

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

OFFICE OF COMPLIANCE AND INSPECTION

In Re: Waterline Systems, LLC

**OC&I File No.: AIR 09-02
AAD File No.: 10-001/ARE**

CONSENT AGREEMENT

A. INTENT & PURPOSE

This Agreement is entered by and between the Rhode Island Department of Environmental Management (“RIDEM”) Office of Compliance & Inspection and Waterline Systems, LLC (the “Respondent”). This Agreement is entered in accordance with Section 42-17.1-2 *et seq.* of the Rhode Island General Laws (“R.I.G.L.”) for the purpose of resolving the administrative enforcement action set forth in the Notice of Violation (“NOV”) issued to the Respondent by RIDEM on 30 December 2009.

B. STIPULATED FACTS

- (1) WHEREAS, the subject facility is located at 225 Alexander Road, Portsmouth, Rhode Island (the “Facility”) and is operated by the Respondent.
- (2) WHEREAS, on 30 December 2009, RIDEM issued a NOV to the Respondent alleging certain violations of RIDEM *Air Pollution Control Regulation No. 9 entitled, “Air Pollution Control Permits”*.
- (3) WHEREAS, the Respondent requested an administrative hearing to contest the NOV.
- (4) WHEREAS, the Respondent has complied with the Order section of the NOV.
- (5) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and in order to affect 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.
- (6) WHEREAS, RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the Rhode Island Clean Air Act, Chapter 23-23, R.I.G.L. § 42-17.1 and 42-17.6 *et seq.* and the RIDEM Air Pollution Control Regulations adopted in accordance thereto.

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 of the Director issued after a full hearing on the merits pursuant to the Administrative Procedures Act, R.I.G.L. § 42-35-1 et seq. from which no timely appeal was taken, and which is enforceable in Superior Court in accordance with R.I.G.L. § 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) CONDITIONS –
 - (a) Penalty – The Respondent shall pay to RIDEM the sum of Eight Thousand Seven Hundred Sixty Seven Dollars (\$8,767.00) in administrative penalties.
 - (b) Penalty Schedule – The total administrative penalty, Eight Thousand Seven Hundred Sixty Seven Dollars (\$8,767.00), shall be paid as follows:
 1. The Respondent shall pay to the RIDEM the sum of One Thousand Seven Hundred Sixty Seven Dollars (\$1,767.00) upon Respondent’s execution of this Consent Agreement.
 2. The remainder of the penalty, Seven Thousand Dollars (\$7,000.00), shall be paid to RIDEM in seven equal and consecutive installments of One Thousand Dollars (\$1,000.00) on or before 1 November 2010, 1 December 2010, 1 January 2011, 1 February 2011, 1 March 2011, 1 April 2011, and 1 May 2011.
 3. Penalties that the Respondent agrees to pay in this Consent Agreement are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
 4. In the event that the Respondent fails to remit to the RIDEM an installment 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 thirty days of its due date, interest shall begin to accrue on the unpaid balance at the rate of twelve 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 payment(s) and interest owed are remitted.

Interest shall be calculated using the following generally established accounting principle:

(number of days late/365) x (0.12) x (entire balance of unpaid balance) =
interest due

5. All penalty payments shall be in the form of a certified check, payable to the R.I. General Treasurer – Water and Air Protection Account. All payments shall be delivered, along with this Agreement, 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) 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.
- (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, 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.G.L. § 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.
- (4) 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.
- (5) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

Christopher John, Supervising Air Quality Specialist
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360 ext. 7023

Communications forwarded to the above-referenced address by certified mail shall be deemed received.

- (6) 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 fifteen days prior to the prescribed deadline.
- (7) AMENDMENT – The Agreement may be amended by mutual agreement of the parties in writing.
- (8) 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 Waterline Systems, LLC

Name and Title

Date: _____

In _____, on the _____ day of _____, 2010, before me personally appeared _____ (signing party's name), to me known and known by me to be the party executing the foregoing Consent Agreement on behalf of Waterline Systems, LLC and he/she acknowledged said instrument executed by him/her to be his/her free act and deed.

Notary Public

My Commission expires: _____

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

David E. Chopy, Chief
Office of Compliance and Inspection

Date: _____