

**EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR
ADMINISTRATIVE ACTIONS**

This form was originated by Wanda I. Santiago for

Kathleen E. Woodward
Name of Case Attorney

3/12/10
Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number CWA-01-2009-0074

Site-specific Superfund (SF) Acct. Number _____

☒ This is an original debt ☐ This is a modification

Name and address of Person and/or Company/Municipality making the payment:

City of Fall River
1 Government Center
Fall River, MA 02722

Total Dollar Amount of Receivable \$ 4,250.00

Due Date: 4/8/10

SEP due? Yes ☒ No ☐ Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

1ST \$ _____ on _____

2nd \$ _____ on _____

3rd \$ _____ on _____

4th \$ _____ on _____

5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office

Phone Number

RECEIVED

MAR 09 2010

EPA ORC WS

Office of Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

In the Matter of

CITY OF FALL RIVER
1 Government Center
Fall River, Massachusetts 02722

Respondent

Docket No. CWA-01-2009-0074

CONSENT AGREEMENT AND
FINAL ORDER

This Consent Agreement and Final Order ("CAFO") is issued under the authority granted to the U.S. Environmental Protection Agency ("EPA") by Section 309(g) of the Clean Water Act (the "Act"), 33 U.S.C. § 1319(g), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," at 40 C.F.R. Part 22 ("Part 22 Rules").

I. PRELIMINARY STATEMENT

1. EPA initiated this proceeding against the Respondent pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), by filing an administrative Complaint against Respondent, Docket No. CWA-01-2009-0074 (the "Complaint"), on August 12, 2009.
2. The complete factual and jurisdictional basis for proposing the assessment of a civil penalty is set forth in the Complaint and is incorporated herein by reference.

CONSENT AGREEMENT AND FINAL ORDER
U.S. EPA Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Docket No. CWA-01-2009-0074

3. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and in accordance with 40 C.F.R. § 22.38(b), the Commonwealth of Massachusetts has been given an opportunity to consult with EPA regarding the assessment of the administrative penalty for CWA violations against Respondent.
4. Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), provides that, prior to issuing an order assessing a penalty under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA must provide public notice of, and reasonable opportunity to, comment on the proposed issuance of such order. EPA has satisfied this requirement by providing public notice of, and reasonable opportunity to comment on, the proposed penalty on August 24, 2009.

II. CONSENT AGREEMENT

5. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint.
6. Respondent waives any defenses they might have as to jurisdiction and venue, and, without admitting or denying the facts and violations alleged in the Complaint, consent to the terms of this CAFO.

III. WAIVER OF RIGHTS

7. Respondent hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in the Complaint, and consent to the issuance of the Final Order included with this Consent Agreement without further adjudication.

IV. TERMS OF SETTLEMENT

8. Based upon the statutory penalty factors at Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3) and Respondent's agreement to perform a Supplemental Environmental Project ("SEP"), and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of four thousand two hundred and fifty dollars (\$4,250.00), plus interest if due pursuant to Paragraph 23 of this CAFO.

V. PAYMENT TERMS

9. Respondent shall pay the civil penalty set forth in Paragraph 8 of this CAFO no later than 30 calendar days after the date this CAFO is final.
10. Respondent shall make payment by depositing in the United States mail a cashier's or certified check, payable to the order of "Treasurer, United States of America" and referencing the title and docket number of the action ("In the Matter of the City of Fall River, Massachusetts, CWA-01-2009-0074") to:

U. S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The date said check is deposited in the mail shall be considered the date that the payment is made.

11. Respondent shall simultaneously submit copies of the penalty payment check to:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100
Mail Code ORA17-1
Boston, MA 02109-3912

and

Kathleen E. Woodward
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100
Mail Code OES04-2
Boston, MA 02109-3912

VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

12. Respondent shall complete the following supplemental environmental project ("SEP"), which the parties agree is intended to secure significant environmental protection and improvements. Not more than 30 days after the issuance of this Consent Agreement and Final Order, Respondent shall begin the bidding process of replacement of the existing asphalt with porous pavement on 10,000 square feet of the access road leading to the Water Treatment Facility as described in Exhibit A, hereto.
13. Respondent shall complete the SEP as follows: 1) Removal of 10,000 square feet of existing asphalt; 2) Installation of porous pavement in a manner consistent with the Commonwealth of Massachusetts Stormwater Management Handbook. Respondent shall also conduct appropriate maintenance of the porous pavement. Respondent will complete installation of the porous pavement by **October 1, 2010**. The porous

pavement will benefit the environment by reducing storm water runoff volume and pollutant transport into the North Watuppa Pond, a public drinking water supply. The SEP is more specifically described in the scope of work (hereinafter, the "Scope of Work"), attached hereto as Exhibit A and incorporated herein by reference.

14. The total cost to the Respondent of the SEP shall be not less than thirty-five thousand eight hundred and forty dollars (\$35,840) in accordance with the specifications set forth in the Scope of Work. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

15. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation, nor is Respondent required to perform or develop the SEP under any grant or agreement with any governmental or private entity, as injunctive relief in this or any other case, or in compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

16. SEP Reports:

a. **SEP Completion Report:** Respondent shall submit a SEP Completion Report to EPA within thirty (30) days of completion of the SEP. The SEP Completion Report shall contain the following information:

- (i) A detailed description of the SEP as implemented;
- (ii) A description of any operating problems encountered and the solutions thereto;

- (iii) Itemized costs, documented by copies of purchase orders and receipts, canceled checks, or wire transfer records;
 - (iv) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order; and
 - (v) A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).
- b. **Quarterly Reports:** Respondent shall submit quarterly written reports ("Quarterly Reports") outlining work completed on the SEP to date and funds spent to date commencing with the first full calendar quarter following the effective date of this Consent Agreement and Final Order. Such reports shall be provided to EPA postmarked no later than the last day of the calendar month following the end of each calendar quarter. Calendar quarters end on the following dates: March 31, June 30, September 30 and December 31. Each Quarterly Report shall contain a narrative description of the SEP activities undertaken to date, an itemization (with copies of supporting documentation) of costs incurred on the SEP, and a report of any difficulties or delays in the implementation of the SEP. The absence of EPA comments on the Quarterly Reports shall not constitute approval of the progress being made on the SEP or waiver of EPA's rights to determine that the SEP was not completed satisfactorily

and to take any action specified in Paragraph 20 of this Consent Agreement and Final Order.

c. Respondent agrees that failure to submit the SEP Completion Report or any Quarterly Report required by subsections a) and b) above shall be deemed a violation of this Consent Agreement and Order and Respondent shall become liable for stipulated penalties pursuant to paragraph 20 below.

d. Respondent shall submit all notices and reports required by this Consent Agreement and Order by first class mail to:

Andrew Spejewski
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100
Mail Code OES04-1
Boston, MA 02109-3912

e. In itemizing its costs in the SEP completion report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP completion report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

17. **EPA right to inspect:** Respondent agrees that EPA may inspect the facility at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

18. **Document retention and certification:** Respondent shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this Consent Agreement and shall provide the documentation of any such underlying research and data to EPA not more than seven days after a request for such information. In all documents or reports, including, without limitation, any SEP reports, submitted to EPA pursuant to this Consent Agreement, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

19. EPA acceptance of SEP Reports

- a. After receipt of an SEP Completion Report described in paragraph 16.a above, EPA will notify the Respondent, in writing: i) identifying any deficiencies in the SEP Report itself and granting Respondent an additional thirty (30) days to

correct any deficiencies; or (ii) indicating that the project has been completed satisfactorily; or (iii) determining that the project has not been completed satisfactorily and seeking stipulated penalties in accordance with paragraph 20 herein.

b. If EPA elects to exercise option (i) above, i.e., if the SEP Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself, Respondent may correct the deficiencies within thirty (30) days or object in writing to the notification of deficiency given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to the agreement on changes necessary to the SEP Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this Consent Agreement and Final Order. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with paragraph 20 herein.

20. Stipulated Penalties for Failure to Complete SEP/Failure to spend agreed-on amount:

a. In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described in

paragraph 13 above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in paragraph 13 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- (i) Except as provided in subparagraph (ii) immediately below, for a SEP which has not been completed satisfactorily pursuant to this Consent Agreement and Order, Respondent shall pay a stipulated penalty to the United States in the amount of \$14,150, plus interest.
- (ii) If the SEP is not completed in accordance with paragraph 13, but the Complainant determines that the Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.
- (iii) If the SEP is completed in accordance with paragraph 13, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of the difference between \$35,840 and the amount not spent.
- (iv) If the SEP is completed in accordance with paragraph 13, and the Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty.

- (v) For failure to submit the SEP Completion Report required by paragraph 16(a) above, Respondent shall pay a stipulated penalty in the amount of \$100 for each day after the report is due until the report is submitted.
- (vi) For failure to submit any other report required by paragraph 16(b) above, Respondent shall pay a stipulated penalty in the amount of \$100 for the day after the report was originally due until the report is submitted.
- b. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.
- c. Stipulated penalties for subparagraphs (v) and (vi) above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.
- d. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph 10 above. Interest and late charges shall be paid as stated in paragraph 23 herein.
- e. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

21. **Public statements must acknowledge enforcement action:** Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to either of the SEP shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Clean Water Act."
22. **No relief from compliance; no endorsement by EPA:** This Consent Agreement and Final Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of the design used or materials installed by Respondent in connection with the SEP undertaken pursuant to this Agreement.

VI. General Provisions

23. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), a failure by Respondent to pay the penalty assessed by this CAFO in full by the payment due date shall subject Respondent to a civil action to collect the assessed penalty, plus interest at current prevailing rates from the date the penalty was due pursuant to Paragraph 9 of this CAFO. The rate of interest assessed shall be at the rate set forth in 31 C.F.R. § 901.9(d), promulgated under 31 U.S.C. § 3717. Any person who fails to pay on a timely basis the amount of an assessed penalty shall be required to pay in addition to such amount and interest, attorney's fees, costs for collection proceedings, and a

quarterly nonpayment penalty for the quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of such person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

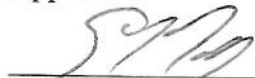
24. The penalty specified in Paragraph 8 above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.
25. The provisions of this CAFO shall be binding upon Respondent and their successors or assigns.
26. Except as described in Paragraph 23 above, the party shall bear its own costs and attorneys fees in this proceeding.
27. Issuance of this CAFO constitutes a full and complete settlement by EPA of all claims for judicial or administrative civil penalties pursuant to Sections 309(d) or (g) of the CWA, 33 U.S.C. §§ 1319(d) or (g), for all past violations of the CWA alleged in the Complaint referenced in Paragraph 1.
28. This CAFO shall not limit the authority of the United States to enforce the underlying substantive legal requirements of this administrative penalty assessment, whether administratively or judicially, pursuant to Sections 309(a), (b), and (c) of the Act, 33 U.S.C. §§ 1319(a), (b), and (c), or Sector 504 of the Act, 33 U.S.C. § 1364.
29. This CAFO does not constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. § 1251 *et seq.*, or any regulations promulgated thereunder.

30. The undersigned representative of Respondent certifies that he or she is fully authorized by Respondent to enter into the terms and conditions of this CAFO and legally bind Respondent.

STIPULATED AND AGREED:

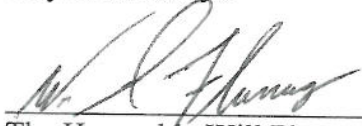
For RESPONDENT CITY OF FALL RIVER, MASSACHUSETTS

Approved



Steven A. Torres
Corporation Counsel
City of Fall River

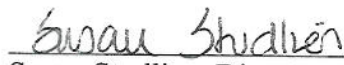
Date: 04 14 2010



The Honorable Will Flanagan
Mayor
City of Fall River

Date: 2-17-10

For U.S. ENVIRONMENTAL PROTECTION AGENCY



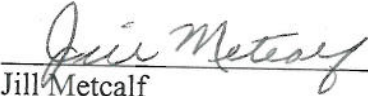
Susan Studlien, Director
Office of Environmental Stewardship
U.S. EPA, Region 1

Date: 03/04/10

FINAL ORDER

31. The forgoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, which will become final thirty (30) days from the date it is signed by the Regional Judicial Officer unless a petition to set aside the order is filed by a commenter pursuant to Section 309(g)(4)(C) of the CWA, 33 U.S.C. § 1319(g)(4)(C), and 40 C.F.R. Part 22.

U.S. ENVIRONMENTAL PROTECTION AGENCY



Jill Metcalf
Acting Regional Judicial Officer
U.S. EPA, Region 1

Date: March 9, 2010

CONSENT AGREEMENT AND FINAL ORDER
U.S. EPA Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Docket No. CWA-01-2009-0074

**FALL RIVER SEWER DIVISION
FALL RIVER, MASSACHUSETTS**

**Supplemental Environmental Project (SEP):
Porous Pavement Installation**

SCOPE OF WORK

A. Background Information.

The City of Fall River owns and manages property adjacent to the North Watuppa Pond. The North Watuppa Pond is 1,650 acres in size and is the drinking water supply for Fall River and for portions of Freetown, Westport, MA; and Tiverton, RI.

At the eastern end of Bedford Street, the old 1873 granite pump station exists. On the eastern perimeter of said pumping station, there is an access road. Said access road is used for large truck deliveries to the new (1975) Water Treatment Facility north of this site.

B. Environmental Issues.

Stormwater drainage that reaches the access road flows over land easterly to the North Watuppa Pond. This includes rain that lands directly on this area and storm drainage that flows west to east from Bedford Street. Most of the storm drainage from Bedford Street that is sloped easterly is captured by catch basins that directs the flow to the 1915 Watuppa Interceptor drain to South Watuppa Pond, thus minimizing said flow to the North Watuppa Pond. However, during significant rain events, some flow can by-pass these catch basins and flow towards the North Watuppa Pond, in addition to the drainage that occurs east of the catch basins.

C. Project.

The proposed project involves:

- Removing 10,000 square feet of existing asphalt (400/feet x 25/feet of access road).
- Installing porous pavement for said 10,000 square feet.
- Installing Jersey Barriers and bollards along the eastern perimeter of the access road for protection against trucks and/or vehicles sliding toward the pond during icing/snow conditions.
- Cleaning, shaping small grass areas on both sides of the access road.
- Making minor masonry repairs at two (2) points along the granite wall that abuts the perimeter of the pond.

D. **Costs.**

Assuming a cross-section of the pavement to be 4" of porous pavement over 4" of $\frac{3}{4}$ " stone over 12" of gravel borrow, the estimate for this work is as follows:

Remove 1100 SY of existing hot mix asphalt:	3,600.00
Remove 475 CY of existing gravel base and subsoil:	5,700.00
Install 360 CY of gravel borrow:	3,600.00
Install 120 CY of stone:	1,800.00
Install 250 tons of porous pavement hot mix asphalt:	20,000.00
Install 10 jersey barriers:	3,000.00
Install 10 6" diameter metal bollards:	2,500.00
Replace 50 LF of granite wall cap:	2,500.00
Repair 10 LF of granite wall:	2,000.00
Total:	44,700.00

E. **Environmental Benefit.**

The proposed porous pavement will increase the stormwater absorption capacity of this area; increase groundwater recharge and reduce storm drainage flow to the North Watuppa Pond.

F. **Current Need & Future Use.**

Implementation of this project is an extra environmental improvement. The existing conditions could stay as is. Without this effort, such improvement in this area would not occur in the foreseeable future (next 25/years). This project will serve as an example for the Engineering Department and the Public Utilities Divisions to observe the effectiveness and durability of the material. Should it perform as well as expected, consideration will be given to expand use of this concept, including the potential use of the remaining/adjacent 1,650 linear feet of roadway from this site westerly to Stonehaven Road.

G. **Permitting.**

The following permits are anticipated.

- Fall River Engineering Department – Street Opening Permit.
- Fall River Conservation Commission – Notice of Intent/Order of Conditions.

Discussions with the City's Environmental Officer/Elizabeth Dennehy, and the City Engineer/Byron Holmes, indicate that additional permitting from the MA DEP (310-CMR-22) is not required.

H. **Applicable SEP Cost.**

Asphalt Removal -	\$ 3,600
Gravel Base & Subsoil Removal -	\$ 5,700
Stone Installation -	\$ 1,800
Porous Pavement Installation -	\$20,000
Gravel Borrow Installation -	<u>\$ 3,600</u>
<i>Sub Total:</i>	<i>\$34,700</i>

In House Costs: City Engineer:

Site Visit/Review -	1/hour.	
Develop Plan & Costs -	2/hours.	
Manage Specs/Bid/Award -	4/hours.	
Inspection during Construction -	10/hours.	
Assess Efficiency of finished products -	2/hours.	
<i>Total 19/hours (rate \$40/hour x 1.5 overhead) -</i>		<u><i>\$1,140.</i></u>

Total Eligible SEP Costs: **\$35,840**

I. **Schedule.**

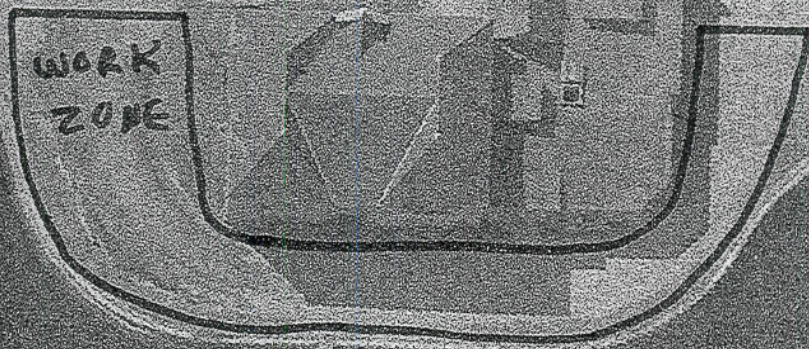
- Bid – Spring 2010
- Construction – Summer 2010
- Completion – October 1, 2010

A

0 30 60 120 Feet

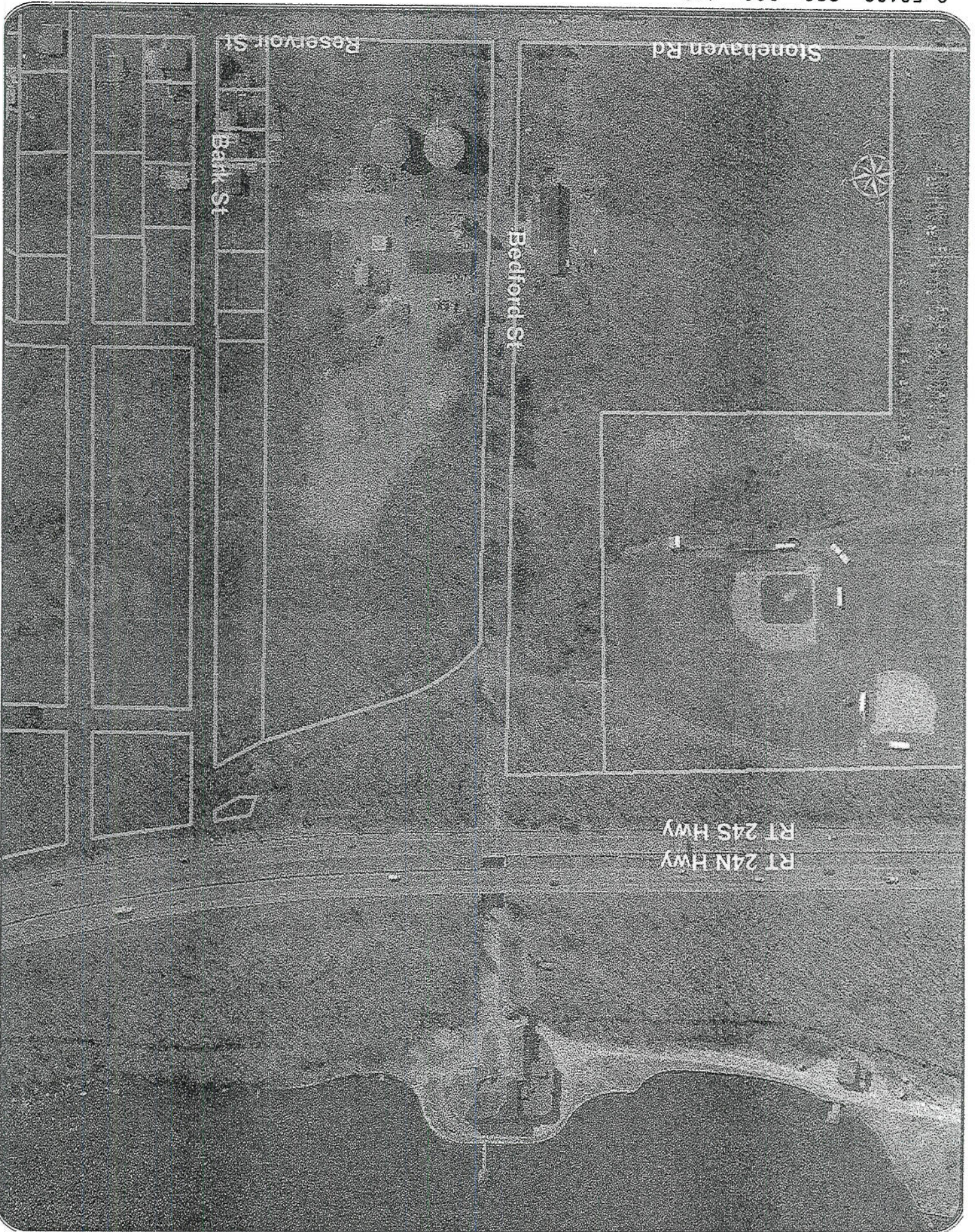


Bedford St



WORK
ZONE

NORTH
WATUPPA
POND



RT 24N HWY
RT 24S HWY

Bedford St

Reservoir St

Stonehaven Rd

In the Matter of: City of Fall River, Massachusetts
Docket No. CWA 01-2009-0074

CERTIFICATE OF SERVICE

I certify that the foregoing complaint was sent to the following persons, in the manner specified on the date below:

Copy hand-delivered:

Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Square, Suite 100
Mail Code ORA17-1
Boston, MA 02109-3912

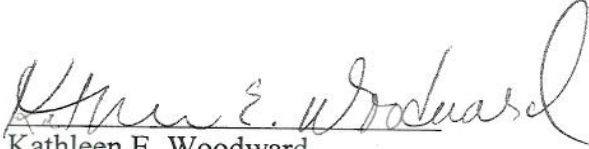
Copy by certified mail, return
receipt requested:

The Honorable William A. Flanagan
City of Fall River
1 Government Center
Fall River, Massachusetts 02722

Copy by first-class mail to:

David Johnston, Acting Regional Director
Massachusetts Department of Environmental
Protection
Southeast Regional Office
20 Riverside Drive
Lakeville, Massachusetts 02347

Dated: March 9, 2010


Kathleen E. Woodward
Senior Enforcement Counsel
Office of Environmental Stewardship
5 Post Office Square, Suite 100
Mail Code OES04-2
Boston, MA 02109-3912
(617) 918-1780