

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE AND INSPECTION

**IN RE: Town of Barrington
 J.H. Lynch & Sons, Inc.**

**FILE NO.: OCI-WP-17-4
X-ref. RIPDES RIR101411
and WQC 16-079**

AAD No.: 18-004/WRE

CONSENT AGREEMENT

A. *INTENT & PURPOSE*

This Agreement is entered by and between the Rhode Island Department of Environmental Management (“RIDEM”) and the Town of Barrington, Rhode Island and J. H. Lynch & Sons, Inc. (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 alleged violations set forth in a Notice of Violation (“NOV”) issued to Respondents by RIDEM on 10 April 2018.

B. *STIPULATED FACTS*

- (1) WHEREAS the Town of Barrington, Rhode Island (“Barrington”) owns property located on Upland Way that has an inactive municipal landfill.
- (2) WHEREAS on or about 25 July 2016, Barrington signed a contract with J.H. Lynch & Sons, Inc. (“Lynch”) to close the landfill.
- (3) WHEREAS on 7 September 2016, RIDEM issued a Rhode Island Pollutant Discharge Elimination System General Permit for Stormwater Discharge Associated with Construction Activity (No. RIR101411) and a Water Quality Certificate (No. 16-079) to Barrington (collectively, the “Permit”) to close the landfill.
- (4) WHEREAS on 10 April 2018, RIDEM issued a NOV to Respondents alleging certain violations of the Permit and Rhode Island’s *Water Pollution Act* (the “WP Act”), the *Water Quality Regulations* (the “WQ Rules”) and the *Regulations for the Rhode Island Pollutant Discharge Elimination System* (the “RIPDES Rules”)
- (5) WHEREAS Respondents requested an administrative hearing with the Administrative Adjudication Division (“AAD”) to contest the NOV.
- (6) WHEREAS the AAD is a division of RIDEM.

- (7) WHEREAS on 22 November 2021, Lynch submitted by electronic correspondence a proposal to repair the wall in the vicinity of the Wyoming Upper Reservoir Dam in Richmond, Rhode Island as a Supplemental Environmental Project (“SEP”) to satisfy the administrative penalty assessed in the NOV.
- (8) WHEREAS on 23 December 2021, RIDEM forwarded a Scope of Work (“SOW”) to Lynch to complete the SEP. The SOW is attached hereto and incorporated herein as Attachment A.
- (9) WHEREAS on or about 13 January 2022, Lynch notified RIDEM by electronic correspondence that all the work was completed in accordance with the SOW.
- (10) WHEREAS in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to effect a timely and amicable resolution of the NOV, RIDEM and 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.
- (11) WHEREAS this Agreement was negotiated and executed by the parties in good faith, and as a settlement of all claims which were denied and disputed as to validity and amount by Respondents. RIDEM and Respondents agree that neither this Agreement, nor any performance under this Agreement by Respondents, shall constitute an admission by Respondents of the factual or legal allegations contained in the NOV. Nor shall this Agreement by Respondents constitute a waiver of, or act as a limitation to, any claims Respondents may have against any third party.
- (12) WHEREAS RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the WP Act, the WQ Rules and the RIPDES Rules.
- (13) WHEREAS Respondents find that this Agreement is reasonable and fair and enter into this Agreement with full knowledge and understanding of its terms.

C. AGREEMENT

- (1) **JURISDICTION** – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over 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. 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, Respondents and their agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for Respondents in the performance of work relating to or impacting the requirements of this Agreement.

(4) **PENALTY** – In lieu of payment of any cash, RIDEM provides Respondents a credit of \$25,000 for the SEP (the “SEP Credit”). The SEP Credit is contingent on the conditions set forth below:

- (a) **By 25 February 2022**, Lynch shall provide to RIDEM a report of the work completed on the SEP, which must include photographs that document the work.
- (b) **By 25 February 2022**, Lynch shall provide to RIDEM a letter that states the following:
 - 1. No Federal or State grants or low interest loans were used to complete the SEP up to the SEP Credit.
 - 2. The actual cost to complete the SEP (the “SEP Cost”) was at least \$25,000.
 - 3. The SEP was completed in accordance with the SOW.
- (c) **By 25 February 2022**, Lynch shall provide to RIDEM a 2-year warranty on the work completed on the SEP.
- (d) If Lynch fails to timely comply with subsections C(4)(a), C(4)(b) or C(4)(c) of this Agreement, RIDEM shall notify Respondents that it intends to rescind the SEP Credit. Within 14 days of Respondents’ receipt of written notification by RIDEM that RIDEM intends to rescind the SEP Credit, Lynch shall comply or submit to RIDEM a check in the amount of the SEP Credit after which Respondents shall be under no further obligation to comply with the subsections.
- (e) If the SEP Cost is less than the SEP Credit, Lynch shall, within 30 days of Lynch’s submission of the letter to RIDEM in subsection C(4)(b) of this Agreement, submit to RIDEM a check in the amount of the difference between the SEP Cost and the SEP Credit.
- (f) The assessment of any penalties hereunder are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (g) If Lynch fails to comply with subsections C(4)(a), C(4)(b) or C(4)(c) of this Agreement and fails to remit to RIDEM a payment pursuant to subsections C(4)(d) or C(4)(e) of this Agreement on or before its due date, that payment will be considered late, and Lynch 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).

(h) Penalty payments shall be by one of two methods:

1. By certified check, cashier's check, or money order made payable to the **General Treasury – Water and Air Protection Program** and forwarded to:

Administrator, RIDEM Office of Compliance and Inspection
235 Promenade Street, Suite 220
Providence, RI 02908-5767

2. By wire transfer in accordance with instructions provided by RIDEM.

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 Respondents 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 Respondents 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 Respondents 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:

David E. Chopy, Administrator
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360 ext. 2777400

david.chopy@dem.ri.gov

Joseph LoBianco, Esquire
RIDEM Office of Legal Services
235 Promenade Street
Providence, RI 02908-5767
(401) 222-6607

joseph.lobianco@dem.ri.gov

Lawrence P. McCarthy
Vice President/General Counsel
J. H. Lynch & Sons, Inc.
50 Lynch Place
Cumberland, RI 02864
(401) 333-4300

lmccarthy@jhlynch.com

Michael A. Ursillo, Esquire
Ursillo, Teitz and Ritch, Ltd
2 Williams Street (at South Main Street)
Providence, RI 02903-2918
(401) 331-2222

mikeursillo@utrlaw.com

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.

Town of Barrington

By: _____

Philip Hervey, Town Manager

Dated: _____

J. H. Lynch & Sons, Inc.

By: _____

Print Name: _____ Title: _____

Dated: _____

In my capacity, as _____ of J. H. Lynch & Sons, Inc., I hereby aver that I am authorized to enter into this Agreement and thereby bind J. H. Lynch & Sons, 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 _____, 2022, before me personally appeared _____, the _____ of J. H. Lynch & Sons, Inc., a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of J. H. Lynch & Sons, Inc., and he/she/they acknowledged said instrument by him/her/they executed, to be his/her/their free act and deed in said capacity and the free act and deed of J. H. Lynch & Sons, Inc.

Notary Public
My Commission Expires: _____

**State of Rhode Island, Department of Environmental
Management**

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

Dated: _____