

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

OFFICE OF COMPLIANCE AND INSPECTION

In Re: Copar Quarries of Westerly, LLC

File No.: AIR-13-07
AAD No.: 13-006/ARE

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") and Copar Quarries of Westerly, LLC (the "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 administrative enforcement action set forth in a Notice of Violation ("NOV") issued to the Respondent by the RIDEM on 21 August 2013.

B. STIPULATED FACTS

- (1) WHEREAS, the facility is located at 271 Church Street in the town of Westerly, Rhode Island (the "Facility"). The Facility is engaged in mining and processing of stone and gravel.
- (2) WHEREAS, the Respondent operates the Facility.
- (3) WHEREAS, on 21 August 2013, the RIDEM issued a NOV to the Respondent alleging certain violation of the RIDEM's *Air Pollution Control Regulations*.
- (4) WHEREAS, the Respondent requested an administrative hearing to contest the NOV.
- (5) WHEREAS, on 24 September 2013 the Respondent submitted to the RIDEM a written plan dated 24 September 2012 prepared by GZA GeoEnvironmental, Inc. to resolve the Order section of the NOV.
- (6) WHEREAS, on 20 November 2013 the RIDEM issued a letter to the Respondent with comments on the plan.
- (7) WHEREAS, on 27 February 2014 the Respondent submitted to the RIDEM a response to the RIDEM's 20 November 2013 letter. The Respondent agreed to amend its plan to address most of the RIDEM's comments and provided an explanation as to why it could not amend its plan to include the remaining comments. The RIDEM reviewed the 27 February 2014 letter and accepted the explanation offered by the Respondent.

- (8) WHEREAS, on 21 April 2014 the Respondent submitted to the RIDEM an addendum to the plan. The plan dated 24 September 2012 and the addendum are attached hereto and incorporated herein as Attachment A (collectively, the “Plan”).
- (9) WHEREAS, the Respondent has advised the RIDEM that as of the signing of this Agreement it is fully compliant with the Plan.
- (10) WHEREAS, the Respondent has advised the RIDEM that it has taken adequate precautions consistent with good industrial practice to control dust from traveling beyond the property line of the Facility, which are included in the Plan.
- (11) WHEREAS, the signing of this Agreement is for settlement purposes only and does not constitute an admission by the Respondent that the law or regulations have been violated or that a penalty is due as alleged in the NOV.
- (12) 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 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.
- (13) WHEREAS, the RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with Rhode Island’s Clean Air Act and the RIDEM’s *Air Pollution Control Regulations*.

C. AGREEMENT

- (1) JURISDICTION – The RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over the Respondent.
- (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 Respondent and its 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) CONDITIONS –
 - (a) The Respondent hereby agrees to implement and abide by the Plan, unless otherwise agreed by the Parties in writing.
 - (b) Penalty – The Respondent shall pay to the RIDEM the sum of **One Thousand Dollars (\$1,000.00)** in settlement of administrative penalties assessed as follows:

- (i) Upon execution of this Agreement by the Respondent, the Respondent shall pay to the RIDEM the sum of **One Thousand Dollars (\$1,000.00)**.
- (ii) The sum that the Respondent agrees to pay in this Agreement are in settlement of assessed penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (iii) All penalty payments shall be in the form of a certified check, cashier's 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

- (5) **RIGHT OF ACCESS** – The Respondent provides to the RIDEM, its authorized officers, employees and representatives an irrevocable right of access to the Facility 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 Respondent. The Respondent shall ensure that assignees, successors in interest, lessees, sublessees, tenants in possession and/or occupants of the Facility shall provide the same access and cooperation as long as they control the Facility. The Respondent shall provide a copy of this Agreement to any current lessee, sublessee, tenant in possession and/or occupant of the Facility as of the effective date of this Agreement. Any subsequent leases, subleases, assignments or transfers of the Facility or an interest in the Facility 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 Respondent 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.
- (2) **FAILURE TO COMPLY** – In the event that the Respondent fails to comply with Section C (4)(a) of the Agreement, the Respondent shall pay a stipulated penalty of Five Hundred Dollars (\$500.00) per day for each and every day during which the noncompliance continues, except that the RIDEM may, for good cause shown, defer or reduce such penalty. The payment of a penalty in accordance with this section shall not preclude the 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 Respondent of any obligation to comply with any other applicable laws or regulations administered by, through or for the 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, the 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 Respondent may have regarding any new enforcement action commenced by the 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) 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:

Christopher John, Supervising Air Quality Specialist
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360

Richard Bianculi, Esquire
RIDEM Office of Legal Affairs
235 Promenade Street
Providence, RI 02908-5767
(401) 222-6607

Jennifer Cervenka, Esquire
Partridge Snow & Hahn LLP
40 Westminster Street, Suite 1100
Providence, RI 02903
(401) 861-8228

- (a) At any time prior to full compliance with the terms of this Agreement, the Respondent agrees to notify the RIDEM in writing of any change in ownership of the 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 this Agreement shall be forwarded to the above-referenced addressees by email and 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 the RIDEM in writing at least 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 and shall expire 5 years of the date of execution by the 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 _____, 2014, 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 the State of Rhode Island Department of
Environmental Management*

David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____