

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

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: City of Providence**

**FILE NO.: OCI-WP-15-57**

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) Respondent owns and operates a wastewater collection system (the "Facility"), which includes but is not limited to, the following:
  - (a) A gravity sewer line that discharges into the Capital Center Pump Station located off Park Row ("Park Row Sewer");
  - (b) A gravity sewer line located on or near the Convention Center on Sabin Street ("Sabin Street Sewer");
  - (c) A gravity sewer line located on or near 796 Branch Avenue ("Branch Avenue Sewer");
  - (d) A gravity sewer line located between Woodland Terrace and Butler Drive ("Butler Grotto Sewer"); and
  - (e) A gravity sewer line located at the corner of Pratt Street and Olney Street ("Pratt Street Sewer").
- (2) Respondent submitted written reports to the DEM that were received on 22 March 2012, 21 March 2013, 5 October 2013, 10 April 2015, 12 August 2015, 11 July 2017, 8 August 2017 and 24 August 2017 that document the discharge of sewage to the waters of the State from the Park Row Sewer, Sabin Street Sewer, Branch Avenue Sewer, Butler Grotto Sewer and Pratt Street Sewer (collectively, the "Surface Water Discharges"). A summary of the information in the written reports is provided in the table below for each of the Surface Water Discharges.

<b>Location</b>	<b>Date/s Surface Water Discharge Observed</b>	<b>Volume Discharged (in Gallons)</b>	<b>Waterbody Affected</b>	<b>Cause of Discharge</b>
Park Row Sewer	3/15/12	4,375	Moshassuck River	Mechanical Failure at Pumping Station due to Lack of Maintenance
Sabin Street Sewer	3/17/13	Unknown	Woonosquatucket River	Blockage
Branch Avenue Sewer	9/18/13 to 9/19/13	4,320	West River	Blockage
Butler Grotto Sewer	3/30/15 to 4/4/15	648,000	Seekonk River	Blockage
Pratt Street Sewer	8/11/15	411	Moshassuck River	Blockage
Branch Avenue Sewer	7/10/17	616	West River	Blockage
Branch Avenue Sewer	7/31/17 to 8/1/17	6,240	West River	Blockage
Branch Avenue Sewer	8/2/17	480	West River	Blockage

- (3) The Moshassuck River, Woonosquatucket River, West River and Seekonk River (collectively, the "Waterbodies") do not meet their assigned water quality designations for primary and secondary contact recreation at the locations of the Surface Water Discharges according to the DEM's *2014 Integrated Water Quality Monitoring and Assessment List Final May 2015*. Among the causes of the impairments are pathogens and fecal coliform bacteria associated with untreated sewage.
- (4) The Surface Water Discharges further degraded the Waterbodies.

- (5) Respondent submitted written or verbal reports to the DEM that document the discharge of sewage at 8 locations from the Facility to the surface of the ground that did not enter the waters of the State that occurred on 30 January 2007, 20 February 2008, 19 November 2008, 27 December 2008, 9 May 2012, 16 July 2014 and 6 May 2015 (the "Ground Surface Discharges").
- (6) Respondent submitted verbal or written reports to the DEM that document the backup of sewage into the basements of buildings at 133 locations from the Facility that occurred from 30 November 2010 through 21 April 2015 (the "Basement Discharges").
- (7) Respondent failed to maintain the Facility in good working order and failed to operate the Facility as efficiently as possible as evidenced by the Surface Water Discharges, the Ground Surface Discharges and the Basement Discharges.
- (8) Respondent failed to submit to the DEM an Operation and Maintenance ("O & M") plan for the Facility.
- (9) Respondent failed to provide verbal notification to the DEM within 24 hours of becoming aware of the Surface Water Discharges and failed to provide written reports to the DEM (except for the 10 July 2017 discharge) within 5 days after the Surface Water Discharges ceased.
- (10) As of the date of this Notice of Violation ("NOV"), Respondent has failed to comply with the DEM's *Rules and Regulations for the Operation and Maintenance of Wastewater Treatment Facilities* ("O & M 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) **R.I. Gen. Laws Section 46-12-5(a)** – prohibiting the placement of any pollutant in a location where it is likely to enter the waters of the State.
- (2) **DEM's *Water Quality Regulations***
  - (a) **Rule 9(A)** – prohibiting the discharge of pollutants into any waters of the State or any activity 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 further degrade the water quality of an impaired waterbody.
  - (c) **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's O & M Regulations**

- (a) **Rule 5A (recently amended to Part 4.5A)** – requiring a facility to be maintained in good working order and operated as efficiently as possible and requiring verbal notification to the DEM within 24 hours and the submission of a written report to the DEM no more than 5 business days of a sewage overflow that enters the waters of the State.
- (b) **Rule 5D (recently amended to Part 4.5D)** – requiring the owner of a facility without an approved O & M plan to submit a plan that complies with the regulations by 19 May 2009.

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) **IMMEDIATELY** upon receipt of the NOV, provide verbal notification to the DEM within 24 hours of becoming aware of a sewage overflow from the Facility that enters waters of the State and provide a written report to the DEM within 5 business days after the sewage overflow ceases.
- (2) **Within 120 days of receipt of the NOV**, submit to the DEM:
  - (a) An O & M plan containing all applicable items listed in Part 4.5 of the DEM's O & M Regulations. As sewer system mapping is a requirement of such manuals, coordinate such mapping with current geographic information system (“GIS”) mapping underway as part of the Consent Agreement executed between Respondent and the DEM on 7 March 2017 (the “GIS Mapping”);
  - (b) A plan for the repair/replacement of the Butler Grotto Sewer, including a schedule to complete the work;
  - (c) As part of the GIS Mapping, a plan that identifies the sections of the Facility that require frequent cleaning, including a schedule to complete this work; and
  - (d) Written agreements or contracts with qualified private contractors to provide emergency services (including repairs to sewer line breaks and pumping) when problems arise that Respondent does not have the resources to address.

- (3) The plans, agreements and other documents required in Paragraph D (2) above shall be subject to the DEM's review and approval. Upon review, the DEM shall provide written notification to 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, Respondent shall submit to the DEM revised plans or additional information necessary to correct the deficiencies.

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:

**\$96,250**

- (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 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 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.
- (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 DEM determines that reasonable efforts have been made to comply promptly with the 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'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 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 DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters*.
- (2) A copy of each request for hearing must also be forwarded to:

Joseph J. LoBianco, 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) Joseph J. LoBianco of the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to me 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 F above.

FOR THE DIRECTOR

By: \_\_\_\_\_  
David E. Chopy, Chief  
Office of Compliance and Inspection

Dated: \_\_\_\_\_

CERTIFICATION

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_  
the within Notice of Violation was forwarded to:

Honorable Jorge O. Elorza, Mayor  
City of Providence  
25 Dorrance Street  
Providence, RI 02903

by Certified Mail.

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# ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution  
 File No.: OCI-WP-15-57  
 Respondent: City of Providence

<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) and C (2) – Sewage Discharge to State Waters - Branch Avenue Sewer	Type I <i>(\$25,000 Max. Penalty) *</i>	Major	\$25,000	1 violation	\$25,000
C (1) and C (2) – Sewage Discharge to State Waters - Butler Grotto Sewer	Type I <i>(\$25,000 Max. Penalty) *</i>	Major	\$25,000	1 violation	\$25,000
C (1) and C (2) – Sewage Discharge to State Waters – Pratt Street Sewer	Type I <i>(\$25,000 Max. Penalty) *</i>	Minor	\$2,500	1 violation	\$2,500
C (3)(a) - Failure to Properly Operate & Maintain Facility	Type I <i>(\$25,000 Max. Penalty) *</i>	Major	\$25,000	1 violation	\$25,000
C (3)(a) - Failure to Properly Report Sewage Discharges	Type I <i>(\$25,000 Max. Penalty) *</i>	Major	\$12,500	1 violation	\$12,500
C (3)(b) - Failure to Submit O & M Plan	Type II <i>(\$12,500 Max. Penalty) *</i>	Major	\$6,250	1 violation	\$6,250
<b><i>SUB-TOTAL</i></b>					<b>\$96,250</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= \$96,250**

# PENALTY MATRIX WORKSHEET

CITATION: Sewage Discharge to State Waters - Branch Avenue Sewer  
 VIOLATION NO.: C (1) and (2)

TYPE		
<p style="text-align: center;"><u>  X  </u> <b>TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ <b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ <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 VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Part 1.10A.1.b of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <ol style="list-style-type: none"> <li>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent discharged untreated sewage to the waters of the State from its wastewater collection system because of blockages caused by lack of maintenance. Proper maintenance of a wastewater collection system to prevent the discharge of untreated sewage to the waters of the State is of major importance to the regulatory program.</li> <li>(2) <b>Environmental conditions:</b> The sewage discharged onto the land near residential dwellings on Branch Avenue and entered the West River. The area where the discharges occurred is a residential/commercial district. The West River in this area does not meet its assigned water quality designation for primary and secondary contact recreation according to the DEM's <i>2014 Integrated Water Quality Monitoring and Assessment List Final May 2015</i>. Among the causes of the impairments are pathogens and fecal coliform bacteria associated with untreated sewage. The discharges occurred in July, August and September, and it is more likely than not that someone was fishing or kayaking on the river. The residential/commercial area is heavily populated, and it is likely that many people were in the area at the time of the discharge.</li> <li>(3) <b>Amount of the pollutant:</b> 11,656 gallons.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> Sewage contains 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. Also, the wastewater collection system includes waste from commercial and industrial operations, which can contain toxics (metal and organic compounds), phosphorous and nitrogen.</li> <li>(5) <b>Duration of the violation:</b> For each of the discharges, full duration unknown. For the 18-19 September 2013 overflow, at least 24 hours. The DEM received a report from the Narragansett Bay Commission at 230 PM on 18 September 2013, and the overflow ended at 209 PM on 19 September 2013. For the 10 July 2017 overflow, at least 2 ½ hours. Respondent received a report at 340 PM on 10 July 2017, and the overflow ended at 614 PM on 10 July 2017. For the 31 July-1 August 2017 overflow, at least 24 hours (based on information provided by Respondent). For the 2 August 2017 overflow, at least 2 hours. The DEM informed Respondent at 840 AM, and the overflow ceased at 1040 AM on 2 August 2017.</li> </ol>		
(continued)		

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- (6) **Areal extent of violation:** Unknown.
- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable measures to prevent the noncompliance. Respondent reported that the cause of the overflows was a blockage of debris. Respondent took steps to mitigate the noncompliance by clearing the blockages.
- (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 properly maintain its wastewater collection system. Respondent had full control over maintenance of its wastewater collection system and has an obligation to provide proper maintenance. The need to provide proper maintenance leads to the conclusion that the violation was foreseeable.
- (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>\$25,000</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: Sewage Discharge to State Waters - Butler Grotto Sewer  
 VIOLATION NO.: C (1) and (2)

TYPE		
<p style="text-align: center;"><u>  X  </u> <b>TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u>      </u> <b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><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 VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Part 1.10A.1.b of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <ol style="list-style-type: none"> <li>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent discharged untreated sewage to the waters of the State from its wastewater collection system because of a blockage caused by lack of maintenance. Proper maintenance of a wastewater collection system to prevent the discharge of untreated sewage to the waters of the State is of major importance to the regulatory program.</li> <li>(2) <b>Environmental conditions:</b> The sewage discharged onto heavily wooded land between residential dwellings on Woodland Avenue and Butler Hospital and entered the Seekonk River. The area where the discharge occurred is a residential area. The Seekonk River in this area does not meet its assigned water quality designation for primary and secondary contact recreation according to the DEM's <i>2014 Integrated Water Quality Monitoring and Assessment List Final May 2015</i>. Among the causes of the impairments are pathogens and fecal coliform bacteria associated with untreated sewage. The discharge occurred in late March/early April, and the likelihood that anyone was fishing or kayaking on the river is low. The discharge occurred in a heavily wooded area, and it is not likely that many people were in the area at the time of the discharge.</li> <li>(3) <b>Amount of the pollutant:</b> 648,000 gallons.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> Sewage contains 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. Also, the wastewater collection system includes waste from commercial and industrial operations, which can contain toxics (metal and organic compounds), phosphorous and nitrogen.</li> <li>(5) <b>Duration of the violation:</b> Full duration unknown - at least 5 days. Respondent reported that it was notified of the sewage overflow at 1000 AM on 30 March 2015 and the sewage overflow ended at 1100 AM on 4 April 2015.</li> <li>(6) <b>Areal extent of the violation:</b> Unknown.</li> </ol>		
(continued)		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable measures to prevent the noncompliance. Respondent reported that the cause of the overflow was a blockage of debris. Respondent took steps to mitigate the noncompliance by clearing the blockage.
- (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 properly maintain its wastewater collection system. Respondent had full control over maintenance of its wastewater collection system and has an obligation to provide proper maintenance. The need to provide proper maintenance leads to the conclusion that the violation was foreseeable.
- (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>\$25,000</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: Sewage Discharge to State Waters – Pratt Street Sewer  
 VIOLATION NO.: C (1) and (2)

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

**DEVIATION FROM THE STANDARD**  
 THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

**FACTORS CONSIDERED:**

Taken from Part 1.10A.1.b of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent discharged untreated sewage to the waters of the State from its wastewater collection system because of a blockage caused by lack of maintenance. Proper maintenance of a wastewater collection system to prevent the discharge of untreated sewage to the waters of the State is of major importance to the regulatory program.
- (2) **Environmental conditions:** The sewage discharged onto the land on Pratt Street and entered the Moshassuck River. The area where the discharges occurred is a residential/commercial district. The Moshassuck River in this area does not meet its assigned water quality designation for primary and secondary contact recreation according to the DEM's *2014 Integrated Water Quality Monitoring and Assessment List Final May 2015*. Among the causes of the impairments are pathogens and fecal coliform bacteria associated with untreated sewage. The discharge occurred in August, and it is more likely than not that someone was fishing or kayaking on the river. The residential/commercial district is heavily populated, and it is likely that many people were in the area at the time of the discharge.
- (3) **Amount of the pollutant:** 411 gallons.
- (4) **Toxicity or nature of the pollutant:** Sewage contains 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. Also, the wastewater collection system includes waste from commercial and industrial operations, which can contain toxics (metal and organic compounds), phosphorous and nitrogen.
- (5) **Duration of the violation:** Full duration unknown - at least 2 hours. Respondent reported that it was notified of the sewage overflow at 1137 AM on 11 August 2015, and the overflow ended at 149 PM on 11 August 2015.
- (6) **Areal extent of the violation:** Unknown.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable measures to prevent the noncompliance. Respondent reported that the cause of the overflow was a blockage of debris. Respondent took steps to mitigate the noncompliance by clearing the blockage.
- (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 properly maintain its wastewater collection system. Respondent had full control over maintenance of its wastewater collection system and has an obligation to provide proper maintenance. The need to provide proper maintenance leads to the conclusion that the violation was foreseeable.
- (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><b>X</b></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

# PENALTY MATRIX WORKSHEET

CITATION: Failure to Properly Operate & Maintain Facility  
 VIOLATION NO.: C (3)(a)

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

**DEVIATION FROM THE STANDARD**  
 THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

**FACTORS CONSIDERED:**

Taken from Part 1.10A.1.b of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent failed to properly operate and maintain its wastewater collection system, resulting in the discharge of untreated sewage to the land and into the basements of buildings. Proper maintenance of a wastewater collection system to prevent the discharge of untreated sewage to the land and the basements of buildings is of major importance to the regulatory program.
- (2) **Environmental conditions:** The sewage discharges occurred in various locations throughout the city onto the land and into the basements of buildings. The city is highly urbanized, and there is a high likelihood that some or all the discharges that occurred on the land were in areas that were near people. The discharges that occurred into the basements of buildings may have adversely affected the health of the occupants of the buildings.
- (3) **Amount of the pollutant:** Unknown. Respondent did not report a volume for most of the 8 overflows to the land and did not report any volume for the 133 overflows into the basements of buildings.
- (4) **Toxicity or nature of the pollutant:** Sewage contains 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. Also, the wastewater collection system includes waste from commercial and industrial operations, which can contain toxics (metal and organic compounds), phosphorous and nitrogen.
- (5) **Duration of the violation:** Varied. Respondent reported that the 8 overflows onto the land occurred between calendar years 2007 and 2015 (and most of these were corrected within 1 day of notification). The 133 overflows into the basements of buildings occurred between calendar years 2010 and 2015 (and most of these were corrected within 1 day of notification).
- (6) **Areal extent of the violation:** Unknown.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable measures to prevent the noncompliance. Respondent reported that the cause of the overflows were blockages of debris. Respondent took steps to mitigate the noncompliance by clearing the blockages.
- (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 properly maintain its wastewater collection system. Respondent had full control over maintenance of its wastewater collection system and has an obligation to provide proper maintenance. The need to provide proper maintenance leads to the conclusion that the violation was foreseeable.
- (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>\$25,000</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 Properly Report Sewage Discharges  
 VIOLATION NO.: C (3)(a)

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

**DEVIATION FROM THE STANDARD**  
 THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

**FACTORS CONSIDERED:**

Taken from Part 1.10A.1.b of the DEM's *Rules and Regulations for Assessment of Administrative Penalties*

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent failed to provide verbal reports to the DEM within 24 hours of becoming aware of a sewage overflow and failed to provide written reports to the DEM within 5 days after the sewage overflows ceased. Proper reporting of sewage overflows to the DEM is of major importance to the regulatory program, as it allows the DEM an opportunity to determine whether to issue advisories to the public to avoid shellfishing, swimming, fishing or other contact recreational activities in polluted waters.
- (2) **Environmental conditions:** The sewage discharges occurred in various locations throughout the city onto the land and into the Moshassuck, Woonosquatucket, West and Seekonk rivers. The city is highly urbanized, and there is a high likelihood that some of the discharges that occurred on the land were in areas that were near people and there is a high likelihood that at least one of the discharges that entered the river was in an area where more likely than not that someone was fishing or kayaking on the river.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** Sewage contains 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. Also, the wastewater collection system includes waste from commercial and industrial operations, which can contain toxics (metal and organic compounds), phosphorous and nitrogen.
- (5) **Duration of the violation:** Varied. Verbal reports were not provided to the DEM for the Park Row Sewer, Sabin Street Sewer, Pratt Street Sewer and Branch Avenue Sewer (10 July 2017) discharges. The first notification the DEM received was when Respondent submitted written reports 7 days, 4 days, 1 day and 1 day, respectively, after the discharges were first reported to Respondent. The written report for the Park Row Sewer was also 2 days late. Verbal reports were also not provided to the DEM from Respondent for the remaining Branch Avenue Sewer discharges and the Butler Grotto Sewer discharge; however, the DEM received verbal reports from others regarding those discharges. The written reports from Respondent were 9 days, 2 days and 17 days late for the Branch Avenue Sewer discharges (18 -19 September 2013, 31 July-1 August 2017 and 2 August 2017, respectively) and 1 day late for the Butler Grotto Sewer discharge.
- (6) **Areal extent of the violation:** Considered, but not utilized for this calculation.

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable measures to prevent or mitigate the noncompliance. Respondent was advised on numerous occasions of the reporting requirements.
- (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 the Respondent for its failure to properly report the sewage overflows to the DEM. The Respondent had full control over the occurrence of the violations and has an obligation to properly report the overflows. The violations were foreseeable.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u>  </u> <b>X</b> <b>MAJOR</b>	<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>	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 Submit O & M Plan

VIOLATION NO.: C (3)(b)

<b>TYPE</b>		
<p style="text-align: center;">_____ <b>TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u>X</u> <b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ <b>TYPE III</b></p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Part 1.10A.1.b of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <ol style="list-style-type: none"> <li>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent failed to submit an O &amp; M plan to the DEM for the facility. Submission of O &amp; M plans to the DEM is of importance to the regulatory program.</li> <li>(2) <b>Environmental conditions:</b> Considered, but not utilized for this calculation.</li> <li>(3) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(5) <b>Duration of the violation:</b> Approximately 9 ½ years. The DEM's regulations required every facility owner to submit an O &amp; M plan to the DEM within 1 year of promulgation of regulations, which was on 19 May 2008.</li> <li>(6) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</li> </ol> <p style="text-align: right; margin-top: 20px;">(continued)</p>		

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- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable measures to prevent or mitigate the noncompliance by submitting an O & M plan to the DEM.
- (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 submit an O & M plan to the DEM. Respondent had full control over the occurrence of the violation and has an obligation to submit the O & M plan. The violation was foreseeable.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u>  </u> <b>X</b> <b>MAJOR</b>	<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 <b>\$6,250</b>	\$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	\$1,250 to \$2,500	\$250 to \$1,250