

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

**OFFICE OF COMPLIANCE AND INSPECTION**

In Re: SCOBOCO Associates  
Pauline C. Metcalf

File No.: Dam State I.D. 527  
AAD No.: 11-007/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"), SCOBOCO Associates, and Pauline C. Metcalf (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 RIDEM on May 3, 2011.

***B. STIPULATED FACTS***

- (1) WHEREAS, the subject property is a dam identified as Metcalf Wildlife Marsh Dam, State I.D. 527, located northwest of the intersection of Tripps Corner Road and Sheffield Hill Road and east of Gardiner Road, in the town of Exeter, Rhode Island ("Dam 527").
- (2) WHEREAS, the Respondents own Dam 527.
- (3) WHEREAS, the Rhode Island Secretary of State's corporations database has no listing for SCOBOCO Associates as an active or inactive corporation.
- (4) WHEREAS, Dam 527 is classified by the RIDEM as High Hazard.
- (5) WHEREAS, on May 3, 2011, the RIDEM issued a NOV to the Respondents alleging certain violations of the RIDEM's Rules and Regulations for Dam Safety (the "Dam Safety Regulations").
- (6) WHEREAS, the Respondents requested an administrative hearing to contest the NOV.
- (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 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.

- (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 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) CONDITIONS – The Respondents shall complete the following actions to comply with the Order section of the NOV:
- (a) **By October 31, 2011** remove the excess vegetation from the embankment of Dam 527 in the areas specified in the NOV.
  - (b) **By October 31, 2011** 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 527 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 527, the report must include an application prepared in accordance with the Dam Safety Regulations, Rule 10B.
  - (c) **By October 31, 2011** retain a professional engineer fully registered in the State of Rhode Island, who is experienced with design, construction and repair, to submit an application to the RIDEM in accordance with the Dam Safety Regulations, Rule 10B to repair the low level gate for Dam 527. The application must include a schedule to complete the work.
  - (d) The reports, applications, and schedules required in Sections C.4.a, C.4.b and C.4.c above shall be subject to the RIDEM's review and approval. Upon review, the RIDEM shall provide written notification to the Respondents 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

Respondents shall submit to the RIDEM a modified report, application, or schedule or additional information necessary to correct the deficiencies.

- (e) 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 Respondents fail to comply with items specified in Section C.4 of the Agreement, the Respondents 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 RIDEM may, for good cause shown, defer or reduce such penalty. The payment of a penalty in accordance with this section shall not preclude 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 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, 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 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:

Paul Guglielmino  
RIDEM Office of Compliance and Inspection  
235 Promenade Street

Providence, RI 02908-5767  
401.222.1360 ext. 7122

Robert Gaumont  
Coastline Trust Company  
90 Elm Street  
Providence, RI 02903  
401.751.5741

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 SCOBCO Associates

By: \_\_\_\_\_ (Print Name)

Its: \_\_\_\_\_ (Title)

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

In my capacity as \_\_\_\_\_ of SCOB  
CO Associates, I hereby aver that I am authorized to enter into this Agreement and thereby bind SCOB  
CO Associates 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 \_\_\_\_\_, 2011, before me personally appeared \_\_\_\_\_, the \_\_\_\_\_ of SCOB  
CO Associates, to me known and known by me to be the party executing the foregoing instrument on behalf of SCOB  
CO Associates, 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 SCOB  
CO Associates.

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

For Pauline Metcalf

\_\_\_\_\_  
By: \_\_\_\_\_ (Print Name)

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

**STATE OF RHODE ISLAND**

COUNTY OF \_\_\_\_\_

In \_\_\_\_\_, in said County and State, on this \_\_\_\_\_ day of \_\_\_\_\_, 2011, before me personally appeared Pauline Metcalf 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 the State of Rhode Island Department of Environmental Management

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

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