

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

**OFFICE OF COMPLIANCE AND INSPECTION**

**In Re: J. H. Lynch & Sons, Inc.**

**File Nos.: OCI-AIR-18-35**

**X-ref Approval Nos. 2024, 2097 and 2098**

**AAD No.: 18-001/ARE**

**CONSENT AGREEMENT**

**A. INTENT & PURPOSE**

This Agreement is entered by and between the Rhode Island Department of Environmental Management (“RIDEM”) and Lynch Corp. (“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 alleged violations set forth in a Notice of Violation (“NOV”) issued to J. H. Lynch & Sons, Inc. (“Lynch”) by RIDEM on 26 November 2018.

**B. STIPULATED FACTS**

- (1) WHEREAS the facility is located at 50 Lynch Place in Cumberland, Rhode Island (“Facility”). The Facility includes an asphalt plant and a baghouse to capture particulate matter.
- (2) WHEREAS on 7 April 2010 RIDEM issued to Lynch an approval (numbers 2024, 2097 and 2098) to emit pollutants to the atmosphere from the Facility.
- (3) WHEREAS on 26 November 2018, RIDEM issued a NOV to Lynch alleging certain violations of Rhode Island’s regulations titled *Air Pollution Control Permits* (250-RICR-120-05-9) (“Air Rules”)
- (4) WHEREAS Lynch requested an administrative hearing with the Administrative Adjudication Division (“AAD”) to contest the NOV.
- (5) WHEREAS AAD is a division of RIDEM.
- (6) WHEREAS Lynch complied with the Order section of the NOV.
- (7) WHEREAS on 28 February 2023, Lynch submitted to RIDEM by electronic correspondence a proposal to install tree plantings in Cumberland, Rhode Island as a Supplemental Environmental Project (“SEP”) to satisfy the administrative penalty assessed in the NOV.

- (8) WHEREAS, the Facility has been re-incorporated as Lynch Corp.
- (9) 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 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.
- (10) 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 Respondent. RIDEM and Respondent agree that neither this Agreement, nor any performance under this Agreement by Respondent, shall constitute an admission by Respondent of the factual or legal allegations contained in the NOV nor shall this Agreement by Respondent constitute a waiver of, or act as a limitation to, any claims Respondent may have against any third party.
- (11) WHEREAS RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the Air Rules.
- (12) WHEREAS Respondent acknowledges that it had an opportunity to consult with and be represented by counsel of its choosing and that it finds that this Agreement is reasonable and fair and enters into this Agreement with full knowledge and understanding of its terms.

### **C. AGREEMENT**

- (1) RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over Respondent.
- (2) 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) The provisions of this Agreement shall apply to and be binding upon RIDEM, Respondent and its agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for Respondent 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 Respondent a credit of \$20,000 for the SEP (“SEP Credit”). The SEP Credit is contingent on the conditions set forth below:
- (a) **Within 30 days of execution of the Agreement**, enter a contract with Groundworks Rhode Island for the supplemental environmental project (“SEP”) described in Attachment A, which is attached hereto and incorporated herein, and provide a copy of the contract to RIDEM.
  - (b) **By 31 May 2024**, complete the SEP.
  - (c) **Within 7 days of completion of the SEP**, provide to RIDEM a letter that states:
    - (i) No Federal or State grants or low interest loans were used to complete the SEP.
    - (ii) The actual cost to complete the SEP (“SEP Cost”) and references the documents used to determine the cost.
    - (iii) The SEP was completed in accordance with the Agreement.
- (5) If Respondent fails to timely complete the SEP, RIDEM shall notify Respondent that RIDEM intends to rescind the SEP Credit. Within 14 days of Respondent’s receipt of written notification by RIDEM that RIDEM intends to rescind the SEP Credit, Respondent shall either complete the SEP or demonstrate that good cause exists for the delay in completing the SEP. If Respondent fails to complete the SEP or does not demonstrate good cause for the delay within said 14 days, Respondent shall, within 10 days of Respondent’s receipt of a written notification from RIDEM, submit to RIDEM a check in the amount of the SEP Credit after which Respondent shall be under no further obligation to complete the SEP.
- (6) If the SEP Cost is less than \$20,000, Respondent shall, within 30 days of its submission of the letter to RIDEM in subsection C(4)(c) of the Agreement, pay to RIDEM the amount calculated using the following formula:

$$\text{Payment Due} = \$20,000 - \text{SEP Cost}$$

- (7) Penalties that Respondent agrees to pay in the Agreement are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

- (8) If Respondent fails to remit to RIDEM a payment pursuant to subsections C (5) or C (6) of the Agreement on or before its due date, that payment will be considered late and Respondent 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 the 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:

$$\text{Interest due} = (\text{number of days late}/365) \times (0.12) \times (\text{amount of unpaid balance}).$$

- (9) Penalty payments shall be by one of two methods:
- (a) 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.
- (b) By wire transfer in accordance with instructions provided by RIDEM.

#### **D. COMPLIANCE**

- (1) Compliance with and fulfillment of this Agreement shall be deemed to resolve all issues raised in the NOV.
- (2) Compliance with the terms of this Agreement does not relieve Respondent of any obligation to comply with any other applicable laws or regulations administered by, through or for RIDEM or any other governmental entity.
- (3) 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 Respondent may have regarding any new enforcement action commenced by RIDEM after the execution of this Agreement.
- (4) This Agreement shall not operate to shield Respondent or its assignees, successors in interest, lessees, sublessees, tenants in possession and/or occupants of the Facility from liability arising from future activities, as of the date of execution of this Agreement.
- (5) The scope of the Agreement is limited to violations alleged in the NOV.

(6) Communications regarding this Agreement shall be directed to:

**Christina Hoefsmit, Deputy Administrator**  
RIDEM Office of Compliance and Inspection  
235 Promenade Street  
Providence, RI 02908-5767  
(401) 222-1360 ext. 2772023

[christina.hoefsmit@dem.ri.gov](mailto:christina.hoefsmit@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](mailto:joseph.lobianco@dem.ri.gov)

**Lawrence P. McCarthy, Esquire**  
Vice President and General Counsel  
J. H. Lynch & Sons  
50 Lynch Place  
Cumberland, RI 02864  
(401) 495-0590

[lmccarthy@jhlynch.com](mailto:lmccarthy@jhlynch.com)

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

- (7) 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) The Agreement may be amended by agreement of the parties in writing.
- (9) 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.**

Lynch Corp as assignment to J. H. Lynch & Sons, Inc.

\_\_\_\_\_

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

In my capacity, as \_\_\_\_\_ of Lynch Corp, I hereby aver that I am authorized to enter into this Agreement and thereby bind Lynch Corp. 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 April \_\_\_\_\_ 2023, before me personally appeared \_\_\_\_\_ the \_\_\_\_\_ of Lynch Corp, to me known and known by me to be the party executing the foregoing instrument on behalf of Lynch Corp, and he/she/they acknowledged said instrument by him/her/them executed, to be his/her/their free act and deed in said capacity and the free act and deed of Lynch Corp.

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

State of Rhode Island, Department of Environmental  
Management

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

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