

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

IN RE: City of East Providence

**FILE No.: OCI-WP-22-140
X-ref RIPDES Permit RI0100048
RIPDES Referral No. 22-04**

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 Rhode Island Department of Environmental Management (“Director” of “RIDEM”) has reasonable grounds to believe that the above-named party (“Respondent”) has violated certain statutes and/or administrative regulations under RIDEM's jurisdiction.

B. ADMINISTRATIVE HISTORY

On 3 September 2020, RIDEM issued electronic correspondence to Respondent for the violation involving the disposal of wastewater sludge that is the subject of this Notice of Violation (“NOV”). The correspondence required that Respondent take specific action to address the violation. On 17 May 2021, Respondent submitted electronic correspondence to RIDEM that it was working to address the violation. As of the date of the NOV, Respondent has not addressed this violation.

C. FACTS

- (1) Respondent owns a wastewater treatment facility located at 1 Crest Avenue in East Providence, Rhode Island (“Facility”). The Facility treats wastewater generated from domestic and industrial users.
- (2) On 2 October 2000, RIDEM issued to Respondent Order of Approval No. 1319 to dispose of wastewater sludge from the Facility (“Sludge Disposal Approval”). The Sludge Disposal Approval authorized Respondent to dispose of sludge at the incinerator located at the wastewater treatment facility in Woonsocket, Rhode Island or at the landfill located at the Rhode Island Resource Recovery facility in Johnston, Rhode Island.
- (3) On 1 February 2016, RIDEM issued to Respondent Rhode Island Pollutant Discharge Elimination System Permit No. RI0100048 (“RIPDES Permit”), which became effective on 1 April 2016. The RIPDES Permit authorizes Respondent to discharge treated wastewater from the Facility to Providence River.

- (4) The RIPDES Permit requires Respondent to:
 - (a) comply with all conditions of the RIPDES Permit.
 - (b) comply with a maximum daily discharge concentration limit for total suspended solids (“TSS”) of 30 milligrams per liter (“mg/L”) between 1 May and 31 October (“TSS Limit”).
 - (c) comply with a maximum daily discharge concentration limit for enterococci bacteria of 276 colony forming units per 100 milliliters (“cfu/100mL”) (“Enterococci Limit”).
 - (d) properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used to achieve compliance with the conditions of the RIPDES Permit.
 - (e) comply with an approval issued by RIDEM for the disposal of wastewater sludge.
- (5) On or before May 2020, Respondent changed wastewater sludge disposal vendors and began using additional facilities and sites for sludge disposal that are not identified in the plan referenced in the Sludge Disposal Approval.
- (6) On 15 September 2021, Respondent verbally reported to RIDEM the following:
 - (a) on 13 September 2021, Respondent determined that the waste activated sludge suction valve (“Valve”) for second clarifier #1 (“Clarifier 1”) was inoperable.
 - (b) on 15 September 2021, Respondent began to dewater Clarifier 1 to repair the Valve.
 - (c) The dewatering created a hydraulic surge in the aeration tanks and the two other secondary clarifiers that caused the discharge of heavy solids to Providence River (“Release”).
- (7) The Release impacted the water quality of Providence River and upper Narragansett Bay (“Upper Bay”).
- (8) The Release required RIDEM to implement a 5-day shellfish closure of Conditional Area “A” in Upper Bay beginning at 9:00 AM on 16 September 2021 and ending at sunrise on 21 September 2021.
- (9) Providence River segment RI0007020E-01A is classified in Rhode Island’s *Water Quality Regulations* (250-RICR-150-05-1) (“WQ Rules”) as Class SB{a}. Class SB{a} waters are designated for primary and secondary contact recreational activities; shellfish harvesting for controlled relay and depuration; and fish and wildlife habitat and have good aesthetic value. Primary contact recreational

activities, shellfishing uses and fish and wildlife habitat will likely be restricted from approved combined sewer overflows.

- (10) Upper Bay is classified in the WQ Rules as Class SA. Class SA waters are designated for shellfish harvesting for direct human consumption, primary and secondary contact recreational activities, and fish and wildlife habitat and have good aesthetic value.
- (11) Providence River and Upper Bay do not meet their assigned water quality designations according to RIDEM’s *2022 Integrated Water Quality Monitoring and Assessment Reporting*. Among the causes of the impairments is fecal coliform bacteria, which is associated with wastewater.
- (12) The Release further degraded Providence River and Upper Bay
- (13) On 26 September 2022, Respondent reported the following RIPDES Permit discharge limit violations to RIDEM that it attributed to the Release:

| Period | Parameter | Permitted Value | Reported Value |
|-------------------|-------------------|-----------------|----------------------|
| 15 September 2021 | Enterococci Limit | 276 cfu/100mL | 24,000,000 cfu/100mL |
| 17 September 2021 | TSS Limit | 30 mg/L | 34.4 mg/L |
| 20 September 2021 | Enterococci Limit | 276 cfu/100mL | 365 cfu/100mL |

- (14) Respondent has a standard operating procedure for dewatering the secondary clarifiers (“Clarifier SOP”); however, the Clarifier SOP does not specify the rate at which the clarifiers should be dewatered. Given the urgent need to repair the Valve, Facility staff appear to have conducted the dewatering at a rate higher than the treatment units could hydraulically handle.

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) **WQ Rules**
- (a) **Part 1.11(A)** – prohibiting the discharge of pollutants into any waters of the State or performing 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 or to downstream waters.
 - (b) **Part 1.13(B)** – prohibiting the discharge of pollutants into the waters of the State except as in compliance with the provisions of R.I. Gen. Laws Chapter 46-12, or other applicable chapters, of the Rhode Island General Laws or these regulations, and pursuant to the terms and conditions of an approval issued by RIDEM thereunder.
- (3) **Rhode Island’s *Regulations for the Rhode Island Pollutant Discharge Elimination System (250-RICR-150-10-1)* (“RIPDES Rules”)**
- (a) **Part 1.14B(1)** – requiring the permittee to comply with all conditions of this permit. No pollutant shall be discharged more frequently than authorized or at a level in excess of that which is authorized by the permit.
 - (b) **Part 1.14(E)** – requiring the permittee to take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.
 - (c) **Part 1.14(F)** – requiring the permittee to at all times maintain in good working order and operate as efficiently as possible all treatment works, facilities, and systems of treatment and control (and related appurtenances) for collection and treatment which are installed or used by the permittee for water pollution control and abatement to achieve compliance with the terms and conditions of the permit.
- (4) **Rhode Island’s *Rules and Regulations Pertaining to the Operation and Maintenance of Wastewater Treatment Facilities (250-RICR-150-10-4)* (“O&M Rules”), Part 4.5(A)** – requiring the permittee to, at all times, maintain the wastewater treatment facility in good working order and operate as the wastewater treatment facility as efficiently as possible.
- (5) **Rhode Island’s *Rules and Regulations for Sewage Sludge Management (250-RICR-150-10-3)*, Part 3.7(G)** – requiring the owner or operator of an approved facility who seeks to change the treatment, disposal, distribution, or land application methods, or who seeks to add facilities or sites to apply to RIDEM for a new Order of Approval for such modifications at least 90 days prior to the anticipated modification.

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 30 days of receipt of the NOV**, submit to RIDEM a revised Clarifier SOP that includes the rate at which the clarifiers can be dewatered to ensure that the Facility can comply with the RIPDES Permit.
- (2) **Within 60 days of receipt of the NOV**, submit to RIDEM an Application for an Order of Approval for sludge disposal, including updates to the Facility's sludge disposal plan and operation and maintenance plan.
- (3) The documents required in subsections E (1) and E (2) above shall be subject to RIDEM's review and approval. Upon review, RIDEM shall provide written notification either granting formal approval or stating the deficiencies therein. Within 14 days (unless a longer time is specified by RIDEM) of receiving a notification of deficiencies, submit to RIDEM additional information necessary to correct the deficiencies.

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:

\$25,000

- (2) The proposed administrative penalty is calculated pursuant to Rhode Island's *Rules and Regulations for Assessment of Administrative Penalties* (250-RICR-130-00-1) ("Penalty Rules") and must be paid to RIDEM within 30 days of your receipt of the NOV.
- (3) Penalty payments shall be by one of two methods:
 - (a) By certified check, cashier's check, or money order made payable to the **General Treasury – Water and Air Protection Program** and forwarded to:

Administrator, RIDEM Office of Compliance and Inspection
235 Promenade Street, Suite 220
Providence, RI 02908-5767

- (b) By wire transfer in accordance with instructions provided by RIDEM.
- (4) 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.

- (5) 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 RIDEM determines that reasonable efforts have been made to comply promptly with the 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 RIDEM's 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 RIDEM'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
RIDEM - 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).
- (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 Rhode Island's *Rules and Regulations for the Administrative Adjudication Division* (250-RICR-10-00-1).
- (2) A copy of each request for hearing must also be forwarded to:

Joseph J. LoBianco, Esquire
RIDEM - 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 RIDEM'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 RIDEM's Office of Legal Services at (401) 222-6607 extension 2772302 or at joseph.lobianco@dem.ri.gov. All other inquiries should be directed to David E. Chopy of RIDEM's Office of Compliance and Inspection at (401) 222-1360 extension 2777400 or at david.chopy@dem.ri.gov.

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:

By: _____
David E. Chopy, Administrator
RIDEM Office of Compliance and Inspection

Date: _____

CERTIFICATION

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

The Honorable Roberto L. DaSilva, Mayor
City of East Providence
East Providence City Hall
145 Taunton Avenue
East Providence, RI 02914

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: Water Pollution
 File No.: OCI-WP-22-140 X-ref RIPDES Permit RI0100048
 Respondent: City of East 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), D (3), and D (4) – Failure to comply with RIPDES Permit | Type I <i>(\$25,000 Max. Penalty) *</i> | Major | \$25,000 | 1 violation | \$25,000 |
| <i>SUB-TOTAL</i> | | | | | \$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.

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 RIDEM 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 RULES = \$25,000

PENALTY MATRIX WORKSHEET

CITATION: Failure to Comply with RIPDES Permit

VIOLATION NOs.: D (1), D (2), D (3), and D (4)

| TYPE | | |
|--|--|---|
| <u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare, or environment. | TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment. | 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 Part 1.10(A)(1)(b) of the Penalty Regulations

- (1) **The extent to which the act or failure to act was out of compliance:** Respondent failed to meet its Enterococci Limit and TSS Limit. Compliance with permit limits and protection of designated and existing water quality uses are major objectives of the RIPDES Rules, WQ Rules, and O&M Rules and are of major importance to the regulatory program.
- (2) **Environmental conditions:** The Release impacted Providence River and Upper Bay. Providence River is classified in the WQ Rules as Class SB{A} or Class SB1{A}. Class SB{A} waters are designated for primary and secondary contact recreational activities, shellfish harvesting for controlled relay and depuration and fish and wildlife habitat and to have good aesthetic value. Primary contact recreational activities, shellfishing uses and fish and wildlife habitat will likely be restricted in these waters from approved CSOs. Class SB1{A} waters are designated for primary and secondary contact recreational activities and fish and wildlife habitat and to have good aesthetic value. Primary contact recreational activities may be impacted in some of these waters due to pathogens from approved wastewater discharges. Also, primary contact recreational activities, shellfishing uses and fish and wildlife habitat will likely be restricted in these waters from approved CSOs. Upper Bay is classified in the WQ Rules as Class SA. Class SA waters are designated for shellfish harvesting for direct human consumption, primary and secondary contact recreational activities, and fish and wildlife habitat and to have good aesthetic value. Providence River and Upper Bay do not meet their assigned water quality designations according to RIDEM's *2022 Integrated Water Quality Monitoring and Assessment Reporting*. Among the causes of the impairments is fecal coliform bacteria, which is associated with wastewater. Upper Bay is managed as a conditionally approved shellfish area. The Release resulted in the closure of Conditional Area "A" in Upper Bay. The shellfish closure was implemented for 5 days beginning at 9:00AM on 16 September 2021 and ending at sunrise on 21 September 2021.
- (3) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (4) **Toxicity or nature of the pollutant:** Wastewater 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:** 3 days – 15 September 2021, 17 September 2021, and 20 September 2021.

(continued)

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- (6) **Areal extent of the violation:** Providence River and Upper Bay.
- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent did not take reasonable steps to prevent the noncompliance. The Clarifier SOP does not specify what rate the clarifiers can be dewatered to ensure compliance with the RIPDES Permit and Respondent dewatered the clarifier at a faster rate than the treatment units could process the wastewater, which resulted in the Release. It is not known to RIDEM what steps, if any, Respondent took to mitigate the noncompliance.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit, or approval issued or adopted by RIDEM, or any law which RIDEM 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:** Respondent had full control over the violations and Facility operations.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** For September 2021, shellfish landings in Conditional Area "A" in Upper Bay totaled \$142,813.70 (or \$4,760.67 per day). The loss to the shellfishermen for the 5-day closure was approximately \$23,803.35. The maximum statutory penalty RIDEM could have assessed for these violations is \$75,000 (\$25,000 per day x 3 days).

| | | |
|----------------|----------|-------|
| <u>X</u> MAJOR | MODERATE | MINOR |
|----------------|----------|-------|

| 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 |