

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: City of Woonsocket

FILE NO.: OCI-WP-17-92

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 (“Woonsocket”) has violated certain statutes and/or administrative regulations under the DEM’s jurisdiction.

B. Administrative History

On 22 December 2003, the DEM notified Woonsocket that it had to apply for a permit for owned or operated municipal facilities that discharge storm water associated with industrial activity. On 18 March 2004, Woonsocket applied for a permit. The only facility identified on the application was the Department of Public Works. On 29 June 2005, the DEM notified Woonsocket that it is responsible for ensuring that all its facilities that have discharges of storm water associated with industrial activity are covered by the permit (one requirement of the permit is to have an approved plan to minimize or prevent pollutants from impacting the State’s waters). On 7 September 2005, Woonsocket advised the DEM that all its facilities are included in its application. On 7 January 2016, Woonsocket reported to the DEM that approximately 220,000 gallons of sewage from its wastewater treatment facility entered the Blackstone River due to a construction failure at the facility and that the sewage entered the river through storm drains at the facility. Woonsocket was unaware that the drains discharged to the Blackstone River. As such, Woonsocket did not prevent or significantly reduce the volume of sewage discharged on 7 January 2016 by employing emergency protective measures around the drains. Woonsocket did take appropriate steps after it determined that the sewage entered State waters by notifying appropriate officials, applying emergency disinfectant, and setting up a bulkhead and pumping the accessible sewage back into the facility. On 25 July 2016, Woonsocket applied for a permit for discharges of storm water at the facility. On 14 November 2016, Woonsocket obtained permit coverage.

C. Facts

- (1) Woonsocket owns a wastewater treatment facility located on Cumberland Hill Road (the “Facility”).

- (2) On 19 December 2003, the DEM issued Rhode Island Pollutant Elimination System General Permit Number RIR040031 titled *Storm Water Discharge from Small Municipal Separate Storm Sewer Systems and from Industrial Activity at Eligible Facilities Operated by Regulated Small MS4s* (the “MS4 General Permit”).
- (3) The MS4 General Permit authorizes the discharge of storm water associated with industrial activity.
- (4) On 18 March 2004, Woonsocket applied to obtain coverage under the MS4 General Permit. The application did not include the Facility.
- (5) On 15 August 2013, the DEM issued Multi-Sector General Permit Number RIR500000 titled *Rhode Island Pollutant Elimination System Storm Water Discharge Associated with Industrial Activity (excluding Construction Activity)* (the “Industrial General Permit”).
- (6) On 7 January 2016, during an investigation into a wastewater discharge caused by a construction failure at the Facility, Woonsocket discovered the existence of 3 storm water drains and a storm water outfall pipe at the Facility.
- (7) On 24 June 2016, the DEM requested that Woonsocket confirm if the Facility has any storm drains that discharge directly to a surface water.
- (8) On 25 July 2016, Woonsocket applied to the DEM to obtain coverage under the Industrial General Permit for the storm water drains and storm water outfall pipe at the Facility.
- (9) On 14 November 2016, Woonsocket obtained coverage under the Industrial General Permit for the Facility.

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) **R.I. Gen. Laws, 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 Regulations for the Rhode Island Pollutant Discharge Elimination System, Rule 31(a)(1)(ii)** – requiring a permit for stormwater discharges associated with industrial activities.

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 Woonsocket:

\$25,383

- (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 Notice of Violation ("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 Woonsocket 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.

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, Woonsocket 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
One Capitol Hill, 2ND 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 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:

Christina A. Hoefsmit, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767

- (3) Woonsocket has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Woonsocket 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 Woonsocket 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 Woonsocket and/or violation and any associated administrative penalty proposed in the NOV shall be final. 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 Woonsocket to additional civil and/or criminal penalties.
- (6) The NOV does not preclude the DEM 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 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 F above.

FOR THE DIRECTOR

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

Dated: _____

CERTIFICATION

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

The Honorable Lisa Baldelli-Hunt, Mayor
City of Woonsocket
169 Main Street
Woonsocket, RI 02895

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution
 File No.: OCI-WP-17-92
 Respondent: City of Woonsocket

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) and D (2) – Discharge of Stormwater Without A Permit	Type I (\$25,000 Max. Penalty) *	Major	\$25,000	1 violation	\$25,000
SUB-TOTAL					\$25,000

*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.		
DESCRIPTION OF BENEFIT	CALCULATION	AMOUNT
Economic benefit of noncompliance identified by the DEM for laboratory analytical costs associated with permit required water sampling. The economic benefit was calculated by using an EPA computer model entitled "BEN", which performs a detailed economic analysis. The dates, dollar amounts and values used in this analysis are as listed in this table.	Profit Status Municipality Filing Status Municipality Initial Capital Investment \$0 One Time Non-Depreciable Expense \$0 Annually Recurring Cost \$120 ¹ First Date of Noncompliance 1 January 2015 Compliance Date 31 December 2017 Penalty Due Date 1 June 2018 Useful Life of Pollution Control Equipment N/A Annual Inflation Rate PCI Discount Compound Rate 3.6%	\$383
¹ In accordance with the Industrial General Permit, Woonsocket is required to annually test for enterococci, fecal coliform, cadmium, lead and total phosphorous. The total annual cost to perform the testing is approximately \$120, based on the costs obtained from the Rhode Island Department of Administration, Division of Purchases Master Price Agreement No. 48.		
SUB-TOTAL		\$383

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 = \$25,383

PENALTY MATRIX WORKSHEET

CITATION: Discharge Of Storm Water Without A Permit
 VIOLATION NO.: D (1) and D (2)

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

- (A) **The extent to which the act or failure to act was out of compliance:** Woonsocket discharged storm water from the Facility to the waters of the State without a permit from the DEM.
- (B) **Environmental conditions:** Storm water discharged to a tributary of the Blackstone River and the Blackstone River. The Blackstone River is classified B1. Among other uses, Class B1 waters are designated for fish and wildlife habitat and primary and secondary contact recreational activities although primary contact recreational activities may be impacted due to pathogens from approved wastewater discharges. Class B1 waters shall have good aesthetic value. The water quality criteria for fecal coliform bacteria for Class B1 waters as specified in Section 8.D(2) of the DEM's *Water Quality Regulations* states that it is not to exceed a geometric mean value of 200 and not more than 10% of the total samples taken shall exceed 400. The Blackstone River does not meet its assigned water quality designations according to the most recent DEM report of impaired waters entitled "STATE OF RHODE ISLAND 2014 303(d) LIST OF IMPAIRED WATERS FINAL May 2015". One cause of the impairment is fecal coliform bacteria.
- (C) **Amount of the pollutant:** Full amount unknown – depends on the pollutants deposited on the land and the intensity and duration of rain storms. On 7 January 2016, 220,000 gallons of wastewater was discharged through the storm drainage system at the Facility that entered a tributary of the Blackstone River and the Blackstone River.
- (D) **Toxicity or nature of the pollutant:** The storm water runoff likely contains sewage, dirt, suspended solids, heavy metals, phosphorous and petroleum. Wastewater contains many kinds of bacteria, viruses, and parasites that can cause serious or fatal diseases in both humans and animals.
- (E) **Duration of the violation:** Approximately 12½ years – 18 March 2004 to 14 November 2016.
- (F) **Areal extent of the violation:** Full extent unknown – depends on the pollutants deposited on the land and the intensity and duration of rain storms. Samples collected by Woonsocket within the river on 7 January 2016 (because of the wastewater discharge) upstream and downstream of the discharge point had fecal coliform bacteria levels of 92 and 155,310, respectively. Samples collected by Woonsocket within the river downstream of the discharge point on 8 January 2016 had fecal coliform bacteria levels of 230, 800 and 2200.

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Woonsocket did not take reasonable and appropriate steps to prevent the noncompliance. Woonsocket mitigated the noncompliance by applying for and receiving the permit, but only after receiving a notice from the DEM on 24 June 2016 requesting that Woonsocket confirm if any storm drains from the Facility discharge directly to surface waters.
- (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:** Woonsocket had complete control over the violation. The DEM notified Woonsocket on 22 December 2003, 29 June 2005 and 24 June 2016 of the need to determine whether storm water from the Facility discharged to surface waters and, if so, to apply for a permit from the DEM. Woonsocket advised the DEM on 7 September 2005 that the Facility did not discharge storm water to surface waters.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Woonsocket was unaware that the Facility's storm water drains discharged to the Blackstone River. As such, Woonsocket did not prevent or significantly reduce the volume of wastewater discharged on 7 January 2016 caused by a construction failure at the Facility by employing emergency protective measures around the storm water basins. Woonsocket did take appropriate steps after it determined that the wastewater entered State waters by notifying appropriate officials, applying emergency disinfectant to the wastewater, and setting up a bulkhead and pumping the accessible wastewater back into the Facility.

<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