

**STATE OF RHODE ISLAND  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

**OFFICE OF COMPLIANCE AND INSPECTION**

**In Re: City of Pawtucket**

**File No.: OCI-WP-15-80  
and RIPDES RI0100072**

**AAD No.: 20-004/WRE**

**CONSENT AGREEMENT**

**A. INTENT & PURPOSE**

This Agreement is entered by and between the Rhode Island Department of Environmental Management (“RIDEM”) and the City of Pawtucket, Rhode Island (“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 a Notice of Violation (“NOV”) issued to Respondent by RIDEM on 10 March 2020.

**B. STIPULATED FACTS**

- (1) WHEREAS the Narragansett Bay Commission (“NBC”) owns and operates a wastewater collection and treatment system (the “Facility”).
- (2) WHEREAS Respondent owns and operates a wastewater collection system (“WWCS”) that discharges to the Facility. The WWCS includes a sewerage pipe located on Middle Street that extends from Blackstone Avenue to Roosevelt Avenue in the City of Pawtucket, Rhode Island (the “Middle Street Pipe”).
- (3) WHEREAS on 31 December 2001, RIDEM issued Rhode Island Pollutant Discharge Elimination System Permit No. RI0100072 (the “Permit”) to NBC.
- (4) WHEREAS the Permit authorized NBC to discharge wastewater from combined sewer outfall (“CSO”) 203A to the waters of the State.
- (5) WHEREAS the Permit prohibited a dry weather overflow (“DWO”) from CSO 203A.
- (6) WHEREAS on 10 March 2020, RIDEM issued a NOV to Respondent alleging certain violations of Rhode Island's *Water Pollution Act* and *Water Quality Regulations (250-RICR-150-05-1)* involving a DWO from CSO 203A caused by a blockage in the Middle Street Pipe.

- (7) WHEREAS Respondent requested an administrative hearing with the Administrative Adjudication Division (“AAD”) to contest the NOV.
- (8) WHEREAS AAD is a division of RIDEM.
- (9) WHEREAS on or about 8 May 2020, Respondent submitted a report to RIDEM in response to the NOV.
- (10) WHEREAS NBC will be replacing approximately 850 feet of the Middle Street Pipe, which is scheduled to begin in April 2022 (the “NBC Project”). The project scope is attached hereto and incorporated herein as Attachment A.
- (11) 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 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.
- (12) WHEREAS 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 *Water Quality Regulations (250-RICR-150-05-1)*.
- (13) WHEREAS Respondent finds that this Agreement is reasonable and fair and enters into this Agreement with full knowledge and understanding of its terms.

### **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) CONDITIONS –

- (a) **Within 180 days of execution of the Agreement**, Respondent shall submit to RIDEM a report prepared by an independent consultant on the findings of an inspection of the Middle Street Pipe. The inspection must include a camera survey of the entire length of the Middle Street Pipe (from Blackstone Avenue to Roosevelt Avenue), except for the section that will be replaced as part of the NBC Project, recommendations to correct any deficiencies identified and a schedule to correct the deficiencies.
- (b) The report described in subsection C(4)(a) 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 14 days (unless a longer time is specified) of receiving a notification of deficiencies, submit to RIDEM additional information to correct the deficiencies.
- (c) Penalty – Respondent shall pay **\$12,500** in administrative penalties as follows:
  - (i) **Upon execution of this Agreement by Respondent**, Respondent shall submit a check to RIDEM for \$12,500 to perform a Supplemental Environmental Project (the “SEP”). The SEP involves 1 shellfish transplant to take place in calendar year 2022.
  - (ii) The SEP shall be administered by NBC.
  - (iii) The check shall be made payable to the Narragansett Bay Commission and the memo of check shall state: “Supplemental Environmental Project Shellfish Transplant Funding”.
  - (iv) NBC shall make payments to eligible fishermen in line with criterion previously established by RIDEM in prior transplant programs and perform all ancillary support for the transplant including, but not limited to, bag counting, paperwork and check cutting.
  - (v) 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.
  - (vi) The check 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 NOV.
- (2) FAILURE TO COMPLY – If Respondent fails to comply with the items specified in subsections C (4)(a) or (b) of the Agreement, Respondent shall pay a stipulated penalty of \$1,000 per month for each 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 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 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 RIDEM after the execution of this Agreement.
- (5) 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.
- (6) SCOPE OF THE AGREEMENT – The scope of the Agreement is limited to violations alleged in the NOV.
- (7) 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  
(401) 222-1360 ext. 2777400  
[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  
(401) 222-6607  
[susan.forcier@dem.ri.gov](mailto:susan.forcier@dem.ri.gov)

**Frank J. Milos, Esquire**  
City of Pawtucket  
137 Roosevelt Avenue  
Pawtucket, RI 02860  
(401) 728-0500 (Ext. 274)  
[FMilos@PAWTUCKETRI.com](mailto:FMilos@PAWTUCKETRI.com)

**David Clemente, Public Works Director**  
City of Pawtucket  
137 Roosevelt Avenue  
Pawtucket, RI 02860  
(401) 728-0500  
[DClemente@PAWTUCKETRI.com](mailto:DClemente@PAWTUCKETRI.com)

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 RIDEM in writing at least 15 days prior to the prescribed deadline.
- (9) AMENDMENT – The Agreement may be amended by 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 Respondent

By: \_\_\_\_\_  
Honorable Donald R. Grebien, Mayor

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

For the State of Rhode Island, Department of  
Environmental Management

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

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