

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA,

Plaintiff,

-v.-

RHODE ISLAND DEPARTMENT OF
TRANSPORTATION,

Defendant.

Civil Action No.

CV-15-433

COMPLAINT

Plaintiff, the United States of America, through its undersigned attorneys, by the authority of the Attorney General, and at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), files this Complaint and alleges as follows:

NATURE OF ACTION

1. The United States files this Complaint against the Rhode Island Department of Transportation (“RIDOT” or “Defendant”) pursuant to Sections 309(b) and (d) of the Federal Water Pollution Control Act of 1972, as amended (commonly referred to as the “Clean Water Act” and hereinafter referred to as “CWA”), 33 U.S.C. §§ 1319(b) and (d), seeking injunctive relief and civil penalties for Defendant’s failure to comply with conditions and limitations of its municipal separate storm sewer system (“MS4”) National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

JURISDICTION, VENUE AND NOTICE

2. This Court has jurisdiction over the subject matter of this action pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d), and 28 U.S.C. §§ 1331, 1345 and 1355.

3. Venue is proper in this district pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c), and 28 U.S.C. § 1395.

4. The United States has provided notice of the commencement of this action to the State pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b).

5. Authority to bring this action is vested in the United States Department of Justice under 28 U.S.C. §§ 516 and 519.

PARTIES

6. Plaintiff is the United States of America, acting by the authority of the Attorney General and on behalf of the Administrator of the EPA (“Administrator”).

7. Defendant RIDOT is a department of the State of Rhode Island and Providence Plantations (the “State”) established to oversee and maintain transportation infrastructure, including the RIDOT storm water drainage system that serves State roads and facilities. RIDOT is located at 2 Capitol Hill, Providence, Rhode Island 02903.

8. As a department of the State, RIDOT meets the definition of “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

STATUTORY BACKGROUND

9. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters of the United States except in compliance with, *inter alia*, the

conditions and limitations of a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

10. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term “discharge of pollutants” to include “any addition of any pollutant to navigable waters from any point source.”

11. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines the term “pollutant” to include, *inter alia*, “solid waste, . . . , sewage, garbage, . . . , biological materials, . . . , sand, . . . and . . . municipal . . . waste discharged into water.”

12. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term “navigable waters” as “the waters of the United States, including the territorial seas.”

13. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines the term “point source” to include “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit . . . from which pollutants are or may be discharged.”

14. Section 402 of the CWA, 33 U.S.C. § 1342, establishes the NPDES permit program, and authorizes the Administrator of EPA (“Administrator”) to issue permits under the NPDES program for the discharge of pollutants into navigable waters of the United States upon such specific terms and conditions as the Administrator may prescribe. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), also provides that the Administrator may authorize the state environmental agency to administer the federal NPDES program within the state, including the issuance of NPDES permits. When a state is authorized to administer a NPDES permit program pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), EPA retains concurrent authority to enforce state issued permits. 33 U.S.C. §§ 1319, 1342(i).

15. Section 309(b) of the CWA, 33 U.S.C. § 1319(b), authorizes the commencement of a civil action for appropriate relief, including a permanent or temporary injunction, against any person who violates Section 301(a) of the CWA, 33 U.S.C. § 1311(a), or a permit condition or limitation in a permit issued by EPA or a state under an approved permit program pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

16. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), authorizes the commencement of an action for civil penalties against any person who violates Section 301(a) of the CWA, 33 U.S.C. § 1311(a), or a permit condition or limitation in a permit issued by EPA or a state under an approved program pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

17. In 1984, the State of Rhode Island Department of Environmental Management (“RIDEM”) was authorized by EPA to administer the federal NPDES program in the State of Rhode Island pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b). See 49 Fed. Reg. 39,063 (October 3, 1984). The State of Rhode Island’s authority for the issuance of permits is established in Chapter 46-12 of the General Laws of Rhode Island.

18. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), on December 8, 1999, EPA promulgated regulations at 40 C.F.R. §§ 122.30 – 122.37 that set forth NPDES permit requirements to address storm water discharges from small Municipal Separate Storm Sewer Systems.

19. Section 303(d)(1)(A) of the CWA, 33 U.S.C. § 1313(d)(1)(A), requires each state to identify those waters within its boundaries for which the effluent limitations required by Sections 301(b)(1)(A) and 301(b)(1)(B) of the CWA, 33 U.S.C. §§ 1311(b)(1)(A) and 1311(b)(1)(B), are not stringent enough to implement any water quality standard applicable to such waters; such waters are referred to herein as “water-quality impaired waters.”

20. Under Section 303(d)(1)(C) of the CWA, 33 U.S.C. § 1313(d)(1)(C), each state must establish for the water-quality impaired water bodies identified under Section 303(d)(1)(A) of the CWA, 33 U.S.C. § 1313(d)(1)(A), the total maximum daily load (“TMDL”) for those pollutants that EPA identifies under Section 304(a)(2), 33 U.S.C. § 1314(a)(2), as suitable for such calculation, and such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.

GENERAL ALLEGATIONS

21. RIDOT is the owner and operator of a Municipal Separate Storm Sewer System (referred to herein as “MS4”), which is a system of conveyances (including roads with drainage systems, catch basins, curbs, gutters, ditches, man-made channels, and storm drains) designed to collect, convey, and directly discharge storm water to receiving waters. RIDOT’s MS4 is a small MS4, as defined in 40 C.F.R. §§ 122.26(b)(8), (16).

22. RIDOT’s MS4 outfalls, from which pollutants are discharged, are “point sources” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

23. RIDOT discharges from its MS4 outfalls to water bodies that include, but are not limited to, the following: Annaquatucket River, Apponaug Cove, Ashaway River, Assapumpset Brook, Baker Creek, Barber Pond, Barrington River, Big River, Blackstone River, Branch River, Brickyard Pond, Brush Neck Cove, Buckeye Brook, Buttonwoods Cove, Chickasheen Brook, Congdon River, Crooked Brook, Dark Entry Brook, Fry Brook, Gorton Pond, Gorton Pond Tributary, Greenwich Bay, Greenwich Cove, Greenwood Creek, Hardig Brook, Hunt River, Indian Run Brook, Island Park Cove, Kickemuit Reservoir, Kickemuit River, Lockwood Brook,

Mashapaug Pond, Maskerchugg River, Mill Brook, Mitchell Brook, Moshassuck River, Mt. Hope Bay, Nooseneck River, North Easton Pond, Old Mill Creek, Palmer River, Parsonage (Knowles) Brook, Pawcatuck River, Pawtuxet River, Peters River, Pettaquamscutt (Narrow) River, Pocasset River, Point Judith Pond, Providence River, Rocky Brook, Roger Williams Park Ponds, Runnins River, Saddle Brook, Sakonnet River, Sand Pond, Saugatucket River, Scrabbletown Brook, Spectacle Pond, Stafford Pond, Stillwater River, Southern Creek, Ten Mile River, Tuscatucket Brook, Upper Dam Pond, Upper Point Judith Pond, Warwick Cove, Warwick Pond, Warwick Pond Tributary, Warner Brook, Woonasquatucket River, West River, and Yawgoo Pond. These waters are waters of the United States and are therefore “navigable waters” under Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

24. Under Rhode Island Pollution Discharge Elimination System (“RIPDES”) Rule 31(a)(1)(v) and RIPDES Rule 31(a)(5)(i)(D), a discharge from any portion of the small MS4 operated by RIDOT that is located in an urbanized area, as defined in RIPDES Rule 31(b)(20), or a densely populated area, as defined in RIPDES Rule 31(b)(21), or that serves a divided highway regardless of its location (collectively, the “RIDOT Permit Area”), requires a RIPDES Permit.

25. Under RIPDES Rule 31(b)(20), “urbanized area” is defined as “those areas that consist of contiguous, densely settled census block groups, and census blocks, that meet minimum population density requirements, along with adjacent densely settled census blocks that together encompass a population of at least 50,000 people. Minimum population density requirements consists of core census block groups or blocks that have a population density of at least 1,000 people per square mile, and, surrounding census blocks that have an overall density of at least 500 people per square mile.”

26. Under RIPDES Rule 31(b)(21), “densely populated area” is defined as “a census designated place(s) as defined by the latest Decennial Census that is located outside the urbanized area and meets all of the following criteria: (i) the population density within the census designated place is equal to or greater than 1,000 people per square mile; and (ii) the census designated place has or is part of a block of contiguous census designated places with a total population of at least 10,000 people.”

27. Under RIPDES Rule 31(e), the operator of a small MS4 must obtain permit coverage under a General or Individual Permit.

28. Pursuant to RIPDES Rule 31(e) and Rule 32, RIDEM issued General Permit, Rhode Island Pollutant Discharge Elimination System Storm Water Discharge from Small Municipal Separate Storm Sewer Systems and from Industrial Activity at Eligible Facilities Operated by Regulated Small MS4s, Permit Number RIR040000 (the “MS4 Permit”). A copy of the MS4 Permit is attached hereto as Exhibit 1. The MS4 Permit became effective on December 20, 2003, and was scheduled to expire on December 19, 2008.

29. Pursuant to RIPDES Rule 31(e)(1), in order to obtain permit coverage under the MS4 Permit, the operator of a small MS4 is required to submit a Notice of Intent (“NOI”) and a Storm Water Management Program Plan (“SWMPP”).

30. Pursuant to RIPDES Rule 31(e)(1) and Part I.C.2.a. of the MS4 Permit, RIDOT submitted its NOI and its initial SWMPP to be covered under the MS4 Permit on March 18, 2004. Pursuant to a December 16, 2005 letter from RIDEM to RIDOT, upon submission of its NOI and SWMPP, RIDOT was granted authorization to discharge in accordance with, and became subject to, the conditions and limitations of the MS4 Permit. RIDEM assigned RIPDES Permit # RIR040036 to RIDOT for the MS4 Permit.

31. In accordance with RIPDES Rule 13 and a RIDEM memorandum regarding the re-issuance of the RIPDES General Permit for Storm Water Discharges from Small MS4s and from Industrial Activity at Eligible Facilities Operated by Regulated Small MS4s (MS4 GP), dated June 18, 2009, the MS4 Permit continues in force and effect until a new general permit is issued and goes into effect, and RIDOT continues to be subject to the conditions and limitations of the MS4 Permit.

32. Part I.B.4.a. of the MS4 Permit provides that the MS4 Permit does not authorize the discharge of storm water mixed with non-storm water discharges unless the discharge is in compliance with another RIPDES permit or otherwise specifically listed in Part I.B.3. of the MS4 Permit.

33. Part I.B.3. of the MS4 Permit does not include untreated wastewater, sewage or other municipal waste as allowable non-storm water discharges.

34. Under RIPDES Rule 31(b), “illicit discharge” means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a RIPDES permit (other than the RIPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.

35. Illicit discharges to MS4s result in the unauthorized discharge of pollutants to waters of the United States from MS4 outfalls. Illicit discharges include, but are not limited to, illicit connections and illegal dumping. Illicit connections to MS4s are either direct connections (e.g., wastewater piping either mistakenly or deliberately connected to the storm drains) or indirect connections (e.g., infiltration into the MS4 from cracks in sanitary systems, from septic systems, or from other sources).

36. Discharges from MS4 outfalls of storm water that has flowed across roads and other impervious surfaces, and storm water combined with untreated wastewater, sewage or other municipal waste, contribute pollutants, such as heavy metals, toxics, oil and grease, solvents, nutrients, and bacteria, to water bodies receiving such discharges.

37. Part IV.A. of the MS4 Permit requires RIDOT to develop, implement and enforce a Storm Water Management Program Plan (“SWMPP”) to reduce the discharge of pollutants from its MS4 to the maximum extent practicable (“MEP”), protect water quality, and satisfy the water quality requirements of the CWA and Rhode Island Water Quality Standards.

38. Part IV.A.1. of the MS4 Permit requires RIDOT to develop and implement a SWMPP meeting all the requirements of six minimum control measures referred to in the MS4 Permit, including but not limited to the implementation of all procedures in accordance with Part IV.B. of the MS4 Permit, and the requirements of applicable TMDLs in accordance with Part IV.D. of the MS4 Permit.

39. Part IV.A.4. of the MS4 Permit requires that for each minimum measure in the SWMPP, RIDOT must identify the person(s) or department responsible for sharing responsibility for the implementation of the measure, identify all Best Management Practices (“BMPs”) to be implemented for full compliance with the measure, identify measurable goals for each BMP, identify all impaired water bodies within regulated areas (if applicable), and identify TMDL requirements or other water quality determination provisions (if applicable).

40. Part II.B. of the MS4 Permit requires RIDOT to implement its SWMPP.

41. Part V.A. of the MS4 Permit requires RIDOT to comply with all conditions of the MS4 Permit and states that any permit noncompliance constitutes a violation of the CWA.

TMDLs and Water Quality Impaired Water Bodies

42. Part II.C.2. of the MS4 Permit requires RIDOT to determine (1) whether storm water discharges from any part of the RIDOT MS4 discharges the pollutant(s) identified as causing the impairment, or contributes the pollutant of concern, either directly or indirectly, to the impairment of a water-quality impaired water body listed under CWA Section 303(d), 33 U.S.C. § 1313(d), and (2) whether the TMDL has been completed and approved for the water body.

43. Part II.C.3. of the MS4 Permit requires that if a TMDL has been approved for any water body into which storm water discharges from the RIDOT MS4 contribute directly or indirectly the pollutant(s) of concern, RIDOT's SWMPP must address the TMDL provisions or other provisions for storm water discharges from the MS4, in accordance with Part IV.D. of the MS4 Permit.

44. Part II.C.4. of the MS4 Permit requires that if a TMDL has not been approved for a water-quality impaired water body listed under CWA Section 303(d), 33 U.S.C. § 1313(d), into which storm water discharges from the RIDOT MS4 contribute directly or indirectly the pollutant(s) of concern, the SWMPP must include a description of the BMPs that will be used to control the pollutant(s) of concern, to the maximum extent practicable ("MEP").

45. RIDOT discharges from its MS4 outfalls to water-quality impaired water bodies that are listed pursuant to CWA Section 303(d), 33 U.S.C. § 1313(d), including water-quality impaired water bodies for which TMDLs have been approved and water-quality impaired water bodies for which a TMDL has not been approved.

46. Parts IV.D.1. – 3. of the MS4 Permit require that if RIDEM notifies RIDOT that discharges from the RIDOT MS4 require non-structural or structural storm water controls based

on an approved TMDL for a water-quality impaired water body, RIDOT must: (a) determine the land areas contributing to the discharges identified in the approved TMDL, (b) ensure that the SWMPP addresses all contributing land areas and the impacts identified by RIDEM, and (c) provide the following information regarding progress towards meeting the TMDL provisions: a tabular description of the discharges identified in the approved TMDL that includes identification of the discharge by location, size and type of conveyance, and any existing discharge data; a description of the TMDL provisions specific to the discharge; and a description of the BMPs that have been implemented or will be implemented to address the provisions and pollutant(s) of concern identified by RIDEM in the TMDL.

47. Part IV.D.4. of the MS4 Permit requires that if additional structural storm water controls or measures are necessary to meet the provisions of an approved TMDL, RIDOT must prepare and submit a Scope of Work (“SOW”) document that describes the process and rationale that will be used to select BMPs and measurable goals to ensure that the TMDL provisions will be met. The SOW must document/identify the following information: (a) how all remaining discharges within the contributing land area not identified in the approved TMDL will be identified and assessed, (b) how the drainage or sub-catchment area(s) from discharge(s) identified in the approved TMDL will be determined, (c) the process that will be used to identify interconnections within the system as well as how RIDOT will work cooperatively with operators/owners of the interconnected system, and (d) any structural BMPs that address the pollutants of concern, areas to site potential BMPs, permitting requirements or restrictions, potential costs, preliminary and final engineering requirements or the steps taken to determine this information if not known.

48. RIDEM has notified RIDOT that discharges from the RIDOT MS4 require structural and non-structural storm water controls based on applicable, approved TMDLs for water-quality impaired water bodies.

49. Part IV.D.5. of the MS4 Permit requires RIDOT to provide measureable goals for the development and/or implementation of the six minimum measures and additional structural and non-structural BMPs that will be necessary to address provisions for the control of storm water in the TMDL provisions identified by RIDEM.

50. Part IV.D.8. of the MS4 Permit requires RIDOT to submit to RIDEM an amended SWMPP and the SOW, if applicable, in response to an applicable, approved TMDL within 180 days of notification from RIDEM of such TMDL.

51. In accordance with Part IV.D. of the Permit, RIDEM notified RIDOT on the following dates that TMDLs had been approved for multiple water bodies in Rhode Island into which RIDOT's MS4 discharges the pollutants of concern:

- February 23, 2004 (Stafford Pond – phosphorus; Hunt River – fecal coliform; Fry Brook – fecal coliform; Scrabbletown Brook – fecal coliform; Runnins River – fecal coliform; Barrington River – fecal coliform; Palmer River – fecal coliform; Pettaquamscutt (Narrow) River – fecal coliform; Crooked Brook – fecal coliform; Saugatucket River, Mitchell Brook, Rocky Brook, and Indian Run Brook – fecal coliform),
- April 26, 2005 (Sakonnet River, Island Park Cove – fecal coliform; Chickasheen Brook, Yawgoo Pond, and Barber Pond – phosphorus),
- March 9, 2006 (Greenwich Bay Waters, including Apponaug Cove, Baker Creek, Brush Neck Cove, Buttonwoods Cove, Dark Entry Brook, Gorton Pond Tributary, Greenwich Bay, Greenwich Cove, Greenwood Creek, Hardig Brook, Maskerchugg River, Mill Brook, Saddle Brook, Southern Creek, Tuscatucket Brook, and Warwick Cove – fecal coliform),
- December 4, 2006 (Kickemuit Reservoir and Upper Kickemuit River – fecal coliform and total phosphorus),
- August 29, 2007 (Woonasquatucket River – fecal coliform and dissolved metals),
- November 14, 2007 (9 eutrophic ponds, including Almy, Brickyard, Gorton, North Easton, Roger Williams Park, Sand, Spectacle, Upper Dam

- and Warwick Ponds – phosphorus; Mashapaug Pond – phosphorus and dissolved oxygen),
- July 2, 2008 (Point Judith Pond and tidal Saugatucket River – fecal coliform),
 - July 7, 2008 (Indian Run Brook – dissolved metals),
 - February 18, 2009 (Buckeye Brook Watershed, including Buckeye Brook, Lockwood Brook, Old Mill Creek, Parsonage (Knowles) Brook, Tributaries to Warwick Pond, and Warner Brook – fecal coliform and enterococci bacteria), and
 - October 7, 2010 (Mount Hope Bay and Kickemuit River Estuary – fecal coliform).

These TMDLs describe requirements applicable to RIDOT, including structural and non-structural storm water controls or measures.

Deficient SWMPP

52. Part I.E. of the MS4 Permit requires that in the case of a deficient SWMPP, RIDOT must make all required changes and re-submit the SWMPP to RIDEM within 30 days of being notified, unless a longer time frame is granted by the Director of RIDEM.

53. In a December 16, 2005 letter, RIDEM notified RIDOT that RIDOT's SWMPP failed to satisfy the terms of the MS4 Permit in numerous respects, and required RIDOT to re-submit the SWMPP with all deficiencies corrected by March 10, 2006. RIDOT submitted revisions to its SWMPP on March 1, 2007 and May 3, 2007.

54. In a January 27, 2009 letter, RIDEM notified RIDOT that RIDOT's March 1, 2007 and May 3, 2007 SWMPP revisions failed to satisfy the terms of the MS4 Permit, and required RIDOT to correct the identified deficiencies by March 10, 2009. RIDOT has not submitted additional SWMPP revisions to RIDEM in response to the January 27, 2009 letter.

Illicit Discharge Detection and Elimination (“IDDE”)

55. Part IV.B.3.a. of the MS4 Permit requires that RIDOT must, at a minimum, develop, implement, and enforce a program to detect and eliminate illicit discharges or flows into the RIDOT MS4, including direct and indirect illicit connections and illegal dumping, that includes, among other items, the following elements: (1) the operator must develop and implement a plan to detect and address non-storm water discharges, including illegal dumping, into the system, and (2) the illicit discharge plan must contain procedures to identify and initially target priority areas, locate illicit discharges, locate the source of the discharge, remove illicit discharges, document actions and evaluate impact on the RIDOT MS4 subsequent to removal.

56. Part IV.B.3.b. of the MS4 Permit requires that RIDOT document the decision process for the development of a storm water illicit discharge detection and elimination (“IDDE”) program. Part IV.B.3.b. of the MS4 Permit further requires that RIDOT include a rationale statement in its SWMPP for the IDDE program that includes, among other things, Standard Operating Procedures to detect and address the illicit discharges to the RIDOT MS4, including discharges from illegal dumping, spills and individual sewage disposal systems. Part IV.B.3.b.5. of the MS4 Permit requires that the Standard Operating Procedures address, among others, the following elements: (a) procedures for tracing the source of an illicit discharge, (b) procedures for removing the source of the illicit discharge, (c) procedures for program evaluation and assessment, and (d) procedures for dry weather surveys including field screening for non-storm water flows and field tests of selected parameters and bacteria.

57. RIDOT’s MS4 includes approximately 25,000 catch basins and 3,816 outfalls that extend over 3,300 lane miles of roadway, approximately two-thirds of which are surface roads that are not divided highways. A significant portion of the MS4 in the RIDOT Permit Area

serves highly developed urban areas, which present the greatest likelihood of illicit connections. RIDOT has not implemented an adequate IDDE program that detects and eliminates illicit discharges to its MS4 in the RIDOT Permit Area.

58. The Rhode Island water quality standard for fecal coliform in Class A or Class B fresh waters is “[n]ot to exceed a geometric mean value of 200 MPN/100 ml and not more than 10% of the total samples taken shall exceed 400 MPN/100 ml, applied only when adequate enterococci data are not available.” See RIDEM, Water Quality Regulations, Rule 8.D.(2), Table 1, at 4. The Rhode Island water quality standard for fecal coliform in Class SA or SB sea waters is “[n]ot to exceed a geometric mean value of 50 MPN/100 ml and not more than 10% of the total samples taken shall exceed 400 MPN/100 ml, applied only when adequate enterococci data are not available.” See RIDEM, Water Quality Regulations, Rule 8.D.(3), Table 1, at 4.

59. RIDOT’s dry weather discharge sampling data for its MS4 outfalls demonstrates that for at least 12 of the MS4 outfalls at which it sampled, RIDOT collected dry weather discharge samples that contained fecal coliform concentrations greater than the 400 MPN/100 ml part of the applicable Rhode Island water quality standard for all 12 outfalls. For each of these 12 RIDOT MS4 outfalls, the sample that contained fecal coliform in excess of 400 MPN/100 ml was the only sample taken during the sampling event and therefore represented 100% of the samples taken, and the outfall discharges into a receiving water body that is either a Class A or B fresh water or a Class SA or SB sea water. RIDOT collected the dry weather discharge samples for these 12 outfalls on the following dates: March 29, 2007; April 23, 2007; May 24, 2007; September 7, 2007; October 4, 2007; September 3, 2008; September 24, 2008; July 13, 2009; August 6, 2009; June 2, 2011; and June 30, 2011.

60. RIDOT has only conducted illicit discharge investigations for two of the MS4 outfalls at which it collected dry weather discharge samples that contained fecal coliform concentrations in excess of 400 MPN/100 ml. These two illicit discharge investigations were not commenced until approximately two years after the sampling events occurred that contained fecal coliform concentrations in excess of 400 MPN/100 ml.

IDDE – Catch Basin Inspection and Dry Weather Sampling

61. Part IV.B.3.b.5.vi. of the MS4 Permit requires that the Standard Operating Procedures for the IDDE program include a measurable goal of inspecting all catch basins and manholes for the purpose of inspecting for illicit connections and non-storm water discharges at least once by the fourth year of the program (i.e., by December 31, 2007).

62. Part IV.B.3.b.5.vii. of the MS4 Permit requires that, for all RIDOT MS4 outfalls within the urbanized and densely populated areas, the Standard Operating Procedures for the IDDE program must include a measureable goal of performing a minimum of two dry weather surveys, one to be conducted between January 1st – April 30th and the other to be conducted between July 1st – October 31st, by the fourth year of the program (i.e., by April 30, 2007 and October 31, 2007, respectively).

63. For RIDOT MS4 outfalls serving divided highways outside the urbanized and densely populated areas, Part IV.B.3.b.5.vii. of the MS4 Permit allows RIDOT to propose an alternative program and schedule for performing dry weather surveys. If such an alternative schedule is not approved, the Standard Operating Procedures for the IDDE program must include a measureable goal of performing a minimum of two dry weather surveys, one to be conducted between January 1st – April 30th and the other to be conducted between July 1st – October 31st, by

the fourth year of the program for the RIDOT MS4 outfalls serving divided highways outside the urbanized and densely populated areas.

64. RIDOT has not proposed an alternative program or schedule for performing dry weather surveys for RIDOT MS4 outfalls serving divided highways outside the urbanized and densely populated areas.

Operation and Maintenance - Catch Basin Inspection and Cleaning

65. Part IV.B.6.b.1.iii. of the MS4 Permit requires that, for the RIDOT MS4 within the urbanized and densely populated areas, the RIDOT's pollution prevention operation and maintenance program in its SWMPP must include procedures for the implementation of a regular catch basin inspection and cleaning program to inspect all catch basins annually commencing by the third year of the program (i.e., by December 31, 2006), document the results of the inspection, and clean structures as necessary, unless RIDOT requests approval of a lesser frequency of inspection based on at least two consecutive years of operational data indicating that the system does not require annual cleaning. RIDOT has not requested approval of less frequent inspections based on at least two consecutive years of operational data indicating that the system does not require annual cleaning. Part IV.B.6.b.1. of the MS4 Permit also requires RIDOT to implement procedures for the inspection, cleaning, and repair of other elements of its storm drainage system.

66. For the portion of the RIDOT MS4 that serves divided highways outside the urbanized and densely populated areas, Part IV.B.6.b.1.iii. of the MS4 Permit allows RIDOT to propose an alternative program for catch basin inspection and cleaning. Unless such an alternative program is approved, the SWMPP must include procedures for the implementation of a regular catch basin inspection and cleaning program to inspect all catch basins annually

commencing by the third year of the program (i.e., by December 31, 2006), document the results of the inspection, and clean structures as necessary for the RIDOT MS4 outfalls serving divided highways outside the urbanized and densely populated areas. RIDOT has not proposed an alternative program for catch basin inspection and cleaning for the portion of the RIDOT MS4 that serves divided highways outside the urbanized and densely populated areas.

67. For the portion of the RIDOT MS4 that serves divided highways inside the urbanized and densely populated areas, Part IV.B.6.b.1.iii. of the MS4 Permit allows RIDOT to propose an alternative program for catch basin inspection and cleaning if RIDOT can provide justification that road sanding is the only potential significant source of sediment accumulation and the MS4 is not physically-interconnected with another MS4 or does not receive discharges from other properties. RIDOT has not proposed an alternative program for catch basin inspection and cleaning for the portion of the RIDOT MS4 that serves divided highways inside the urbanized and densely populated areas.

Operation and Maintenance - Street Sweeping Pollution Prevention

68. Part IV.B.6.b.1.vi. of the MS4 Permit requires that, for all RIDOT MS4 outfalls within the urbanized and densely populated areas, the RIDOT's pollution prevention operation and maintenance program in its SWMPP must include procedures for the development and implementation of a regular street sweeping program that includes sweeping of all streets and roads within the regulated area annually, to be fully implemented by the third year of the program (i.e., by December 31, 2006), unless RIDOT requests approval of a lesser frequency of sweeping based upon at least two consecutive years of data indicating that the street or road does not require annual sweeping. RIDOT has not requested approval of less frequent sweeping

based upon at least two consecutive years of data indicating that any street or road does not require annual sweeping.

69. For the portion of the RIDOT MS4 serving divided highways outside the urbanized and densely populated areas, Part IV.B.6.b.1.vi. of the MS4 Permit allows RIDOT to propose an alternative program or frequency for street and road sweeping. Unless such an alternative program is approved, the SWMPP must include procedures for the development and implementation of a regular street sweeping program that includes annual sweeping of all streets and roads for the MS4 outfalls serving divided highways outside the urbanized and densely populated areas, to be fully implemented by the third year of the program (i.e., by December 31, 2006). RIDOT has not proposed an alternative program or frequency for street and road sweeping for the portion of the RIDOT MS4 that serves divided highways outside the urbanized and densely populated areas.

CLAIM FOR RELIEF
(Violations of RIDOT's MS4 Permit)

70. The United States realleges and incorporates by reference the allegations of paragraphs 1 through 69 above.

71. Throughout the term of the MS4 Permit and continuing to the present, RIDOT violated Parts II.B., II.C.2., II.C.3., and IV.D. of the MS4 Permit by failing to address in its SWMPP, and by failing to implement, requirements for applicable TMDLs, including by not (a) determining the land areas contributing to the discharges identified in the applicable TMDL, (b) ensuring that the SWMPP addresses all contributing land areas and addresses the impacts identified by RIDEM in the TMDL, and (c) providing the required information regarding progress towards meeting the TMDL provisions.

72. Since August 21, 2004, and continuing to the present, RIDOT violated Part IV.D.4. of the MS4 Permit by failing to prepare and submit to RIDEM, and by failing to implement, Scope of Work (“SOW”) documents that describe the process and rationale that will be used to select BMPs and measureable goals to ensure that TMDL provisions will be met for applicable TMDLs that require structural storm water controls or measures for RIDOT’s MS4.

73. Throughout the term of the MS4 Permit and continuing to the present, RIDOT violated Parts II.B. and II.C.4. of the MS4 Permit by failing to include in its SWMPP, and by failing to implement, a description of the BMPs that will be used to control the pollutants of concern to the maximum extent practicable (“MEP”) for discharges from the RIDOT MS4 that contribute directly or indirectly the pollutants of concern to a water-quality impaired water body listed under CWA Section 303(d), 33 U.S.C. § 1313(d), for which a TMDL has not been approved.

74. Since August 21, 2004, and continuing to the present, RIDOT violated Part IV.D.8. of the MS4 Permit by failing to submit to RIDEM an amended SWMPP in response to approved TMDLs within 180 days of notification from RIDEM of such TMDLs, including, but not limited to, TMDLs that were notified to RIDOT on the following dates: February 23, 2004; April 26, 2005; March 9, 2006; December 4, 2006; August 29, 2007; November 14, 2007; July 2, 2008; July 7, 2008; and February 18, 2009.

75. Since March 10, 2009, and continuing to the present, RIDOT violated Part I.E. of the MS4 Permit by failing to submit to RIDEM an amended SWMPP to correct deficiencies identified by RIDEM in RIDOT’s existing SWMPP.

76. Since March 29, 2007, and continuing to the present, RIDOT violated Parts II.B., IV.A., IV.B.3.a., and IV.B.3.b. of the MS4 Permit by failing to develop, implement, and enforce

a program to detect illicit discharges into the RIDOT MS4 in the RIDOT Permit Area, including by not conducting illicit discharge investigations in response to dry weather discharge sampling results for 10 out of 12 MS4 outfalls that contained fecal coliform bacteria in excess of the applicable Rhode Island water quality standards.

77. Since January 1, 2008, and continuing to the present, RIDOT violated Part IV.B.3.b.5.vi. of the MS4 Permit by failing to inspect all catch basins and manholes in the RIDOT MS4 in the RIDOT Permit Area at least once for the purpose of detecting illicit connections and non-storm water discharges.

78. Since May 1, 2007, and continuing to the present, RIDOT violated Part IV.B.3.b.5.vii. of the MS4 Permit by failing to perform a dry weather survey of its MS4 outfalls within the RIDOT Permit Area during the time frame of January 1st – April 30th.

79. Since January 1, 2007, and continuing to the present, RIDOT violated Part IV.B.6.b.1.iii. of the MS4 Permit by failing to inspect all catch basins annually for the RIDOT MS4 within the RIDOT Permit Area, document the results of the inspections, and clean structures as necessary and violated Part IV.B.6.b.1. of the MS4 Permit by failing to implement adequate procedures for the inspection, cleaning, and repair of other elements of its storm drainage system.

80. Since January 1, 2007, and continuing to the present, RIDOT violated Part IV.B.6.b.1.vi. of the MS4 Permit by failing to sweep all streets and roads annually for all streets and roads within the RIDOT Permit Area, as part of RIDOT's pollution prevention operation and maintenance program.

81. Pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) and (d), and the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, any person who violates

any condition or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342, is liable for injunctive relief and for civil penalties not to exceed \$32,500 per day for each violation occurring after March 15, 2004, but prior to and including January 12, 2009, and \$37,500 per day for each violation occurring after January 12, 2009.

PRAYER FOR RELIEF

WHEREFORE, the United States of America respectfully requests that the Court grant the following relief:

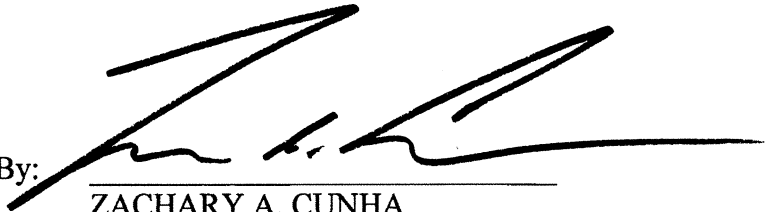
1. Permanently enjoin RIDOT, pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), from any and all future violations of the conditions and limitations of the MS4 Permit and the CWA and from discharges of pollutants except as authorized by a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342;
2. Order RIDOT to comply with the conditions and limitations of the MS4 Permit;
3. Order RIDOT to pay a civil penalty not to exceed \$32,500 per day per violation occurring prior to and including January 12, 2009, and \$37,500 per day per violation occurring after January 12, 2009;
4. Award the United States its costs in this action; and
5. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

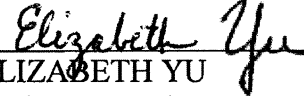
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