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October 15, 2007

Gregory Schultz, Esq.
Rhode Island Department of Environmental Management
Legal Services
235 Promenade Street
Providence, RI 02908-5767

Dear Mr. Schultz,

Public Employees for Environmental Responsibility (PEER) is a Washington D.C.-based non-profit, non-partisan public interest organization concerned with honest and open government. Specifically, PEER serves and protects public employees working on environmental issues. PEER represents thousands of local, state and federal government employees nationwide; our New England chapter is located outside of Boston, Massachusetts.

I am writing today to formally request that the Rhode Island Department of Environmental Management (DEM) terminate, revoke or modify the Rhode Island Pollutant Discharge Elimination System (RIPDES) permit for Sakonnet Point Club in Little Compton, Rhode Island (RIPDES No. R10023558). This request is being made pursuant to Rule 36(a) of the RIPDES regulations, which states, "Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Department's initiative." PEER represents the original Appellant in this matter, Mary W. Johnson, and as such, we are "interested persons."

As we discussed yesterday, the Sakonnet Point Club (hereinafter "SPC") is in clear violation of its RIPDES permit as the submerged outfall with the diffuser is not installed at the correct ocean depth. Specifically, the Development Document for the draft permit states, "The Applicant has proposed a submerged outfall with a multi-port diffuser, consisting of eight (8) $\frac{3}{4}$ inch diffuser ports, which terminates *in 23 feet of water...*" (emphasis added; see page 3 of the June, 2002 Permit Development Document). Our client relied on this information, and believes that this depth – or

deeper - is the only depth at which the lobster nursery habitat would be protected. PEER sent a scuba diver down to the submerged outfall on October 1, 2007. The diver found that the unit was located in eight (8) feet of seawater at near high tide.

We believe that the DEM has the duty to revoke the SPC RIPDES permit pursuant to Rule 24(a)(1), (3) and (4) which state:

“The following are causes for terminating a permit during its term, or for denying a permit renewal application: (1) Noncompliance by the permittee with any condition of the permit; ... (3) The permittee's failure in the application or during the issuance of a NPDES or RIPDES permit, a treatment works approval or Construct and Operate order to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; (4) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination....”

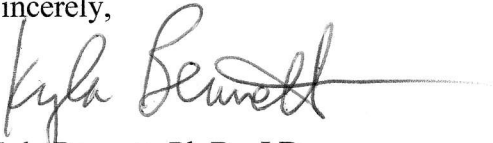
Specifically, we believe that SPC is in noncompliance with its RIPDES permit due to the fact that the outfall is only in eight feet of water. Moreover, we believe that SPC failed to disclose fully all relevant facts, and/or misrepresented facts, when it proposed to place the unit in 23 feet of water, and actually installed the unit in eight feet of water. Finally, we believe that if the desalination operation discharges in eight feet of water, the discharge will endanger the lobster habitat. This can only be remedied by permit termination or revocation, until such time as the outfall is moved into 23 feet of water.

We therefore request that the DEM immediately:

- Issue a stop work order which prohibits the SPC from *any* discharge through the improperly installed outfall; and
- Terminate or revoke RIPDES No. R10023558; and
- Require the outfall to be placed at a depth of 23 feet.

Please let me know as soon as possible whether you will be taking these actions. If DEM does not take immediate action, PEER will submit an overfile request asking the U.S. Environmental Protection Agency (EPA) to intervene and take an enforcement action.

Sincerely,



Kyla Bennett, Ph.D., J.D.
Director, New England PEER