

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

OFFICE OF COMPLIANCE AND INSPECTION

In Re: Rhode Island Resource Recovery Corporation

File No.: WP 14-10

AAD No.: 14-004/WRE

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 Rhode Island Resource Recovery Corporation (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 administrative enforcement action set forth in a Notice of Violation ("NOV") issued to the Respondent by RIDEM on 14 July 2014.

B. STIPULATED FACTS

- (1) WHEREAS, the property is located at 65 Shun Pike in the town of Johnston, Rhode Island (the "Property").
- (2) WHEREAS, the Property includes a facility that is engaged in the recycling and disposal of solid waste (the "Facility").
- (3) WHEREAS, the Respondent was issued a Rhode Island Pollutant Discharge Elimination System Permit No. RI0023442 (the "Permit") on 28 September 2007 that became effective on 1 January 2008 (the Permit was modified on 26 October 2009). The Permit authorizes the Respondent to discharge storm water from treatment pond 11 ("Pond 11") at the Facility to Cedar Swamp Brook.
- (4) WHEREAS, on 14 July 2014, the RIDEM issued a NOV to the Respondent alleging certain violations of Rhode Island's *Water Pollution Act*, the RIDEM's *Water Quality Regulations*, and the RIDEM's *Regulations for the Rhode Island Pollutant Discharge Elimination System*. The NOV alleged that the Respondent failed to comply with the limits in its Permit for Total Ammonia from Pond 11.
- (5) WHEREAS, the Respondent requested an administrative hearing to contest the NOV. The Respondent does not admit and specifically denies any and all liability.

- (6) WHEREAS, in lieu of proceeding to 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 disputed issues by the terms of the Agreement set forth herein.
- (7) 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 Act*, the RIDEM's *Water Quality Regulations*, and the RIDEM's *Regulations for the Rhode Island Pollutant Discharge Elimination System*.

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. 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)(v).
- (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) **CONDITIONS** –
 - (a) The Respondent has agreed to complete the following actions in settlement of the allegations in the NOV:
 - (i) **Within 90 days of execution of the Agreement**, the Respondent shall submit a standard operating procedure to the RIDEM for the use of aerators in Pond 11 as a temporary measure to achieve compliance with the limits for Total Ammonia in the Permit.
 - (ii) **By 30 September 2015**, the Respondent shall submit a formal report that includes an evaluation of the causes of the exceedances of the Total Ammonia limits in the Permit, the treatment alternatives, and an order of approval application for the preferred treatment alternative, if required. The report must include: an evaluation of the influent sources to Pond 11, a summary of Total Ammonia monitoring data, an evaluation as to the possible causes of the exceedances of the Total Ammonia limits in the Permit; an evaluation of the effectiveness of the temporary aerators using historic pollutant data (e.g., Total Ammonia and BOD); and a schedule to complete

any and all additional work for a preferred treatment alternative, if deemed necessary based on the analysis.

- (iii) The standard operating procedure, required by Section C(4)(a)(i), and the report and application (if necessary), required by Section C (4)(a)(ii), shall be subject to the RIDEM's review and approval. Upon review, the RIDEM shall provide written notification to the Respondent either granting formal approval, or listing the deficiencies. Within 14 days (unless a longer time is specified) of receiving a notification of any specific deficiencies, the Respondent shall submit to the RIDEM information requested by the RIDEM necessary to correct the deficiencies.
 - (iv) Upon RIDEM's approval of the standard operating procedure required by Section C(4)(a)(i), and the order of approval application (if necessary), required by Section C (4)(a)(ii), the Respondent shall comply with the approvals at all times and complete all work in accordance with the approved schedule.
- (b) Penalty – The Respondent shall pay to the RIDEM the sum of \$15,000 in administrative penalties in the form of a Supplemental Environmental Project ("SEP") as follows:
- (i) **By 30 September 2015**, Respondent shall remove the catch basin located at the intersection of Shun Pike and Green Hill Road in the town of Johnston, Rhode Island and replace it with a spillway of suitable materials that will allow storm water to directly enter the sediment basin.
 - (ii) **By 30 September 2015**, Respondent shall remove sediment from the wetland and sediment trap located south of Shun Pike in the area shown in the photographs attached hereto and incorporated herein as Attachment A. Sediment shall be removed using a backhoe or other excavation equipment. The Respondent shall place the equipment such that it does not extend beyond the sediment trap and remove as much sediment as possible from the wetland. The Respondent shall also remove sediment from the sediment trap and reestablish the sediment trap so that it functions properly.
 - (iii) **By 30 September 2016**, Respondent shall remove the sediment trap if the RIDEM provides written notice to the Respondent to do so.

The Respondent estimates that the cost of the SEP is \$17,116.80. The Respondent shall receive a credit of \$15,000 for the SEP (the "SEP Credit") in lieu of paying the \$15,000 administrative penalties referenced above.

- (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 \$15,000 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:

$$\text{Interest due} = (\text{number of days late}/365) \times (0.12) \times (\text{amount of unpaid balance})$$

- (f) All penalty payments shall be in the form of a check 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) FAILURE TO COMPLY – In the event that the Respondent fails to comply with items specified in Section C (4)(a) of the Agreement, the Respondent shall pay a stipulated penalty of \$200 per week for each and every week during which the noncompliance continues, except that the RIDEM may, for good cause shown, defer or reduce such penalty. The payment of a penalty in accordance with this section shall not preclude the RIDEM from seeking any other appropriate remedy (e.g., injunctive relief in Superior Court).
- (3) 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.

- (4) 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 law 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.
- (5) 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.
- (6) SCOPE OF THE AGREEMENT – The scope of the Agreement is only violations alleged in the NOV.
- (7) 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
(401) 222-1360 ext. 7400

Mary E. Kay, Executive Counsel
RIDEM Office of Legal Services
235 Promenade Street
Providence, RI 02908-5767
(401) 222-6607

Brian N. Card, Director of Operations & Engineering
Rhode Island Resource Recovery Corporation
65 Shun Pike
Johnston, RI 02919
(401) 942-1430 x 140

Alexandra K. Callam, Esquire
Hinkley Allen
50 Kennedy Plaza, Suite 1500
Providence, RI 02903-2319
(401) 457-5160

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

- (8) 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.
- (9) AMENDMENT – The Agreement may be amended by mutual agreement of the parties in writing.
- (10) 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 Rhode Island Resource Recovery Corporation

By: _____ (Print Name)

Its: _____ (Title)

Dated: _____

For the State of Rhode Island Department of Environmental Management

David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____