

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
OFFICE OF WATER RESOURCES

IN RE: AAD No. 05-002/WRA

No. RIA-371

CONSENT AGREEMENT

This Consent Agreement is entered into by and between the Department of Environmental Management (the "DEM") and the Narragansett Bay Commission (the "Respondent" or the "NBC"), which is responsible for the operation of the Fields Point Wastewater Treatment Facility, (the "Facility"), in Providence Rhode Island. This Agreement is entered into in accordance with Chapters 46-12 and 42-17.1 of the Rhode Island General Laws ("RIGL").

On, December 31, 2001, the DEM issued Rhode Island Pollutant Discharge Elimination System ("RIPDES") permit No. RI0100315 for the Facility. The DEM issued a final modification to the RIPDES to the NBC by letter dated June 27, 2005 (the "Permit Modification"). By a letter dated July 25, 2005 the NBC requested an administrative hearing and moved to stay certain conditions of the Permit Modification.

In lieu of convening an Administrative Hearing regarding the disputed permit conditions and in order to effect a resolution of all disputed issues in this matter between DEM and the Respondent, the parties agree as follows:

1. The Respondent is subject to the provisions of Chapter 46-12 of the RIGL for purposes of this Agreement.
2. DEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over the Respondent for purposes of this Agreement.
3. The provisions of this Agreement shall apply to and be binding upon the Respondent, its agents, servants, employees, successors and assigns, and all persons, firms and corporations acting under, through and for it.
4. The compliance with the terms of this Agreement does not relieve the Respondent from compliance with any other applicable laws or regulations administered by DEM or any other governmental entity.
5. Upon the determination by the Director of the DEM that there is an immediate threat to the public health or the environment, or upon the discovery of new information, the DEM reserves the right to order additional remedial action or other enforcement measures as provided by

law or regulations.

6. The Director of the DEM may, for good cause shown, defer any of the compliance dates prescribed herein. In the event that the Respondent believes that good cause exists for extending any such dates, the Respondent may submit a written request to DEM for an extension at least seven (7) days prior to such deadline, together with a complete statement of the reasons why the Respondent believes that such an extension is justified. If DEM denies NBC's extension request, that decision may be appealed to Superior Court in accordance with RIGL 42-35-1 et seq.
7. In the event that the Respondent fails to comply with any of the schedules in paragraph 11 of this Agreement it shall pay a stipulated penalty of one thousand dollars (\$1,000) a day for each and every day it remains in violation of the schedule. The payment of a stipulated penalty in accordance with this paragraph shall not preclude DEM from seeking any other appropriate remedy.
8. In the event the Respondent fails to comply with any of the interim limits of paragraph 11 of this Agreement it may be subject to an administrative penalty as determined by the DEM in accordance with the Rules and Regulations for Assessment of Administrative Penalties. The payment of an administrative penalty in accordance with this paragraph shall not preclude DEM from seeking any other appropriate remedy.
9. The permit expires on February 1, 2007. Should DEM seek to reissue the Permit prior to completion of construction of the facility modifications required in paragraph 11(a)(ii) the Respondent agrees not to object to a Total Nitrogen monthly average permit limits of 5.0 mg/l for the months of May through October, so long as the schedule and interim limits outlined in paragraph 11 remain in effect.
10. This Agreement shall have the full force and effect of a final administrative adjudication, shall be deemed a final administrative decision under the Administrative Procedures Act (RIGL Chapter 42-35) and shall be fully enforceable in the Superior Court of the State of Rhode Island. However, if DEM initiates procedures to modify or reissue the RIPDES permit to contain Total Nitrogen limits less than 5 mg/l May-October or to impose limits during the months November – April, and NBC appeals said modification or reissuance, DEM will not object to NBC raising any issues that NBC could have raised in an appeal of the current Permit Modification.
11. The Respondent shall attain compliance with the final effluent limits for Total Nitrogen (May – October) as specified in the Permit Modification, in accordance with the following schedule:

- (a) By August 31, 2006, the Respondent shall submit a draft Wastewater Facilities Plan Amendment that will evaluate and recommend alternative(s) to attain compliance with the Total Nitrogen limitations as specified in the Permit Modification, ensure that the technology selected to comply with the Permit Modification can be modified to provide further treatment of Total Nitrogen, with minimal disruption of the selected treatment process.- The analysis shall include but not be limited to consideration of each alternative's ability to treat variable flows associated with the combined sewer system and maintain the biomass and overall treatment process during cold weather periods and shall include a schedule for conducting a public hearing, preparing a response to comments and submitting the final Wastewater Facilities Plan Amendment to DEM. NBC shall recommend the alternative with the most consistent and greatest degree of nitrogen removal. The Wastewater Facilities Plan Amendment shall be subject to DEM review, modification and approval. Upon DEM approval of the Wastewater Facilities Plan Amendment, the Respondent shall do the following:
- (i) Within eighteen (18) months of DEM's approval of the Wastewater Facilities Plan Amendment the Respondent shall submit to DEM an application for the issuance of an Order of Approval for the selected treatment alternative. At a minimum, the application shall include final plans, the appropriate fee, technical specifications, design calculations, and a schedule for construction and initiation of operation (which shall be defined as the date of substantial completion of construction), which are subject to DEM review, modification, and approval.
  - (ii) In accordance with the schedule for construction and initiation of operation approved in the Order of Approval, the Respondent shall complete installation and commence operation of the equipment required therein.
- (b) Within eighteen (18) months of the approved deadline for initiation of operation, specified in paragraph 11.a. (ii), the Respondent shall submit a draft engineering analysis that will: evaluate whether the WWTF is able to attain compliance with the Total Nitrogen limitations as specified in the Permit Modification ("attain compliance"); evaluate and recommend any operational changes that are necessary to attain compliance; or includes a determination that facility modifications are necessary to attain compliance. The engineering analysis shall be subject to DEM review, modification and approval. Upon approval, the Respondent shall do the

following:

- (i) If the approved engineering analysis indicates that operational changes, including carbon source addition, will attain compliance or reduce the extent of non-compliance, the engineering analysis shall include an implementation schedule and the changes shall be implemented in accordance with the approved schedule.
- (ii) If the approved engineering analysis indicates that facility modifications are necessary to attain compliance, then it shall contain a suggested reduction in the interim limits for Total Nitrogen. NBC agrees to propose and the parties agree to negotiate in good faith reductions to the interim limits initially stipulated in this agreement. Within twelve (12) months of DEM's approval of the engineering analysis, the Respondent shall submit to DEM a Facilities Plan Amendment that will evaluate and recommend facility modification alternative(s) to attain compliance and include a schedule for submission of an application for the issuance of an Order of Approval for the selected treatment alternative. The schedule shall consider the magnitude of noncompliance, the cost and extent of the additional modifications necessary to attain compliance, whether a permit modification is pending and the anticipated water quality benefits. Upon approval of the engineering analysis, NBC shall be subject to the revised interim limits. The Facilities Plan Amendment shall be subject to DEM review, modification and approval. DEM shall seek and consider public comments prior to approval of the Facilities Plan Amendment. Approval of the Facilities Plan Amendment shall not be unreasonably withheld.
- (iii) Upon approval of the Facilities Plan Amendment NBC shall submit an application for the issuance of an Order of Approval for the selected treatment alternative, in accordance with the approved schedule. At a minimum, the application shall include final plans, the appropriate fee, technical specifications, design calculations, and a schedule for construction and initiation of operation, which are subject to DEM review, modification, and approval.
- (iv) In accordance with the schedule for construction and initiation of operation approved in the Order of Approval, the Respondent shall complete installation and commence operation of the equipment required therein.

- (v) From the date of execution of this Agreement until: DEM approval of an engineering analysis that indicates the facility can attain compliance; the DEM approved deadline specified in paragraph 11(b)(i) for implementation of operation changes; or three months from the DEM approved deadline for completion of installation and commencement of operation in paragraph 11 (b)(iv) above; as appropriate NBC shall meet the limitations in Attachment A of this Agreement which is attached hereto and incorporated herein (or alternative interim limits approved pursuant to Part 11(b)(ii)).
12. No later than fourteen (14) calendar days following a date identified in any schedule of compliance, the Respondent shall submit either a report of progress or, in the case of specific actions being required by identified dates, a written notice of compliance or noncompliance. In the latter case, the notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirements.
  13. All reports and other documentation that the Respondent is required to submit to the DEM by the terms of this Agreement shall be sent to the Office of Water Resources, RIPDES Program, 235 Promenade Street, Providence, RI 02908-5767. Each document shall be subject to DEM review and approval. Upon DEM review of the document, DEM shall provide written notification to the Respondent, either granting approval or stating the deficiencies revealed therein. Within fourteen (14) days (unless a longer time is specified) of receiving a notification of deficiencies, the Respondent shall submit to DEM a revised document consistent with the DEM comments.

14. This Agreement shall be deemed entered as of the date of execution by the parties.
  
15. Once construction is completed, an integral component of this phased implementation approach is adequate monitoring and assessment of water quality changes to determine if additional reductions are necessary to meet water quality standards. DEM, in partnership with Narragansett Bay National Estuarine Research Reserve, the Narragansett Bay Commission, University of Rhode Island, and Roger Williams University, has increased the number of continuous water quality monitoring stations to 13. At a minimum, DEM will evaluate data generated by the continuous water quality monitoring stations to determine compliance with state water quality standards. If data and analyses indicate that further Total Nitrogen reductions are necessary to achieve compliance with water quality standards, DEM will review nitrogen loading information and require implementation by Rhode Island sources and seek reductions from out of state sources as necessary to achieve compliance with standards.

Narragansett Bay Commission

The individuals signing on behalf of the Narragansett Bay Commission represent that they have the actual authority to enter into this Agreement, and the authority to bind the Narragansett Bay Commission to the requirements contained within.

Paul Pinault  
Paul Pinault, P.E., Executive Director  
6/16/06  
Date

In Providence, on the 16<sup>th</sup> day of June 2006, before me personally appeared Paul Pinault to me known and known by me to be the party executing the foregoing Consent Agreement on behalf of the Narragansett Bay Commission and the acknowledged said instrument executed by them to be their free act and deed.

Mary F. M. Mahon  
Notary Public Mary F. Mahon  
My Commission expires: 6/27/09

Vincent J. Mesoella  
Vincent J. Mesoella, Chairman  
6/16/06  
Date

In Providence, on the 15<sup>th</sup> day of June 2006, before me personally appeared Vincent J. Mesoella, to me known and known by me to be the party executing the foregoing Consent Agreement on behalf of the Narragansett Bay Commission and the acknowledged said instrument executed by them to be their free act and deed.

Mary F. M. Mahon  
Notary Public  
My Commission expires: 11/17/09

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

W. Michael Sullivan  
W. Michael Sullivan, Ph.D., Director  
6/16/06  
Date

*ATTACHMENT A*

PART I

Permit No. RI0100315

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A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning effective date and lasting through permit expiration, the permittee is authorized to discharge from outfall serial number 001A.

Such discharges shall be limited and monitored by the permittee as specified below:

<u>Effluent Characteristic</u>	<u>Discharge Limitations</u>			<u>Monitoring Requirement</u>			
	Quantity		Concentration - specify units			Measurement Frequency	Sample Type
	Average <u>Monthly</u> *( <u>Minimum</u> )	Maximum <u>Daily</u> *( <u>Average</u> )	Average <u>Monthly</u> *( <u>Maximum</u> )	Average <u>Weekly</u>	Maximum <u>Daily</u>		
Nitrogen, Total [TKN + Nitrite + Nitrate, as N] (May – Oct) --- lb/d			18.2 mg/l		--- mg/l	3/Week	Calculated

--- Signifies a parameter that must be monitored and data reported but no limit has been established at this time.

Samples taken in compliance with the monitoring requirements specified above shall be taken at the following location: Outfall 001A