

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

OFFICE OF COMPLIANCE AND INSPECTION

**In Re: HOPKINS HILL ROAD REALTY, LLC
HOPKINS HILL SAND & STONE, LLC**

File No.: OCI-WP-18-40

AAD No.: 20-002/WRE

CONSENT AGREEMENT

A. INTENT & PURPOSE

This Consent Agreement (“Agreement”) is entered by and between the Rhode Island Department of Environmental Management (“RIDEM”) and HOPKINS HILL ROAD REALTY, LLC (“Hopkins Realty”) and HOPKINS HILL SAND & STONE, LLC (“Hopkins Stone”) (collectively, “Respondents”). The 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 Hopkins Realty and Hopkins Stone by RIDEM on 27 January 2020.

B. STIPULATED FACTS

- (1) WHEREAS the property is located at and adjacent to 190 New London Turnpike, Assessor’s Plat 55, Lot 6 (“Parcel 55/6”), Plat 56, Lot 2 (“Parcel 56/2”), Plat 56, Lot 3 (“Parcel 56/3”) and Plat 7, Lot 2 (“Parcel 7/2”) in West Greenwich, Rhode Island (“Property”).
- (2) WHEREAS Parcel 55/6 and Parcel 56/3 include a sand and stone quarry (“Facility”).
- (3) WHEREAS freshwater wetlands (including one or more streams) are on Parcel 56/2, Parcel 56/3, and Parcel 7/2 (“Wetlands”).
- (4) WHEREAS Hopkins Realty owns Parcel 55/6 and Parcel 56/3.
- (5) WHEREAS Hopkins Stone operates the Facility.
- (6) James E. Thibault owns Parcel 56/2.
- (7) State of Rhode Island Water Resources Board owns Parcel 7/2.

- (8) WHEREAS on 27 January 2020, RIDEM issued a NOV to Respondents alleging certain violations of Rhode Island's *Freshwater Wetlands Act* ("FWW Act"), *Water Pollution Act* ("WP Act"), *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* (250-RICR-150-15-1) ("FWW Rules"), *Water Quality Regulations* (250-RICR-150-05-1) ("WQ Rules"), and *Regulations for the Rhode Island Pollutant Discharge Elimination System* (250-RICR-150-10-1) ("RIPDES Rules") relating to the discharge of process water and stormwater from the Facility to the Wetlands without a permit from RIDEM.
- (9) WHEREAS Respondents requested an administrative hearing with the Administrative Adjudication Division ("AAD") to contest the NOV.
- (10) WHEREAS AAD is a division of RIDEM.
- (11) WHEREAS on 19 May 2021, RIDEM issued a permit (application number 21-0062) ("Wetlands Permit") to Hopkins Stone to alter freshwater wetlands on Parcel 55/6 and Parcel 56/3 to construct a settlement basin ("Settling Basin"), outfall pipe ("Outfall Pipe"), berms, and check dams at the Facility to comply with the Order section of the NOV. The permit is attached hereto and incorporated herein as Attachment A.
- (12) WHEREAS on 2 February 2022, RIDEM issued a permit (number RI0023965) ("RIPDES Permit") to Hopkins Stone to discharge process water and storm water from the Settling Basin and Outfall Pipe. The permit became effective on 1 April 2022. The permit is attached hereto and incorporated herein as Attachment B.
- (13) WHEREAS on 29 March 2023, RIDEM issued a letter ("March 29TH Letter") to Hopkins Realty regarding noncompliance with the RIPDES Permit. The letter is attached hereto and incorporated herein as Attachment C.
- (14) WHEREAS on 16 May 2023, Hopkins Stone applied to RIDEM to modify the Wetlands Permit ("Wetlands Application") to allow for the repair and improvement of the existing settling basins at the Facility.
- (15) WHEREAS on 29 June 2023, RIDEM issued a letter ("June 29TH Letter") to Hopkins Realty in response to the April 13TH Letter. The letter described the issues that remain to correct the noncompliance with the RIPDES Permit. The letter is attached hereto and incorporated herein as Attachment D.
- (16) WHEREAS on 3 August 2023, RIDEM issued a letter ("August 3RD Letter") to Hopkins Stone regarding deficiencies in the Wetlands Application. The letter is attached hereto and incorporated herein at Attachment E.
- (17) WHEREAS on 4 August 2023, RIDEM issued a letter ("August 4TH Letter") to Hopkins Realty regarding noncompliance with the RIPDES Permit. The letter is attached hereto and incorporated herein as Attachment F.
- (18) WHEREAS on 29 September 2023, RIDEM issued a letter ("September 29TH Letter") to Hopkins Realty regarding noncompliance with the RIPDES Permit. The letter is attached hereto and incorporated herein as Attachment G.

- (19) 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.
- (20) WHEREAS RIDEM finds that the Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the FWW Act, WP Act, FWW Rules, WQ Rules, and RIPDES Rules.
- (21) WHEREAS Respondents find that the Agreement is reasonable and fair and enter into this Agreement with full knowledge and understanding of its terms.

C. AGREEMENT

- (1) RIDEM has jurisdiction over the subject matter of the Agreement and has personal jurisdiction over Respondents.
- (2) The 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 the Agreement shall apply to and be binding upon RIDEM, Respondents and its 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 the Agreement. Respondents enter into this Agreement without admitting or denying the facts or allegations set forth herein.
- (4) **Within 3 days of the receipt of the fully executed Agreement from RIDEM,** Respondents shall record the Agreement in the land evidence records for the Town of West Greenwich and shall provide a copy of the recorded Agreement to RIDEM. The recording shall be at the sole expense of Respondents.
- (5) Respondents shall complete the following actions to comply with the Order section of the NOV:
 - (a) **By 30 October 2023,** submit:
 - (i) corrected Discharge Monitoring Reports (“DMRs”) required under the RIPDES Permit for outfall 001-A for the monitoring periods that ended 31 December 2022, 30 June 2023, and 31 March 2023 and for outfall 001-RF for the monitoring period that ended 30 June 2023.
 - (ii) completed DMRs required under the RIPDES Permit for outfalls 001-A and 001-RF for the monitoring period that ended 30 September 2023.

- (b) **By 30 November 2023**, submit a modified Wetlands Application that addresses the deficiencies in the August 3RD Letter.
- (c) **By 31 December 2023**, fully comply with all other requirements of the March 29TH Letter, June 29TH Letter, August 4TH Letter, and September 29TH Letter.
- (d) Upon receipt of any approvals or permits issued by RIDEM as a follow up to the submissions required in subsection C(5)(a) or C (5)(b) above, complete all work required in the approvals or permits within the time frame specified by RIDEM in such approvals or permits.
- (e) **Within 30 days of completion of the work in subsection C(5)(d) above**, submit a plan to RIDEM prepared by a qualified wetland scientist to assess the impacts of sedimentation to the Wetlands (“Sediment Assessment Plan”). The Sediment Assessment Plan must describe the method/s that will be used to estimate the extent of deposition of non-native soil including depth, type and area impacted and include a schedule for completion of the work.
- (f) **Within 30 days of RIDEM’s approval of the Sediment Assessment Plan**, initiate the work in the Sediment Assessment Plan and complete all work in accordance with the approved schedule.
- (g) **Within 30 days of completion of the work in subsection C(5)(f) above**, submit a report of the findings to RIDEM (“Sediment Assessment Report”). RIDEM will review the Sediment Assessment Report and notify Respondents in writing whether Respondents need to prepare a restoration plan (“Wetland Restoration Plan”). The Wetland Restoration Plan shall describe the method/s that will be used to remove non-native soil from the Wetlands and provide a schedule for completion of the work. Within 60 days of notification by RIDEM that the Wetland Restoration Plan is necessary, Respondents shall submit the Wetland Restoration Plan to RIDEM.
- (h) **Within 30 days of RIDEM’s approval of the Wetland Restoration Plan**, initiate the work in the Wetland Restoration Plan and complete all work in accordance with the approved schedule.
- (i) The plans, reports and other documents required in this section shall be subject to RIDEM’s review and approval. Upon completing its review, RIDEM shall provide written notification to Respondents either granting approval or stating the deficiencies therein. Within 14 days (unless a longer time is specified) of receiving a notification of deficiencies, Respondents shall submit to RIDEM modified plans, reports or additional documents to correct the deficiencies.

(6) Respondents shall perform a Supplemental Environmental Project (“SEP”)¹ to satisfy in its entirety the administrative penalty assessed in the NOV as follows:

(a) **By 3 November 2023**, repave the roadway in Lincoln Woods State Park as described in Attachment H (attached hereto and incorporated herein). Respondent shall be given a SEP credit of \$50,000 (“SEP Credit”).

(b) **By 20 November 2023**, provide to RIDEM a letter stating the following:

(i) No Federal or State grants or low interest loans were used to complete the SEP up to the SEP Credit.

(ii) The SEP was completed in accordance with the Agreement.

(iii) If Respondents fail to comply with subsection C (6)(b)(i) or C (6)(b)(ii) above, 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, Respondents shall either complete the SEP or demonstrate that good cause exists for the delay in completing the SEP. If Respondents fail to complete the SEP or does not demonstrate good cause for the delay within said 14 days, Respondents shall, within 10 days of Respondents’ receipt of a written notification from RIDEM, submit to RIDEM a payment in the amount of the SEP Credit after which Respondents shall be under no further obligation to complete the SEP. The Parties reserve whatever rights they may to contest the completeness of the SEP.

(iv) Penalties that Respondents agree 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.

(v) In the event that Respondent fails to complete the SEP or does not demonstrate good cause for the delay in completing the SEP as set forth in subsection C(4)(b)(iii) and if Respondents fail to remit to RIDEM a payment on or before its due date, that payment will be considered late, and 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 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:

Interest due = (number of days late/365) x (0.12) x (amount of unpaid balance)

¹ RIDEM valued the SEP at \$100,000. The SEP is to satisfy the penalty assessed in the NOV for this case and the penalty assessed in a NOV issued to Cardi Corporation under case file no. OCI-WP-17-10. RIDEM assigned half the value of the SEP to each case.

(vi) 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 to be provided by RIDEM.

- (7) Respondents provide to RIDEM, its authorized officers, employees, and representatives an irrevocable right of access to the Property for the duration of the Agreement at all reasonable times to monitor compliance with the Agreement. 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 if they control the Property. Respondents shall provide a copy of the Agreement to any current lessee, sublessee, tenant in possession and/or occupant of the Property as of the effective date of the 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 the Agreement.

D. COMPLIANCE

- (1) Compliance with and fulfillment of the Agreement shall be deemed to resolve all issues raised in the NOV. Upon Respondents successful completion of the requirements set forth in the Agreement, RIDEM shall issue a Release and Discharge of the NOV and the Agreement to Respondents for recording. The recordings shall be at the sole expense of Respondents.
- (2) If Respondents fail to comply with any items specified in subsection C (5) of the Agreement, Respondents shall pay a stipulated penalty of \$10,000 per month for each 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). As specified in subsection D(8) supra, RIDEM may for good cause shown, defer any of the compliance dates specified in subsection C(5).

- (3) Compliance with the terms of the 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.
- (4) 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). The 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 the Agreement.
- (5) The Agreement shall not operate to shield Respondents or its assignees, successors in interest, lessees, sublessees, tenants in possession and/or occupants of the Facility or Property from liability arising from future activities, as of the date of execution of the Agreement.
- (6) The scope of the Agreement is limited to violations alleged in the NOV and as set forth in RIDEM’s letters attached to this Agreement.
- (7) Communications regarding the Agreement shall be directed to:

Patrick Hogan, Environmental Engineer IV
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360 ext. 2777119

patrick.hogan@dem.ri.gov

Joseph LoBianco, Deputy Chief Legal Counsel
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-6607 ext. 2772302

joseph.lobianco@dem.ri.gov

Christine E. Dieter, Esquire
Hinckley Allen
100 Westminster Street, Suite 1500
Providence, RI 02903-2319
(401) 274-2000

cdieter@hinckleyallen.com

- (a) At any time prior to full compliance with the terms of the Agreement, Respondents agree to notify RIDEM in writing of any change in ownership of the Property and/or Facility 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 the Agreement shall be forwarded to the above-referenced addressees by certified mail.
- (8) 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, if possible, prior to the prescribed deadline.
- (9) The Agreement may be amended by agreement of the parties in writing.
- (10) The 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 the Agreement in substance and in form.

HOPKINS HILL ROAD REALTY, LLC

By: _____
Print Name: _____ Title: _____

Dated: _____

In my capacity, as _____ of _____, I hereby aver that I am authorized to enter into the Agreement and thereby bind HOPKINS HILL ROAD REALTY, LLC 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 _____, 2023, before me personally appeared _____, the _____ of HOPKINS HILL ROAD REALTY, LLC, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of HOPKINS HILL ROAD REALTY, LLC, 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 HOPKINS HILL ROAD REALTY, LLC.

Notary Public
My Commission Expires: _____

HOPKINS HILL SAND & STONE, LLC

By: _____
Print Name: _____ Title: _____

Dated: _____

In my capacity, as _____ of _____, I hereby aver that I am authorized to enter into the Agreement and thereby bind HOPKINS HILL SAND & STONE, LLC 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 _____, 2023, before me personally appeared _____, the _____ of HOPKINS HILL SAND & STONE, LLC, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of HOPKINS HILL SAND & STONE, LLC, 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 HOPKINS HILL SAND & STONE, LLC.

Notary Public
My Commission Expires: _____

State of Rhode Island, Department of Environmental
Management

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

Dated: _____