

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: City of Warwick

**File No.: OCI-WP-22-229
X-ref RIPDES RI0100234
RIPDES Referral 22-06**

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. FACTS

- (1) Respondent owns a wastewater collection and treatment system (“Facility”).
- (2) On 30 September 2019, RIDEM issued to Respondent Rhode Island Pollutant Discharge Elimination System (“RIPDES”) Permit No. RI0100234 (“Permit”), which became effective on 1 January 2020.
- (3) The Permit authorizes Respondent to discharge treated wastewater from the Facility to Pawtuxet River through outfall 001A.
- (4) The Permit does not authorize Respondent to discharge wastewater from the Facility to any other waters of the State or from any location other than outfall 001A.
- (5) The Permit requires Respondent to:
 - (a) Take all reasonable steps to minimize or prevent any discharge which has a reasonable likelihood of adversely affecting human health or the environment.
 - (b) Properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used to achieve compliance.
- (6) On 12 September 2022, RIDEM received verbal notification from Respondent of a sanitary sewer overflow (“SSO”) at 304 Lakeshore Drive in Warwick, Rhode Island.
- (7) On 17 September 2022, RIDEM received from Respondent a written report of the SSO. The report stated that:
 - (a) The SSO was caused by a corroded crown on a section of the Cedar Swamp Force Main (“CSFM”).
 - (b) The SSO resulted in the discharge of 161,600 gallons of wastewater to Warwick Pond.

- (c) The CSFM was inspected in October 2016 and a core sample of the CSFM was analyzed for corrosion. In May 2017, Respondent received a report of the findings of the inspection. The report stated that the CSFM was in overall good condition and the concrete was structurally sound; however, additional soil and core sampling was recommended to verify the condition of the CSFM. Based on the cost of the additional sampling, Respondent decided not to perform additional sampling but instead replace the CSFM. Respondent signed a design contract to replace the CSFM approximately 4 years later (20 May 2021).
- (8) RIDEM reviewed results of water quality sampling performed by Respondent from 12 September 2022 through 21 September 2022 for Warwick Pond, Buckeye Brook, Old Mill Creek, and Mill Cove. The results showed elevated levels of fecal coliform bacteria and enterococci consistent with wastewater.
- (9) RIDEM determined that the SSO also entered Buckeye Brook, Old Mill Creek, and Upper Narragansett Bay.
- (10) The SSO required RIDEM to implement a shellfish closure in Upper Narragansett Bay (“Closure”).
- (11) RIDEM and the Rhode Island Department of Health also issued an advisory to the public to refrain from primary contact recreation (wading, swimming) and secondary contact recreation (canoeing, kayaking, rowing, and fishing) on Warwick Pond, Buckeye Brook, Mill Creek, and Mill Cove and to avoid consuming any fish from these waters. Also, swimming in the portion of Upper Narragansett Bay subject to the Closure was not recommended.
- (12) Warwick Pond and Buckeye Brook are classified in Rhode Island’s *Water Quality Regulations* (250-RICR-150-05-1) (“WQ Rules”) as Class B. Class B waters are designated for primary and secondary contact recreational activities and fish and wildlife habitat and have good aesthetic value.
- (13) Old Mill Creek and Upper Narragansett Bay are 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.
- (14) Warwick Pond, Buckeye Brook, Old Mill Creek, and Upper Narragansett Bay do not meet their assigned water quality designations according to RIDEM’s *2022 Impaired Waters Report December 2021*. Among the causes of the impairment are cadmium, copper, iron, lead, dissolved oxygen, enterococcus, total phosphorus, total nitrogen, and fecal coliform bacteria, which are associated with wastewater.
- (15) The SSO further degraded the water quality of Warwick Pond, Buckeye Brook, Old Mill Creek, and Upper Narragansett Bay.

- (16) On or about 29 September 2029, Respondent submitted to RIDEM a proposal and plans titled *Cedar Swamp Force Main Rehabilitation – Contract No. 94* to rehabilitate the SCFM (“Contract No. 94”).
- (17) On 29 November 2022, RIDEM approved Contract No. 94.

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) **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.
- (3) **WQ Rules**
 - (a) **Part 1.11(A)** – prohibiting the discharge of pollutants into any waters of the State or any activity alone or in combination which RIDEM 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) **Part 1.11(B)** – prohibiting the discharge of pollutants in concentrations that will further degrade the water quality of an impaired waterbody.
 - (c) **Part 1.13(B)** – requiring the discharge of pollutants into the waters of the State comply with the terms and conditions of a permit issued by RIDEM.
 - (d) **Part 1.15(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.
 - (e) **Part 1.18(A)** – mandating compliance with all terms, conditions, management practices and operation and maintenance requirements set forth in a permit.

- (4) **Rhode Island’s *Regulations for the Rhode Island Pollutant Discharge Elimination System (250-RICR-150-10-1)* (“RIPDES Rules”)**
- (a) **Part 1.14(B)(1)** – requiring the permittee to comply with all conditions of the permit.
 - (b) **Part 1.14(E)** – requiring the permittee to take all reasonable steps to minimize or prevent a discharge in violation of the permit.
 - (c) **Part 1.14(F)** – requiring the permittee to maintain in good working order and operate as efficiently as possible all treatment works to achieve compliance with the permit.
- (5) **Rhode Island’s *Rules and Regulations for the Operation and Maintenance of Wastewater Treatment Facilities (250-RICR-150-10-4)* (“O&M Rules”), Part 4.5(A)** – requiring a facility to be maintained in good working order and operated as efficiently as possible.

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 complete all work in Contract No. 94 to rehabilitate the CSFM within 1 year of receipt of this Notice of Violation (“NOV”).

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:

\$50,000

- (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. 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.

- (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.

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 RIDEM'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 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:

Jenna Giguere, 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 RIDEM 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) Jenna Giguere of RIDEM's Office of Legal Services at (401) 222-6607 ext. 2772306 or at jenna.giguere@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 ext. 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 F above.

FOR THE DIRECTOR

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

Dated: _____

CERTIFICATION

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

City of Warwick
c/o Betty Anne Rogers, Executive Director
Warwick Sewer Authority
125 Arthur W. Devine Boulevard
Warwick, RI 02886

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: Water Pollution
 File No.: OCI-WP-22-229, X-ref RIPDES No. RI0100234
 Respondent: City of Warwick

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	
C (1), C (2), C (3), C (4), and C (5) SSO	Type I <i>(\$25,000 Max. Penalty) *</i>	Major	\$25,000	2 days	\$50,000
<i>SUB-TOTAL</i>					\$50,000

*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 = \$50,000

PENALTY MATRIX WORKSHEET

CITATION: SSO

VIOLATION NOs: C (1), C (2), C (3), C (4), and C (5)

TYPE		
<p style="text-align: center;"><u> X </u> TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;">___ TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare, or environment.</p>	<p style="text-align: center;">___ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare, or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Part 1.10(A)(1)(b) of the Penalty Rules.</p> <ol style="list-style-type: none"> (1) The extent to which the act or failure to act was out of compliance: The SSO entered Warwick Pond, Buckeye Brook, Old Mill Creek, and Upper Narragansett Bay in violation of the Permit. The SSO was caused by collapsed section of the CSFM. Protection of designated and existing water quality uses is a major objective of the Permit, RIPDES Rules, WQ Rules, and O&M Rules and is of major importance to the regulatory program. (2) Environmental conditions: The SSO impacted Warwick Pond, Buckeye Brook, Old Mill Creek, and Upper Narragansett Bay. Warwick Pond and Buckeye Brook are classified in the WQ Rules as Class B. Class B waters are designated for primary and secondary contact recreational activities and fish and wildlife habitat and have good aesthetic value. Old Mill Creek and Upper Narragansett Bay are 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. Warwick Pond, Buckeye Brook, Old Mill Creek, and Upper Narragansett Bay do not meet their assigned water quality designations according to RIDEM's <i>2022 Impaired Waters Report December 2021</i>. Among the causes of the impairment are cadmium, copper, iron, lead, dissolved oxygen, enterococcus, total phosphorus, total nitrogen, and fecal coliform bacteria, which are associated with wastewater. The SSO further degraded the water quality of Warwick Pond, Buckeye Brook, Old Mill Creek, and Upper Narragansett Bay. Upper Narragansett Bay is managed as a conditionally approved shellfish area. The SSO resulted in the Closure. The Closure was implemented for 19 days beginning at sunrise on 16 September 2022 and ending at sunrise on 5 October 2022. The SSO also resulted in an advisory to the public to refrain from primary contact recreation (wading, swimming) and secondary contact recreation (canoeing, kayaking, rowing, and fishing) on Warwick Pond, Buckeye Brook, Mill Creek, and Mill Cove and to avoid consuming any fish from these waters. Also, swimming in the portion of Upper Narragansett Bay subject to the Closure was not recommended. (3) Amount of the pollutant: Approximately 161,600 gallons. (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: Approximately 44 hours – the SSO began around 4:00PM on 12 September 2022 and ended around 12:20PM on 14 September 2022. 		
(continued)		

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- (6) **Areal extent of the violation:** Warwick Pond, Buckeye Brook, Old Mill Creek, and Upper Narragansett Bay.
- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by properly maintaining the CSFM and by following through on evaluating the structural integrity of the CSFM. The CSFM was inspected in October 2016 and a core sample of the CSFM was analyzed for corrosion. In May 2017, Respondent received a report of the findings of the inspection. The report stated that the CSFM was in overall good condition and the concrete was structurally sound; however, additional soil and core sampling was recommended. Respondent determined that based on the cost of the additional soil and core sampling, it would instead move forward with design to replace the CSFM. Respondent did not sign a design contract for approximately 4 years (20 May 2021). Respondent took reasonable and appropriate steps to mitigate the noncompliance by repairing the collapsed section of CSFM and minimizing the amount of wastewater that was discharged. Respondent has also moved forward in a timely manner to complete the design to replace the CSFM.
- (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:** On 28 January 2020, RIDEM issued a Notice of Violation ("2020 NOV") to Respondent for sewer system overflows within the Facility wastewater collection system. On 1 April 2022, RIDEM and Respondent executed a Consent Agreement to resolve the 2020 NOV. Pursuant to the Consent Agreement, Respondent paid a penalty of \$22,000 and committed to a 5-year plan to assess and repair the wastewater collection system. Respondent is complying with the Consent Agreement.
- (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:** In August 2007, the U.S. Environmental Protection Agency ("EPA") issued to Respondent an Administrative Order for unpermitted discharges of untreated wastewater from the Facility wastewater collection system. As a result of this Order, in January 2008, Respondent submitted to EPA a *Wastewater Collection System CMOM Program Self-Assessment Checklist* that in part identified that Respondent has "several pumping station force mains that generate hydrogen sulfide as a result of long detention times due to low flow conditions." This was followed by a May 2008 submittal of a *CMOM Program Corrective Action Plan* by Respondent to EPA. In part, this corrective action plan included assurances by Respondent to establish "plans to prioritize routine line maintenance and inspections," to better assess "collection system maintenance expenses and ensure sufficient funds in the future for routine maintenance of collection system as well as major repairs, rehabilitations and replacements," and other tasks related to the proper operation and maintenance of sewer collection systems. Also, see Factor 8 above.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** For August 1 – October 31, 2022, shellfish landings in Upper Narragansett Bay totaled \$257,925 (or \$2,803 per day). The Closure affected the entire Upper Narragansett Bay (9,391 acres). The loss to the shellfish industry for the Closure was approximately \$53,257 [calculated as \$2,803 per day x 19 days].

<input checked="" type="checkbox"/> 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