

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

**OFFICE OF COMPLIANCE AND INSPECTION**

In Re: Town of Johnston

File Nos.: WP 10-092 X-ref  
RIPDES RIR040000

AAD No.: 10-009/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 the Town of Johnston (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 the RIDEM on 22 November 2010.

**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 storm water from small municipal separate storm sewer systems ("MS4s") that are operated by regulated small MS4s.
- (3) WHEREAS, on 31 October 2005 the Respondent obtained coverage under the General Permit.
- (4) WHEREAS, on 22 November 2010 the RIDEM issued a NOV to the Respondent alleging certain violations of Rhode Island's Water Pollution Act and the RIDEM's *Water Quality Regulations* and RIDEM's *Regulations for the Rhode Island Pollutant Discharge Elimination System*. The violations pertained to the Respondent's failure to comply with the General Permit.

- (5) WHEREAS, the Respondent requested an administrative hearing to contest the NOV.
- (6) WHEREAS, the Respondent complied with the paragraphs (1) through (4) of the Order section of the NOV.
- (7) 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 issues raised in the NOV.
- (8) 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 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 shall complete the following actions in lieu of complying with the remaining Order section of the NOV:
    - (i) **By 31 April 2014** the Respondent shall submit to the RIDEM its Annual Report for calendar years 2012 and 2013 in accordance with the General Permit.
    - (ii) **By 30 June 2014** the Respondent shall investigate the illicit discharge of untreated sewage into the storm water drainage system in front of 32 Salina Avenue during rainstorms and submit to the RIDEM a report of its findings. The investigation shall include a video camera inspection of the sewerage system on Salina Avenue and the connection from 32 Salina

Avenue to the sewerage system. If the investigation determines that action is required to correct the illicit discharge, the report must identify the actions necessary and a schedule to complete the work. The Respondent shall provide a copy of the video camera inspection to the RIDEM with the report.

(iii) **By 31 December 2014** the Respondent shall submit to the RIDEM the following:

1. A spreadsheet that includes the location of all storm water outfall pipes that are owned by the Respondent (the “Outfall Pipes”) (39 currently identified) and names and locations of all receiving waters, with latitudes and longitudes and receiving waters for each pipe. Documentation shall also include procedures used to identify additional Outfall Pipes. This information shall be submitted in electronic and paper format using the form attached and incorporated herein as Attachment A;
2. Documents confirming that all catch basins and manholes (889 currently identified) have been inspected for illicit connections and non-storm water discharges and include a tabular summary that identifies the structures inspected, date of inspection, findings and corrective actions taken and/or required. Documentation shall also include procedures used to identify additional catch basins and manholes. This information shall be submitted in electronic and paper format using the form attached and incorporated herein as Attachment B; and
3. A report on the findings of 1 dry weather survey on the Outfall Pipes that must be completed between July and October. The report must be in the form of a tabular summary that includes at a minimum: outfall identification, date, time, location (latitude/longitude), size and type of outfall (for example, fifteen inch diameter concrete pipe), flow (indicate if flowing or not, include flow rate if determined), samples collected (indicate what type of sample), sample results, results of other parameters measured, and sample analysis method (for example, *Standard Methods for the Examination of Water and Wastewater*). Visual observations must include, but are not limited to, odors, sheen, stressed vegetation, coloration/staining, algae growth, sedimentation, scouring and land use in the vicinity of the outfalls. Samples of all dry weather flows from outfalls must be collected and analyzed for temperature, conductivity, pH, and bacteria. This information shall be submitted using Attachment A.

(iv) **By 1 July 2015** the Respondent shall submit to the RIDEM an amended Stormwater Pollution Management Program (“SWMPP”) to implement nonstructural and structural storm water controls in response to the Total Daily Maximum Load (“TMDL”) restoration plan that the RIDEM completed for the Woonosquatucket River. The amended SWMPP shall include the following elements:

1. **By 1 January 2016** begin street sweeping more than once annually within the eastern area of Johnston located between Route 128 and the Woonosquatucket River where significant amounts of industrial, commercial and high-density residential areas exist.
2. **By 1 January 2016** conduct an investigation to identify and eliminate the sources contributing to suspected illicit discharges within the following areas:
  - a. Mancini Drive outfall catchment area identified as W6 outfall (the “W6 Outfall”);
  - b. Within the catchment area to the outfall on Riverside Drive near the intersection with Kenton Street identified as S1 outfall (the “S1 Outfall”), a small pipe in front of 17 DiPonte Drive; and
  - c. Within the catchment area to the outfall at the route 44 bridge identified as S2 outfall (the “S2 Outfall”), a pipe at the top of Dante Street.
3. **By 1 January 2016** implement a strategy to ensure that dumpsters and other commercial receptacles located near the Woonosquatucket River are covered and regularly emptied.
4. **By 1 July 2016** submit to the RIDEM an assessment of the potential of each of the outfalls in the areas identified below to discharge pathogens and dissolved metals and the findings of an analysis to prioritize the outfalls for implementing controls:
  - a. W6 Outfall;
  - b. S1 Outfall;
  - c. S2 Outfall; and
  - d. Any outfalls in Johnston located east of Route 128 and draining to the Woonosquatucket River that are 24 inches or greater in diameter or that drain catchments having significant urban, commercial , or industrial land uses.

The priority assessment must be conducted consistent with TMDL provisions.

5. **By 1 July 2016** complete the remaining mapping of the S1 Outfall catchment area within the town of Johnston by determining the pipe origins in Smithfield catch basin 247 CB-05 and DOT catchbasin 999.
6. **By 1 July 2017** submit to the RIDEM the identity of one of the outfalls identified in Section C(4)(a)(iv)(4) above that the Respondent will commit to undertake the necessary analysis of the catchment area to determine suitable locations and best management practices (“BMPs”) to achieve reduction of pathogens and dissolved metals to the maximum extent practicable (the “Catchment Area Analysis”).
7. **By 1 July 2019** complete the design and construction of BMPs identified in the Catchment Area Analysis for the selected priority outfall.
  - (b) The schedules, reports and other documents that the Respondent 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 the Respondent either granting formal approval or stating the deficiencies therein. Within 14 days (unless a longer time is specified) of receiving a notification of deficiencies, the Respondent shall submit to the RIDEM revised schedules, reports, documents or additional information necessary to correct the deficiencies.
  - (c) Upon the RIDEM’s approval of the schedules, reports and other documents, the Respondent shall complete all work required in accordance with the approved schedule.
  - (d) Penalty – The administrative penalty assessed in the NOV against the Respondent is waived.

#### ***D. COMPLIANCE***

- (1) EFFECT OF COMPLIANCE – The parties acknowledge that this Agreement does not address all the issues in the NOV and that the signing of this Agreement does not preclude the RIDEM from taking further enforcement action to enforce the violations alleged in the NOV. The RIDEM agrees that it will take no action to enforce the violations alleged in the NOV for 5 years from the date of execution of the Agreement.
- (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 \$500.00 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).

- (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

**Joseph J. LoBianco, Esquire**

RIDEM Office of Legal Services  
235 Promenade Street  
Providence, RI 02908-5767  
(401) 222-6607 ext. 2302

**William J. Conley, Jr., Esquire**

670 Willett Avenue  
East Providence, RI 02915  
(401) 437-0905

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 Town of Johnston*

\_\_\_\_\_  
Mayor Joseph Polisena

Dated: \_\_\_\_\_

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

\_\_\_\_\_  
David E. Chopy, Chief  
Office of Compliance and Inspection

Dated: \_\_\_\_\_