

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

**OFFICE OF COMPLIANCE AND INSPECTION**

In Re: David A. Harlow  
Stephanie M. Harlow

File No.: FW C11-0141  
AAD No.: 12-001/FWE

**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 David A. Harlow and Stephanie M. Harlow (the "Respondents"). 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 Respondents by the RIDEM on 31 December 2011.

**B. STIPULATED FACTS**

- (1) WHEREAS, the property is located at 35 Patchet Brook Road, Assessor's Plat 25, Lot 24-5 in the town of Little Compton, Rhode Island (the "Property").
- (2) WHEREAS, the Respondents own the Property.
- (3) WHEREAS, on 31 December 2011, the RIDEM issued a NOV to the Respondents alleging certain violations of Rhode Island's Freshwater Wetlands Act and the RIDEM's *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* (the "Freshwater Wetland Regulations").
- (4) WHEREAS, the Respondents requested an administrative hearing to contest the NOV.
- (5) WHEREAS, on 25 June 2012, the RIDEM received a plan entitled "Wetland Restoration Plan DEM Notice of Violation C11-0141 David A. Harlow 35 Patchet Brook Road A.P. 25, Lot 24-5 Little Compton, RI", 2 sheets, dated 18 June 2012 and prepared by Natural Resource Services, Inc. to resolve the Order section of the NOV (the "Wetland Restoration Plan"). The Wetland Restoration Plan is attached hereto and incorporated herein as Attachment A.

- (6) 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 Respondents 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.
- (7) WHEREAS, the RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with Rhode Island's Freshwater Wetlands Act and the RIDEM's Freshwater Wetland Regulations.

### **C. AGREEMENT**

- (1) JURISDICTION – The RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over the Respondents.
- (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 Respondents and their agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for the Respondents in the performance of work relating to or impacting the requirements of this Agreement.
- (4) RECORDING OF AGREEMENT – Within 10 days of the receipt of the fully executed Agreement from the RIDEM, the Respondents shall record this Agreement with the town of Little Compton, Rhode Island and shall provide a copy of the recorded Agreement to the RIDEM. The recording shall be at the sole expense of the Respondents.
- (5) CONDITIONS –
  - (a) **Within 18 months of execution of the Agreement**, the Respondents shall complete the wetland restoration on the Property in accordance with the Wetland Restoration Plan and the requirements below unless the Respondents obtain a permit from the RIDEM allowing some or all of the altered wetlands to remain. It is acknowledged that any discrepancy between the Wetland Restoration Plan and the requirements of this Agreement shall be governed by the Agreement.
    - (i) If necessary, prior to the commencement of restoration of the freshwater wetlands, a continuous uninterrupted line of staked haybales or silt fence shall be installed between those portions of the wetlands that have been altered without authorization and the undisturbed freshwater wetlands. These soil erosion and sediment controls must be regularly inspected and properly and continually maintained (and replaced, if necessary) during and

following the completion of the required wetland restoration, and until such time that all surrounding areas are properly stabilized. At the discretion and direction of the RIDEM, additional soil erosion and sediment controls must be installed on-site, as deemed necessary, to protect any and all freshwater wetlands.

- (ii) If any or all of the required plantings (including wildlife grasses) fail to survive at least 1 year from the time that planting has been verified by the RIDEM, the Respondent agrees to plant and maintain the same plant species until such time that survival is maintained over 1 full year.
  - (iii) Upon stabilization of all disturbed areas, erosion and sedimentation controls must be removed from the freshwater wetland. Prior to the removal of the controls, all accumulated sediment must be removed to a suitable upland area, outside of any and all freshwater wetlands.
  - (iv) All restored wetland areas, including replanted areas, must be allowed to revegetate naturally and revert to a natural wild state. Aside from those improvements allowed within the freshwater wetlands on the Property under this Agreement, no future clearing, mowing, cutting, trimming, or other alterations are allowed in the restored wetland areas, or within other previously undisturbed freshwater wetlands on Property, without first obtaining a permit from the RIDEM, with the exception of any work allowed as an exempt activity under the RIDEM's Freshwater Wetland Regulations, Rule 6.00
- (b) Penalty – The Respondents shall pay to the RIDEM **\$3,000** in administrative penalties assessed as follows:
- (i) Upon execution of this Agreement by the Respondents, the Respondents shall pay to the RIDEM **\$166.67**.
  - (ii) The remainder of the penalty, **\$2,833.33**, shall be paid to the RIDEM in 17 equal and consecutive monthly installments of **\$166.67**. The remaining payments shall be made on the first of the month.
  - (iii) Penalties that the Respondents agree 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.
  - (iv) In the event that the Respondents fail to remit to the RIDEM a payment on or before its due date, that payment will be considered late and the Respondents 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% 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)

This provision does not preclude the RIDEM from seeking additional penalties according to paragraph D for failure to comply with the remaining provisions of this Agreement.

- (v) All penalty payments shall be in the form of a certified check, cashiers check, or money order, payable to the ***R.I. General Treasurer – Water and Air Protection Account***. All payments shall be delivered to:

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

- (6) **RIGHT OF ACCESS** – The Respondents provide to the RIDEM, its authorized officers, employees and representatives an irrevocable right of access to the Property at all reasonable times for the purpose of monitoring compliance with this Agreement. The Respondents shall ensure that assignees, successors in interest, lessees, sublessees, tenants in possession and/or occupants of the Property shall provide the same access and cooperation as long as they control the Property. The Respondents shall provide a copy of this Agreement to any current lessee, sublessee, tenant in possession and/or occupant of the Property as of the effective date of this Agreement. Any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property 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. Upon the Respondents successful completion of the requirements set forth in this Agreement, the RIDEM shall issue a Release and Discharge of the NOV and the Agreement to the Respondents for recording. The recordings shall be at the sole expense of the Respondents.
- (2) **FAILURE TO COMPLY** – In the event that the Respondents fail to comply with the items specified in paragraph C (5)(a) of the Agreement, the Respondents shall pay a stipulated penalty of \$100 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 Respondents 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 Respondents 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 Respondents 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:

**David E. Chopy, Chief**  
RIDEM Office of Compliance and Inspection  
235 Promenade Street  
Providence, RI 02908-5767  
(401) 222-1360 ext. 7400

**Joseph J. LoBianco, Esquire**  
RIDEM Office of Legal Services  
235 Promenade Street, 4<sup>TH</sup> Floor  
Providence, RI 02908-5767  
(401) 222-6607

**David A. Harlow**  
35 Patchet Brook Road  
Little Compton, RI 02837  
(401) 592-0094

- (a) At any time prior to full compliance with the terms of this Agreement, the Respondents agree to notify the RIDEM in writing of any change in ownership of the Property, and provide the name and address of the new owner(s). Notice of any change in address/telephone/fax of either party shall be sent to all other parties by certified mail.

- (b) 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.**

*For the Respondents*

\_\_\_\_\_  
David A. Harlow

Dated: \_\_\_\_\_

**STATE OF RHODE ISLAND**  
**COUNTY OF** \_\_\_\_\_

In \_\_\_\_\_, in said County and State, on this \_\_\_\_\_ day of \_\_\_\_\_, 2014, before me personally appeared David A. Harlow to me known and known by me to be the party executing the foregoing instrument and he acknowledged said instrument and the execution thereof, to be his free act and deed.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

*For the Respondents*

\_\_\_\_\_  
Stephanie M. Harlow

Dated: \_\_\_\_\_

**STATE OF RHODE ISLAND**  
**COUNTY OF \_\_\_\_\_**

In \_\_\_\_\_, in said County and State, on this \_\_\_\_\_ day of \_\_\_\_\_, 2014, before me personally appeared Stephanie M. Harlow to me known and known by me to be the party executing the foregoing instrument and he acknowledged said instrument and the execution thereof, to be his free act and deed.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

*For the State of Rhode Island Department of  
Environmental Management*

\_\_\_\_\_  
David E. Chopy, Chief  
Office of Compliance and Inspection

Dated: \_\_\_\_\_