

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF COMPLIANCE AND INSPECTION**

In Re: Conanicut Marine Services, Inc.

FILE NO.: OCI-UST-18-19-01866

AAD No.: 19-003/WME

CONSENT AGREEMENT

A. INTENT & PURPOSE

This Agreement is entered by and between the Rhode Island Department of Environmental Management (“RIDEM”), Conanicut Marine Services, Inc., (“Respondent”) and the Town of Jamestown, Rhode Island (the “Town of Jamestown”). 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 Respondent by RIDEM on February 26, 2019.

B. STIPULATED FACTS

- (1) WHEREAS, the property is located on Conanicut Avenue in the Town of Jamestown, Rhode Island (the “Property”). The Property includes a pier, a motor fuel dispensing system and underground storage tanks (“USTs” or “tanks”) that are used for storage of petroleum products (the "Facility").
- (2) WHEREAS, the Facility is owned and operated by Respondent.
- (3) WHEREAS, the Property is owned by the Town of Jamestown.
- (4) WHEREAS, on February 26, 2019, RIDEM issued a NOV to Respondent alleging certain violations of Rhode Island's Code of Regulations titled *Rules and Regulations for Underground Storage Facilities Used for Regulated Substances and Hazardous Materials (250-RICR-140-25-1)* (the “UST Regulations”).
- (5) WHEREAS, Respondent requested an administrative hearing to contest the NOV.
- (6) WHEREAS, Respondent complied with the Order section of the NOV.
- (7) WHEREAS, the Administrative Adjudication Division is a division of RIDEM.
- (8) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to affect a timely and amicable resolution of the NOV, RIDEM, Respondent and the Town of Jamestown 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.

- (9) WHEREAS, RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the UST Regulations.

C. AGREEMENT

- (1) JURISDICTION – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over Respondent and the Town of Jamestown.
- (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. and R.I. Gen. Laws Section 42-17.7-1 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 RIDEM, Respondent, the Town of Jamestown and its agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for Respondent and the Town of Jamestown in the performance of work relating to or impacting the requirements of this Agreement.
- (4) CONDITIONS – Penalty and Supplemental Environmental Project
- (a) Respondent and the Town of Jamestown shall complete a Supplemental Environmental Project (“SEP”) entitled “Taylor Point Restoration Project” (“TPRP”). The SEP involves the rehabilitation of the main footpath to Taylor Point that will reduce erosion to the adjacent water. The SEP will be constructed in accordance with the plan attached hereto and incorporated herein as Exhibit A.
- (b) Respondent shall bear the cost of the materials for the TPRP, and the Town of Jamestown will be responsible for the construction and labor costs of the TPRP.
- (c) All work associated with the TPRP must be completed by November 30, 2020.
- (d) Respondent shall be given a credit of \$8,000 for the SEP (the “SEP Credit”).
- (e) By December 30, 2020, Respondent shall provide a letter to RIDEM that documents the following:
- (i) No Federal or State grants or low interest loans were used to complete the SEP up to the SEP Credit;
 - (ii) The actual cost to complete the SEP (the “SEP Cost”); and
 - (iii) The SEP was completed in accordance with this Agreement.

- (f) If Respondent and the Town of Jamestown fail to timely complete the SEP, RIDEM shall notify Respondent and the Town of Jamestown that it intends to rescind the SEP Credit. Within 14 days of Respondent's and the Town of Jamestown's receipt of written notification by RIDEM that RIDEM intends to rescind the SEP Credit, Respondent and the Town of Jamestown shall either complete the SEP or demonstrate that good cause exists for the delay in completing the SEP. If Respondent and the Town of Jamestown fail to complete the SEP or do not demonstrate good cause for the delay within said 14 days, Respondent shall, within 10 days of Respondent's receipt of a written notification from RIDEM, submit to RIDEM a check in the amount of the SEP Credit after which Respondent and the Town of Jamestown shall be under no further obligation to complete the SEP;
- (g) If the SEP Cost is less than the SEP Credit, Respondent shall, within 30 days of Respondent's submission of the letter to RIDEM in subsection C(4)(e) of this Agreement, submit to RIDEM a check in the amount of the difference between the SEP Cost and the SEP Credit;
- (h) Penalties that Respondent agrees to pay in this Agreement are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss;
- (i) If Respondent fails to comply with subsections C(4)(a) (b), (c) and (e) of this Agreement and fails to remit to RIDEM a payment pursuant to subsections C(4)(f) and C(4)(g) of this Agreement on or before its due date, that payment will be considered late and Respondent will be in default. If the payment is not received within 30 days of its due date, interest shall begin to accrue on the entire unpaid balance at the rate of 12 percent per annum. Interest will accrue at this rate beginning with the day after the due date specified in this Agreement until such date all past due installment payments and interest owed are remitted. Interest shall be calculated using the following generally established accounting principle:

Interest due = (number of days late/365) x (0.12) x (amount of unpaid balance);

and

- (j) All penalty payments shall be in the form of a check payable to the ***R.I. General Treasurer – Water and Air Protection Account***. All payments shall be delivered to:

Administrator, RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767

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) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve Respondent of any obligation to comply with any other applicable laws or regulations administered by, through or for RIDEM or any other governmental entity.
- (3) ADDITIONAL ENFORCEMENT ACTIONS – Upon a determination by the Director that there is a threat to the public health or the environment, or upon discovery of any new information, RIDEM reserves the right to take additional enforcement actions as provided by statute 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 Respondent may have regarding any new enforcement action commenced by RIDEM after the execution of this Agreement.
- (4) FUTURE ACTIVITIES AND UNKNOWN CONDITIONS – This Agreement shall not operate to shield Respondent or the Town of Jamestown from liability arising from future activities, as of the date of execution of this Agreement.
- (5) SCOPE OF THE AGREEMENT – The scope of the Agreement is limited to violations alleged in the NOV.
- (6) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

Tracey D’Amadio Tyrrell, Supervising Environmental Scientist
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360 ext. 7407
tracey.tyrrell@dem.ri.gov

Tricia Quest, Esq.
RIDEM Office of Legal Services
235 Promenade Street
Providence, RI 02908-5767
(401) 222-6607
tricia.quest@dem.ri.gov

Christian S. Infantolino, Esq.
Morneau & Murphy
77 Narragansett Avenue
Jamestown RI, 02835
(401) 423-0400 ext. 14

cinfantolino@jamestownlawyer.com

Town of Jamestown
Jamie Hainsworth, Town Administrator
93 Narragansett Ave
Jamestown, RI 02835
401-423-9805
Jhainsworth@jamestownri.net

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

- (7) DEFERRAL – The Director 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 RIDEM in writing at least 15 days prior to the prescribed deadline.
- (8) AMENDMENT – The Agreement may be amended by agreement of the parties in writing.
- (9) EFFECTIVE DATE – This Agreement shall be deemed entered as of the date of execution by all parties.

[SIGNATURES ON FOLLOWING PAGES]

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

Conanicut Marine Services, Inc.

By: _____
Print Name: _____ Title: _____

Dated: _____

In my capacity as _____ of Conanicut Marine Services, Inc., I hereby aver that I am authorized to enter into this Agreement and thereby bind Conanicut Marine Services, Inc., to satisfy any obligation imposed upon it pursuant to said Agreement.

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2020, before me personally appeared _____, the _____ of Conanicut Marine Services, Inc., a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of Conanicut Marine Services, Inc., and he/she acknowledged said instrument by him/her executed, to be his/her/ free act and deed in said capacity and the free act and deed of Conanicut Marine Services, Inc.

Notary Public
My Commission Expires: _____

Town of Jamestown

By: _____
Print Name: _____ Title: _____

Dated: _____

In my capacity as _____ of the Town of Jamestown, I hereby aver that I am authorized to enter into this Agreement and thereby bind the Town of Jamestown, to satisfy any obligation imposed upon it pursuant to said Agreement.

State of Rhode Island, Department of Environmental
Management

By: _____
David E. Chopy, Administrator
RIDEM Office of Compliance and Inspection

Dated: _____