

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

OFFICE OF COMPLIANCE AND INSPECTION

In Re: The Narragansett Bay Commission

File Nos.: WP 14-95
and RIPDES RI0100072

CONSENT AGREEMENT

A. INTENT & PURPOSE

This Agreement is entered by and between the Rhode Island Department of Environmental Management's Office of Compliance & Inspection ("RIDEM") and the Narragansett Bay Commission (the "Respondent"). This Agreement is entered in accordance with Section 42-17.1-2 *et seq.* of the Rhode Island General Laws ("R.I. Gen. Laws") for the purpose of resolving the alleged violations set forth in a Notice of Violation ("NOV") issued to the Respondent by the RIDEM on 26 July 2016.

B. STIPULATED FACTS

- (1) WHEREAS, the property is located at 102 Campbell Avenue in the city of East Providence, Rhode Island (the "Property"). The Property includes a facility that is engaged in the treatment of wastewater from residential, commercial and industrial sources (the "Facility").
- (2) WHEREAS, on 31 December 2001, the RIDEM issued Rhode Island Pollutant Discharge Elimination System ("RIPDES") Permit No. RI0100072 (the "Permit") to the Respondent. The Permit authorizes the Respondent to discharge treated wastewater from the Facility through outfall 001A to the Seekonk River.
- (3) WHEREAS, on 30 January 2002, the Respondent filed an appeal of the Permit and moved to stay certain conditions of the Permit (the "Appeal").
- (4) WHEREAS, on 1 February 2002, the Permit went into effect for all conditions not stayed pursuant to the Appeal.
- (5) WHEREAS, on 12 January 2004, the RIDEM and the Respondent executed a Consent Agreement to resolve the Appeal (the "2004 Agreement"). The 2004 Agreement remains in full force and effect.
- (6) WHEREAS, on 1 February 2007, the Permit expired.

- (7) WHEREAS, the Respondent submitted a timely and complete Permit reapplication, and pursuant to Rule 13 of the RIDEM's *Regulations for the Rhode Island Pollutant Discharge Elimination System* (the "RIPDES Regulations") the expired Permit remains in full force and effect and is fully enforceable.
- (8) WHEREAS, the Permit and the 2004 Agreement require the Respondent to comply with specific effluent limits (the "Permit Limits").
- (9) WHEREAS, on 12 May 2016, the Respondent submitted to the RIDEM a scope of work to complete a stress test of the Facility (the "Stress Test") as part of the Phase III CSO Abatement Plan that is currently under review by the RIDEM.
- (10) WHEREAS, on 26 July 2016, the RIDEM issued a NOV to the Respondent alleging certain violations of Rhode Island's *Water Pollution Control Act*, the RIDEM's *Water Quality Regulations* and the RIDEM's RIPDES Regulations relating to the failure to comply with the Permit Limits.
- (11) WHEREAS, the RIDEM agrees that the Stress Test will satisfy the Order section of the NOV.
- (12) WHEREAS, in lieu of the Respondent requesting an administrative adjudicatory hearing on the NOV and to effect a timely and amicable resolution of the NOV, the RIDEM and the Respondent hereby agree that it is in the best interest of the parties and in the public interest to resolve the issues raised in the NOV.
- (13) WHEREAS, the RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with Rhode Island's *Water Pollution Control Act* and the RIDEM's *Water Quality Regulations* and RIPDES Regulations.

C. AGREEMENT

- (1) JURISDICTION – The RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over the Respondent.
- (2) FORCE and EFFECT – This Agreement shall have the full force and effect of a final compliance order issued after a full hearing on the merits pursuant to the Administrative Procedures Act, R.I. Gen. Laws Section 42-35-1 et seq. and R.I. Gen. Laws Section 42-17.7-1 et seq. from which no timely appeal was taken, and which is enforceable in Superior Court in accordance with R.I. Gen. Laws Section 42-17.1-2(21)(vi).
- (3) APPLICATION – The provisions of this Agreement shall apply to and be binding upon the RIDEM, the Respondent and its agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for the Respondent in the performance of work relating to or impacting the requirements of this Agreement.

- (4) PENALTY –The Respondent shall perform a Supplemental Environmental Project ("SEP") to satisfy the administrative penalty assessed in the NOV. The SEP involves sponsoring a multi-year shellfish transplant program. The Respondent estimates that the cost of the SEP is \$30,000. The Respondent shall be given a credit of \$12,500 for the SEP (the "SEP Credit"). Specifically, the Respondent shall:
- (a) Administer at least 2 shellfish transplants to take place during calendar years 2016 and 2017. The Respondent shall make \$25,000 in payments to eligible fishermen in line with criterion previously established by the RIDEM in prior transplant programs and perform all ancillary support for the transplants including, but not limited to, bag counting, paperwork and check cutting; and
 - (b) By 31 March 2018, provide a report to the RIDEM that documents that the SEP was completed in accordance with this Agreement.
 - (c) If the Respondent fails to timely complete the SEP, the RIDEM shall notify the Respondent that it intends to rescind the SEP Credit. Within 14 days of Respondent's receipt of written notification by the RIDEM that the RIDEM intends to rescind the SEP Credit, the Respondent shall either complete the SEP or demonstrate that good cause exists for the delay in completing the SEP. If the Respondent fails to complete the SEP or does not demonstrate good cause for the delay within said 14 days, the Respondent shall, within 10 days of the Respondent's receipt of a written notification from the RIDEM, submit to the RIDEM a check in the amount of \$12,500 after which the Respondent shall be under no further obligation to complete the SEP.
 - (d) Penalties that the Respondent agrees to pay in this Agreement are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
 - (e) In the event that the Respondent fails to remit to the RIDEM a payment on or before its due date, that payment will be considered late and the Respondent will be in default. If the payment is not received within 30 days of its due date, interest shall begin to accrue on the entire unpaid balance at the rate of 12 percent per annum. Interest will accrue at this rate beginning with the day after the due date specified in this Agreement until such date all past due installment payments and interest owed are remitted. Interest shall be calculated using the following generally established accounting principle:

Interest due = (number of days late/365) x (0.12) x (amount of unpaid balance)
 - (f) All penalty payments shall be in the form of a certified check, cashiers check, or money order, payable to the ***R.I. General Treasurer – Water and Air Protection Account***. All payments shall be delivered to:

Chief, RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767

D. COMPLIANCE

- (1) EFFECT OF COMPLIANCE – Compliance with and fulfillment of this Agreement shall be deemed to resolve all issues raised in the NOV.
- (2) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve the Respondent of any obligation to comply with any other applicable laws or regulations administered by, through or for the RIDEM or any other governmental entity.
- (3) ADDITIONAL ENFORCEMENT ACTIONS – Upon a determination by the Director that there is a threat to the public health or the environment, or upon discovery of any new information, the RIDEM reserves the right to take additional enforcement actions as provided by statute or regulation, including, but not limited to, the issuance of “Immediate Compliance Orders” as authorized by R.I. Gen. Laws Section 42-17.1-2(21). This Agreement shall not restrict any right to hearing or other right available by statute or regulation that the Respondent may have regarding any new enforcement action commenced by the RIDEM after the execution of this Agreement.
- (4) FUTURE ACTIVITIES AND UNKNOWN CONDITIONS – This Agreement shall not operate to shield the Respondent from liability arising from future activities, as of the date of execution of this Agreement.
- (5) SCOPE OF THE AGREEMENT – The scope of the Agreement is limited to violations alleged in the NOV.
- (6) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

David E. Chopy, Chief
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
222-1360 ext. 7400

Christina Hoefsmit, Esquire
RIDEM Office of Legal Services
235 Promenade Street
Providence, RI 02908-5767
222-6607 ext. 2023

Laurie Horridge,
Director of Executive Affairs & General Counsel
Narragansett Bay Commission
One Service Road
Providence, RI 02905
461-8848 ext. 331

All communications regarding compliance with this Agreement shall be forwarded to the above-referenced addressees by certified mail.

- (7) DEFERRAL – The Director may, for good cause shown, defer any of the compliance dates prescribed herein. Good cause for deferral of any compliance date shall be forwarded to the RIDEM in writing at least 15 days prior to the prescribed deadline.
- (8) AMENDMENT – The Agreement may be amended by mutual agreement of the parties in writing.
- (9) EFFECTIVE DATE – This Agreement shall be deemed entered as of the date of execution by all parties.

IN WITNESS WHEREOF, the undersigned consent to this Agreement in substance and in form.

For The Narragansett Bay Commission

By: _____
Raymond J. Marshall, P.E., Executive Director

Dated: _____

State of Rhode Island, Department of Environmental Management

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

Dated: _____