

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Tonia Bandrowicz
Name of Case Attorney

7/7/10
Date

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

Case Docket Number CWA-01-2009-0093

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:

Town of North Providence, RI
North Providence Town Hall
2000 Smith Street
North Providence, RI 02911

Total Dollar Amount of Receivable \$ 15,000 Due Date: 7/31/10

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



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

BY HAND

July 1, 2010

RECEIVED
JUL 01 2010
EPA ORC
Office of Regional Hearing Clerk

Wanda Santiago
Regional Hearing Clerk
United States Environmental Protection Agency
5 Post Office Square - Suite 100
Boston, MA 02109-3912

Re: In the Matter of Town of North Providence, Rhode Island
Docket No. CWA-01-2009-0093

Dear Ms. Santiago:

Enclosed for filing in the above-referenced action, please find the original and a copy of a Consent Agreement and Final Order resolving this case.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Tonia Bandrowicz".

Tonia Bandrowicz
Senior Enforcement Counsel
U.S. EPA

Enclosure

cc: Barbara A. Gunning,
U.S. Administrative Law Judge
Stephen H. Burke, Esq.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

JUL 1 2010

RECEIVED
JUL 01 2010
EPA ORC
Office of Regional Hearing Clerk

Jill Metcalf
Regional Judicial Officer
U.S. EPA - Region I
5 Post Office Square, Suite 100
Mail Code ORA 18-1
Boston, MA 02109-3912

Re: In the Matter of Town of North Providence, RI
EPA Docket No. CWA-01-2009-0093

Dear Ms. Metcalf:

Enclosed is a consent agreement and final order resolving the above-captioned case that has been signed by the U.S. Environmental Protection Agency and Respondent and which is now being submitted to you for approval pursuant to 40 C.F.R. § 22.18(b)(3). The penalty is in accordance with the Clean Water Act and Agency guidance.

Once the final order has been signed, the parties will file the fully executed consent agreement and final order with the Regional Hearing Clerk thereby resolving this matter.

Respectfully submitted,

A handwritten signature in black ink that reads "Tonia Bandrowicz".

Tonia Bandrowicz
Counsel for Complainant
U.S. EPA

cc: Stephen Burke, Esq.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

RECEIVED

JUL 01 2010

EPA ORC
Office of Regional Hearing Clerk

IN THE MATTER OF)
Town of North Providence)
North Providence Town Hall)
2000 Smith Street)
North Providence, RI 02911)
_____)

DOCKET NO. CWA-01-2009-0093
CONSENT AGREEMENT AND
FINAL ORDER

STATUTORY AUTHORITY

1. This Consent Agreement and Final Order is issued under the authority granted to the U.S. Environmental Protection Agency ("EPA") by Section 309(g)(1) of the Clean Water Act (the "Act"), 33 U.S.C. § 1319(g)(1), in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits," at 40 C.F.R. Part 22 ("Part 22").

STIPULATIONS AND FINDINGS

2. The Town of North Providence, Rhode Island ("Respondent"), by its authorized representative, stipulates, and EPA finds as follows:

3. EPA issued an Administrative Complaint, Docket No. CWA-01-2009-0093, to Respondent pursuant to Section 309(g)(1) of the Clean Water Act, 33 U.S.C. § 1319(g)(1) and proposing a penalty of up to the statutory maximum of \$177,500 pursuant to Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), as updated by 40 C.F.R. § 19.4.

4. Respondent timely filed its Answer to the Administrative Complaint in accordance with the provisions of Part 22 and denied liability for the matters described therein.

5. Respondent admits sufficient allegations in the Administrative Complaint to establish EPA's jurisdiction over this matter, and without admitting wrongdoing or liability,

waives its right to a hearing under Section 309(g)(2)(B) of the Act, and to appeal this Consent Agreement and Final Order under Section 309(g)(8)(A) of the Act, 33 U.S.C. § 1319(g)(8)(A).

CONSENT AGREEMENT

6. Pursuant to the relevant provisions of the Act, and based upon the nature of the alleged violations, 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 fifteen thousand dollars (\$15,000).

7. Respondent consents to the issuance of this Consent Agreement and Final Order and consents, for the purposes of settlement, to the payment of a civil penalty of \$15,000 and to the performance of the SEP that will cost a minimum of \$86,000. Respondent shall pay the total penalty of \$15,000, as specified below, within 30 calendar days of the date this Consent Agreement and Final Order become final.

8. Respondent shall pay the \$15,000 penalty by cashier's or certified check, payable to "Environmental Protection Agency," and referencing the title and docket number of the action ("In the Matter of North Providence, Rhode Island, Docket No. CWA 01-2009-0093"). The payment shall be mailed via regular U.S. Postal Service mail, to:

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

9. Respondent shall simultaneously submit a copy of the check referenced in the paragraph 8 above to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square Suite 100
Mail Code: MC-ORA 18-1
Boston, MA 02109-3912

and

Consent Agreement & Final Order
In the Matter of North Providence, RI
Docket No. CWA 1-2009-0093

Tonia Bandrowicz, Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
5 Post Office Square Suite 100
Mail Code OES 04-3
Boston, MA 02109-3912

SUPPLEMENTAL ENVIRONMENTAL PROJECT

10. Respondent shall implement a Supplemental Environmental Project ("SEP") involving the design and construction of a new sanitary sewer line in Warren Avenue to be connected to the residential buildings (15 – 17, and 19 Warren Ave) to prevent backups attributable to the system now in place. The SEP shall be completed in accordance with the instructions and schedule set forth in Attachment A.

11. Respondent is responsible for the satisfactory completion of the SEP in accordance with the requirements of this Consent Agreement. Respondent may use contractors and/or consultants in planning and implementing the SEP, but Respondent shall be solely responsible for the completion of the SEP.

12. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:

- a. that all cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is at least \$86,000;
- b. that, as of the date of executing this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- c. that the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in

this Consent Agreement;

- d. that Respondent has not received and will not receive credit for the SEP in any other enforcement action; and
- e. that Respondent will not receive any reimbursement for any portion of the SEP from any other person.

13. The Respondent shall submit monthly SEP Status Reports on the status of its compliance with SEP requirements by the 30th day of the first full month following the filing of this Consent Agreement and Final Order, and every month thereafter until the month the SEP is completed. Each Status Report shall include, at a minimum, the following items:

- a. An update on the activities undertaken during the previous month at achieving compliance with the SEP;
- b. An identification of all plans, approvals and other submissions required under the SEP completed and submitted during the previous month; and
- c. A description of any noncompliance with the requirements of the SEP and the actions taken to come back into compliance.

14. Within 30 days after completion of the SEP, Respondent shall submit a SEP Completion Report to EPA which shall contain the following information:

- a. a detailed description of the SEP as implemented;
- b. a description of any problems encountered in completing the SEP and the solutions thereto;
- c. an itemized list of all eligible SEP costs expended;
- d. certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order; and

- e. 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).

15. EPA may, in its sole discretion, require information in addition to that described in the preceding Paragraph in order to evaluate the SEP Completion Report.

16. After receiving the SEP Completion Report, EPA shall notify Respondent whether or not it has satisfactorily completed the SEP. If Respondent has not completed the SEP in accordance with this Consent Agreement, stipulated penalties may be assessed in accordance with Paragraph 18 – 21 of this Consent Agreement.

17. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP under this Consent Agreement shall include the following language: “This project was undertaken in connection with the settlement of an administrative enforcement action, In the Matter of North Providence, Rhode Island, Docket No. CWA 01- 2009-0093, taken by the U.S. Environmental Protection Agency under the Clean Water Act.”

STIPULATED PENALTIES

18. In the event that Respondent fails to comply with any of the terms or provisions of this Consent Agreement relating to the performance of the SEP described herein and in Attachment A, 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 12, above, and Attachment A, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- a. Except as provided in subparagraph (b) immediately below, if the SEP has not been completed satisfactorily pursuant to this Consent Agreement, Respondent shall pay a stipulated penalty in the amount of 60% of \$86,000, plus interest from

the final date of this Consent Agreement.

- b. If the SEP is not completed satisfactorily pursuant to this Consent Agreement and Final Order, but the Complainant determines that the Respondent: (i) made good faith and timely efforts to complete the project; and (ii) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent pursuant to Paragraph 12, above, was expended on the SEP, Respondent shall not be liable for any stipulated penalty.
- c. If the SEP is completed satisfactorily pursuant to this Consent Agreement, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project pursuant to Paragraph 12, above, Respondent shall pay a stipulated penalty equal to 60% of the difference between \$86,000 and the amount actually spent by the Respondent, plus interest from the effective date of this Consent Agreement.
- d. If the SEP is completed satisfactorily pursuant to this Consent Agreement, and the Respondent spent at least 90 percent of the amount of money required to be spent for the project pursuant to Paragraph 12, above, Respondent shall not be liable for any stipulated penalty.
- e. For failure to submit a SEP Status Report or the SEP Completion Report required by Paragraphs 13 and 14, above, Respondent shall pay a stipulated penalty in the amount of \$100.00 for each day after the report was originally due until the report is submitted.

19. 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.

20. Stipulated penalties under Paragraph 18 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.

21. 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 Paragraphs 8 and 9, above.

FORCE MAJEURE

22. Force Majeure

- a. If any event occurs which causes or may cause delays in the completion of the SEP as required under this Consent Agreement and Final Order, Respondent shall notify Complainant in writing not more than 10 days after the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and constitute a waiver of the Respondent's right to request an extension of its obligation under this Consent Agreement based on such incident. Where completion of the SEP requires the Respondent to obtain a federal, state, or local permit or approval, or to obtain approval from the Warren Avenue Condominium Association, Respondent shall submit timely and complete applications and responses to requests for information and take all other actions

necessary to obtain all such permits or approvals. Respondent may seek relief under this paragraph for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, provided that the Respondent has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

- b. If the parties agree that the delay or anticipated delay in completion of the SEP as required by this Consent Agreement and Final Order has been or will be caused by circumstances entirely beyond the control of Respondent, including its agents or contractors, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.
- c. In the event that the EPA does not agree that a delay in completion of the SEP as required by this Consent Agreement and Final Order has been or will be caused by circumstances entirely beyond the control of the Respondent, including its agents or contractors, EPA will notify Respondent in writing of its decision and any delays in the completion of the SEP shall not be excused.
- d. The burden of proving that any delay in completion of the SEP as required by this Consent Agreement and Final Order is caused by circumstances entirely beyond the control of the Respondent shall rest with the Respondent. Increased costs or expenses associated with the implementation of the SEP shall not, in any event, be a basis for extensions of time under section (b) of this paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

GENERAL PROVISIONS

23. The provisions of this Consent Agreement and Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

24. Except as provided in the following paragraph, each party shall bear its own costs and attorneys fees in this proceeding.

25. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), a failure by the Respondent to pay the penalty assessed by this Consent Agreement and Final Order in full by its due date shall subject the Respondent to a civil action to collect the assessed penalty, plus interest at current prevailing rates from the date of this Consent Agreement and Final Order. The rate of interest assessed shall be at the rate set forth in 4 C.F.R. § 102.13(c), 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 each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent of the aggregate amount of such person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter. In such a collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

26. Nothing in this Consent Agreement and Final Order 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 Consent Agreement and Final Order or of the statutes and regulations upon which this Consent Agreement and Final Order is based, or for Respondent's violation of any applicable provision of law.

27. This Consent Agreement and Final Order 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.

28. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of the Act, or any regulations promulgated thereunder.

29. This Consent Agreement and Final Order constitutes a settlement by EPA of all claims for civil penalties pursuant to the Act for the violations of the Act alleged in the complaint filed in this case. Compliance with this Consent Agreement and Final Order shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations. This Consent Agreement and Final Order in no way relieves Respondent or its employees of any criminal liability. Nothing in this Consent Agreement and Final Order shall be construed to limit the authority of the United States to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public.

30. 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.

31. Each undersigned representative of the parties to this Consent Agreement and Final Order certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind that party to it.

ATTACHMENT A

Warren Avenue Mitigation SEP

The Respondent shall undertake all necessary actions to design and build a Warren Avenue sewerage collection system from the Narragansett Bay Commission (NBC) interceptor tie-in outwards to Woonasquatucket Avenue with the intent of eliminating basement backups in the area. The Respondent shall comply with all state and local laws and regulations, as well as NBC requirements, including all necessary permits or approvals, in undertaking such actions. This work shall include the following steps:

1. Solicit Bids for Sewerage System Engineering Study and Design

By July 15, 2010, the Respondent shall develop and publish a Request for Proposal to retain a professional engineering consultant, licensed in Rhode Island, with significant experience and expertise in the study and design of wastewater collections systems, to complete an engineering evaluation of, and design for, a wastewater collection system on Warren Avenue. The evaluation and design shall require, at a minimum, an assessment, as necessary, of how current conditions cause or contribute to backups of sewage into residential properties on Warren Avenue, and the development of plans and specifications, including any changes to plumbing systems in the affected residential properties. All necessary coordination with relevant State agencies and the NBC shall be the Respondent's responsibility. The survey and plan shall employ accepted engineering standards for sewer conveyance, such as TR-16, *RIDEM Sanitary Sewer Design Policies*, and any other relevant design protocols, in a manner that will protect public health, private and public properties, and the environment.

2. Awarding of Engineering Contract

By August 15, 2010, the Respondent shall award a contract for the engineering and design of a wastewater collection system on Warren Avenue in accordance with the Request for Proposal described in paragraph 1 above.

3. Approval and Permitting of Engineering Plan

By September 30, 2010, the Respondent shall have a final engineering plan and required permits and approvals.

4. Solicit Bids for Sewerage System Construction

By September 30, 2010, the Respondent shall develop and publish a Request for Proposals for the construction of the wastewater collection system for Warren Avenue in accordance with the approved engineering plan.

5. Awarding of Construction Contract

By October 29, 2010, the Respondent shall award a contract for the construction of a wastewater collection system on Warren Avenue in accordance with the approved engineering plan.

32. Pursuant to Section 22.5(c)(4) of the enclosed Part 22 Rules, the following individual is authorized to receive service on behalf of EPA:

Tonia Bandrowicz
Senior Enforcement Counsel
U.S. Environmental Protection Agency
5 Post Office Square Suite 100
Mail Code: OES04-3
Boston, MA 02109-3912

THE UNDERSIGNED PARTY enters into this Consent Agreement and Final Order in the Matter of North Providence, Rhode Island, EPA Docket No. CWA 01-2009-0093 on behalf of EPA:

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

06/30/10
Date

THE UNDERSIGNED PARTY enters into this Consent Agreement and Final Order in the Matter of North Providence, Rhode Island, EPA Docket No. CWA 01-2009-0093 on behalf of the Town of North Providence:

Charles A. Lombardi
Charles A. Lombardi, Mayor
North Providence, RI

6-18-10
Date

FINAL ORDER

The foregoing 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
Jill Metcalf,
Acting Regional Judicial Officer
U.S. EPA, Region I

July 1, 2010
Date

Consent Agreement & Final Order
In the Matter of North Providence, RI
Docket No. CWA 1-2009-0093

6. Commencement of Construction

By November 12, 2010, the Respondent shall commence construction of the wastewater collection system on Warren Avenue in accordance with the approved engineering plan. Construction will be monitored by Town officials to ensure construction is in accordance with the approved plans and specifications. Adequate and timely notification will be made to private sewer users regarding any interruption in sewer service, as well as any other inconveniences related to construction.

7. Substantial Completion of Construction

By December 10, 2010, the Respondent shall have substantially completed construction of the wastewater collection system on Warren Avenue in accordance with the approved engineering plan.

In the Matter of Town of North Providence, RI
EPA Docket No. CWA-01-2009-0093

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was transmitted to the following persons, in the manner specified, on the date below:

Original and one copy
hand-delivered:

Wanda Santiago,
Regional Hearing Clerk
U.S. EPA - Region I
5 Post Office Square, Suite 100
Mail Code ORA 18-1
Boston, MA 02109-3912

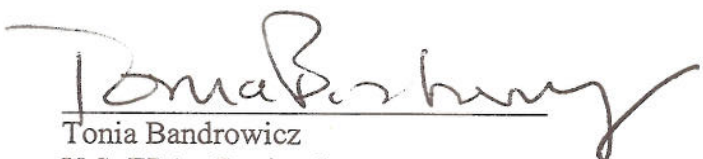
Copy by Overnight Mail

Barbara A. Gunning,
U.S. Administrative Law Judge
U.S. EPA
Office of Administrative Law Judges
Franklin Court Building
1099 14th Street, NW, Suite 350
Washington, DC 20460

Copy by certified mail,
return receipt requested:

Stephen H. Burke, Esq.
Ratcliffe Burke Haren & Elias, LLP
1600 Financial Plaza
Providence, RI 02903

Dated: 2/1/10


Tonia Bandrowicz
U.S. EPA - Region I
5 Post Office Square, Suite 100
Mail Code OES 04-3
Boston, MA 02109-3912
Phone: (617) 918-1734
Fax: (617) 918-0734