

CERTIFIED MAIL

Sakonnet Point Club
c/o R. Kelly Sheridan, Registered Agent
Roberts Carrol Feldstein
10 Weybosset Street
Providence, RI 02903

Re: **NOTICE OF VIOLATION**

File Name: Sakonnet Point Club
File Number: OC&I/WP 08-010 x-ref RIPDES Permit RI0023558

Dear Mr. Sheridan:

Enclosed please find a Notice of Violation (“NOV”) relating to RIPDES violations on property located at the Sakonnet Point Club (“SPC”) in the Town of Little Compton.

PLEASE READ THIS DOCUMENT CAREFULLY. Pursuant to R.I. General Laws §§ 42-17.1-2(21)(i), 42-17.6-4 and Chapter 42-35 each named Respondent is entitled to request an administrative hearing before the Director or his designee regarding the alleged violations, orders, and/or penalties set forth in this NOV. Further details regarding each Respondent’s right to an administrative hearing are provided within the NOV.

If SPC wishes to request an administrative hearing concerning this NOV, the request must **be made in writing and be received within twenty (20) days of your receipt of this NOV**. The written request for an administrative hearing must be submitted to:

RIDEM – Administrative Adjudication Division (“AAD”)
235 Promenade Street, 3rd Floor
Providence, RI 02908-5767

A copy of the request for an administrative hearing must also be forwarded to:

RIDEM – Office of Legal Services
235 Promenade Street, 4th Floor
Providence, RI 02908-5767

SPC also may wish to arrange for an informal meeting to discuss this NOV with representatives of the Office of Compliance & Inspection (“OC&I”). At that informal meeting, representatives of the OC&I will be prepared to discuss the facts set forth in the NOV, steps that may be necessary to comply with the orders contained therein, pertinent regulatory requirements, as well as issues related to the penalty assessed in this NOV. If agreement on resolution of the enforcement action can be reached, a Consent Agreement may be entered that both resolves the NOV and eliminates the need for an administrative hearing.

Representatives of the OC&I are prepared to discuss a resolution of this matter with SPC; however, please be advised that correspondence with the OC&I, including a request for an informal meeting to discuss this NOV, does not constitute a formal request for a hearing and will not protect the right of SPC to a formal hearing before AAD.

If SPC wishes to arrange for an informal meeting to discuss this NOV, please contact:

David E. Chopy
Supervising Sanitary Engineer
Office of Compliance & Inspection
235 Promenade Street, Room 220
Providence, RI 02908 – 5767
Telephone: (401) 222 – 4700, ext. 7257
or
Anna Zonfrilli, Technical Staff Assistant
Telephone: (401) 222 – 4700, ext. 7431

SPC has a right to be represented by legal counsel before AAD or in an informal meeting with the OC&I. SPC is not obligated to do so, but if SPC plans on having legal representation present at an informal meeting with the OC&I, please inform us at the time of the meeting request and we will make arrangements to have legal counsel present.

Sincerely,

David E. Chopy, Supervising Sanitary Engineer
Office of Compliance and Inspection

Enclosure: Notice of Violation

xc: Office of Legal Services, DEM
Angelo Liberti, Chief, Office of Water Resources, DEM
Eric Beck, Office of Water Resources, DEM
David Turin, EPA

CERTIFIED MAIL

Reagan Construction Corp.
c/o William A. Reagan, Registered Agent
121 Green Lane
Middletown, RI 02842

Re: **NOTICE OF VIOLATION**

File Name: Sakonnet Point Club

File Number: OC&I/WP 08-010 x-ref RIPDES Permit RI0023558

Dear Mr. Reagan:

Enclosed please find a Notice of Violation ("NOV") relating to water pollution violations on property located at the Sakonnet Point Club in the Town of Little Compton.

PLEASE READ THIS DOCUMENT CAREFULLY. Pursuant to R.I. General Laws §§ 42-17.1-2(21)(i), 42-17.6-4 and Chapter 42-35 each named Respondent is entitled to request an administrative hearing before the Director or his designee regarding the alleged violations, orders, and/or penalties set forth in this NOV. Further details regarding each Respondent's right to an administrative hearing are provided within the NOV.

If Reagan Construction Corp. ("Reagan") wishes to request an administrative hearing concerning this NOV, the request must **be made in writing and be received within twenty (20) days of your receipt of this NOV**. The written request for an administrative hearing must be submitted to:

RIDEM – Administrative Adjudication Division ("AAD")
235 Promenade Street, 3rd Floor
Providence, RI 02908-5767

A copy of the request for an administrative hearing must also be forwarded to:

RIDEM – Office of Legal Services
235 Promenade Street, 4th Floor
Providence, RI 02908-5767

Reagan also may wish to arrange for an informal meeting to discuss this NOV with representatives of the Office of Compliance & Inspection (“OC&I”). At that informal meeting, representatives of the OC&I will be prepared to discuss the facts set forth in the NOV, steps that may be necessary to comply with the orders contained therein, pertinent regulatory requirements, as well as issues related to the penalty assessed in this NOV. If agreement on resolution of the enforcement action can be reached, a Consent Agreement may be entered that both resolves the NOV and eliminates the need for an administrative hearing.

Representatives of the OC&I are prepared to discuss a resolution of this matter with Reagan; however, please be advised that correspondence with the OC&I, including a request for an informal meeting to discuss this NOV, does not constitute a formal request for a hearing and will not protect the right of Reagan to a formal hearing before AAD.

If Reagan wishes to arrange for an informal meeting to discuss this NOV, please contact:

David E. Chopy, Supervising Sanitary Engineer
Office of Compliance & Inspection
235 Promenade Street, Room 220
Providence, RI 02908 – 5767
Telephone: (401) 222 – 4700, ext. 7257
or
Anna Zonfrilli, Technical Staff Assistant
Telephone: (401) 222 – 4700, ext. 7431

Reagan has a right to be represented by legal counsel before AAD or in an informal meeting with the OC&I. Reagan is not obligated to do so, but if Reagan plans on having legal representation present at an informal meeting with the OC&I, please inform us at the time of the meeting request and we will make arrangements to have legal counsel present.

Sincerely,

David E. Chopy, Supervising Sanitary Engineer
Office of Compliance and Inspection

Enclosure: Notice of Violation

xc: Office of Legal Services, DEM
Angelo Liberti, Chief, Office of Water Resources, DEM
Eric Beck, Office of Water Resources, DEM
David Turin, EPA

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Sakonnet Point Club
Reagan Construction Corp.**

**No.: OC&I/WP/08-010 x-ref
RIDPES Permit No. RI0023558**

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*, 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 parties ("Respondents") have violated certain statutes and/or administrative regulations under DEM's jurisdiction.

* * * * *

B. Facts

- (1) Sakonnet Point Club ("SPC") is incorporated as a Rhode Island non-profit corporation and is the owner of a yacht club located at 11 Bluff Head Avenue in Little Compton, Rhode Island (the "Property"). The Property includes a desalination water treatment facility (the "Facility") to supply drinking water to the yacht club.
- (2) Reagan Construction Corp. ("Reagan") is incorporated as a Rhode Island business corporation having its principal place of business at 121 Green Lane, Middletown, Rhode Island.
- (3) Reagan was contracted by SPC to construct a wastewater outfall pipe for the Facility.
- (4) SPC submitted an application to DEM for a Rhode Island Pollutant Discharge Elimination System ("RIDPES") permit to discharge treated wastewater from the Facility to the Sakonnet River (the "RIDPES Permit Application").
- (5) On March 6, 2002 DEM received a plan submitted on behalf of SPC as part of the RIDPES Permit Application for the construction of a wastewater outfall pipe from the Facility to the Sakonnet River entitled: "RO Diffuser Profile & Details", sheet 1 of 1, revised March 5, 2002 (the "Outfall Construction Plan"). Said plan was prepared by Mount Hope Engineering.
- (6) On November 29, 2002 DEM issued RIDPES Permit No. RI0023558 to SPC (the "RIDPES Permit"). The RIDPES Permit became effective January 1, 2003 and authorizes SPC to discharge treated wastewater from the Facility to the Sakonnet River. The Outfall Construction Plan was approved by DEM as part of the RIDPES Permit.

- (7) The Sakonnet River, in the area of the discharge, is classified as SA. Waters classified as SA are designated for shellfish harvesting for direct human consumption, primary and secondary contact recreational activities and fish and wildlife habitat.

RIPDES Permit Violations

- (8) The RIPDES Permit requires SPC to:
- (a) Discharge wastewater from the outfall pipe at a total water depth of four (4) meters (approximately thirteen (13) feet) below sea level.
 - (b) Discharge wastewater at a maximum daily flow limit of three thousand (3,000) gallons per day
 - (c) Comply with a limit for pH of 6.5 as a daily minimum.
 - (d) Perform analytical testing one (1) day each month.
 - (e) Provide true, accurate, and complete information to DEM.
- (9) On or about August 17, 2007 DEM received an inquiry from a private citizen on whether the SPC had installed the wastewater outfall pipe in compliance with the approved plan.
- (10) On or about August 29, 2007 DEM requested that SPC provide “as built” drawings of the wastewater outfall pipe.
- (11) On September 17, 2007 DEM received a letter dated September 14, 2007 and “as built” drawing from SPC for the wastewater outfall pipe. The “as built” drawing indicated that the pipe was constructed twenty-three (23) feet below sea level.
- (12) On September 19, 2007 a DEM engineer spoke with Mr. William Reagan of Reagan Construction Corp. Mr. Reagan informed the DEM engineer that the “as built” drawing was incorrect concerning the water depth of the pipe. Mr. Reagan stated that the pipe was constructed nine (9) feet below sea level.
- (13) On October 5, 2007 DEM received a letter from Mount Hope Engineering documenting the findings of a diver who inspected the wastewater outfall pipe on October 3, 2007 (the “dive report”). The dive report stated that the pipe was constructed seven and one half (7.5) feet below sea level.
- (14) On October 9, 2007 DEM received a Discharge Monitoring Report for the quarter of July 1, 2007 through September 30, 2007 (the “Third Quarter DMR”).
- (15) A review of the Third Quarter DMR by DEM revealed that SPC violated the daily minimum limit for pH in August 2007. The reported concentration for pH was 6.1.
- (16) On October 19, 2007 DEM issued a letter to SPC advising SPC that the wastewater outfall pipe was not constructed in accordance with the approved permit and that the discharge of wastewater through the current outfall pipe is not authorized by the RIPDES Permit. The letter required SPC to submit additional documents,

detailed construction drawings, and additional information to DEM to correct the noncompliance.

- (17) On October 26, 2007 DEM received a letter dated October 24, 2007 from SPC in response to the October 19, 2007 letter. The letter documented that:
- (a) Discharges of wastewater occurred on August 1, 2007; August 2, 2007; August 17, 2007; August 20, 2007; August 21, 2007; August 22, 2007; August 23, 2007; August 29, 2007; August 31, 2007; September 18, 2007; September 19, 2007; and September 20, 2007, and
 - (b) A total of three thousand nine hundred sixty (3,960) gallons of wastewater was discharged over the twelve (12) days
- (18) The Third Quarter DMR did not include any reported analytical results for September 2007.
- (19) The Third Quarter DMR included a statement directly below the signature line that there were no discharges in September 2007.
- (20) The Third Quarter DMR was signed by John F. Hurley, the general manager for SPC. Mr. Hurley stated that the Third Quarter DMR was true, accurate, and complete.
- (21) The September 14, 2007 letter submitted by SPC with the "as built" drawing showing the pipe constructed twenty three (23) feet below sea level, which pipe was actually seven and one half (7.5) feet below sea level stated that the drawing was true, accurate, and complete.

Unauthorized Discharge to State Waters

- (22) The Outfall Construction Plan approved by DEM required the installation of two (2) pre-cast concrete blocks to support the wastewater outfall pipe. The plan showed that one concrete block was to be installed at the diffuser and the other concrete block was to be installed at the breakwater.
- (23) DEM received copies of letters dated September 14, 2007 and October 22, 2007 from Mr. Reagan of Reagan Construction Corp. to SPC. The letters stated that a concrete block was installed at the diffuser and that ten (10) cubic yards of concrete was pumped into the water to encase the wastewater outfall pipe from the diffuser to the breakwater [in lieu of installing a concrete block at the breakwater].
- (24) Reagan did not have authorization from DEM to discharge concrete into the waters of the State.
- (25) The concrete that was pumped into the water was removed to facilitate the reconstruction of the wastewater outfall pipe to comply with the RIPDES Permit.

* * * * *

C. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes, regulations, and/or other requirements:

- (1) *The Rhode Island Water Pollution Act*
R.I.G.L. 46-12-5 (b) – requiring the discharge of any pollutant into the waters of the State comply with the terms and conditions of a permit.
- (2) *DEM's Water Quality Regulations*
 - (a) Rule 11.B-requiring the discharge of pollutants into the waters of the State comply with the terms and conditions of an approval issued by DEM.
 - (b) 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 without an approval from the DEM.
 - (c) Rule 16.A-mandating compliance with all terms, conditions, management practices and operation and maintenance requirements set forth in the approval.
- (3) *DEM's RIPDES Regulations*
 - (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 14.09-requiring the permittee to provide accurate information to the DEM.

* * * * *

D. Assessment of Penalty:

- (1) Pursuant to *R.I. Gen. Laws §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:
 - (A) SPC for **Thirty Three Thousand Seven Hundred Fifty Dollars (\$33,750.00)**
 - (B) Reagan for **Six Thousand Two Hundred Fifty Dollars (\$6,250.00)**
- (2) The proposed administrative penalty is calculated pursuant to the *Rules and Regulations for Assessment of Administrative Penalties*, as amended, and must be paid to the Director within 20 days of your receipt of this NOV. Payment shall be in the form of a certified check or money order made payable to the "General Treasury - Water & Air Protection Program Account," and shall be forwarded to the DEM, Office of Management Services, 235 Promenade Street, Providence, Rhode Island 02908-5767, along with a copy of this NOV.

- (3) 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 Director determines that reasonable efforts have been made to comply promptly with this NOV.

* * * * *

E. Right to Administrative Hearing

- (1) Pursuant to *R.I. Gen. Laws §§42-17.1-2(21)(i), 42-17.6-4 and Chapter 42-35*, each named respondent is entitled to request a hearing before the Director or his designee regarding the allegations, orders and/or penalties set forth in Paragraphs B through D, above. **All requests for hearing MUST:**

- (a) Be in writing. See R.I. Gen. Laws §§42-17.1-2(21)(i) and 42-17.6-4(a);
- (b) Be **RECEIVED** by DEM's Administrative Adjudication Division within twenty (20) days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21) and 42-17.7-9;
- (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*; **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 *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters*.

- (2) All written requests for hearing must be forwarded to:

Bonnie Stewart, Clerk
Department of Environmental Management
Administrative Adjudication Division
235 Promenade Street, Room 310
Providence, RI 02908

- (3) A copy of each request for hearing must also be forwarded to:

DEM - Office of Legal Services
235 Promenade Street, Room 450
Providence, RI 02908

- (4) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.

- (5) If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then this 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)(v) and 42-17.6-4(b).*

- (6) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
- (7) This 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, please contact the DEM Office of Legal Services at (401) 222-6607. Technical questions should be directed to Mr. David Chopy of DEM's Office of Compliance and Inspection at (401) 222-4700 ext. 7257.

FOR THE DIRECTOR

Dean Albro, Chief
Office of Compliance & Inspection
Department of Environmental Management

Date

CERTIFICATION

I hereby certify that on the _____ day of _____, 2008, a copy of the Notice of Violation and Order was forwarded to:

**Sakonnet Point Club
c/o R. Kelly Sheridan, Registered Agent
Roberts Carrol Feldstein
10 Weybosset Street
Providence, RI 02903**

**Reagan Construction Corp.
c/o William A. Reagan, Registered Agent
121 Green Lane
Middletown, RI 02842**

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: Office of Compliance and Inspection; Water Pollution

File Name: Sakonnet Point Club

GRAVITY OF VIOLATION SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	No. or Duration of Violations	
C(1), C(2), C(3)(a) & (b); Failure to Discharge Wastewater at Authorized Depth	Type I (\$25,000 Max. Penalty)	Major	\$12,500	1 violation	\$12,500
C(2)(c) & C(3)(a); Failure to Perform Analytical Testing	Type II (\$12,500 Max. Penalty)	Moderate	\$2,500	1 violation	\$2,500
C(2)(c); C(3)(a) & (d); Failure to Provide True, Complete and Accurate Information-As Built Plan	Type I (\$25,000 Max. Penalty)	Moderate	\$6,250	1 violation	\$6,250
C(2)(c); C(3)(a) & (d); Failure to Provide True, Complete and Accurate Information-Third Quarter DMR	Type I (\$25,000 Max. Penalty)	Major	\$12,500	1 violation	\$12,500
C(1), C(2)(a) & (b); Unauthorized Discharge of Concrete to State Waters	Type I (\$25,000 Max. Penalty)	Moderate	\$6,250	1 violation	\$6,250
SUB-TOTAL					\$40,000

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$40,000

PENALTY MATRIX WORKSHEET

File No.: **OC&I/WP/08-010 x-ref RIPDES Permit No. RI0023558**

File Name: **Sakonnet Point Club**

Citation: **Failure to Discharge Wastewater at Authorized Depth**

Violation No.: **C(1), C(2), C(3)(a) & (b)**

TYPE		
<u>X</u> TYPE I <i>DIRECTLY</i> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <i>INDIRECTLY</i> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <i>INCIDENTAL</i> 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 Administrative Penalty Regulations		
<p>(A) The extent to which the act or failure to act is out of compliance. SPC violated the RIPDES Permit by discharging wastewater to an unauthorized water depth. Compliance with the conditions of a permit is a primary objective of the Water Pollution Act, the Water Quality Regulations and the RIPDES Regulations.</p> <p>(B) Environmental conditions. The wastewater from the Facility discharges into the Sakonnet River. The Sakonnet River, in the area of the discharge, is classified as SA. Waters classified as SA are designated for shellfish harvesting for direct human consumption, primary and secondary contact recreational activities and fish and wildlife habitat.</p> <p>(C) The amount of the pollutant. Approximately three thousand nine hundred sixty (3,960) gallons total for the twelve (12) days (see Fact B.17).</p> <p>(D) The toxicity or nature of the pollutant. The RIPDES Permit established monitoring requirements for suspended and dissolved solids and permit limits for pH and copper. The pH of the wastewater discharged on August 31, 2007 [the only day sampling occurred over the twelve (12) days discharges occurred] was 6.1. The RIPDES Permit includes a daily minimum pH limit of 6.5. DEM has no information that the discharges caused any adverse impacts to fish and other aquatic organisms and vegetation</p> <p>(E) The duration of violation. Nine (9) days in August 2007 and 3 days in September 2007.</p> <p>(J) Other factors that may be relevant in determining the amount of the penalty. The RIPDES Permit has a maximum daily flow limit of three thousand (3,000) gallons per day.</p>		
<u> </u> MINOR	<u> </u> MODERATE	<u> </u> X MAJOR

Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		<u>VIOLATION TYPE</u>		
		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 -to- \$25,000 <u>\$12,500</u>	\$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

PENALTY MATRIX WORKSHEET

File No.: **OC&I/WP/08-010 x-ref RIPDES Permit No. RI0023558**

File Name: **Sakonnet Point Club**

Citation: **Failure to Perform Analytical Testing**

Violation No.: **C(2)(c) & C(3)(a)**

TYPE		
<u>TYPE I</u> <i>DIRECTLY</i> related to protecting health, safety, welfare or environment.	<u>X</u> TYPE II <i>INDIRECTLY</i> related to protecting health, safety, welfare or environment.	<u>TYPE III</u> <i>INCIDENTAL</i> 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 Administrative Penalty Regulations		
(A)	The extent to which the act or failure to act is out of compliance. SPC violated the RIPDES Permit by failing to perform monitoring of the wastewater discharge in September 2007. Compliance with the monitoring requirements of a permit is of importance to the regulatory program.	
(B)	Environmental conditions. The wastewater from the Facility discharges into the Sakonnet River. The Sakonnet River, in the area of the discharge, is classified as SA. Waters classified as SA are designated for shellfish harvesting for direct human consumption, primary and secondary contact recreational activities and fish and wildlife habitat.	
(C)	The amount of the pollutant. Approximately three hundred sixty (360) gallons on September 18, 2007, four hundred fifty (450) gallons on September 19, 2007, and two hundred seventy (270) gallons on September 20, 2007. The wastewater was discharged for one hundred twenty (120) minutes, one hundred fifty (150) minutes, and ninety (90) minutes on September 18, September 19, and September 20, respectively at a rate of three (3) gallons per minute.	
(D)	The toxicity or nature of the pollutant. The RIPDES Permit established monitoring requirements for suspended and dissolved solids, pH and copper.	
(E)	The duration of violation. One (1) day.	
(G)	Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance. SPC failed to monitor the wastewater discharge in September 2007. The RIPDES Permit specifies that monitoring must be performed monthly.	
(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. The Respondent had complete control over the violation and had an obligation to ensure that the wastewater that was discharged was monitored in compliance with the RIPDES Permit.	
(J)	Other factors that may be relevant in determining the amount of the penalty. The RIPDES Permit had a maximum daily flow limit of three thousand (3,000) gallons per day.	
<u>MINOR</u>	<u>X</u> MODERATE	<u>MAJOR</u>

Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		<u>VIOLATION TYPE</u>		
		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 -to- \$25,000	\$6,250 -to- \$12,500	\$2,500 -to- \$6,250
	MODERATE	\$6,250 -to- \$12,500	\$2,500 -to- \$6,250 <u>\$2,500</u>	\$1,250 -to- \$2,500
	MINOR	\$2,500 -to- \$6,250	\$1,250 -to- \$2,500	\$250 -to- \$1,250

PENALTY MATRIX WORKSHEET

File No.: **OC&I/WP/08-010 x-ref RIPDES Permit No. RI0023558**

File Name: **Sakonnet Point Club**

Citation: **Failure to Provide True, Complete, and Accurate Information-As Built Plan**

Violation No.: **C(2)(c); C(3)(a) &(d)**

TYPE		
<u> X </u> TYPE I <i>DIRECTLY</i> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <i>INDIRECTLY</i> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <i>INCIDENTAL</i> 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 Administrative Penalty Regulations		
(A)	The extent to which the act or failure to act is out of compliance. SPC violated the RIPDES Permit by failing to provide a true, complete, and accurate “as built” plan to DEM. Failing to provide true, accurate and complete information prevents the regulatory program from carrying out its responsibilities.	
(G)	Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance. SPC failed to provide true, accurate, and complete information to DEM upon submission of an “as built” plan for the wastewater outfall pipe. SPC stated that the plan was true, accurate and complete. SPC did submit true, accurate, and complete information to DEM, but only after further request by DEM for said information. The revised information submitted by SPC stated that the wastewater outfall pipe was not installed at the authorized depth in the RIDPES Permit.	
(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. One of the critical factors used by DEM to determine the permit limit for copper was the depth of the outfall pipe. The “as built” plan identified several changes from the plan approved by DEM on March 5, 2002; however, the “as built” plan failed to show that the water depth of the pipe was seven and one half (7.5) feet instead of the approved four (4) meter (approximately thirteen (13) foot) depth. SPC and its consultants had knowledge of the importance of the correct water depth in the issuance of the permit and had an obligation to ensure that the information provided to DEM was true, accurate and complete.	
(J)	Other factors that may be relevant in determining the amount of the penalty. The “as built” plan was submitted to DEM by John F. Hurley, the general manager for SPC with the following statement: <i>I certify under penalty of law that the documents were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.</i>	
<u> </u> MINOR	<u> X </u> MODERATE	<u> </u> MAJOR

Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		<u>VIOLATION TYPE</u>		
		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 -to-\$25,000	\$6,250 -to- \$12,500	\$2,500 -to- \$6,250
	MODERATE	\$6,250 -to- \$12,500 <u>\$6,250</u>	\$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

PENALTY MATRIX WORKSHEET

File No.: **OC&I/WP/08-010 x-ref RIPDES Permit No. RI0023558**

File Name: **Sakonnet Point Club**

Citation: **Failure to Provide True, Complete, and Accurate Information-Third Quarter DMR**

Violation No.: **C(2)(c); C(3)(a) &(d)**

TYPE		
<u> X </u> TYPE I <i>DIRECTLY</i> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <i>INDIRECTLY</i> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <i>INCIDENTAL</i> 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 Administrative Penalty Regulations		
(A)	The extent to which the act or failure to act is out of compliance. SPC violated the RIPDES Permit by failing to provide a true, complete, and accurate Third Quarter DMR. Filing a true, accurate and complete DMR allows the regulatory program to monitor compliance with the RIPDES Permit. Failing to provide true, accurate and complete information prevents the regulatory program from carrying out its responsibilities.	
(G)	Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance. SPC failed to provide true, accurate, and complete information to DEM upon submission of the Third Quarter DMR. SPC stated that no discharges of wastewater occurred in September 2007. SPC did submit true, accurate, and complete information to DEM, but only after further request by DEM for said information. The revised information submitted by SPC stated that wastewater discharges occurred on three (3) days in September 2007.	
(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. SPC had complete control over the violation and had an obligation to ensure that the information provided to DEM was true, accurate and complete. SPC was aware or should have been aware of the days that discharges occurred from the Facility; however, SPC failed to include this information on the Third Quarter DMR.	
(J)	Other factors that may be relevant in determining the amount of the penalty. The DMR was submitted to DEM by John F. Hurley, the general manager for SPC with the following statement: <i>I certify under penalty of law that the documents were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.</i>	
<u> </u> MINOR	<u> </u> MODERATE	<u> X </u> MAJOR

Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		<u>VIOLATION TYPE</u>		
		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 -to- \$25,000 <u>\$12,500</u>	\$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

PENALTY MATRIX WORKSHEET

File No.: **OC&I/WP/08-010 x-ref RIPDES Permit No. RI0023558**
 File Name: **Sakonnet Point Club**
 Citation: **Discharge of Concrete to Waters of the State**
 Violation No.: **C(1), C(2)(a) & (b)**

TYPE		
<u>X</u> TYPE I	<u> </u> TYPE II	<u> </u> TYPE III
<i>DIRECTLY</i> related to protecting health, safety, welfare or environment.	<i>INDIRECTLY</i> related to protecting health, safety, welfare or environment.	<i>INCIDENTAL</i> 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 Administrative Penalty Regulations		
(A)	The extent to which the act or failure the act or failure to act is out of compliance. Reagan discharged concrete into the Sakonnet River. Preventing the unauthorized discharge of pollutants to the waters of the State is a primary objective of the Water Pollution Act and the Water Quality Regulations.	
(B)	Environmental conditions. The concrete was discharged into the Sakonnet River. The Sakonnet River, in the area of the discharge, is classified as SA (b). Waters classified as SA are designated for shellfish harvesting for direct human consumption, primary and secondary contact recreational activities and fish and wildlife habitat.	
(C)	The amount of the pollutant. Ten (10) cubic yards.	
(D)	The toxicity or nature of the pollutant. Concrete is comprised of inorganic sand, cement, and rock. Concrete can settle to the bottom of the sea floor and smother benthic organisms and high concentrations released to the water column can be acutely toxic to fish and other aquatic organisms and vegetation. DEM has no information that the discharge caused any adverse impacts to fish and other aquatic organisms and vegetation.	
(E)	The duration of the violation. Full duration unknown.	
(F)	The areal extent of the violation. Full extent unknown.	
(G)	Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance. Reagan failed to follow the approved plan in the construction of the wastewater outfall pipe. The plan required the installation of a concrete block to anchor the pipe on the sea floor. Reagan poured concrete on the sea floor over the pipe to anchor it.	
(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. Reagan had complete control over the occurrence of the violation and had an obligation to follow the approved plan for the construction of the wastewater outfall pipe. Reagan was aware of the requirement to construct the concrete block but failed to do so.	
<u> </u> MINOR	<u>X</u> MODERATE	<u> </u> MAJOR

Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		<u>VIOLATION TYPE</u>		
		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 -to- \$25,000	\$6,250 -to- \$12,500	\$2,500 -to- \$6,250
	MODERATE	\$6,250 -to- \$12,500 <u>\$6,250</u>	\$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