

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF COMPLIANCE & INSPECTION**

IN RE: Town of North Providence

FILE NO.: WP 10-093

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Department of Environmental Management (the “Director” of “DEM”) has reasonable grounds to believe that the above-named party (“Respondent”) has violated certain statutes and/or administrative regulations under DEM’s jurisdiction.

B. Administrative History

DEM issued informal notices to the Respondent on January 30, 2009 and April 24, 2009 for the violations. To date, the Respondent has failed to comply with the notices.

C. Facts

- (1) On December 19, 2003, the DEM issued Rhode Island Pollutant Elimination System (“RIPDES”) General Permit Number RIR040000 entitled “Storm Water Discharge from Small Municipal Separate Storm Sewer Systems and from Industrial Activity at Eligible Facilities Operated by Regulated Small MS4s” (the “General Permit”).
- (2) The General Permit authorizes the discharge of storm water from small municipal separate storm sewer systems (“MS4s”) that are operated by regulated small MS4s.
- (3) Part I.C.2 of the General Permit required the MS4 operators to submit a completed Notice of Intent (the “NOI”) and Storm Water Management Program Plan (the “SWMPP”) to DEM within ninety days of the effective date of the General Permit to obtain coverage under the General Permit.
- (4) On March 18, 2004, the Respondent submitted to DEM a NOI and SWMPP.
- (5) Part I.E of the General Permit requires MS4 operators, in the case of a deficient SWMPP, to make all required changes and resubmit an amended SWMPP to DEM within thirty days of being notified, unless a longer time frame is granted. During this period, discharges from the MS4 are not authorized.

- (6) On June 9, 2005, DEM issued a letter to the Respondent requiring changes to the SWMPP (the “Deficient SWMPP Notification”). The Respondent was given forty five days to resubmit the SWMPP to DEM.
- (7) The Respondent has not responded to the Deficient SWMPP Notification and coverage under the General Permit ceased on June 9, 2005.
- (8) On August 29, 2007, DEM advised the Respondent in a letter that a Total Maximum Daily Load (“TMDL”) water quality restoration plan was completed for the Woonasquatucket River (the “TMDL Notification”). The TMDL Notification advised the Respondent that storm water from the Respondent’s MS4 was contributing to bacteria and dissolved metals impairments in the Woonosquatucket River. The TMDL Notification required the Respondent to submit an amended SWMPP to DEM within one hundred and eighty days (by February 29, 2008).
- (9) The Respondent has failed to submit an amended SWMPP in response to the TMDL Notification.
- (10) As of the date of this Notice of Violation (“NOV”), the Respondent has failed to comply with the DEM Water Quality Regulations and the DEM RIPDES Regulations.

D. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) **The Rhode Island Water Pollution Act Section 46-12-5(b)** – requiring the discharge of any pollutant into waters of the State comply with the terms and conditions of a permit and applicable regulations.
- (2) **DEM Water Quality Regulations**
 - (a) **Rule 9(A)** – prohibiting the discharge of pollutants into any waters of the State or the performance of any activities alone or in combination 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 9(B)** – prohibiting the discharge of pollutants in concentrations that will likely result in the additional degradation of the water quality of an impaired waterbody.
 - (c) **Rule 11(B)** – requiring that the discharge of pollutants into the waters of the State comply with the terms and conditions of a permit issued by DEM.

- (d) **Rule 13(A)** – prohibiting the discharge of any pollutant into, or conducting any activity which will likely cause or contribute pollution to, the waters of the State.

(3) **DEM RIPDES Regulations**

- (a) **Rule 31(a)(1)(v)** – requiring a permit for discharges composed entirely of storm water from MS4s.
- (b) **Rules 31(a)(1)(viii) and 31(a)(5)(i)(I)** – requiring a permit for discharges composed entirely of storm water that DEM determines storm water controls are necessary to ensure implementation of waste load allocations as part of TMDL.
- (c) **Rule 31(a)(5)(i)(H)** – requiring a permit for discharges composed entirely of storm water that contribute to violations of water quality standards.
- (d) **Rule 31(a)(5)(i)(A) and (B)** – requiring a permit for discharges composed entirely of storm water that are located in an urbanized or densely populated area.

E. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), you are hereby ORDERED to:

- (1) **Within one hundred eighty days of receipt of the NOV**, adopt a regulatory mechanism to:
 - (a) effectively prohibit and enforce illicit discharges and provides the authority to adequately carry out the requirements of Part IV.B.3 of the General Permit;
 - (b) require erosion and sediment control and control of other wastes at construction sites and provides the authority to adequately carry out the requirements of Part IV.B.4 of the General Permit; and
 - (c) address post-construction runoff from new development and redevelopment projects and provides the authority to adequately carry out the requirements of Part IV.B.5 of the General Permit.
- (2) **Within one hundred eighty days of receipt of the NOV**, submit to DEM a statement or letter from the town solicitor, legal counsel, or an official acting in comparable capacity stating that the Respondent has adopted a regulatory mechanism to address the items identified in Section E(1)(a) through E(1)(c). The submission shall include a copy of the relevant sections of said mechanisms.
- (3) **Within one hundred eighty days of receipt of the NOV**, identify, locate and list all structural BMPs owned by the Respondent and submit the list to DEM.
- (4) **By June 15, 2011** complete the January-April dry weather survey on all outfalls

and submit to DEM a report in the form of a tabular summary that includes at a minimum: outfall identification, date, time, location (latitude/longitude), size and type of outfall (for example, fifteen inch diameter concrete pipe), flow (indicate if flowing or not, include flow rate if determined), samples collected (indicate what type of sample), sample results, results of other parameters measured, and sample analysis method (for example, *Standard Methods for the Examination of Water and Wastewater*). Visual observations must include, but are not limited to, odors, sheen, stressed vegetation, coloration/staining, algae growth, sedimentation, scouring and land use in the vicinity of the outfalls. Samples of all dry weather flows from outfalls must be collected and analyzed for temperature, conductivity, pH, and bacteria.

- (5) **By July 1, 2012**, develop and implement a mechanism that provides long term funding to manage the storm water program in compliance with the General Permit. Specifically, the funding must be adequate to:
 - (a) address the TMDL Notification and satisfy Part IV.D of the General Permit (the “TMDL requirements”);
 - (b) implement a public education program that satisfies Part IV.B.1 and IV.B.2 of the General Permit (the “public education program”);
 - (c) review all of the plans and storm water pollution prevention plans for construction projects resulting in land disturbance of one to five acres and to inspect all of the construction projects within the urbanized area (the “SWPPP construction program”)
 - (d) review all plans for post-construction BMPs for the control of storm water runoff from new development and redevelopment projects greater than one acre and to inspect all post-construction BMPs within the urbanized area to ensure the BMPs are constructed in accordance with the approved plans (the “SWPPP post-construction program”.

- (6) **By January 1, 2013**, submit to DEM a revised SWMPP that:
 - (a) includes an implementation schedule that identifies the steps and milestones necessary to address the TMDL requirements
 - (b) includes an implementation schedule for the public education
 - (c) documents how the SWPPP construction program and SWPPP post-construction programs will be implemented and identifies the data management system that will be used to track the status of all reviews, permit issuance, and inspections.

F. Penalty

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:

Twenty Five Thousand Dollars (\$25,000.00)

- (2) The proposed administrative penalty is calculated pursuant to the DEM Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the Director within twenty days of your receipt of this NOV. Payment shall be in the form of a check made payable to the “General Treasury - Water & Air Protection Program Account” and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against respondent in this NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if the Director determines that reasonable efforts have been made to comply promptly with this NOV.

G. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through F above. All requests for hearing MUST:
 - (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b),
 - (b) Be **RECEIVED** by DEM's Administrative Adjudication Division, at the following address, within twenty days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
235 Promenade Street, 3RD Floor
Providence, RI 02908-5767

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
- (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Rule 7.00(b) of the DEM Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters.

- (2) A copy of each request for hearing must also be forwarded to:

Richard M. Bianculli Jr., Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then this NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (v) and 42-17.6-4(b) and (c).
- (5) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) This NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Richard M. Bianculli Jr. at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to David Chopy of the DEM 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 G above.

FOR THE DIRECTOR

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

Date: _____

CERTIFICATION

I hereby certify that on the _____ day of November, 2010, a copy of the within Notice of Violation was forwarded to:

Honorable Charles A. Lombardi, Mayor
Town of North Providence
2000 Smith Street
North Providence, RI 02911

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution

File No.: WP10 – 093

Respondent: Town of North Providence

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) and D (3) – Unauthorized discharge of storm water from MS4	Type I <i>(\$25,000 Max. Penalty)*</i>	Major	\$ 25,000	1 violation	\$25,000.00
<i>SUB-TOTAL</i>					\$25,000.00

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

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$ 25,000.00

PENALTY MATRIX WORKSHEET

CITATION: Unauthorized discharge of storm water from MS4
 VIOLATION NO.: D (1), (2) and (3)

TYPE		
<p><u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>____ TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>____ TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondent failed to obtain a permit to discharge storm water from its storm water collection system to the waters of the State. Ensuring that municipalities comply with the Water Pollution Act, the DEM Water Quality Regulations, and the DEM RIPDES Regulations is of major importance to the regulatory program.</p> <p>(B) Environmental conditions: The Respondent operates a small municipal separate storm sewer system (MS4) and discharges storm water from the MS4 to numerous waters of the State, including the Woonosquatucket River. The Woonosquatucket River within the town of North Providence is designated as a Class B1 water body of the State. Class B1 water bodies are designated for fish and wildlife habitat, primary and secondary contact recreational activities and fish and wildlife habitat, however, primary contact recreation may be impacted from the Smithfield wastewater treatment facility. The river is not meeting the Class B1 water quality standards for bacteria and dissolved metals within the town of North Providence and is listed as impaired.</p> <p>(C) Amount of the pollutant: Unknown. Varies with rainfall.</p> <p>(D) Toxicity or nature of the pollutant: Storm water contains a multitude of pollutants, including bacteria, metals, and petroleum.</p> <p>(E) Duration of the violation: Approximately five and one half years. The Respondent has not been authorized to discharge storm water since June 9, 2005.</p> <p>(F) Areal extent of the violation: Not relevant.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take the steps necessary to obtain coverage under the General Permit.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Not relevant
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent has complete control over its MS4 and is well aware of the requirements of its permit. DEM issued letters in January 2009 and April 2009 advising the Respondent of its noncompliance and the steps necessary to correct the noncompliance. The Respondent did not comply with the letters.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** The Respondent was advised in the January 2009 and April 2009 letters that failure to comply may result in issuance of a formal enforcement action.

<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