

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

IN RE: **Westerly Granite Co., Inc.  
Sacco Enterprises, Inc.  
Copar Quarries of Westerly, LLC**

**FILE NOs.: FW C12-0019  
and FW-12-17; WP-12-47  
and WP 12-037; and SW-12-33**

**AAD NO.: 12-002/MM**

**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"), Westerly Granite Co. Inc., Sacco Enterprises, Inc., and Copar Quarries of Westerly, LLC (the "Respondents") and The New Castle Realty Company. 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 July 12, 2012.

**B. *STIPULATED FACTS***

- (1) WHEREAS, the subject property is located approximately 700 feet west-northwest of the intersection of Church Street (Rt. 216) and Buckeye Brook Road, approximately 360 feet southwest of the intersection of Church Street and Buckeye Brook Road and approximately 1270 feet to 1750 feet west-southwest of the intersection of Church Street and Buckeye Brook Road, on parcels 45/21/4, 55/21/5, and 55/1 in the town of Westerly, Rhode Island (the "Property").
- (2) WHEREAS, Westerly Granite Co. Inc. ("Westerly Granite") owns parcel 55/1.
- (3) WHEREAS, The New Castle Realty Company ("New Castle") owns parcels 45/21/4 and 55/21/5.
- (4) WHEREAS, Copar Quarries of Westerly, LLC ("Copar") is currently engaged in mineral mining and processing on parcel 55/1.
- (5) WHEREAS, Sacco Enterprises, Inc. ("Sacco") was formerly engaged in mineral mining and processing on parcel 55/1.
- (6) WHEREAS, on July 12, 2012 RIDEM issued a NOV to the Respondents alleging certain violations of Rhode Island's Freshwater Wetlands Act, Water Pollution

Control Act and Refuse Disposal Act and the RIDEM's *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act, Water Quality Regulations and Regulations for Rhode Island Pollutant Discharge Elimination System*.

- (7) WHEREAS, Copar and Westerly Granite requested an administrative hearing to contest the NOV.
- (8) WHEREAS, Sacco failed to request an administrative hearing to contest the NOV.
- (9) WHEREAS, on December 6, 2012 RIDEM inspected parcel 55/1 and determined that Westerly Granite had removed and properly disposed of the solid waste on parcel 55/1 as ordered in the NOV.
- (10) WHEREAS, on July 27, 2012 Westerly Granite and Copar submitted to the RIDEM a Notice of Intent and Storm Water Pollution Prevention Plan (the "Stormwater Application").
- (11) WHEREAS, on February 25, 2013 RIDEM issued a letter to Copar that described deficiencies in the Stormwater Application (the "Stormwater Application Deficiency Letter"). The Stormwater Application Deficiency Letter is attached hereto and incorporated herein as "Attachment A".
- (12) WHEREAS, without admission by Respondents of any of the factual allegations or alleged violations set forth in the NOV, 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 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.
- (13) WHEREAS, 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, Water Pollution Control Act and Refuse Disposal Act and the RIDEM's *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act, Water Quality Regulations and Regulations for Rhode Island Pollutant Discharge Elimination System*.

### **C. AGREEMENT**

- (1) JURISDICTION – 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 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)(v).

- (3) APPLICATION – The provisions of this Agreement shall apply to and be binding upon RIDEM and 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) RECORDING OF AGREEMENT – Within ten (10) days of the receipt of the fully executed Agreement from RIDEM, Westerly Granite shall record this Agreement with the Town of Westerly, Rhode Island and shall provide a copy of the recorded Agreement to RIDEM. The recording shall be at the sole expense of Westerly Granite.
- (5) CONDITIONS –

#### **Issues Pertaining to Freshwater Wetlands**

- (a) **By October 16, 2013**, New Castle shall record a Conservation Easement against their lots which reflects the terms agreed to between Westerly Granite and New Castle as referenced in the June 13, 2013 communication, attached hereto as “Attachment B”.
- (b) By **October 31, 2013** Westerly Granite and Copar shall complete all wetland restoration work as described below in those areas depicted on the attached aerial photographs as “Area 1 – Copar Quarries of Westerly”, “Copar Quarries of Westerly – Area 2”, “Copar Quarries of Westerly – Areas 3-5”, and Copar Quarries of Westerly – Area 6”, attached hereto and incorporated herein as “Attachment C”.
  - (i) Area 1
    - (1) The stream course shall be relocated in the approximate location shown on the photograph. Elevations of the relocated stream must be sufficient to convey water across the old cartpath, through the understory of the forest, through the berm in the forest, and to the crest of the slope that leads to the Swamp to the northwest. Minimum disturbance must occur in the forested area when constructing the stream channel. If necessary, a riprap pad shall be installed at the outfall of the culvert under the dirt roadway.
    - (2) Ten (10) to fifteen (15) feet of the old stream course must be filled up to the surrounding grade with a properly compacted very fine sand or silt material beginning at a point immediately adjacent to the outfall of the culvert under the dirt roadway.
    - (3) A crushed stone berm shall be installed along the dirt roadway in the approximate area shown on the photograph.

- (ii) Area 2

- (1) Fill shall be excavated from an area beginning at the existing wetland edge and extending to a line defined in the field by RIDEM on July 17, 2013. The line runs from one large tree to another in a location approximately identified on Attachment B. All fill must be removed down to, or slightly below, the adjacent undisturbed wetland grade.
- (2) Haybales or silt fence must be installed in the area in such a manner to prevent erosion and sedimentation of the restored area and adjacent undisturbed wetlands.

(iii) Areas 3A and 3B

- (1) Grade all stone and boulders away from the quarry ponds, cover all disturbed surface areas with plantable soil, seed all areas with a wildlife conservation grass mixture, and plant with native trees and shrubs. Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, ten (10) feet on center, four (4) feet tall after planting, throughout the areas defined above. Tree species must include an equal distribution of at least two (2) of the following selections:

White pine, *Pinus strobus*  
Northern white cedar, *Thuja occidentalis*  
Red maple, *Acer rubrum*  
White ash, *Fraxinus americana*  
White oak, *Quercus alba*  
Northern red oak, *Quercus rubra*  
Black birch, *Betula lenta*

Balled and burlapped or transplanted shrub species must be planted in an interspersed fashion five (5) feet on center, three (3) feet tall after planting, throughout the area defined above. Shrub species must include an equal distribution of at least three (3) of the following selections:

Mountain laurel, *Kalmia latifolia*  
Gray (stiff, red panicle) dogwood, *Cornus foemina racemosa*  
Silky dogwood, *Cornus amomum*  
Arrowwood (southern), *Viburnum dentatum*  
American cranberrybush, *Viburnum trilobum*  
Mapleleaf viburnum, *Viburnum acerifolium*  
Highbush blueberry, *Vaccinium corymbosum*  
Lowbush blueberry, *Vaccinium angustifolium*  
Sweet pepperbush, *Clethra alnifolia*  
Bayberry, *Myrica pennsylvanica*  
Black chokeberry, *Aronia melanocarpa*  
Witchhazel, *Hamamelis virginiana*

- (2) To ensure the survival of all plantings, each planting hole must be cleared of any underlying rock and properly prepared to a depth of eighteen (18) inches.
- (3) Install a haybale or silt fence erosion barrier around the restored areas to prevent sedimentation of the restored areas and the adjacent quarry ponds.
- (4) If necessary, install a crushed stone berm around the erosion controls.
- (5) If any or all of the required plantings fail to survive at least two (2) years from the time that planting has been verified by RIDEM, the same plant species shall be replanted and maintained until such time that survival is maintained over two (2) full years.

(iv) Area 4

A crushed stone berm shall be installed along both sides of the dirt roadway in the approximate area depicted on Attachment B.

(v) Area 5A

- (1) The area shall be seeded with a wildlife conservation grass mixture and covered with a mat of loose hay.
- (2) If necessary, a crushed stone berm shall be installed around the erosion controls.

(vi) Area 5B

- (1) Within the area depicted, the dirt road shall be moved at least thirty (30) feet (horizontally - without regard to topography) from the water's edge and all stone and boulders on the top of the slope shall be graded away from the quarry pond. The top of the slope shall be covered with plantable soil and all areas shall be seeded with a wildlife conservation grass mixture and covered with a mat of loose hay.
- (2) If necessary, a crushed stone berm shall be installed around the erosion controls.

(vii) Area 6

- (1) Remove all rock and other fill remaining in the forested wetland.
- (2) Haybales or silt fence must be installed in the area in such a manner to prevent erosion and sedimentation of the restored area and adjacent undisturbed wetlands.
- (3) If necessary, a crushed stone berm shall be installed around the erosion controls.

- (c) All restored wetland areas, including replanted areas, must be allowed to revegetate naturally and revert to a natural wild state. No future clearing, mowing, cutting, trimming, or other alterations are allowed in the restored wetland areas, or within other freshwater wetlands on the Property, without first obtaining a permit from RIDEM.
- (d) Upon stabilization of all disturbed areas all artificial erosion and sedimentation controls (e.g., silt fences and silt curtains) must be removed from the freshwater wetlands. Staked haybales, spread hay mulch, and other naturally-based/bio-degradable erosion control measures may remain in place to decompose naturally. Prior to the removal of the controls all accumulated sediment must be removed to a suitable upland area and all disturbed surfaces must be stabilized as described above.
- (e) 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, the 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 RIDEM.

#### **Issues Pertaining to Stormwater**

- (f) **By October 4, 2013** Copar and Westerly Granite shall submit a revised Stormwater Application that addresses all of the deficiencies in the Stormwater Application Deficiency Letter and include a schedule to complete all work proposed (the "Revised Stormwater Application"). The plans for the Revised Stormwater Application must incorporate and be consistent with all of the freshwater wetland restoration requirements in the areas described above.
- (g) The Revised Stormwater Permit Application is subject to RIDEM's review and approval. Upon review, RIDEM shall provide written notification to Westerly Granite and Copar 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, Westerly Granite and Copar shall submit to RIDEM a revised application or additional information necessary to correct the deficiencies.
- (h) Upon RIDEM's approval of the Revised Stormwater Application, Copar and Westerly Granite shall complete all work required in the application in accordance with the approved schedule.
- (i) Penalty – Respondents shall pay to RIDEM the sum of **Seven Thousand Five Hundred Dollars (\$7,500.00)** in settlement of administrative penalties assessed in the NOV as follows:

- (i) Upon execution of this Agreement by the Respondents, the Respondents shall pay to RIDEM the sum of **Seven Thousand Five Hundred Dollars (\$7,500.00)**. Said settlement sum shall be allocated among the Respondents, and paid by the Respondents to RIDEM as follows: Three Thousand Seven Hundred and Fifty and 00/100 Dollars (\$3,750.00) – Westerly Granite and Three Thousand Seven Hundred and Fifty and 00/100 Dollars (\$3,750.00) – Copar. Respondents Westerly Granite and Copar shall not be jointly and severally liable for the aggregate settlement sum agreed to pursuant to this Agreement.
- (ii) Sums that the Respondents agree to pay in settlement of assessed penalties are payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (iii) All payments shall be in the form of a certified check, cashiers check, or money order, payable to the ***R.I. General Treasurer – Water and Air Protection Account***. All payments shall be delivered to:

Chief, RIDEM Office of Compliance and Inspection  
235 Promenade Street  
Providence, RI 02908-5767

- (6) **RIGHT OF ACCESS** – Westerly Granite and New Castle shall provide to the RIDEM, its authorized officers, employees and representatives an irrevocable right of access to the Property at all reasonable times for the purpose of monitoring compliance with this Agreement. That right of access shall be in accordance with all state and federal regulations, including the regulations of the Mine Safety and Health Administration, applicable to the quarry and with all reasonable safety policies of Copar. Westerly Granite and New Castle 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 as long as they control the Property. Westerly Granite and New Castle shall provide a copy of this Agreement to any current lessee, sublessee, tenant in possession and/or occupant of 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 shall otherwise be consistent with the terms of this Agreement. Access shall not interfere with quarry or mineral processing operations being conducted by Copar at the time access is provided.

**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, RIDEM shall issue a Release and Discharge of the NOV and Agreement to Westerly Granite for recording. The recording of the releases shall be at the sole expense of Westerly Granite.
- (2) FAILURE TO COMPLY – In the event that Westerly Granite or Copar fail to comply with the items specified in paragraphs C(5) or C(6) of the Agreement, Westerly Granite and Copar shall pay a stipulated penalty of Five Hundred Dollars (\$500.00) 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 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 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:

**Harold K. Ellis, Supervising Environmental Scientist**  
RIDEM Office of Compliance and Inspection  
235 Promenade Street  
Providence, RI 02908-5767  
(401) 222-1360 ext. 7401

**Richard M. Bianculli Jr., Esquire**  
RIDEM Office of Legal Services  
235 Promenade Street  
Providence, RI 02908-5767  
(401) 222-6607 ext. 2023

**Christopher M. Mulhearn, Esquire**  
55 Pine Street – Fourth Floor  
Providence, RI 02903  
(401) 533-9330

**Jennifer Cervenka, Esquire**  
Partridge Snow & Hahn, LLP  
40 Westminster Street, Suite 1100  
Providence, RI 02903  
(401) 861-8200

**Charles Soloveitzik, Esquire**  
Two Elm Street  
P.O. Box 414  
Westerly, RI 02891  
(401) 596-0225

- (a) At any time prior to full compliance with the terms of this Agreement, Westerly Granite and New Castle agree 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) 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 (15) 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 Copar Quarries of Westerly, LLC*

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

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

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

In my capacity as \_\_\_\_\_ of Copar Quarries of Westerly LLC, I hereby aver that I am authorized to enter into this Agreement and thereby bind Copar Quarries of Westerly 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 \_\_\_\_\_, 2013, before me personally appeared \_\_\_\_\_, the \_\_\_\_\_ of Copar Quarries of Westerly LLC, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of Copar Quarries of Westerly LLC, 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 Copar Quarries of Westerly LLC.

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

*For Westerly Granite Co., Inc.*

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

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

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

In my capacity as \_\_\_\_\_ of Westerly Granite Co., Inc., I hereby aver that I am authorized to enter into this Agreement and thereby bind Westerly Granite Co., Inc. 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 \_\_\_\_\_, 2013, before me personally appeared \_\_\_\_\_, the \_\_\_\_\_ of Westerly Granite Co., Inc., a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of Westerly Granite Co., Inc., 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 Westerly Granite Co., Inc.

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

*For Sacco Enterprises, Inc.*

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

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

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

In my capacity as \_\_\_\_\_ of Sacco Enterprises, Inc., I hereby aver that I am authorized to enter into this Agreement and thereby bind Sacco Enterprises, Inc. 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 \_\_\_\_\_, 2013, before me personally appeared \_\_\_\_\_, the \_\_\_\_\_ of Sacco Enterprises, Inc., a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of Sacco Enterprises, Inc., 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 Sacco Enterprises, Inc.

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

*For The New Castle Realty Company*

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

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

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

In my capacity as \_\_\_\_\_ of The New Castle Realty Company, I hereby aver that I am authorized to enter into this Agreement and thereby bind The New Castle Realty Company 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 \_\_\_\_\_, 2013, before me personally appeared \_\_\_\_\_, the \_\_\_\_\_ of The New Castle Realty Company, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of The New Castle Realty Company, 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 The New Castle Realty Company.

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

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

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David E. Chopy, Chief  
Office of Compliance and Inspection

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