

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

OFFICE OF COMPLIANCE AND INSPECTION

In Re: Town of Smithfield

File No.: Dam State I.D. 126
AAD No.: 11-004/DE

CONSENT AGREEMENT

A. INTENT & PURPOSE

This Agreement is entered by and between the Rhode Island Department of Environmental Management's Office of Compliance & Inspection ("RIDEM") and the Town of Smithfield (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 administrative enforcement action set forth in a Notice of Violation ("NOV") issued to the Respondent by RIDEM on April 21, 2011.

B. STIPULATED FACTS

- (1) WHEREAS, the subject property is a dam identified as Georgiaville Pond Dam, State I.D. 126, located north and west of Stillwater Road and east of Farnum Pike, in the town of Smithfield, Rhode Island ("Dam 126").
- (2) WHEREAS, the Respondent owns Dam 126.
- (3) WHEREAS, Dam 126 is classified by the RIDEM as High Hazard.
- (4) WHEREAS, on April 21, 2011, the RIDEM issued a NOV to the Respondent alleging certain violations of the RIDEM's Rules and Regulations for Dam Safety (the "Dam Safety Regulations").
- (5) WHEREAS, the Respondent requested an administrative hearing to contest the NOV.
- (6) WHEREAS, on July 14, 2011 the RIDEM received from the Respondent a letter and video showing that the low level gates for Dam 126 are operable.
- (7) 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.

- (8) 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)(v).
- (3) APPLICATION – The provisions of this Agreement shall apply to and be binding upon the RIDEM, the Respondent and its 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 – The Respondent shall complete the following actions to comply with the Order section of the NOV:
- (a) **By March 31, 2012** remove the brushy vegetation and trees up to 6 inches in diameter from the embankment and dike of Dam 126 in the areas specified in the NOV.
- (b) **By April 30, 2012** retain a professional engineer fully registered in the State of Rhode Island, who is experienced with dam inspections, to complete a visual inspection of Dam 126 in accordance with the Dam Safety Regulations, Rule 11C and submit a report of the inspection findings to the RIDEM. The report must specify the actions necessary to return the dam to a safe condition and include a schedule to complete the work. For any proposed repairs to Dam 126, the report must include an application prepared in accordance with the Dam Safety Regulations, Rule 10B and a schedule to complete the work.
- (c) The report, application, and schedule required in Section C.4.b 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 fourteen (14) days (unless a longer time is specified) of receiving a notification of deficiencies**, the Respondent shall submit to the RIDEM a modified report, application, or schedule or additional information necessary to correct the deficiencies.
- (d) Commence work specified in the schedule approved by the RIDEM within twenty (20) days of approval (unless otherwise expressly authorized by the RIDEM in

writing to commence work at a later time), and complete such work in accordance with the approved schedule.

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 the items specified in Section C.4 of the Agreement, the Respondent shall pay a stipulated penalty of One Hundred Dollars (\$ 100.00) 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 Director 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 only violations alleged in the NOV.
- (7) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

Paul Guglielmino
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
401.222.1360 ext. 7122

Kevin Cleary

Town of Smithfield
64 Farnum Pike
Smithfield, RI 02917
401.233.1041

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

- (8) 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 fifteen 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.

For the Town of Smithfield

Dennis G. Finlay, Town Manager

Dated: _____

For the State of Rhode Island Department of
Environmental Management

David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____

