89. As a result of the defects and deficiencies in WP's design of the rapid infiltration system, Wolfeboro is unable to fully comply with the DES permit for the disposal of its treated effluent.

90. Wolfeboro will be required to operate the RIB site in a manner inconsistent with WP's design, resulting in significant damages to Wolfeboro, which may include, but are not limited to:

A. consulting, engineering, design, construction, operating, and maintenance costs and fees associated with the construction of RIBs that do not perform as represented, designed, and guaranteed;

B. additional consulting fees;

C. potential fines and penalties from DES;

D. additional costs to comply with future DES mandates;

E. additional unanticipated operating costs;

F. additional future design and construction costs to repair, remediate, replace, or supplement the RIBs; and

G. additional costs and expenses not known at this time.

Factual Allegations Regarding WP's Fraud, Violations of RSA 358-A, and Gross Negligence

91. As part of the professional engineering services that WP agreed to provide to Wolfeboro for the design of a long term means of disposing of Wolfeboro's treated wastewater effluent, WP engaged Jesse Schwalbaum of Watershed Hydrogeologic Inc. to develop a computer model of the Wolf-1A Site in order to determine how much treated wastewater effluent the Site could dispose of if it were used as a location for an RIB system.

92. Subsequently, Mr. Schwalbaum developed a computer model of the Site using data provided by WP.

93. On or about February 4, 2007, Mr. Gary Smith of WP received an email from Mr. Schwalbaum concerning the results of the computer model when simulating WP's recommended design load of 600,000 gpd. A true and accurate copy of the email is attached hereto as Exhibit A. Mr Schwalbaum's email indicated that the computer model yielded unfavorable results, Specifically, the email stated:

> *With 600,000 gpd the mound under the discharge area looks fine, but there appears to be a little bit of 'break out' in the southeast - just west of the power line and the southern extent of sand and gravel.*
>
> *I would feel a lot better if everything looked good on the most conservative run but this is the real world. I could make this breakout go away by opening up the drains, increasing the K values, or reducing the discharge. But we should put our heads together and figure out what (sic) how far out on a limb we want to go and what makes the most sense.*
>
> *I've also included a run with slightly higher K values (wolfe6). There is still a very small area indicating breakout but I don't know how real that is. For all we know there could be springs there already or the bedrock could be lower. I just don't think we have much data there.*

94. Mr. Schwalbaum's email expressly stated that (1) the Site could not handle WP's recommended design load of 600,000 gpd without breakouts occurring, (2) he had been provided with insufficient data by WP to accurately construct the computer model, and (3) he could alter the input data to "make this breakout go away." In other words, Mr. Schwalbaum proposed to WP that he could manipulate the input data to eliminate the problematic results of the computer model if WP and Mr. Schwalbaum decided that this was the preferred course of action.

95. Upon information and belief, WP and Mr. Schwalbaum altered the computer model's input data in the manner described in Mr. Schwalbaum's February 4, 2007 email.

96. Mr. Schwalbaum's email was not copied to Wolfeboro and the contents were never conveyed to Wolfeboro.

97. Two days after Mr. Schwalbaum's email, WP discovered an error in the data used to construct the computer model. Mr. Smith of WP wrote an internal email to fellow WP employees Neil Cheseldine, Gary Smith, and Melissa Hamkins which stated *"I do not want to have this discrepancy picked up by reviewers and have it raise questions on the accuracy of the model and its results."* A true and accurate copy of the email is attached hereto as Exhibit B. It is unknown whether this error was ever corrected. Mr. Smith's email was not sent to Wolfeboro and the contents were never conveyed to Wolfeboro.

98. Just three hours after the discovery of this error, Mr. Peter Atherton of WP responded by asking Mr. Smith of WP when the computer model results would be available so that he could provide them to Wolfeboro. See Exhibit B. Mr. Smith responded that although the results would not be ready for a couple weeks, WP should *"shoot for a loading rate from NHDES greater than N. Conway so we can be the highest in the country!!! Soils can handle it fine."* See Exhibit B. Mr. Smith's statement evidences both WP's intent to push forward with the construction of the RIB system at the Site at all costs and WP's intent to obtain permission from NHDES to discharge flow to the Site in excess of what WP knew, based on the results of the computer model, the Site could handle without break-outs.

99. The next day, Mr. David Ford of Wolfeboro wrote an email to Mr. Atherton asking whether the computer model had yielded any results. Instead of informing Wolfeboro of the fact that WP's computer modeling expert had advised WP that he did not have sufficient data to properly model the Site and despite the fact that the computer model showed that the Site could not dispose of the 600,000 gpd without break-outs occurring, Mr. Atherton wrote *"Hi*

Dave - The model results indicate that the site can take up to 600,000 gpd…" A true and accurate copy of the email is attached hereto as Exhibit C. Mr. Atherton's statement was knowingly false, as there were no modeling results to support this statement. Mr. Atherton's statement was made for the purpose of hiding deficiencies in WP's analysis, shielding WP from liability and continuing the design process so that WP could benefit commercially by having designed the RIB system with the highest loading rate in the United States.

100. On February 14, 2007, Mr. Neil Cheseldine of WP sent an internal confidential email in which he indicated that Mr. Schwalbaum had verbally indicated that the Site had a capacity above 1,000,000 gpd. A true and accurate copy of this email is attached as Exhibit D. Mr. Cheseldine instructed the team not to tell Wolfeboro of the results, only that the *"modeling results continue to look pretty good."* These results are clearly contrary to Mr. Schwalbaum's emails just days before, which indicated breakouts at the Site at a 600,000 gpd loading rate and a lack of data provided by WP.

101. On February 20, 2007, Mr. Cheseldine emailed Mr. Ford of Wolfeboro stating *"The groundwater flow modeling is complete and still looks good in terms of site capacity accommodating future annual average design flow of 600,000 gpd."* A true and accurate copy of this email is attached as Exhibit E. Mr. Cheseldine's statement was knowingly false: there were no modeling results to support this statement. Once again, Mr. Chesedine's statement was made for the purpose of hiding deficiencies in WP's analysis, shielding WP from liability, maintaining its lucrative professional services contract with Wolfeboro, and continuing the project so that WP could benefit commercially from having designed RIB system with the highest loading rate in the United States.

102. On March 7, 2007, Mr. Smith sent an internal email to four WP employees in which he stated that the Site could not handle any load above 600,000: *"It is our opinion the modeling does show breakout will occur in the vicinity of B-7 at flows of 800,000 and 1,000,000 gpd. The memo and Section 9.5 of our report needs to be changed to reflect this finding."* A true and accurate copy of this email is attached as Exhibit F.

103. Mr. Atherton of WP subsequently voiced concern in a reply email that if the Site could not handle these levels of discharge, it would be impossible to achieve an annual average of 600,000 gpd (design capacity for the Site produced by WP and the Site's permitted loading capacity per NHDES). See Exhibit G. In other words, WP knew that the Site could not dispose of the 600,000 gpd annual average without causing damage to the Site. WP never informed Wolfeboro of these results.

104. Mr. Smith responded to Mr. Atherton's email stating *"At this time I do not believe we could pass the straight face test if we try to overstate the sites capability without the modeling results to support this"* and suggested that WP could gather more data and re-run the computer model. See Exhibit F. However, WP did not gather additional data. Instead, it produced its Phase 3 Hydrogeologic Report in March of 2007 in which it stated *"Wright-Pierce and Watershed Hydrogeologic conclude that an annual average treated effluent discharge of 600,000 gpd on the Whitten West site is feasible."* WP knowingly made this false statement to shield itself from liability, to maintain its lucrative professional service contracts with Wolfeboro, and to continue with the project so that WP could benefit commercially from having designed the RIB system with the highest loading rate in the United States.

105. Additional internal WP emails on March 7, 2007 confirm that the computer model showed that there was the potential for breakouts at an 800,000 gpd loading rate. See Exhibit H.

106. On March 3, 2009, the RIB's commenced operation and breakouts were subsequently observed on or about April 20, 2009. On June 16, 2009, Mr. Schwalbaum issued an internal memorandum to WP indicating numerous flaws in the computer model and highlighting the fact that the computer model was constructed without sufficient or adequate data. A true and accurate copy of Mr. Schwalbaum's memorandum is attached hereto as Exhibit I.

107. Despite the content of Mr. Schwalbaum's memorandum, WP has continued to make numerous statements to Wolfeboro (both orally and in writing) that (1) the Site could be repaired, and (2) following repair, the Site could dispose of an annual average flow of 600,000 gpd. These statements were knowingly false. WP made these statements for the purpose of generating additional engineering fees to correct its mistakes. WP also made these knowingly false statements to attempt to shield itself from liability that would arise if Wolfeboro became aware that WP knew as early as 2007 that the Site could not handle the design flow recommended and warranted by WP and that WP had insufficient data to properly model the Site.

COUNT I
Professional Negligence

108. Wolfeboro repeats and re-alleges the allegations in the above paragraphs as if stated fully herein.

109. WP had a duty to provide professional engineering services in accordance with the professional standard of care.

110. WP breached this duty in the following respects: