

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: The Narragansett Bay Commission

**FILE NOs.: WP 14-95 and
RIPDES RI0100072**

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. Administrative History

Pursuant to the DEM's *Regulations for the Rhode Island Pollutant Discharge Elimination System* (the "RIPDES Regulations") the DEM issued the Respondent a permit to discharge treated wastewater from its facility at Bucklin Point to the Seekonk River. The permit requires the Respondent to meet specific discharge limits to protect water quality and the uses of the water. The facility has been unable to meet some of its limits during periods of high incoming wastewater flows when all of its treatment tanks are not in operation. In February 2013 this resulted in a 7 day closure of shellfishing grounds in upper Narragansett Bay. In April 2013 the DEM issued a letter to the Respondent that required, among other things, an analysis of the need for additional treatment tanks at the facility. In May 2013 the DEM received a letter from the Respondent stating that implementing operational changes would keep the facility in compliance with its permit. Reports submitted to the DEM in November 2013 and November 2014 show continued noncompliance.

C. Facts

- (1) The property is located at 102 Campbell Avenue in the city of East Providence, Rhode Island (the "Property"). The Property includes a facility that is engaged in the treatment of wastewater from residential, commercial and industrial sources (the "Facility").
- (2) On 31 December 2001 the DEM issued Rhode Island Pollutant Discharge Elimination System ("RIPDES") Permit No. RI0100072 (the "Permit") to the Respondent. The Permit authorizes the Respondent to discharge treated wastewater from the Facility through outfall 001A to the Seekonk River.
- (3) On 30 January 2002 the Respondent filed an appeal of the Permit and moved to stay certain conditions of the Permit (the "Appeal").

- (4) On 1 February 2002 the Permit went into effect for all conditions not stayed pursuant to the Appeal.
- (5) On 12 January 2004 the DEM and the Respondent executed a Consent Agreement to resolve the Appeal (the "2004 Agreement"). The 2004 Agreement remains in full force and effect.
- (6) On 1 February 2007 the Permit expired.
- (7) The Respondent submitted a timely and complete Permit reapplication, and pursuant to Rule 13 of the DEM's RIPDES Regulations the expired Permit remains in full force and effect and is fully enforceable.
- (8) The Permit and 2004 Agreement require:
 - (a) Compliance with the following effluent limits (collectively, the "Permit Limits"):
 - (i) BOD₅ - 50 milligrams per liter ("ppm") as a daily maximum concentration and 19,182 pounds per day ("ppd") as a daily maximum loading;
 - (ii) TSS - 50 ppm as a daily maximum concentration, 45 ppm as a weekly average concentration and 19,182 ppd as a daily maximum loading;
 - (iii) TSS Percent Removal – 85%;
 - (iv) Fecal Coliform - 400 most probable number ("mpn") as a daily maximum concentration;
 - (v) Copper - 86.1 micrograms per liter ("ppb") as a daily maximum concentration; and
 - (vi) Zinc - 88.0 ppb as a daily maximum concentration.
 - (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) Properly operate and maintain all components of the Facility to achieve compliance with the conditions of the Permit; and
 - (d) Summarize monitoring results obtained during the previous month and report these results to the DEM in a Discharge Monitoring Report ("DMR").

- (9) The Respondent submitted DMRs to the DEM for February 2013 through May 2013 (the "February-May DMRs") that showed the following exceedances of the Permit Limits:

Parameter	February 2013	March 2013	April 2013	May 2013
BOD₅ - daily maximum (in ppm)	86 56	106 84		66
BOD₅ - daily maximum(in ppd)	20,088	30,137		
TSS - daily maximum (in ppm)	133 84 89	171 181	53 55	111
TSS - daily maximum(in ppd)	30,888 19,204 20,184	48,363 30,860		
TSS Percent Removal	83.7	78.1		
Fecal Coliform - daily maximum (in mpn)	519			552

- (10) The exceedance of the Permit Limits for February 2013 required the DEM to implement a 7 day shellfish closure of Conditional Area A in the upper Narragansett Bay.
- (11) The letters the Respondent submitted to the DEM with the February-May DMRs stated that the exceedances of the Permit Limits occurred during periods of high incoming wastewater flows when only 5 of the 6 secondary clarifiers and 3 of the 4 aeration tanks were in operation as a result of ongoing construction.
- (12) On 26 April 2013 the DEM issued a letter to the Respondent that included the findings of an inspection completed by the DEM (the "April Letter"). The April Letter required the Respondent to submit, among other things, a detailed loading and hydraulic design analysis ("L&H Analysis") to the DEM to demonstrate that the Facility can meet the Permit Limits during periods of construction when the Facility does not have all of its clarifiers and aeration tanks in operation.
- (13) On 16 May 2013 the DEM received a letter and attachments from the Respondent in response to the April Letter (the "Response Letter"). The Response Letter stated that operational changes were made at the Facility to ensure compliance with the Permit Limits.

- (14) The Respondent submitted a DMR to the DEM for November 2013 (the "November 2013 DMR") that showed the following exceedances of the Permit Limits:

Parameter	November 2013
BOD₅ - daily maximum (in ppm)	59
TSS - daily maximum (in ppm)	303 187
TSS - weekly average (in ppm)	74.7
TSS - daily maximum (in ppd)	43,209 67,893
Fecal Coliform - daily maximum (in mpn)	14,958
Copper - daily maximum (in ppb)	99.3
Zinc - daily maximum (in ppb)	142

- (15) The letter the Respondent submitted to the DEM with the November 2013 DMR stated that the exceedances of the Permit Limits occurred during periods of high incoming wastewater flows when only 5 of the 6 secondary clarifiers were in operation. The letter further stated that operational changes were made to ensure compliance with the Permit Limits.

- (16) The Respondent submitted a DMR to the DEM for November 2014 (the "November 2014 DMR") that showed the following exceedances of the Permit Limits:

Parameter	November 2014
BOD₅ - daily maximum (in ppm)	107.75
BOD₅ - daily maximum (in ppd)	31,389.3
TSS - daily maximum (in ppm)	212
TSS - daily maximum (in ppd)	61,759

- (17) The letter the Respondent submitted to the DEM with the November 2014 DMR stated that the exceedances of the Permit Limits occurred during periods of high incoming wastewater flows when only 3 of the 4 aeration tanks were in operation. The letter provided no additional actions that would be taken to ensure compliance with the Permit Limits other than to put the off-line aeration tank back into operation.

- (18) The Respondent has repeatedly not complied with the conditions of the Permit, including the Permit Limits.
- (19) The Respondent has not taken 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 including, but not limited to, submitting a L&H Analysis to the DEM that satisfied the intent of the April Letter.
- (20) The Respondent has not properly operated and maintained all components of the Facility to achieve compliance with the conditions of the Permit including, but not limited to, submitting a L&H Analysis to the DEM that satisfied the intent of the April Letter.
- (21) As of the date of this Notice of Violation (“NOV”), the Respondent has not submitted a detailed L&H Analysis to the DEM that satisfies the intent of the April Letter.

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) **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 9(A)** – prohibiting the discharge of pollutants into any waters of the State which the Director determines will likely result in the violation of any State water quality criterion or interfere with one or more of the existing or designated uses assigned to the receiving waters.
 - (b) **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.
 - (c) **Rule 16(A)** – mandating compliance with all terms, conditions, management practices and operation and maintenance requirements set forth in a permit.
- (3) **DEM’s 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.

- (c) **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.

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 120 days of receipt of the NOV**, complete an engineering analysis that assesses the ability of the Facility to comply with the Permit Limits during periods of high flow when one or more of the secondary clarifiers or aeration tanks are not in operation (the "Facility Analysis"). The Facility Analysis must include an assessment of the following:
 - (a) The efficiency of the secondary clarifiers and aeration tanks;
 - (b) The need for additional secondary clarifiers or aeration tanks;
 - (c) Improvements to the secondary clarifier junction boxes to better balance flows to the clarifiers;
 - (d) Recommendations for improvements to the secondary clarifiers, aeration tanks or other equipment (the "Recommended Improvements"); and
 - (e) A proposed schedule for the completion of the Recommended Improvements.
- (2) **Within 30 days of completion of the Facility Analysis**, submit the findings of the Facility Analysis to the DEM (the "Facility Analysis Report").
- (3) The Facility Analysis Report shall be subject to the DEM's review and approval. Upon review, the DEM shall provide written notification to the Respondent either granting formal approval or stating the deficiencies therein. Within 14 days (unless a longer time is specified) of receiving a notification of deficiencies, the Respondent shall submit to the DEM a modified plan or additional information necessary to correct the deficiencies.
- (4) Upon approval of the Facility Analysis Report by the DEM (the "Approval"), the Respondent shall complete all work in accordance with the 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:

\$37,500

- (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 30 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.

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's 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 the DEM's Administrative Adjudication Division, at the following address, within 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's *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:
- Christina A. Hoefsmit, Esq.
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 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 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 (vi) 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) Christina A. Hoefsmit, Esq. at the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to David E. Chopy at (401) 222-1360 extension 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 F above.

FOR THE DIRECTOR

By: _____
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:

The Narragansett Bay Commission
C/o Raymond J. Marshall, Executive Director, P.E.
2 Ernest Street
Providence, RI 02905

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution
 File Nos.: WP14-95 x-ref RIPDES RI0100072
 Respondent: The Narragansett Bay Commission

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(2)(b) and (c) and D(3) – Failure to comply with permit	Type I (\$25,000 Max. Penalty)*	Major	\$25,000	1 violation	\$25,000
D(2)(a) - Discharge of wastewater that resulted in shellfish closure	Type I (\$25,000 Max. Penalty)*	Major	\$12,500	1 violation	\$12,500
SUB-TOTAL					\$37,500

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

ECONOMIC BENEFIT FROM NONCOMPLIANCE
<p>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:</p> <ul style="list-style-type: none"> - THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.
<p>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 cannot be quantified.</p>

COST RECOVERY
<p>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.</p>
<p>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.</p>

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$37,500

PENALTY MATRIX WORKSHEET

CITATION: *Failure to comply with permit*
 VIOLATION NO.: *D (1), D (2)(b) and (c), and D (3)*

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's *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 comply with its permit limits. Compliance with permit limits is a major objective of the DEM's RIPDES Regulations and the DEM's Water Quality Regulations and is of major importance to the regulatory program.
- (B) **Environmental conditions:** Considered, but not utilized for this calculation.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** Over a 21 month period (February 2013 through November 2014) the Respondent had 32 permit exceedances for a number of parameters (BOD₅, TSS, TSS Percent Removal, Fecal Coliform, Copper and Zinc). Except for the TSS weekly average concentration exceedances and TSS Percent Removal exceedances, all the exceedances involved daily maximum limits.
- (E) **Duration of the violation:** Over that 21 month period, violations occurred in 6 separate months (February 2013; March 2013; April 2013; May 2013; November 2013; and November 2014).
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.
- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to take reasonable and appropriate steps to prevent and/or mitigate the noncompliance. The DEM required that the Respondent complete a detailed loading and hydraulic analysis of the Facility in a letter that was sent to the Respondent on 26 April 2013. The Respondent submitted a response to that letter on 16 May 2013 and stated that operational changes were made at the facility to ensure compliance with the permit. The Respondent submitted a letter to the DEM following the November 2013 violations again stating that operational changes were made to ensure compliance with the permit. The Respondent submitted a letter to the DEM following the November 2014 violations stating that it would place all aeration tanks in operation, but the letter made no mention of any other actions the Respondent was taking to prevent reoccurrence of the violations when the facility is receiving high influent wastewater flows and one or more tanks are not in operation.

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- (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.
- (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 violations that occurred in November 2013 and November 2014 may have been avoided if the Respondent had completed a detailed loading and hydraulic design analysis of the facility that satisfied the intent of the DEM's 26 April 2013 letter. Additionally, given the repeated permit exceedances, all of which occurred while the facility operated with only 5 of the 6 secondary clarifiers and 3 of 4 aerators, the Respondent was aware of the propensity for permit exceedance under these conditions.
- (J) **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	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

PENALTY MATRIX WORKSHEET

CITATION: *Discharge of wastewater that resulted in shellfish closure*
 VIOLATION NO.: *D (2)(a)*

TYPE		
<p style="text-align: center;"><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____TYPE III</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.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM's <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 failed to comply with its permit limits for fecal coliform bacteria that resulted in a shellfish closure of Conditional Area A in upper Narragansett Bay. Protection of designated and existing water quality uses is a major objective of the DEM's RIPDES Regulations and the DEM's Water Quality Regulations and is of major importance to the regulatory program.</p> <p>(B) Environmental conditions: Upper Narragansett Bay is used by fishermen to harvest shellfish. It is managed as a conditionally approved area, as it is subject to closure in the case of heavy rainfall that causes combined sewer overflows (CSOs) or failures at wastewater treatment facilities that cause untreated or partially treated sewage to discharge to the Bay.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Fecal coliform bacteria analysis of 4 samples collected on 24 February 2013 showed the following: 23 mpn; 3,000 mpn; 30 mpn; and 35,000 mpn.</p> <p>(E) Duration of the violation: The shellfish closure was implemented for 7 days beginning at sunrise 26 February 2013 and lasting through 5 March 2013; however, a rain event on 27 February 2013 resulted in a 2 day extension of the shellfish closure to 7 March 2013.</p> <p>(F) Areal extent of the violation: Seekonk River in East Providence and Providence and Conditional Area A of upper Narragansett Bay.</p> <p>(G) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance: Considered, but not utilized for this calculation.</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>		
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- (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:** Considered, but not utilized for this calculation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The week after the shellfish area was reopened resulted in shellfish landings totaling about \$12,500.

<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	MAJOR	\$12,500 to \$25,000 \$12,500	\$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