

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

In Re: Paul Bjorklund

**OC&I FILE NO.: C09-0022
AAD FILE NO.: 09-007/FWE**

CONSENT AGREEMENT

A. INTENT & PURPOSE

This Agreement is entered by and between the Rhode Island Department of Environmental Management, Office of Compliance & Inspection (“RIDEM”) and Paul Bjorklund (the “Respondent”). This Agreement is entered in accordance with Section 42-17.1-2 et seq. of the *Rhode Island General Laws* (“R.I.G.L.”) for the purpose of resolving the administrative enforcement action set forth in a Notice of Violation (“NOV”) issued to the Respondent by RIDEM on November 10, 2009.

B. STIPULATED FACTS

- (1) WHEREAS, the subject property is located approximately 280 feet southwest of the terminus of Electronic Drive, approximately 560 feet south of the intersection of Electronic Drive and Ford Lane located in the City of Warwick, Assessor’s Plat 284, Lot 50 and Lot 121 (the “Property”).
- (2) WHEREAS, on November 10, 2009, RIDEM issued a NOV to the Respondent alleging certain violations of R.I.G.L. §2-1-21 et seq. and the *RIDEM Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act*.
- (3) WHEREAS, the Respondent has timely requested an administrative adjudicatory hearing on the NOV.
- (4) WHEREAS, the Respondent has complied with the planting requirements in the Order section of the NOV.
- (5) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and in order to effect a timely and amicable resolution of the NOV, RIDEM and the 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.
- (6) WHEREAS, RIDEM finds that this Consent Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with Freshwater Wetlands Act, R.I.G.L. §2-1-18 et seq. and the *RIDEM Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act*.

C. AGREEMENT

- (1) JURISDICTION – RIDEM has jurisdiction over the freshwater wetlands at issue in its NOV File C09-0022 and has personal jurisdiction over the Respondent.
- (2) FORCE and EFFECT – This Agreement shall have the full force and effect of a final administrative order pursuant to the Administrative Procedures Act, R.I.G.L. §42-35-1 et seq. from which no timely appeal was taken, and which is enforceable in Superior Court in accordance with R.I.G.L. §42-17.1-2(21)(v).
- (3) APPLICATION – The provisions of this Agreement shall apply to and be binding upon RIDEM, the Respondent and his agents, servants, employees, successors assigns and all persons, firms and corporations acting under, through and for the Respondent in the performance of work relating to or impacting the requirements of this Agreement.
- (4) RECORDING OF AGREEMENT – The Respondent agrees to have the fully executed Consent Agreement recorded in the land evidence records of the City of Warwick, Rhode Island within ten days of the receipt of the fully executed Consent Agreement from RIDEM. The Respondent shall ensure that the original Consent Agreement is recorded and returned to RIDEM at the sole expense of the Respondent.
- (5) CONDITIONS –
 - (a) Restoration
 - (1) The Respondent shall, if necessary, install a continuous uninterrupted line of staked haybales or silt fence between those portions of the wetlands that have been altered without authorization and the adjacent undisturbed wetlands. These soil erosion and sediment controls must be regularly inspected and properly and continually maintained (and replaced, if necessary) during and following the completion of any remaining wetland restoration, and until such time that all of the surrounding areas are properly stabilized. At the discretion and direction of representatives of RIDEM, additional soil erosion and sediment controls must be installed on-site, as deemed necessary, to protect any and all freshwater wetlands.
 - (2) The Respondent shall remove all equipment from the wetlands on the Property by **October 31, 2010**. All equipment that is removed must be placed in an appropriate upland location, outside of any and all wetlands.
 - (3) If any or all of the plantings that were planted fail to survive until at least **May 13, 2011** the same plant species shall be replanted and maintained until such time that survival occurs for at least one full growing season.
 - (4) Upon final stabilization of all disturbed areas, all erosion and sedimentation controls must be removed from the freshwater wetland. Prior to the removal of the controls all accumulated sediment must be removed to a suitable upland area.

- (5) All restored freshwater wetland areas, including replanted areas must be allowed to revert to a natural wild condition. No future clearing, mowing, cutting, trimming, or other alterations are authorized in any wetland area on the Property without first obtaining a permit from RIDEM.
- (6) With the exception of any work required by this Consent Agreement or as allowed as an exempt activity under the RIDEM *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* Rule 6.00, the Respondent shall not alter the character of any freshwater wetland on site by undertaking any additional activities, including, but not limited to, construction, excavation, filling, grading and removal of vegetation without prior written approval of RIDEM.

(b) Penalties

- (1) The Respondent agrees to pay to RIDEM the sum of One Thousand Two Hundred and Fifty Dollars and no cents (\$1,250.00) in administrative penalties.
- (2) Payment Schedule – Respondent’s total penalty, One Thousand Two Hundred and Fifty Dollars and no cents (\$1,250.00), shall be paid as follows:
 - (i) Upon execution of the Agreement by the Respondent, the Respondent shall pay to RIDEM the sum of Two-Hundred Fifty Dollars and no cents (\$250.00).
 - (ii) The remainder of the penalty, One-Thousand Dollars and no cents (\$1,000.00), shall be paid to RIDEM in ten equal and consecutive monthly installments of One-Hundred Dollars and no cents (\$100.00). The remaining payments shall be made on the first of each month.
- (3) Penalties that the Respondent agrees to pay in this Consent Agreement are payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (4) In the event that the Respondent fails to remit to RIDEM a payment on or before its due date, that payment will be considered late and the Respondent will be in default. If the payment is not received within thirty days of its due date, interest shall begin to accrue on the unpaid balance at the rate of twelve 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 payment(s) and interest owed are remitted. Interest shall be calculated using the following generally established accounting principle:

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

This provision does not preclude RIDEM from seeking additional penalties according to Section D for failure to comply with the remaining provisions of this Agreement.

- (5) All penalty payments shall be in the form of a certified check, payable to the R.I. General Treasurer – **Water and Air Protection**. All payments shall be delivered, along with a copy of this Agreement to:

Chief, RIDEM Office of Compliance and Inspection
235 Promenade Street, Suite 220
Providence, RI 02908

- (6) RIGHT OF ACCESS – The Respondent agrees to provide to RIDEM, its authorized officers, employees and representatives an irrevocable right of access to the Property at all reasonable times for the purposes of monitoring the remediation activities and compliance with this Agreement. The Respondent shall ensure that assignees, successors in interest, lessees, and sublessees of the Property shall provide the same access and cooperation as long as they control the Property. The Respondent shall provide a copy of this Agreement to any current lessee or sublessee on the Property as of the effective date of this 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 otherwise be consistent with the terms of this Agreement.

D. COMPLIANCE

- (1) EFFECT OF COMPLIANCE – Compliance with and fulfillment of this Agreement shall be deemed to resolve all issues raised in the NOV dated November 10, 2009. Upon Respondent’s successful completion of the requirements set forth in this Agreement and payment of any noncompliance penalties resulting from the failure to comply, RIDEM shall issue a Release and Discharge of the NOV and the Consent Agreement to the Respondent for recording in the Land Evidence Records of the City of Warwick. The Respondent shall ensure that the original Releases are recorded and returned to RIDEM at the sole expense of the Respondent.
- (2) FAILURE TO COMPLY – In the event that Respondent fails to comply with any provision of paragraph C5(a) above, the Respondent shall pay an administrative penalty of One Hundred Dollars per month for each and every month that the Respondent remains in non-compliance with this Agreement, except that RIDEM may, for good cause shown, defer or reduce such penalty. The payment of a penalty in accordance with this paragraph shall not preclude RIDEM from seeking any other appropriate remedy (*i.e.* injunctive relief in Superior Court).
- (3) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve the Respondent 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 § 42-17.1-2(21). This Agreement shall not restrict any right to hearing or other right available by statute or regulation that the Respondent 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 Respondent from liability arising from future activities, as of the date of execution of this Agreement.
- (6) NOTICE AND COMMUNICATION - Communications regarding this Agreement shall be directed to:

Harold K. Ellis, Supervising Environmental Scientist
Office of Compliance and Inspection
Department of Environmental Management
235 Promenade Street
Providence, RI 02908
(401) 222-4700, ext. 7401

- (a) At any time prior to full compliance with the terms of this Agreement, Respondent agrees to notify 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) Communications forwarded to the above-referenced address by certified mail shall be deemed received.
- (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 fifteen days prior to the prescribed deadline. The fact that a review and/or decision is pending on a permit application shall not be considered “good cause” to extend the compliance dates herein.
- (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 the Respondent

Paul Bjorklund

Date: _____

In _____, on the _____ day of _____, 2010, before me personally appeared Paul Bjorklund to me known and known by me to be the party executing the foregoing Consent Agreement, for and on behalf of himself, he acknowledged said instrument, executed by him, to be his free act and deed.

Notary Public

My Commission expires: _____

*For the State of Rhode Island Department of
Environmental Management*

David Chopy, Chief
Department of Environmental Management
Office of Compliance and Inspection

Date: _____