

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

OFFICE OF COMPLIANCE & INSPECTION

IN RE: City of Warwick

FILE NO.: OCI-WP 16-15

X-ref RIPDES NO.: RIR040031

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 ("Warwick") has violated certain statutes and/or administrative regulations under the DEM's jurisdiction.

B. Administrative History

The DEM issued informal notices to Warwick on 9 February 2009, 24 April 2009, 9 April 2010 and 5 January 2011 for the failure to comply with its storm water permit. The notices identified the actions required to correct the violations. In May 2013, the DEM met with Warwick to discuss the actions required to correct the violations. To date, Warwick has failed to comply with its storm water permit.

C. Facts

- (1) On 19 December 2003, the DEM issued Rhode Island Pollutant Elimination System General Permit Number RIR040031 entitled "Storm Water Discharge from Small Municipal Separate Storm Sewer Systems and from Industrial Activity at Eligible Facilities Operated by Regulated Small MS4s" (the "General Permit").
- (2) The General Permit authorizes the discharge of storm water from a small municipal separate storm sewer system ("MS4") that is operated by a municipality.
- (3) Part I.C.2 of the General Permit required the MS4 operators to submit a completed Notice of Intent (the "NOI") and Storm Water Management Program Plan (the "SWMPP") to the DEM within 90 days of the effective date of the General Permit to obtain coverage under the General Permit.
- (4) On 17 March 2004, Warwick submitted to the DEM a NOI and SWMPP.

- (5) The General Permit requires Warwick to:
- (a) Submit an amended SWMPP to the DEM within 30 days of notification by the DEM, unless a longer time is granted;
 - (b) Submit an amended SWMPP to the DEM to implement non-structural or structural storm water controls in response to Total Daily Maximum Load (“TMDL”) determinations by the DEM within 180 days of notification by the DEM;
 - (c) Submit an Annual Report (“AR”) to the DEM by March 10th of each year;
 - (d) Implement a public education program;
 - (e) Implement a public participation program;
 - (f) Issue a public notice of the AR and provide an opportunity for public comment;
 - (g) Include the date and copy of the public notice of the AR in the AR;
 - (h) Implement an illicit discharge detection program;
 - (i) Implement a construction site storm water runoff control program;
 - (j) Implement a post construction storm water management program for new development and redevelopment projects;
 - (k) Implement a pollution prevention and good housekeeping program;
 - (l) Take all reasonable steps to minimize or prevent any discharge in violation of the permit which has a reasonable likelihood of adversely affecting human health or the environment; and
 - (m) Properly operate and maintain all facilities and systems of treatment and control to achieve compliance with the storm water pollution prevention plans.
- (6) On 27 January 2005, the DEM issued a letter to Warwick requiring amendments to the SWMPP (the “Deficient SWMPP Notification”). Warwick was required to submit an amended SWMPP to the DEM by 25 March 2005 to address the Deficient SWMPP Notification.
- (7) Warwick did not respond to the Deficient SWMPP Notification and coverage under the General Permit ceased after that date.
- (8) On March 9, 2006, the DEM advised Warwick in a letter that a TMDL water quality restoration plan was completed for Greenwich Bay Waters (the “GB TMDL Notification”). The GB TMDL Notification advised Warwick that storm water from Warwick’s MS4 was contributing to bacteria impairments in Greenwich Bay, its coves and tributaries. Warwick was required to submit an amended SWMPP to the DEM within 180 days to address the GB TMDL Notification.
- (9) On November 14, 2007, the DEM advised Warwick in a letter that a TMDL water quality restoration plan was completed for Gorton Pond, Sand Pond and Warwick Pond (the “Pond TMDL Notification”). The Pond TMDL Notification advised Warwick that storm water from Warwick’s MS4 was contributing to phosphorus impairments in Gorton Pond, Sand Pond and Warwick Pond. Warwick was

required to submit an amended SWMPP to the DEM within 180 days to address the Pond TMDL Notification.

- (10) On 3 September 2008, the DEM received a letter from Warwick in response to the Deficient SWMPP Notification, the GB TMDL Notification and the Pond TMDL Notification (the "September 2008 Letter"). Coverage under the General Permit recommenced on that date.
- (11) On February 18, 2009, the DEM advised Warwick in a letter that a TMDL water quality restoration plan was completed for the Buckeye Brook Watershed (the "BBW TMDL Notification"). The BBW TMDL Notification advised Warwick that storm water from Warwick's MS4 was contributing to bacteria impairments in the Buckeye Brook Watershed. Warwick was required to submit an amended SWMPP to the DEM within 180 days to address the BBW TMDL Notification.
- (12) On 24 March 2009, the DEM reviewed the September 2008 Letter and issued a letter to Warwick stating that the response was deficient (the "March 2009 Letter"). The March 2009 Letter required Warwick to submit an amended SWMPP within 90 days that addressed the deficiencies.
- (13) Warwick failed to respond to the March 2009 Letter and coverage under the General Permit for the storm water discharges to the Greenwich Bay waters, Gorton Pond, Sand Pond, and Warwick Pond ceased on or about 24 June 2009.
- (14) Warwick failed to respond to the BBW TMDL Notification and coverage under the General Permit for the storm water discharges to the Buckeye Brook Watershed ceased on or about 18 August 2009.
- (15) Warwick failed to submit to the DEM ARs for calendar years 2008 and 2009.
- (16) In 2010, the DEM reviewed the status of compliance for Warwick. The review revealed that Warwick failed to:
 - (a) Implement a public education program consistent with the requirements of the General Permit;
 - (b) Implement a public participation program consistent with the requirements of the General Permit;
 - (c) Public notice the AR for reporting years 2008 and 2009 and provide an opportunity for public comment;
 - (d) Implement an illicit discharge detection program as evidenced by:
 - (i) Completion of outfall maps showing the location of all outfalls and the names of all waters that receive discharges from those outfalls;
 - (ii) Submission to the DEM of documents indicating outfall locations;
 - (iii) Submission of a statement or letter from the town solicitor, legal counsel, or an official acting in comparable capacity stating that Warwick has adopted a regulatory mechanism to effectively

- prohibit and enforce illicit discharges and that the mechanism provides the authority to adequately carry out the requirements of General Permit;
- (iv) Implementation of a catch basin and manhole inspection program for illicit connections and non-stormwater discharges; and
 - (v) Completion of 2 dry weather surveys of the storm water collection system and submission of the results to the DEM;
- (e) Implement a construction site storm water runoff program as evidenced by:
- (i) Submission of a statement or letter from the town solicitor, legal counsel, or an official acting in comparable capacity stating that Warwick has adopted a regulatory mechanism to require erosion and sediment control and control of other wastes at construction sites and that the mechanism provides the authority to adequately carry out the requirements of General Permit; and
 - (ii) Development and implementation of procedures for tracking erosion and sediment control permits including status of reviews and inspections;
- (f) Implement a post construction storm water management program for new development and redevelopment projects as evidenced by:
- (i) Submission of a statement or letter from the town solicitor, legal counsel, or an official acting in comparable capacity stating that Warwick has adopted a regulatory mechanism to address post-construction runoff from new development and redevelopment and that the mechanism provides the authority to adequately carry out the requirements of General Permit; and
 - (ii) Development and implementation of procedures for tracking post-construction reviews and inspections;
- (g) Implement a pollution prevention and good housekeeping program as evidenced by submission of procedures for identification, listing, and description of all structural controls in the SWMPP and the AR;
- (h) Inspect 100% of catch basins annually and clean as necessary; and
- (i) Submit an amended SWMPP to address the GB TMDL Notification, Pond TMDL Notification and BBW TMDL Notification.
- (17) Warwick failed to submit ARs to the DEM for calendar years 2010, 2011 and 2012.
- (18) Warwick failed to submit timely ARs for calendar years 2013 and 2014. The AR for calendar year 2013 was submitted on 21 April 2014 (41 days late), and the AR for calendar year 2014 was submitted on 1 May 2015 (50 days late).

- (19) As of the date of the NOV, Warwick has failed to:
- (a) Submit an amended SWMPP that adequately addresses the GB TMDL Notification and Pond TMDL Notification;
 - (b) Submit an amended SWMPP in response to the BBW TMDL Notification;
 - (c) Implement a public education program;
 - (d) Implement a public participation program;
 - (e) Implement an illicit discharge detection program;
 - (f) Implement a construction storm water runoff program;
 - (g) Implement a post construction storm water management program for new development and redevelopment projects;
 - (h) Implement a pollution prevention and good housekeeping program; and
 - (i) Submit the AR for calendar years 2008, 2009, 2010, 2011 and 2012.
- (20) As of the date of the NOV, Warwick has failed to properly operate and maintain all facilities and systems of treatment and control to achieve compliance with the General Permit as evidenced by its failure to implement the following programs: a public education program; a public participation program; an illicit discharge detection program, a construction storm water runoff program, a post construction storm water management program for new development and redevelopment projects, and a pollution prevention and good housekeeping program.
- (21) As of the date of the NOV, Warwick has failed to take all reasonable steps to minimize or prevent any discharge in violation of the General Permit which has a reasonable likelihood of adversely affecting human health or the environment by submitting an amended SWMPP to the DEM that adequately addresses the GB TMDL Notification, the Pond TMDL Notification and the BBW TMDL Notification.

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(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) **DEM's *Water Quality Regulations***
- (a) **Rule 9(A)** – prohibiting the discharge of pollutants into any waters of the State or the performance of 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.
 - (b) **Rule 9(B)** – prohibiting the discharge of pollutants in concentrations that will likely result in the additional degradation of the water quality of an impaired waterbody.
 - (c) **Rule 11(B)** – requiring the discharge of pollutants into the waters of the State that comply with the terms and conditions of a permit issued by DEM.
 - (d) **Rule 13(A)** – prohibiting the discharge of any pollutant into or conducting any activity which will likely cause or contribute pollution to the waters of the State.
 - (e) **Rule 16(A)** – mandating compliance with all terms, conditions, management practices and operation and maintenance requirements set forth in a permit.
- (4) **DEM's *Regulations for the Rhode Island Pollutant Discharge Elimination System ("RIPDES")***
- (a) **Rule 14.02(a)** – requiring the permittee to comply with all conditions of the permit.
 - (b) **Rule 14.05** – requiring the permittee to take all reasonable steps to minimize or prevent a discharge in violation of the permit.
 - (c) **Rule 14.06** – requiring the permittee to maintain in good working order and operate as efficiently as possible all treatment works to achieve compliance with the permit.
 - (d) **Rule 14.17(d)** – requiring the permittee to report monitoring results at the intervals specified in the permit.

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 90 days of receipt of the NOV**, submit to the DEM the AR for calendar years 2008, 2009, 2010, 2011 and 2012 in accordance with the General Permit.
- (2) **Within 90 days of receipt of the NOV**, implement a public education program consistent with the requirements of the General Permit.
- (3) **Within 90 days of receipt of the NOV**, implement a public participation program consistent with the requirements of the General Permit.

- (4) **Within 180 days of receipt of the NOV**, adopt a regulatory mechanism to:
- (a) Effectively prohibit and enforce illicit discharges and provides the authority to adequately carry out the requirements of Part IV.B.3 of the General Permit;
 - (b) Require erosion and sediment control and control of other wastes at construction sites and provides the authority to adequately carry out the requirements of Part IV.B.4 of the General Permit; and
 - (c) Address post-construction runoff from new development and redevelopment projects and provides the authority to adequately carry out the requirements of Part IV.B.5 of the General Permit.
- (5) **Within 180 days of receipt of the NOV**, submit to the DEM a statement or letter from the town solicitor, legal counsel, or an official acting in comparable capacity stating that Warwick has adopted a regulatory mechanism to address the items identified in Paragraph E(4) above. The submission shall include a copy of the relevant sections of said mechanisms.
- (6) **Within 180 days of receipt of the NOV**, identify, locate and list all municipally owned and privately owned structural controls that drain to the MS4 (both baseline existing conditions and as they are constructed) and implement procedures to ensure adequate maintenance practices are followed.
- (7) **By June 15, 2017**, submit to the DEM:
- (a) A complete outfall map showing the location of all outfalls and names and locations of all receiving waters, as well as a tabular listing of all outfalls with latitudes and longitudes and receiving waters for each outfall; and
 - (b) Documentation that confirms all catch basins and manholes have been inspected for illicit connections and non-storm water discharges and include a tabular summary that identifies the structures inspected, date of inspection, findings and corrective actions taken and/or required.

- (8) **By June 15, 2017**, complete the January-April dry weather survey on all outfalls and submit to the DEM a report in the form of a tabular summary that includes at a minimum: outfall identification, date, time, location (latitude/longitude), size and type of outfall (for example, 15 inch diameter concrete pipe), flow (indicate if flowing or not, include flow rate if determined), samples collected (indicate what type of sample), sample results, results of other parameters measured, and sample analysis method (for example, *Standard Methods for the Examination of Water and Wastewater*). Visual observations must include, but are not limited to, odors, sheen, stressed vegetation, coloration/staining, algae growth, sedimentation, scouring and land use in the vicinity of the outfalls. Samples of all dry weather flows from outfalls must be collected and analyzed for temperature, conductivity, pH, and bacteria.
- (9) **By December 15, 2017**, complete the July-October dry weather survey on all outfalls and submit to the DEM a report in the form of a tabular summary that includes at a minimum: outfall identification, date, time, location (latitude/longitude), size and type of outfall (for example, 15 inch diameter concrete pipe), flow (indicate if flowing or not, include flow rate if determined), samples collected (indicate what type of sample), sample results, results of other parameters measured, and sample analysis method (for example, *Standard Methods for the Examination of Water and Wastewater*). Visual observations must include, but are not limited to, odors, sheen, stressed vegetation, coloration/staining, algae growth, sedimentation, scouring and land use in the vicinity of the outfalls. Samples of all dry weather flows from the outfalls must be collected and analyzed for temperature, conductivity, pH, and bacteria.
- (10) **By December 31, 2017**, develop and implement a construction site storm water runoff program for tracking erosion and sediment control permits including status of reviews and inspections.
- (11) **By December 31, 2017**, develop and implement a post construction storm water management program for new development and redevelopment projects for tracking post-construction reviews and inspections.
- (12) **By December 31, 2017**, inspect 100% of catch basins within the MS4 annually and clean as necessary.
- (13) **By December 31, 2017**, submit an amended SWMPP to the DEM to address the GB TMDL Notification, the Pond TMDL Notification and the BBW TMDL Notification.

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:

\$175,000

- (2) The proposed administrative penalty is calculated pursuant to the DEM's *Rules and Regulations for Assessment of Administrative Penalties*, as amended, and must be paid to the DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a 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 Warwick in the NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if the DEM determines that reasonable efforts have been made to comply promptly with the NOV.

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, Warwick 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 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 the DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of the NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
235 Promenade Street, 3RD Floor
Providence, RI 02908-5767

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
- (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Rule 7.00(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:

Mary Kay, Executive Counsel
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767

- (3) Warwick has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) If Warwick fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then the NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to Warwick 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 Warwick 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) Mary Kay at 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 G above.

FOR THE DIRECTOR

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

Date: _____

CERTIFICATION

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

Honorable Scott Avedisian, Mayor
City of Warwick
3275 Post Road
Warwick, RI 02886

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution
 File No.: WP16-15 X-ref Permit No. RIR040031
 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	
D (1) through D (3) – Failure to Comply with Storm Water Permit and Water Quality Regulations	Type I (\$25,000 Max. Penalty)*	Major	\$ 25,000	7 years	\$175,000
SUB-TOTAL					\$175,000

*Maximum Penalties represent the maximum penalty amounts per day, per violation.

ECONOMIC BENEFIT FROM NONCOMPLIANCE
<p>COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT ARE IN COMPLIANCE. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:</p> <ul style="list-style-type: none"> - THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.
<p>A review of the record in this matter has revealed that Warwick 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.</p>

COST RECOVERY
<p>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.</p>
<p>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.</p>

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$ 175,000

PENALTY MATRIX WORKSHEET

CITATION: Failure to Comply with Storm Water Permit and Water Quality Regulations
 VIOLATION NO.: D (1) through (3)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> 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 Section 10 (a) (2) 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:** Warwick failed to comply with numerous requirements of its MS4 storm water permit and failed to comply with the requirements of several TMDL notifications. Compliance with the conditions of a permit and a TMDL notification are primary objectives of the Water Pollution Act, the DEM's Water Quality Regulations, and the DEM's RIPDES Regulations and are of major importance to the regulatory program.
- (B) **Environmental conditions:** Warwick operates a small municipal separate storm sewer system (MS4) and discharges storm water from the MS4 to numerous waters of the State, including Greenwich Bay, Gorton Pond, Sand Pond, Warwick Pond, and the Buckeye Brook watershed. These waters are designated as Class SA, SB or B water bodies of the State. Class SA water bodies are designated for shellfish harvesting for direct human consumption, primary and secondary recreational activities, and fish and wildlife habitat. Class B water bodies are designated for fish and wildlife habitat, primary and secondary contact recreational activities and fish and wildlife habitat. These water bodies are not meeting the water quality standards assigned to each class for bacteria or phosphorus and are listed as impaired.
- (C) **Amount of the pollutant:** Unknown. Varies with rainfall.
- (D) **Toxicity or nature of the pollutant:** Storm water contains a multitude of pollutants, including bacteria, metals, phosphorus, nitrogen and petroleum.
- (E) **Duration of the violation:** About 11 years. Warwick was required to meet numerous conditions of the permit, the first of which was due about March 15, 2005. The DEM only assessed a penalty from January 1, 2010 to present.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

(continued)

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Warwick failed to comply with numerous provisions of its permit and failed to address the TMDL notifications for Greenwich Bay, Gorton Pond, Sand Pond, Warwick Pond and the Buckeye Brook watershed.
- (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:** Warwick has complete control over its MS4 and is well aware of the requirements of its permit. In January 2007 the DEM held a workshop for all MS4 operators and issued letters in January 2009, April 2009, April 2010 and January 2011 advising Warwick of its noncompliance with the permit and the steps necessary to correct the noncompliance. Warwick failed to comply with the letters. In March 2006, November 2007, and February 2009, the DEM issued TMDL notification letters to Warwick for Greenwich Bay, Sand Pond, Gorton Pond and Warwick Pond (collectively), and the Buckeye Brook watershed, respectively. The notification letters required Warwick to take specific actions to address the issues associated with storm water runoff that were contributing to the impairment of these waterbodies. Warwick failed to adequately comply with the letters.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Warwick was advised in the January 2009 and April 2009 letters that failure to comply may result in issuance of a formal enforcement action.

<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