

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

In Re: Littlefield & Sons, Ltd.
A. Verna Littlefield
Everett R. Littlefield, Sr.

FILE NO.: FW C94-0216
AAD NO.: 10-001/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 Littlefield & Sons, Ltd., A. Verna Littlefield and Everett R. Littlefield, Sr. (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 Respondents by the RIDEM on 12 January 2010.

B. *STIPULATED FACTS*

- (1) WHEREAS, the property is located approximately 20 feet north of Old Town Road, at Utility Pole Number 17 and Fire Number 0049, approximately 800 feet southwest of the intersection of Old Town Road and Connecticut Avenue, Assessor's Plat 17, Lot 43 in the town of New Shoreham, Rhode Island (the "Property").
- (2) WHEREAS, at the time of the filing of the NOV. A. Verna Littlefield owned the Property.
- (3) WHEREAS, Littlefield & Sons, Ltd. operates a propane gas distribution business on the Property. At the time of the filing of the NOV the Vice President of Littlefield & Sons, Ltd. was Everett R. Littlefield Sr.
- (4) WHEREAS, on 12 January 2010, the RIDEM issued a NOV to 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*.
- (5) WHEREAS, Respondents requested an administrative hearing to contest the NOV before the RIDEM's Administrative Adjudication Division ("AAD").

- (6) WHEREAS, on 4 October 2012, the AAD hearing officer issued an Order regarding Respondents' Motion to Dismiss for Lack of Subject Matter Jurisdiction or in the Alternative Summary Judgment (the "AAD Order"). The AAD Order denied Respondents' Motion for Summary Judgment.
- (7) WHEREAS, Respondents filed an action in Providence County Superior Court captioned *Littlefield & Sons, Ltd, et al. v. State of Rhode island Department of Environmental Management et al*, C.A. No. PC 12-5678 (the "Complaint") seeking, *inter alia*, judicial review of the AAD Order.
- (8) WHEREAS, on 22 August 2013, Respondents submitted a plan to the RIDEM entitled "Channel Relocation and Emergent Plant Community Mitigation Plan..." 1 sheet revised dated 16 August 2013 (the "Wetland Restoration Plan").
- (9) WHEREAS, on 29 January 2014, the RIDEM approved the Wetland Restoration Plan. The Wetland Restoration Plan is attached hereto and incorporated herein as Attachment A.
- (10) WHEREAS, the RIDEM and Respondents agree that the wording in Construction Note 8 on the Wetland Restoration Plan shall be deleted in its entirety and replaced with the following wording: "The area between the channel and the business shall be maintained on a regular basis. The area under the planted trees will only be cut in the fall. Emergent Plant Community will not be mowed."
- (11) WHEREAS, the RIDEM and Respondents agree that the wording in Construction Notes for Emergent Plant Community Mitigation Area, Note 2 shall be deleted in its entirety and replaced with the following wording: "Prior to the commencement of work, the limits of the proposed mitigation area shall be staked in the field and appropriate erosion controls (e.g., hay bales, silt fence, mulch tubes) shall be installed between the proposed mitigation area and the relocated channel. Erosion controls shall be monitored and maintained throughout construction.
- (12) WHEREAS, on 29 January 2014, the RIDEM received electronic mail from Respondents' attorney forwarding a letter that was sent from Lisa Stiepock and Julie Conant, co-presidents of Block Island School Friends, to Respondents. The letter acknowledged receipt of a donation of \$900 to the Block Island School Friends from Respondents (the "Donation").
- (13) WHEREAS, on 10 February 2014, the RIDEM received electronic mail from Ms. Stiepock. Ms. Stiepock stated the following regarding Block Island School Friends:
 - (a) It is a fundraising group dedicated to enriching the academic and cultural lives of the children in the Block Island school system;
 - (b) It is a non-profit organization, but not a 501(c)(3) corporation; and
 - (c) It funds field trips revolving around environmental education.

- (14) WHEREAS, the Donation fully satisfies the administrative penalty assessed in the NOV.
- (15) WHEREAS, on 11 June 2015, the DEM inspected the Property (the “Compliance Inspection”) and determined that the wetland restoration was completed in accordance with the Wetland Restoration Plan.
- (16) WHEREAS, the Compliance Inspection revealed that 22 of the 24 planted spruce trees were either dead or in a dying condition (the “Spruce Trees”).
- (17) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to the Superior Court on the Complaint and Appeal and to effect a timely and amicable resolution of the NOV, the 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.
- (18) 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 *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act*.
- (19) WHEREAS, the RIDEM and Respondents agree that the use of the term “channel” in this Agreement is for descriptive purposes only and is not intended to establish a legally binding precedent as to the legal significance of the subject waterbody.

C. AGREEMENT

- (1) JURISDICTION – The 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 of the Director 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 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) RECORDING OF AGREEMENT – Within 10 days of the receipt of the fully executed Agreement from the RIDEM, Respondents shall record this Agreement with the town of New Shoreham, Rhode Island and shall provide a copy of the recorded Agreement to the RIDEM. The recording shall be at the sole expense of Respondents.

(5) CONDITIONS –

- (a) **By 30 June 2017**, Respondents shall dismiss the Complaint with prejudice.
- (b) **By 31 July 2017**, replant the Spruce Trees. The same trees shall be replanted and maintained until such time that survival complies with the Wetland Restoration Plan.
- (c) With the exception of any work required by this Agreement or as allowed as an exempt activity under the RIDEM's *Rules and Regulations for Governing the Administration and Enforcement of the Freshwater Wetlands Act*, Rule 6.00, Respondents shall not alter the character of any freshwater wetland by undertaking any additional activities, including, but not limited to, construction, excavation, filling, grading and removal of vegetation without prior written approval of the 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. 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 Respondents for recording. The recording of the Releases shall be at the sole expense of Respondents.
- (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 the 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, 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 Respondents may have regarding any new enforcement action commenced by the 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 only violations alleged in the NOV.

- (6) 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

Gary Powers, Esquire
RIDEM Office of Legal Services
235 Promenade Street
Providence, RI 02908-5767
(401) 222-6607 ext. 2408

Nicholas Gorham, Esquire
GORHAM & GORHAM INC.
P.O. Box 46
25 Danielson Pike
Scituate, RI 02857
(401) 647-1400

- (a) At any time prior to full compliance with the terms of this Agreement, 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.
- (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 the RIDEM in writing at least 15 days prior to the prescribed deadline.
- (8) AMENDMENT – The Agreement may be amended by mutual agreement of the parties in writing.
- (9) 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 A. Verna Littlefield

By: _____ (Print Name)

Dated: _____

In _____, in said County and State, on this _____ day of _____, 2017, before me personally appeared A. Verna Littlefield to me known and known by me to be the party executing the foregoing instrument and she acknowledged said instrument and the execution thereof, to be her free act and deed.

Notary Public
My Commission Expires: _____

For Everett R. Littlefield, Sr.

By: _____ (Print Name)

Dated: _____

In _____, in said County and State, on this _____ day of _____, 2017, before me personally appeared Everett R. Littlefield, Sr. 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 Littlefield & Sons, Ltd.

By: _____ (Print Name)

Its: _____ (Title)

Dated: _____

In my capacity as _____ of Littlefield & Sons, Ltd., I hereby aver that I am authorized to enter into this Agreement and thereby bind Littlefield & Sons, Ltd. 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 _____, 2017, before me personally appeared _____, the _____ of Littlefield & Sons, Ltd., a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of Littlefield & Sons, Ltd., 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 Littlefield & Sons, Ltd.

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: _____