

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

IN RE: Town of West Warwick

**FILE NO.: WP07-10
AAD NO.: 07-009/WRE**

CONSENT AGREEMENT

A. *INTENT & PURPOSE*

This Agreement is entered by and between the Rhode Island Department of Environmental Management, Office of Compliance & Inspection (“RIDEM”) and the Town of West Warwick (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, **with regard only to RIDEM and the Respondent**, the administrative enforcement action set forth in a Notice of Violation (“NOV”) issued to the Respondent, Robert Houghton and Alliance General Contracting by RIDEM on August 31, 2007. This Agreement does not affect any rights or causes of action that RIDEM may possess against Robert Houghton and Alliance General Contracting, arising from or related to the NOV.

B. *STIPULATED FACTS*

- (1) WHEREAS, the Town of West Warwick is the owner and operator of a facility known as the West Warwick Regional Wastewater Treatment Facility located at 1 Pontiac Avenue, West Warwick, Rhode Island (the “Facility”).
- (2) WHEREAS, the Facility receives and treats raw wastewater from the towns of West Warwick and Coventry.
- (3) WHEREAS, the Facility generates sludge as a waste byproduct as part of its regular permitted operations, which sludge must be treated, handled, stored, and distributed pursuant to an approval issued by RIDEM.
- (4) WHEREAS, on August 31, 2007, RIDEM issued an NOV to the Respondent, Robert Houghton and Alliance General Contracting alleging certain violations of RIDEM’s Regulations for Operation and Maintenance of Wastewater Treatment Facilities and RIDEM’s Regulations for Treatment, Disposal, Utilization, and Transportation of Sewage Sludge. The NOV cited the Respondent for its failure to operate the Facility in accordance with RIDEM’s approval and cited the Respondent, Robert Houghton and Alliance General Contracting for the improper use of composted sludge generated at the Facility.

- (5) WHEREAS, the Respondent requested an administrative hearing to contest the NOV.
- (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, 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.
- (7) WHEREAS, RIDEM finds that this Consent Agreement is a reasonable and fair settlement of all claims against Respondent and adequately protects the public interest in accordance with RIDEM's Regulations for Operation and Maintenance of Wastewater Treatment Facilities and RIDEM's Regulations for Treatment, Disposal, Utilization, and Transportation of Sewage Sludge.
- (8) WHEREAS, this Consent Agreement does not release or dismiss the NOV as it pertains to Robert Houghton or Alliance General Contracting.

C. AGREEMENT

- (1) JURISDICTION – 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 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) SITE ACCESS – RIDEM shall forward to the owners of the property identified in Section C(5)(a)(i) of the Agreement (the "Owners") a Site Access Agreement, a copy of which is attached hereto and incorporated herein as Attachment A. Upon execution of the Site Access Agreement by the Owners RIDEM shall promptly forward the Site Access Agreement to the Respondent. The Respondent agrees to execute and forward the original Site Access Agreement to RIDEM prior to commencing the work described below. The Respondent's obligations as set forth herein shall not mature unless and until RIDEM has obtained the Site Access Agreement from the Owners.
- (5) CONDITIONS –

- (a) **Within ninety (90) days of execution of this Agreement**, the Respondent shall complete one of the following actions:
- (i) Remove the composted sludge from property located at 175 Provident Place, Assessor's Plat 318, Lot 175 in the town of Coventry, Rhode Island (the "Property") and properly dispose and/or reuse the composted sludge in accordance with RIDEM's Regulations for Treatment, Disposal, Utilization, and Transportation of Sewage Sludge; **OR**
 - (ii) Blend the composted sludge product on the Property with clean soil and demonstrate that the resultant mixture complies with RIDEM's Regulations for Treatment, Disposal, Utilization, and Transportation of Sewage Sludge; **OR**
 - (iii) Conduct an assessment of the soil on the Property consistent with the soil objectives set forth in Rule 8.02 of RIDEM's Rules and Regulation for the Investigation and Remediation of Hazardous Material Releases to demonstrate that the composted sludge product does not present a risk.
- (b) **Within thirty (30) days completion of the work required in Section C(4)(a) of this Agreement**, the Respondent shall submit a report to RIDEM that describes the actions that were taken and demonstrates that the actions taken comply with RIDEM's regulations.
- (c) The report required in Section C(5)(b) of this Agreement shall be subject to RIDEM's review and approval. Upon review, RIDEM shall provide written notification either granting formal approval or stating the deficiencies therein. **Within thirty (30) days of receiving a notification of deficiencies** (unless a longer time is specified) the Respondent shall submit to RIDEM a modified report or take other necessary actions to correct the deficiencies.
- (6) PENALTY – The administrative penalty assessed in the NOV is hereby waived against the Respondent.

D. COMPLIANCE

- (1) EFFECT OF COMPLIANCE – Compliance with and fulfillment of this Agreement shall be deemed to resolve all issues, with regard to RIDEM and the Respondent, raised in the NOV.
- (2) FAILURE TO COMPLY – In the event that the Respondent fails to comply with the items specified in Sections C(5)(a) through C(5)(c) of this Agreement, the Respondent shall pay a stipulated penalty of Five Hundred Dollars (\$500.00) per month for each and every month during which the noncompliance continues, except that RIDEM may, for good cause shown, defer or reduce such penalty. The

payment of a penalty in accordance with this section shall not preclude 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 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, 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 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 OF COMMUNICATION – Communications regarding this Agreement shall be directed to:

Patrick J. Hogan
Office of Compliance & Inspection
Department of Environmental Management
235 Promenade Street
Providence, RI 02908
(401) 222-4700 extension 7119
- (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 DEM in writing at least fifteen 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 Town of West Warwick

By: _____ (Print Name)

Dated: _____

For the State of Rhode Island Department of Environmental
Management

David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____