

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE AND INSPECTION

In Re: Fred A. Gott, Jr.
Jane H. Gott
Carl Gott

File No.: Dam State I.D. 127
AAD No.: 17-002/DE

CONSENT AGREEMENT

A. INTENT & PURPOSE

This Agreement is entered into by and between the Rhode Island Department of Environmental Management's Office of Compliance & Inspection ("RIDEM") and Carl Gott (the "Respondent"). This Agreement is entered in accordance with Section 42-17.1-2 et seq. of the Rhode Island General Laws ("R.I. Gen. Laws") for the purpose of resolving the alleged violations set forth in a Notice of Violation ("NOV") issued to the Respondent, Fred A. Gott, Jr. and Jane H. Gott (the "Gotts") by the RIDEM on 27 February 2017.

B. STIPULATED FACTS

- (1) WHEREAS, the property is a dam identified as Belknap Pond Dam, State Identification Number 127, located approximately 250 feet north of the intersection of Greenville Avenue and Pine Hill Avenue, approximately 285 feet northwest of Pine Hill Avenue, Assessor's Plat 50, Lot 8 in the Town of Johnston, Rhode Island ("Dam 127").
- (2) WHEREAS, on or about 27 February 2017, the RIDEM issued a NOV to the Gotts alleging certain violations of the Rhode Island Code of Regulations titled *Rules and Regulations for Dam Safety (250-RICR-130-05-1)* (the "Dam Safety Regulations")
- (3) WHEREAS, on or about 23 March 2017, the Gotts requested an administrative hearing to contest the NOV.
- (4) WHEREAS, on or about 25 May 2018, the Respondent became the sole owner of Dam 127.
- (5) WHEREAS, on or about 1 April 2019, the RIDEM received a letter dated 29 March 2019 that was prepared by Fairbanks Engineering Corporation ("FEC") on behalf of the Respondent. The letter contained findings from a detailed investigation completed in accordance with the Order section of the NOV (the "Investigation Report"). The Investigation Report revealed, among other things, a recommendation to monitor two areas of seepage/leakage on the downstream side of the dam.

- (6) WHEREAS, on or about 9 May 2019, the RIDEM issued a letter to the Respondent indicating that a seepage monitoring program must be developed.
- (7) WHEREAS, on or about 17 July 2019, the RIDEM received an email dated 17 July 2019, that was prepared by FEC on behalf of the Respondent. The email provided a seepage monitoring program (the "Seepage Monitoring Program"). The Seepage Monitoring Program is attached hereto and incorporated herein as Attachment A.
- (8) WHEREAS, on 18 July 2019, the RIDEM approved the Seepage Monitoring Program.
- (9) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to effect a timely and amicable resolution of the NOV, the RIDEM and the Respondent hereby agree that it is in the best interest of the parties and in the public interest to resolve the issues raised in the NOV.
- (10) WHEREAS, the RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the Dam Safety Regulations.

C. AGREEMENT

- (1) JURISDICTION – The RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over the Respondent.
- (2) FORCE and EFFECT – This Agreement shall have the full force and effect of a final compliance order issued after a full hearing on the merits pursuant to the Administrative Procedures Act, R.I. Gen. Laws Section 42-35-1 et seq. from which no timely appeal was taken, and which is enforceable in Superior Court in accordance with R.I. Gen. Laws Section 42-17.1-2(21)(vi).
- (3) APPLICATION – The provisions of this Agreement shall apply to and be binding upon the RIDEM, the Respondent and his agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for the Respondent in the performance of work relating to or impacting the requirements of this Agreement.
- (4) CONDITIONS
 - (a) **For a period of 1 year following execution of this Agreement**, the Respondent shall monitor Dam 127 in accordance with the Seepage Monitoring Program.
 - (b) At any time, if the monitoring thresholds identified in the Seepage Monitoring Program as Note 6 are observed, the Respondent shall immediately contact a professional engineer fully registered in the State of Rhode Island and experienced with dam inspections to assess the safety of Dam 127 and shall immediately contact the RIDEM.

- (c) **Within 60 days of completion of the monitoring as required in subsection C(4)(a) above**, the Respondent shall forward to the RIDEM a report, prepared by a professional engineer fully registered in the State of Rhode Island and experienced with dam inspections. The report must assess the collected data, provide an opinion on the safety of Dam 127 and recommend any further action that may be required, including a schedule for its completion.
- (d) The report and/or schedule required in subsection C(4)(c) above shall be subject to the RIDEM's review and approval. Upon review, the RIDEM shall provide written notification to the Respondent either granting formal approval or stating the deficiencies therein. Within 14 days (unless a longer time is specified) of receiving a notification of deficiencies, the Respondent shall submit to the RIDEM a modified report and/or schedule or additional information necessary to correct the deficiencies.
- (5) **RIGHT OF ACCESS** – The Respondent provides to the RIDEM, its authorized officers, employees and representatives an irrevocable right of access to Dam 127 at all reasonable times to monitor compliance with this Agreement. The Respondent shall ensure that assignees, successors in interest, lessees, sublessees, tenants in possession and/or occupants of Dam 127 shall provide the same access and cooperation if they control Dam 127. The Respondent shall provide a copy of this Agreement to any current lessee, sublessee, tenant in possession and/or occupant of Dam 127 as of the effective date of this Agreement. Any subsequent leases, subleases, assignments or transfers of Dam 127 or an interest in Dam 127 shall include this right of access provision and shall otherwise be consistent with the terms of this Agreement.

D. COMPLIANCE

- (1) **EFFECT OF COMPLIANCE** – Compliance with and fulfillment of this Agreement shall be deemed to resolve all issues raised in the NOV.
- (2) **FAILURE TO COMPLY** – In the event that the Respondent fails to comply with subsection C (4) of the Agreement, the Respondent shall pay a stipulated penalty of \$500 per month for each and every month during which the noncompliance continues, except that the RIDEM may, for good cause shown, defer or reduce such penalty. The payment of a penalty in accordance with this section shall not preclude the RIDEM from seeking any other appropriate remedy (e.g., injunctive relief in Superior Court).
- (3) **COMPLIANCE WITH OTHER APPLICABLE LAWS** – Compliance with the terms of this Agreement does not relieve the Respondent of any obligation to comply with any other applicable laws or regulations administered by, through or for the RIDEM or any other governmental entity.

- (4) ADDITIONAL ENFORCEMENT ACTIONS – Upon a determination by the RIDEM that there is a threat to the public health or the environment, or upon discovery of any new information, the RIDEM reserves the right to take additional enforcement actions as provided by law or regulation, including, but not limited to, the issuance of “Immediate Compliance Orders” as authorized by R.I. Gen. Laws Section 42-17.1-2(21). This Agreement shall not restrict any right to hearing or other right available by statute or regulation that the Respondent may have regarding any new enforcement action commenced by the RIDEM after the execution of this Agreement.
- (5) FUTURE ACTIVITIES AND UNKNOWN CONDITIONS – This Agreement shall not operate to shield the Respondent from liability arising from future activities, as of the date of execution of this Agreement.
- (6) SCOPE OF THE AGREEMENT – The scope of the Agreement is limited to the violations alleged in the NOV.
- (7) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed:

To RIDEM: Paul Guglielmino, Principal Civil Engineer
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360 ext. 7122
paul.guglielmino@dem.ri.gov

To Respondent: Carl Gott
307 West Greenville Road
North Scituate, RI 02857
(401) 742-2877
cagott@me.com

All communications regarding compliance with this Agreement shall be forwarded to the above-referenced addressees by certified mail.

- (8) DEFERRAL – The RIDEM may, for good cause shown, defer any of the compliance dates prescribed herein. Good cause for deferral of any compliance date shall be forwarded to the RIDEM in writing at least 15 days prior to the prescribed deadline.
- (9) AMENDMENT – The Agreement may be amended by mutual agreement of the parties in writing.
- (10) EFFECTIVE DATE – This Agreement shall be deemed entered as of the date of execution by all parties.

IN WITNESS WHEREOF, the undersigned consent to this Agreement in substance and in form.

Carl Gott

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on the _____ day of _____, 2019, before me personally appeared Carl Gott, to me known and known by me to be the party who executed the foregoing instrument and he acknowledged said instrument by him so executed to be his free act and deed.

Notary Public

My Commission Expires: _____

*State of Rhode Island Department of Environmental
Management*

David E. Chopy, Administrator
Office of Compliance and Inspection

Dated: _____