

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF COMPLIANCE AND INSPECTION

In Re: Town of Cumberland

File Nos.: OCI-WP-17-56
X-ref RIPDES RIR040035

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 Town of Cumberland ("Cumberland"). 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 Cumberland by the RIDEM on 5 May 2017.

B. STIPULATED FACTS

- (1) WHEREAS, on 19 December 2003, the RIDEM issued Rhode Island Pollutant Elimination System ("RIPDES") General Permit Number RIR040000 entitled "Storm Water Discharge from Small Municipal Separate Storm Sewer Systems and from Industrial Activity at Eligible Facilities Operated by Regulated Small MS4s" (the "General Permit").
- (2) WHEREAS, the General Permit authorizes the discharge of stormwater from small municipal separate storm sewer systems ("MS4s") that are operated by municipalities.
- (3) WHEREAS, on 18 March 2004, Cumberland obtained coverage under the General Permit through the submission of a Notice of Intent ("NOI") and Stormwater Management Program Plan ("SWMPP") to the RIDEM.
- (4) WHEREAS, on 24 June 2005, the RIDEM issued comments to Cumberland on its SWMPP (the "SWMPP Comments").
- (5) WHEREAS, Cumberland failed to respond to the SWMPP Comments and, in accordance with the General Permit, coverage under the General Permit ceased on 24 June 2005.
- (6) WHEREAS, for the purposes of this Agreement, the separate storm sewer system covered under the General Permit means the system as defined in Rule 31(b)(19) of the RIDEM's *Regulations for the Rhode Island Pollutant Discharge Elimination System*, except for the state roads as defined by RI Gen. Laws Chapter 24-8, as amended.

- (7) WHEREAS, on 5 May 2017, the RIDEM issued a NOV to Cumberland 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 violations pertained to the unauthorized discharge of storm water.
- (8) WHEREAS, in lieu of proceeding with an administrative adjudicatory hearing on the NOV and to affect a timely and amicable resolution of the NOV, the RIDEM and Cumberland hereby agree that it is in the best interest of the parties and in the public interest to resolve the issues alleged in the NOV.
- (9) 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 and 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 Cumberland.
- (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, Cumberland and its agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for Cumberland in the performance of work relating to or impacting the requirements of this Agreement.
- (4) **CONDITIONS** –
 - (a) Cumberland shall complete the following actions to comply with the Order section of the NOV:
 - (i) **By 31 August 2017**, adopt an Illicit Discharge Detection and Elimination ("IDDE") ordinance that prohibits illicit connections and non-stormwater discharges to the MS4 and has an adequate mechanism to ensure compliance, and submit to the RIDEM the ordinance and a letter from the Town Solicitor certifying that the ordinance was duly adopted and provides the authority for Cumberland to carry out the requirements of the General Permit;

- (ii) **By 1 December 2017**, revise and/or amend the SWMPP to include procedures to implement the requirements of the General Permit and keep track of records, including, but not be limited to the following:
1. Procedures used to inspect all town-owned catch basins and manholes for illicit connections and non-stormwater discharges;
 2. Procedures for tracing and removing the source of an illicit discharge, including enforcement process, and physical removal of illicit discharges;
 3. Procedures and an implementation schedule (“IDDE Plan”) for prioritizing outfalls or portions of the system for further investigation of illicit discharges, for screening and monitoring of MS4 outfalls and interconnections, investigation of sub-catchment areas, and removal of illicit discharges that is consistent with a document entitled "EPA New England Bacterial Source Tracking Protocol Draft January 2012", which is attached hereto and incorporated herein as Attachment B, and this Agreement. The IDDE Plan must include, but is not limited to, the requirements, guidelines, procedures, and deadlines in a document entitled "IDDE Plan Requirements", which is attached hereto and incorporated herein as Attachment C;
 4. Procedures to implement an Erosion and Sediment Control Review and Inspection Program, including reviewing 100% of plans, issuing and tracking permits, inspecting 100% of projects with 1 or more acres of land disturbance, a system to track compliance and keep track of records, coordination with State programs, and procedures for referral to RIDEM;
 5. Procedures to implement a Post-Construction Review and Inspection Program, including reviewing 100% of plans, issuing and tracking permits, inspecting 100% of projects with 1 or more acres of land disturbance, and a system to track compliance and keep track of records. Develop strategies and procedures for program consistency with the *RI Stormwater Design and Installation Standards Manual*, pre-application meetings, coordination with existing State programs, referral of new industrial activity discharges, post-construction inspection of BMPs, and identifying existing structural BMPs;
 6. Procedures to maintain an inventory of municipally-owned and privately-owned structural controls that discharge to the MS4 (both baseline existing conditions and as they are constructed) and to ensure adequate maintenance practices are followed;
 7. Procedures to maintain records on annual street sweeping;
 8. Procedures to maintain records on inspections and maintenance performed on structural BMPs, storm sewers, and catch basins;

9. Procedures to coordinate inspection of catch basins for sediment accumulation with catch basin inspections for illicit discharges and also for mapping additional portions of the MS4 during illicit discharge investigations;
 10. Procedures for the proper disposal of waste removed from MS4s and waste from other municipal operations, including accumulated sediments, floatables and other debris;
 11. Procedures to ensure that design and construction of new elements of the MS4 and repairs of existing elements of the MS4 undertaken by the operator are assessed for potential water quality impacts and incorporation of additional water quality protection devices or practices;
- (iii) **By 1 December 2017**, complete a dry weather survey (during July 1 – October 31) of all outfalls, including visual observations and sampling for the parameters listed in Attachment C, Part B and as required by the General Permit;
 - (iv) **By 31 December 2017 and annually thereafter**, inspect all catch basins and manholes for sediment accumulation and clean as necessary. Increased inspections and maintenance should be considered in areas contributing to impaired waterbodies. After at least 2 consecutive years of operational data has been collected, Cumberland may submit a request for approval for a lesser frequency of inspection based on evidence indicating the system does not require annual cleaning;
 - (v) **By 31 December 2017**, submit documentation that all town-owned catch basins and manholes have been inspected for illicit connections and non-stormwater discharges;
 - (vi) **Within 60 days of the RIDEM's approval of the IDDE Plan**, implement the IDDE Plan and initiate the investigation of the 7 priority outfalls listed in a document entitled "Total Maximum Daily Load Analysis for Blackstone River Watershed, Pathogen and Trace Metals Impairments, Final Report, February 2013" (the "TMDL"), specifically, outfalls 302, 304 311, 317, 324, 325 and 333. The portion of the TMDL that describes these outfalls is attached hereto and incorporated herein as Attachment D. Investigations shall be completed in accordance with the implementation schedule in the approved IDDE Plan.
 - (vii) **By 10 March 2018**, submit to the RIDEM electronically in an ArcGIS compatible format, using RI State Plane Coordinate system - feet, NAD1983, a GIS map of all outfalls, receiving waters, drainage systems, and the contributing drainage areas to the MS4 outfalls. The map shall include, but not be limited to, locations of all catch basins, manholes, pipes, culverts, swales, and ditches contributing to the MS4 outfalls.

Cumberland shall field verify flow direction and connectivity by, at a minimum, visual observation of the invert elevation of pipes connected to each catch basin, the connectivity of each catch basin with the ultimate discharge/outfall, identify interconnections with other MS4s (for example, the Rhode Island Department of Transportation (the "RIDOT") and the Town of Lincoln);

- (viii) **By 10 March 2018 and annually thereafter**, submit the MS4 Annual Report to the RIDEM. The MS4 Annual Report shall be developed in a manner that fulfills the General Permit and include all the information within the document entitled "Compliance Reporting Requirements", which is attached hereto and incorporated herein as Attachment A;
 - (ix) **By 1 June 2018**, complete a dry weather survey (during January 1 – April 30) of all outfalls, including visual observations and sampling for the parameters listed in Attachment C, Part B and as required by the General Permit;
 - (x) **By 31 October 2018**, establish and maintain an inventory of municipally-owned and privately-owned structural controls that drain to the MS4 (both baseline existing conditions and as they are constructed), and submit that list to the RIDEM for review, along with documentation that Cumberland is implementing procedures to ensure adequate maintenance practices are followed;
 - (xi) **By 31 December 2018**, work with the RIDOT to confirm ownership of the priority outfalls listed in Table 4.2 of the TMDL, which is attached hereto and incorporated herein as Attachment E, determine interconnections between the state and town-owned drainage systems, and submit documentation to the RIDEM.
- (b) No later than 30 days following a date identified in any schedule pursuant to Paragraph C(4)(a) above, Cumberland shall submit either a progress report or, in the case of set deadlines by when specific tasks must be completed, a written notice of whether that deadline was met. In the deadline was not met, the notice shall include the cause of the missed deadline, any remedial actions taken, and the probability of meeting the next scheduled deadline.
- (c) The schedules, reports and other documents that Cumberland is required to submit to the RIDEM in accordance with Paragraph C(4)(a) above are subject to the RIDEM's review and approval. Upon review, the RIDEM shall provide written notification to Cumberland either granting formal approval or stating the deficiencies therein. Within 14 days (unless a longer time is specified) of receiving a notification of deficiencies, Cumberland shall submit to the RIDEM revised schedules, reports, documents or additional information necessary to correct the deficiencies.

- (d) Upon the RIDEM's approval of the schedules, reports and other documents, Cumberland shall complete all work required in accordance with the approved schedule.
- (e) Penalty - In lieu of a penalty for non-compliance, and in consideration that the NOV issued in this matter was not prosecuted or that any determination of liability was reached on the merits, and in further consideration that the parties agree an amicable resolution is in the best interest of the public and will more effectively preserve and enhance the environmental quality of Cumberland's water bodies, two supplemental environmental projects shall be initiated and carried out by Cumberland. For each supplemental environmental project ("SEP"), Cumberland shall be given a credit for the SEP (the "SEP Credit"). The specifications for each SEP are attached hereto and incorporated herein as Attachment F.
 - (i) **By 1 July 2018**, Cumberland shall purchase and put into use a mini-excavator. The mini excavator will be used to get into areas that would otherwise only be accessible with hand tools, such as replacement of drainage pipes in wooded areas or areas where buildings are too close to allow for bigger equipment. The mini excavator will also be used to clear debris from wetlands and outfalls. Cumberland estimates the cost of the mini-excavator is approximately \$55,000. Cumberland shall be given a credit of \$55,000 for this SEP; and
 - (ii) **By 1 July 2018**, Cumberland shall purchase and put into use a camera system to check on the condition of drainage pipes. Cumberland estimates the cost of the camera system is approximately \$46,000. Cumberland shall be given a credit of \$46,000 for this SEP.
- (f) If Cumberland fails to timely complete a SEP, the RIDEM shall notify Cumberland that it intends to rescind the SEP Credit. Within 14 days of Cumberland's receipt of written notification by the RIDEM that the RIDEM intends to rescind the SEP Credit, Cumberland shall either complete the SEP or demonstrate that good cause exists for the delay in completing the SEP. If Cumberland fails to complete the SEP or does not demonstrate good cause for the delay within said 14 days, Cumberland shall, within 10 days of Cumberland's receipt of a written notification from the RIDEM, submit to the RIDEM a check in the amount of the SEP Credit after which Cumberland shall be under no further obligation to complete the SEP.
- (g) Penalties that Cumberland 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.
- (h) In the event that Cumberland fails to remit to the RIDEM a payment on or before its due date, that payment will be considered late and Cumberland 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)

- (i) 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) RELEASE FROM REQUIREMENTS OF THE AGREEMENT – Upon the RIDEM’s determination that Cumberland has satisfactorily complied with the requirements of this Agreement expressed as “annually thereafter”, Cumberland is released from its responsibility to continue to comply with said provisions under this Agreement.
- (3) FAILURE TO COMPLY – In the event that Cumberland fails to comply with items specified in Section C (4)(a) of the Agreement, Cumberland shall pay a stipulated penalty of \$500 per month for each and every month 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).
- (4) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve Cumberland of any obligation to comply with any other applicable laws or regulations administered by, through or for the RIDEM or any other governmental entity.
- (5) 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 Cumberland may have regarding any new enforcement action commenced by the RIDEM after the execution of this Agreement.

- (6) FUTURE ACTIVITIES AND UNKNOWN CONDITIONS – This Agreement shall not operate to shield Cumberland from liability arising from future activities, as of the date of execution of this Agreement.
- (7) SCOPE OF THE AGREEMENT – The scope of the Agreement is only violations alleged in the NOV.
- (8) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to (or their successors):

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 Legal Counsel
RIDEM Office of Legal Services
235 Promenade Street
Providence, RI 02908-5767
(401) 222-6607, ext. 2304

Robert A. Anderson, Jr., P.E., Director of Public Works
Town of Cumberland
45 Broad Street
Cumberland, RI 02864
(401) 728-2400, ext. 143

Christopher R. Alger, Esq., Assistant Town Solicitor
Town of Cumberland
45 Broad Street
Cumberland, RI 02864
(401) 728-2400, ext. 130

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

- (9) 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.
- (10) AMENDMENT – The Agreement may be amended by mutual agreement of the parties in writing.
- (11) 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 Town of Cumberland

By: _____
Honorable William S. Murray, Mayor

Dated: _____

*For the State of Rhode Island Department of
Environmental Management*

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

Dated: _____