STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
ADMINISTRATIVE ADJUDICATION DIVISION

In Re: Warren Sewer Commission/Wastewater Treatment Facility
AAD No. 93-005/WRE
Notice of Violation No. RI0-169

DECISION AND ORDER

This matter is before this Hearing Officer pursuant to Chapter 12 of Title 42 of the R.I.G.L. entitled, "Water Pollution" (the "Act"), specifically § 46-12-9 as amended, R.I.G.L. § 42-17.1-2 and Chapter 42-17.6, R.I.G.L. § 42-17.7-1 et seq., the Administrative Procedures Act, R.I.G.L. § 42-35-1 et seq., and the Regulations for the Rhode Island Pollutant Discharge Elimination System ("RIPDES Regulations") ("Pretreatment Regulations") adopted pursuant thereto, and the Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters. The proceedings were conducted in accordance with the above-noted statutes and regulations.

The Division of Water Resources ("Division") of the Department of Environmental Management ("DEM") issued a Notice of Violation and Order dated March 10, 1993 ("NOV") to the Town of Warren, Warren Sewer Commission ("Warren" or "Respondent").

The NOV alleged that Warren had been in violation of:

A. R.I.G.L. § 46-12-5(b) which provides that:

> It shall be unlawful for any person to discharge any pollutant into the waters except as in compliance with the provisions of this Chapter and any rules and regulations promulgated hereunder and pursuant to the terms and conditions of a permit.

B. R.I.G.L. § 46-12-13 which provides in part that:

> . . . any person who shall violate the provisions of this Chapter, or any permit, rule, regulations or order issued pursuant thereto, shall be subject to a civil penalty of not more than twenty-five thousand dollars ($25,000) for each day during which the violation occurs.

C. R.I.G.L. § 46-12-3 which provides in part that:

> In addition to the other powers granted the director of environmental management herein, the director shall have and may exercise the following powers and duties: **(n) To require publicly owned treatment works to adopt and implement requirements regarding the pretreatment of pollutants consistent with existing federal requirements, and to require compliance by all persons with pretreatment requirements;

D. RIPDES Regulations Rule 14.02(a) which provides that:

> The permittee shall 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. The discharge of any pollutant not specifically authorized in the RIPDES permit or listed and quantified in the RIPDES application shall constitute a violation of the permit. Any permit noncompliance constitutes a violation of the State Act or other authority of these regulations and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

E. RIPDES Permit No. RI0100056, Part 1.A.4.f. which provides that:

> The permittee shall analyze its effluent semi-annually for the EPA Priority Pollutants as listed in 40 CFR 122, Appendix D, Tables II and III. The results of these analyses shall be submitted to the Department of Environmental Management. The State user fee samples may be utilized. All sampling and analysis shall be

done in accordance with EPA Regulations, including 40 CFR, Part 136; grab and composite samples shall be taken as appropriate.

F. Specifically, the violations for which Warren is being cited are as follows:

1. Failure to develop a Pretreatment Program and to submit the required reports as described in RIPDES Permit No. RI0100056. Specifically, Warren failed to submit the following reports required by sections of RIPDES Permit No. RI0100056:

   a. By July 19, 1992, a plan and schedules for obtaining any additional legal authority as set forth in Part I.C.(1)(c) which fulfills the requirements set forth in Part I.C.(1)(b).

   b. By August 19, 1992, a Pretreatment Strategy, as set forth in Part I.C.(1)(d), for implementing the program requirements contained in the Rhode Island Pretreatment Regulations and the Federal Regulations 40 CFR 403 with respect to each of the industries identified through the completion of the requirements set forth in Part I.C.(1)(a).

   c. By September 19, 1992, a monitoring program, as set forth in Part I.C.(1)(e), which will implement the requirements of Rules 10 and 14 of the Rhode Island Pretreatment Regulations, of any other applicable State Regulation and of all Federal Regulations contained in 40 CFR 403.

   d. By October 19, 1992, an evaluation of the staffing needs and funding required to implement the Pretreatment Program as set forth in Part I.C.(1)(f).

   e. By October 19, 1992, an evaluation of additional monitoring equipment required by the POTW to implement the Pretreatment Program and a description of any municipal facilities to be constructed for the monitoring and analysis of industrial wastes as set forth in Part I.C.(1)(g).

f. By October 19, 1992, a detail of all outside laboratory services required to complete analyses of samples for the Pretreatment Program as set forth in Part I.C.(1)(h).

g. By October 19, 1992, proposed revisions to the Town's Sewer Use Ordinance (SUO) and Pretreatment Regulations which contain all applicable sections and legal authority as set forth in Part I.C.(1)(i).

h. By October 19, 1992 a thorough technically based local limits analysis completed in accordance with EPA protocol as set forth in Part I.C.(1)(j).

i. By October 19, 1992 a complete and detailed Pretreatment Program, as set forth in Part I.C.(1)(k), which satisfies the requirements of Rule 10 and Rule 11 of the Rhode Island Pretreatment Regulations and of all Federal Regulations contained in 40 CFR 403.

2. Failure to comply with RIPDES Permit No. RI0100056, Part I.A.4.f. Specifically, during a March 1, 1993 telephone conversation between Mr. Rodger Carr of Professional Services Group, Inc., (under contract with the Town of Warren) and Mr. Paul Guglielmino of the Department, Mr. Carr stated that the priority pollutants analysis sampled on May 27, 1992 by the User Fee Program was to be applied to fulfill the permit requirement. However, this sample was scheduled to be analyzed for only a portion of the EPA Priority Pollutants defined in 40 CFR 122, Appendix D, Tables II and III. Warren neglected to analyze the sample for the remainder of the EPA Priority Pollutants.

Said NOV contained the following Order to Warren:

1. Upon receipt of the Order, Warren shall immediately comply with the requirements set forth in RIPDES Permit No. RI0100056 including but not limited to the submission of the following:

   a. The plan to obtain legal authority as outlined in Part I.C.(1)(c);

   b. The Pretreatment Strategy as outlined in Part I.C.(1)(d);

   c. The Monitoring Program as outlined in Part I.C.(1)(e);

   d. An evaluation of staffing needs as outlined in Part I.C.(1)(f);

   e. An evaluation of equipment and funding needs as outlined in Part I.C.(1)(g);

   f. The Laboratory Services evaluation as outlined in Part I.C.(1)(h);

   g. The Proposed Sewer Use Ordinance as outlined in Part I.C.(1)(i);

   h. The Local Limits analysis as outlined in Part I.C.(1)(j) and;

   i. The complete Pretreatment Program as outlined in Part I.C.(1)(k).

   j. Documentation establishing a contractual arrangement for performing the two (2) EPA Priority Pollutants Analyses for the 1993 monitoring period in compliance with Part I.A.4.f.

2. Within ten (10) days of receipt of this Order, Warren shall pay to DEM an administrative penalty of Twenty Thousand Five Hundred Ten Dollars ($20,510).

3. For each and every day that Warren remains in violation of the terms of the Order, Warren shall pay an administrative penalty in the amount of Five Thousand Dollars ($5,000), plus any administrative costs that the DEM may show have been expended during the course of noncompliance with this Order,

4. Based on the information currently available, it appears that the only violation which is continuing at this time is Violation No. 1 (of the NOV). Warren was advised that, for the period that it remains in violation of this permit requirement, Warren shall be required to pay an additional administrative penalty calculated in the manner set forth in the Administrative Penalty Worksheet for Violation No. 1 attached to the NOV (currently Five Thousand Dollars ($5,000) per month) for the period that Warren remained in violation of the permit requirement as set forth in Violation No. 1.

The Respondent thereupon requested a hearing on the NOV.

Gary Powers, Esq., represented the Division and Anthony DeSisto, Esq., and Michael O'Connor, Esq., represented the Respondent.

The Division bore the burden of proving that Warren violated the aforementioned law and regulations as alleged in the NOV and that Division is entitled to the relief requested therein.

A prehearing conference was held on September 3, 1993 and the requisite Prehearing Conference Record was prepared by the hearing officer who conducted same. The parties did not submit any stipulations of fact at the prehearing conference.

The hearing of this matter was conducted on October 12 and 14, 1993. Division's post-hearing memorandum was filed on November 16, 1993, and the Respondent's post-hearing memorandum (by agreement of the parties) was filed on December 8, 1993. The following documents were admitted as full exhibits for Division:

Div. 1. Full	Copy of Notice of Violation Order and Penalty issued to Respondent by Division on March 10, 1993.
Div. 2. Full	Copy of Respondent's March 23, 1993 request for hearing.
Div. 3. Full	Curriculum vitae of Angelo S. Liberti, III, P.E.
Div. 4. Full	Curriculum vitae of Paul Guglielmino.

Div. 5. Full — Copy of RIPDES Permit No. RI0100056.

Div. 6. Full — Copy of letter dated March 18, 1992 from William MacDougall to Department of Environmental Management.

Div. 7. Full — Copy of letter dated July 7, 1992 from Angelo S. Liberti to William MacDougall.

Div. 8. Full — Copy of letter from Attorney Pasquale Annarummo to Gina N. Friedman dated March 30, 1992.

Div. 9. Full — Copy of letter from Gina N. Friedman to John Gross, P.E., dated April 29, 1992.

Div. 10. Full — Copy of letter from Angelo S. Liberti to William MacDougall dated August 12, 1991.

The following documents were admitted as full exhibits for Respondent:

Resp. 1. Full — Copy of undated reference note of Angelo Liberti (4 pp.).

Resp. 2. Full — Copy of letter from Warren Town Council to John Hamilton, Director of Aqua Fund, dated July 18, 1991 (2 pp.)

Resp. 3. Full — Copy of memo from Gina N. Friedman to Alicia M. Good dated January 21, 1992.

Angelo S. Liberti, III, P.E., was the first witness called by the Division. He is employed as a Supervising Sanitary Engineer with Division, and he was qualified by agreement as an expert in pretreatment requirements and as a sanitary engineer. Mr. Liberti testified that he reviewed the file in this matter, and met with and discussed the alleged violations with his technical staff. He concluded, based on his review of the

records and reports of staff members, that Respondent had committed the violations set out in subparts (a) through (i) of Part F(1) of the NOV in violation of RIPDES Permit No. RI0100056.

Mr. Liberti described the significance of each of the components which Respondent failed to satisfy as alleged in Part F(1) of the NOV. It was this witness's testimony that as of the date of the hearing, Respondent has remained in violation of the requirements set out in Part F(1) of the NOV. Consequently, Respondent has remained in noncompliance for over seven (7) months after being cited, viz. from the date of issuance of the NOV (March 10, 1993) to the date of the hearing (October 12, 1993).

It was Mr. Liberti's testimony that, based upon his review of the records and reports, the Respondent committed the violation set out in Part F(2) of the NOV, in that it had failed to conduct as complete an analysis of the water samples retrieved on May 27, 1992 as required by its RIPDES Permit. Also that Respondent's noncompliance set out in Part F(2) of the NOV was deemed to be a "Type III" violation with a "deviation from the standard of minor." This violation was deemed to be a single, non-continuing event for which Respondent was assessed a penalty of One Hundred Dollars ($100). In addition, Respondent was

assessed an additional Four Hundred Ten Dollars ($410) to recapture the economic benefit realized by Respondent due to the violation set out in Part F(2), i.e., to include an assessment for the savings realized by Respondent by not conducting the full laboratory analysis required by the Permit. The total assessment for the violation in Part F(2) of the NOV amounted to Five Hundred Ten Dollars ($510).

Mr. Liberti described in detail how Respondent's noncompliance as set out in Part F(1) resulted in its failure to establish the required mechanism by which the wastewater treatment system discharges could be monitored by Respondent. Because of the gravity of such noncompliance, the violations noted in Part F(1) were grouped together and collectively assessed as a "Type I" violation with a "deviation from the standard of moderate." Division assessed a penalty of Five Thousand Dollars ($5,000) per month collectively for the Part F(1) violations. This amount was less than the maximum penalty allowed, but Division considered the lesser penalty more appropriate considering Respondent's efforts (though ineffectual) to mitigate the violation.

The Division rested its case at the conclusion of Mr. Liberti's testimony. Respondent then made an oral Motion for a Directed Verdict. The Hearing Officer reserved decision on the Motion, and this Decision and Order acts as a decision on said Motion.

William MacDougall, Chairman of the Warren Sewer Commission ("Commission"), was the first witness to testify for Respondent. He explained that as Chairman of the Commission, he administers the Sewer Department; and that funding for same is provided via the Town Council pursuant to approval of the voters at the annual financial meeting. The Commission is composed of three part-time members who are paid between $550 and $600 annually. This witness felt that these part-time commissioners do not have the expertise to accomplish certain requisite activities.

It was Mr. MacDougall's testimony that the Town was informed at the meeting in 1991 that they were required to develop a Pretreatment Program by October, 1992. Bids were solicited for same; but because of budgetary problems, it was decided to save money by doing the work themselves.

They solicited assistance from Division and attempted to utilize forms that had been used by a neighboring municipality. They encountered difficulties and therefore decided to engage

professional help. They "ran into stumbling blocks" and were delayed because of "personal problems" of their private consultant, Cheryl Stevenson.

After notification from Division that the Town had missed certain deadline dates contained in their discharge permit, Respondent conducted extensive negotiations with, and eventually hired, the consulting firm of Metcalf & Eddy. Mr. McDougall testified that although the Division notified Respondent during 1992 that the industrial user's survey was not complete, the Division failed to adequately inform Respondent of the impending October, 1992 deadline.

Catherine Avila, the Warren Council Vice President, was the next witness called by Respondent. She explained that the Warren Sewer Commission submits its budget, which is presented to the Financial Town Meeting once a year. She believed that One Hundred Thirty-Two Thousand Dollars ($132,000) was appropriated for implementation of the Industrial Pretreatment Program ("IPP"). No further evidence was introduced by Respondent.

The evidence introduced by Division clearly establishes that (1) the Respondent was in violation of R.I.G.L. §§ 46-12-5(b), 46-12.13 and 46-12-3(a), and RIPDES Regulations Rule 14.02(a) as alleged in the subject Notice of Violation and Order, and Respondent remained in violation as of the date of this hearing;

and (2) the Division is entitled to a total penalty assessment of Forty Thousand Five Hundred Ten Dollars ($40,510), i.e., the penalty in the amount of Five Thousand Five Hundred Ten Dollars ($5,510) which was initially assessed as of March 10, 1993, plus the accrued penalty of Thirty Five Thousand Dollars ($35,000) due to Respondent's continued noncompliance with Part F(1) of the NOV, (seven months at Five Thousand Dollars ($5,000) per month).

The testimony of the Division's expert Mr. Liberti was positive and uncontradicted. I found Mr. Liberti to be a credible witness. The evidence presented by him was unchallenged and not discredited either by other positive testimony or by circumstantial evidence extrinsic or intrinsic
and is therefore deemed conclusive upon this Hearing Officer as the trier of fact. State v. A. Capuano Bros., Inc., 120 R.I. 58 (1978).

Respondent argues that Division failed to comply with its statutory mandate to advise and cooperate with Respondent on its Industrial Pretreatment Program plan, and that Division should be estopped from enforcing the NOV because the Division made representations upon which Respondent relied to its detriment.

It is essentially Respondent's contention that Division failed to assist the Town in the preparation of an IPP plan as required by R.I.G.L. § 46-12-3(c); and that the doctrine of

estoppel should be applied against Division since Respondent relied to its detriment on the erroneous advice of Division that the non-engineer, part-time commissioners could perform certain technical functions required to complete an IPP plan.

R.I.G.L. § 46-12-3(c) provides that "the director shall have and may exercise the following powers and duties":

> (c) To advise, consult, and cooperate with other agencies of the state, the federal government, other states, and interstate agencies and with affected groups, political subdivisions, and industries in the furtherance of the purposes of this chapter;

A clear reading of the statute reveals that it authorized the Director to assist municipalities with their required functions, but does not establish the statutory obligation as suggested by Respondent. The Division obviously attempted to help Respondent implement an IPP plan, but certainly neither the statute nor the unfortunate circumstances required Division to provide the additional technical assistance which Respondent needed.

It is, indeed, unfortunate that the Town was eventually compelled to expend funds to engage an engineering consultant in order to implement its IPP plan, especially during extremely difficult fiscal times. However, this does not excuse Respondent from complying with the mandates of the statutes and regulations, and the terms and conditions of the Permit. The evidence

introduced by Respondent fails to support its argument that Division failed to provide Respondent with the requisite assistance for Respondent to meet the Permit requirements.

The evidence offered by Division substantiated the Respondent's violations and was not controverted by Respondent. Respondent's witnesses did not dispute the allegations of the NOV; rather, their testimony only pointed out the difficulties encountered by Respondent and the problems which hindered their compliance. Neither of Respondent's witnesses unequivocally attributed Respondent's failure to comply with the Permit to the actions or inaction by Division.

The argument by Respondent that the Division made representations to Respondent upon which it relied to its detriment is not supported by the evidence. Mr. MacDougall candidly testified that the delays encountered by Respondent resulted from a number of factors that did not involve Division, viz: (1) a disagreement with legal counsel as to the extent of the services he would provide; (2) Ms. Stevenson's "personal problems"; (3) the protracted negotiations with the consulting firm of Metcalf & Eddy; and (4) ultimately the financial plight of the Town and related funding problems.

Respondent's reliance on Division's exhibit No. 7 (the letter from Mr. Liberti to Mr. MacDougall, dated July 7, 1992) to support its position is misplaced. This letter extended the Interim Compliance Dates for Development of an IPP, but clearly informed Respondent that the final program submission date remained October 19, 1992 (since this date is federally mandated and Division cannot extend same). This letter reviewed the numerous discussions and meetings of employees of the Division with Commission personnel and those parties engaged by or on behalf of Respondent. It reiterated the importance for Respondent to meet the interim deadlines as well as final compliance. The Respondent's witnesses did not establish that Respondent was unable to perform any of those functions which Division felt could be accomplished by Respondent. Also, the evidence does not substantiate Respondent's contention that it relied upon representations of Division to the detriment of Respondent.

Under the circumstances involved in this matter, it is unnecessary to consider whether the doctrine of estoppel is applicable to administrative adjudicatory hearings in environmental matters. Assuming arguendo, that such equitable principles or the power to determine what is "fair and equitable"

have been conferred on this administrative agency, a review of the evidence reveals that such doctrines are not applicable to the instant matter.

The facts and circumstances of each case must be closely scrutinized to determine whether justice requires the imposition of estoppel. Learner v. Gill, 463 A.2d 1352 (R.I. 1983), citing Schiavulli v. School Committee of North Providence, 114 R.I. 443 (1975).

The Rhode Island Supreme Court in Ferreli v. Employment Sec. Dept., 106 R.I. 588, 261 A.2d 906 (1970) observed that "This court has long recognized that the doctrine of estoppel may in appropriate circumstances be invoked against a public body. The court went on to note that "In Santos v. City Council, 99 R.I. 439, 208 A.2d 387, we again recognized that the doctrine of estoppel could be invoked against a municipality but held that on the facts of that case there was no evidence that any representations had been made by the city council upon which the petitioner could reasonably have relied to his detriment."

The Respondent's burden with respect to a claim of estoppel requires Respondent to establish some affirmative representation or equivalent conduct by Division which was intended to and did

in fact induce Respondent to act or fail to act in reliance thereon to its disadvantage. Raymond v. B.I.F. Industries, Inc., 112 R.I. 192, 308 A.2d 820 (1973).

The Respondent's position is premised upon the assumption that Division so acted as to induce it to refrain from taking appropriate action to comply with its Permit and that it relied upon that conduct to its detriment.

The record, however, fails to support that hypothesis. Instead, it discloses that Division provided adequate assistance to Respondent in complying with the permit requirements. Respondent's own testimony establishes that it was Respondent's budgetary and other associated problems that caused Respondent's failure to meet the permit requirements. Accordingly, the principles of estoppel are not applicable to this matter.

The direct and competent evidence introduced by Division clearly demonstrates that Division has sustained its burden of proof in this matter. The Division's evidence was uncontroverted and supports its position that Respondent violated the requirements of RIPDES Permit No. RI010056, and that the Order portion of the NOV, including the administrative penalty imposed should be upheld. The evidence clearly establishes that

Respondent committed the violations set out in subparts (a) through (i) of Parts F(1) of the NOV and Part F(2) of the NOV, that Part F(1) was a continuing violation and that as of the date of the hearing, the Respondent had remained in noncompliance with the requirements set out in Part F(1) of the NOV over seven (7) months after being cited.

The evidence also establishes that the administrative penalty assessed in accordance with the NOV is appropriate, and that Respondent is liable to the Division for a total penalty assessment of Forty Thousand Five Hundred Ten Dollars ($40,510), i.e., the penalty in the amount of Five Thousand Five Hundred Ten Dollars ($5,510) which was initially assessed as of March 10, 1993, plus the accrued penalty of Thirty-Five Thousand Dollars ($35,000) due to the Respondent's continued noncompliance with Part F(1), [seven (7) months at Five Thousand Dollars ($5,000) per month].

FINDINGS OF FACT

After reviewing the documentary and testimonial evidence of record, I find as a fact the following:

1. The Warren Sewer Commission/Wastewater Treatment Facility ("Respondent") operates a wastewater treatment facility ("WWTF") located at 427 Water Street in the Town of Warren, Rhode Island.

2. The WWTF operates pursuant to a RIPDES Permit issued by the Department of Environmental Management ("DEM"), Permit No. RI0100056 ("Permit").

3. The Division of Water Resources of DEM ("Division") has jurisdiction to enforce the Permit, the RIPDES Regulations and the Rhode Island statutes involved.

4. Respondent failed to submit the reports required by sections of RIPDES Permit No. RI0100056 as follows:

a. By July 19, 1992, a plan and schedules for obtaining any additional legal authority as set forth in Part I.C.(1)(c) which fulfills the requirements set forth in Part I.C.(1)(b).

b. By August 19, 1992, a Pretreatment Strategy, as set forth in Part I.C.(1)(d), for implementing the program requirements contained in the Rhode Island Pretreatment Regulations and the Federal Regulations 40 CFR 403 with respect to each of the industries identified through the completion of the requirements set forth in Part I.C.(1)(a).

c. By September 19, 1992, a monitoring program, as set forth in Part I.C.(1)(e), which will implement the requirements of Rules 10 and 14 of the Rhode Island Pretreatment Regulations, of any other applicable State Regulation and of all Federal Regulations contained in 40 CFR 403.

d. By October 19, 1992, an evaluation of the staffing needs and funding required to implement the Pretreatment Program as set forth in Part I.C.(1)(f).

e. By October 19, 1992, an evaluation of additional monitoring equipment required by the POTW to implement the Pretreatment Program and a descrip-

tion of any municipal facilities to be constructed for the monitoring and analysis of industrial wastes as set forth in Part I.C.(1)(g).

f. By October 19, 1992, a detail of all outside laboratory services required to complete analyses of samples for the Pretreatment Program as set forth in Part I.C. (1)(h).

g. By October 19, 1992, proposed revisions to the Town's Sewer Use Ordinance (SUO) and Pretreatment Regulations which contain all applicable sections and legal authority as set forth in Part I.C.(1)(i).

h. By October 19, 1992, a thorough technically based local limits analysis completed in accordance with EPA protocol as set forth in Part I.C.(1)(j).

i. By October 19, 1992, a complete and detailed Pretreatment Program, as set forth in Part I.C.(1)(k), which satisfies the requirements of Rule 10 and Rule 11 of the Rhode Island Pretreatment Regulations and of all Federal Regulations contained in 40 CRF 403.

5. Respondent failed to fully analyze the priority pollutants analysis sample of May 27, 1992 for the EPA Priority Pollutants defined in 40 CFR 122, Appendix D, Tables II and III, as required by the Permit.

6. The Respondent has failed and refused to comply with the terms and conditions of the RIPDES Permit and the NOV.

7. The Respondent remained in noncompliance with Part F(1) of the NOV for a period of seven (7) months after being cited.

8. The administrative penalty assessed against Respondent is not excessive, and the penalty imposed by the NOV should be modified to Forty Thousand Five Hundred Ten Dollars ($40,510.00) to include the additional time Respondent has remained in noncompliance.

9. The Order requested by Division in the NOV that Respondent immediately comply with the requirements of the RIPDES Permit is necessary to assure compliance with the Statutes and Regulations.

CONCLUSIONS OF LAW

Based on the foregoing facts and testimonial and documentary evidence of record, I conclude as a matter of law that:

1. DEM has jurisdiction in this matter.

2. Warren at its 427 Water Street facility violated R.I.G.L. § 46-12-5(b) by discharging pollutants into the waters of this state that were not in compliance with the provisions of Chapter 46-12 of the R.I.G.L. and the Rule and Regulations promulgated thereunder pursuant to the terms and conditions of a Permit.

3. Warren at its 427 Water Street facility violated RIPDES Regulations Rule 14.02(a) by failing to comply with all conditions of its RIPDES Permit in that Warren discharged

pollutants into the waters of this state that were not specifically authorized in the RIPDES Permit or listed and quantified in the RIPDES application.

4. Warren violated the terms and conditions of RIPDES Permit No. RI0100056 in that it failed to develop a Pretreatment Program and to submit the reports that were required by the dates specified in the permit.

5. Warren violated the terms and conditions of its RIPDES Permit No. RI0100056 in that it failed to coduct as complete an analysis of the water samples retrieved on May 27, 1992 for the required EPA Priority Pollutants as required by the Permit.

Therefore, it is hereby

ORDERED

1. That the Notice of Violation and Order and Penalty issued to Respondent dated March 10, 1993 be and is hereby sustained.

2. That upon receipt of the Final Decision and Order Warren shall comply immediately with the requirements set forth in RIPDES Permit No. RI0100056 including but not limited to the submissions as set forth in No. 1 (a through j) of the Order portion of the NOV.

3. That within ten (10) days of receipt of the Final Decision and Order, Warren shall pay an administrative penalty for said violations in the total amount of Forty Thousand Five Hundred Ten Dollars ($40,510). This amount includes the penalty imposed by the NOV as is modified to reflect the additional time that Warren has remained in noncompliance. Said payment shall be made directly to:

Rhode Island Department of Environmental Management
ATTENTION: ROBERT SILVIA
Office of Business Affairs
22 Hayes Street
Providence, RI 02908

I hereby recommend the foregoing Decision and Order to the Director for issuance as Final Decision and Order on this 15th day of April, 1994.

Joseph F. Baffoni

Joseph F. Baffoni
Hearing Officer
Department of Environmental Management
Administrative Adjudication Division
One Capitol Hill, Third Floor
Providence, RI 02908
(401) 277-1357

Entered as a Final Agency Decision and Order this 26th day of April, 1994.

Frederick T. Vincent
for Michael A. Annarummo
Director
Department of Environmental Management
9 Hayes Street
Providence, RI 02908

CERTIFICATION

I hereby certify that I caused a true copy of the within Decision and order to be forwarded, via regular mail, postage prepaid to Anthony DeSisto, Esq., O'Connell, Flaherty & Attmore, 129 Dyer Street, Providence, RI 02908; Michael J. O'Connor, Esq., O'Connell, Flaherty & Attmore, 129 Dyer Street, Providence, RI 02908; Fidele Incollingo, Council Administrative Assistant, Town Hall, Warren, RI 02885 and via interoffice mail to Gary Powers, Esq., DEM/Office of Legal Services, 9 Hayes Street, Providence, RI 02908 on this 26th day of April, 1994.

Jacqueline A. Ballard