

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

**OFFICE OF COMPLIANCE AND INSPECTION**

In Re: The Narragansett Bay Commission      File Nos.: OCI-WP-15-79, OCI-WP-15-80  
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 ("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 two Notices of Violation ("NOVs") issued to Respondent by RIDEM on 10 September 2019.

**B. STIPULATED FACTS**

- (1) WHEREAS, Respondent owns and operates a wastewater collection and treatment system in the City of East Providence, Rhode Island (the "Facility")
- (2) WHEREAS, on 10 September 2019, RIDEM issued NOVs to Respondent alleging certain violations of Rhode Island's *Water Pollution Act*, the Rhode Island Code of Regulations titled *Water Quality Regulations (250-RICR-150-05-1)* (the "Water Quality Regulations") and the Rhode Island Code of Regulations titled *Regulations for the Rhode Island Pollutant Discharge Elimination System (250-RICR-150-10-1)* (the "RIPDES Regulations").
- (3) WHEREAS, in lieu of requesting an administrative adjudicatory hearing on the NOVs and to effect a timely and amicable resolution of the NOVs, RIDEM and 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 NOVs.
- (4) 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 Water Quality Regulations and the RIPDES Regulations.

### **C. AGREEMENT**

- (1) JURISDICTION – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over 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 RIDEM, Respondent and its agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for Respondent in the performance of work relating to or impacting the requirements of this Agreement.
- (4) PENALTY – Respondent shall perform 2 Supplemental Environmental Projects (“SEPs”) to satisfy the administrative penalties assessed in the NOV’s and shall be given a credit for each of the SEPs (the “SEP Credit”).
  - (a) Administer at least 1 shellfish transplant to take place during calendar year 2020. Respondent shall make \$20,000 in payments to eligible fishermen in line with criterion previously established by 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 provide a report to RIDEM by 31 December 2020 that documents that the SEP was completed in accordance with this Agreement. Respondent shall receive a SEP Credit of \$20,000;
  - (b) By 30 September 2021, install a second emergency generator at the Facility as described in Attachment A, which is attached hereto and incorporated herein and provide documentation to RIDEM within 30 days of the generator becoming operational that the SEP was completed in accordance with this Agreement. Respondent shall receive a SEP Credit of \$25,000;
  - (c) If Respondent fails to timely complete the SEP, RIDEM shall notify Respondent that it intends to rescind the SEP Credit. Within 14 days of Respondent’s receipt of written notification by RIDEM that RIDEM intends to rescind the SEP Credit, Respondent shall either complete the SEP or demonstrate that good cause exists for the delay in completing the SEP. If Respondent fails to complete the SEP or does not demonstrate good cause for the delay within said 14 days, Respondent shall, within 10 days of Respondent’s receipt of a written notification from RIDEM, submit to RIDEM a check in the amount of the SEP Credit after which Respondent shall be under no further obligation to complete the SEP;
  - (d) Penalties that 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) If Respondent fails to comply with subsections C(4)(a) or C(4)(b) of this Agreement and fails to remit to RIDEM a payment pursuant to subsection C(4)(c) of this Agreement on or before its due date, that payment will be considered late and 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);

and

- (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:

Administrator, 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 NOVs and will satisfy all administrative penalties assessed pursuant to the NOVs.
- (2) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve 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 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 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 NOVs.

- (6) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

**David E. Chopy, Administrator**  
RIDEM Office of Compliance and Inspection  
235 Promenade Street  
Providence, RI 02908-5767  
222-1360 ext. 7400  
[david.chopy@dem.ri.gov](mailto:david.chopy@dem.ri.gov)

**Susan Forcier, Esquire**  
RIDEM Office of Legal Services  
235 Promenade Street  
Providence, RI 02908-5767  
222-6607 ext. 2305  
[susan.forcier@dem.ri.gov](mailto:susan.forcier@dem.ri.gov)

**Jennifer J. Harrington, Esquire, General Counsel**  
Narragansett Bay Commission  
One Service Road  
Providence, RI 02905  
461-8848 ext. 420  
[jharrington@narrabay.com](mailto:jharrington@narrabay.com)

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 RIDEM in writing at least 15 days prior to the prescribed deadline.
- (8) AMENDMENT – The Agreement may be amended by agreement of the parties in writing.
- (9) EFFECTIVE DATE – This Agreement shall be deemed entered as of the date of execution by all parties.

[SIGNATURES ON FOLLOWING PAGES]

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

*The Narragansett Bay Commission*

By: \_\_\_\_\_  
Laurie Horridge, Executive Director

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

*State of Rhode Island, Department of Environmental Management*

By: \_\_\_\_\_  
David E. Chopy, Administrator  
DEM Office of Compliance and Inspection

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