates is toxic to aquatic organisms.
- (5) **Duration of the violation:** Considered, but not utilized for this calculation.
- (6) **Areal extent of the violation:** Unknown. The DEM has no specific information concerning adverse impacts to the aquatic organisms in the brook that may have occurred because of these discharges.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Considered, but not utilized for this calculation.
- (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 Respondent for its failure to comply with the Permit. Respondent had control over the violations and had an obligation to ensure compliance with the Permit.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<b>MAJOR</b>	<b>MODERATE</b>	<u>  X  </u> <b>MINOR</b>
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		<b>TYPE I</b>	TYPE II	TYPE III
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	<b>MODERATE</b>	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	<b>MINOR</b>	\$2,500 to \$6,250 <b>\$2,500</b>	\$1,250 to \$2,500	\$250 to \$1,250