

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

OFFICE OF COMPLIANCE AND INSPECTION

In Re: Derek Keniston

File No.: C05-0235

CONSENT AGREEMENT

A. INTENT & PURPOSE

This Agreement is entered by and between the Rhode Island Department of Environmental Management (“RIDEM”) and Leo P. DeRoy (“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 Derek Keniston by RIDEM on 26 February 2010.

B. STIPULATED FACTS

- (1) WHEREAS, the property is located approximately 50 feet west of North Woody Hill Road, 200 feet south of its intersection with Church Street, Utility Pole No. 2, Assessor’s Plat 33, Lot 99, in the Town Westerly, Rhode Island (the “Property”).
- (2) WHEREAS, Respondent owns the Property. Respondent acquired title to the Property on 20 December 2019.
- (3) WHEREAS, on 26 February 2010, RIDEM issued a NOV to Derek Keniston alleging certain violations of Rhode Island's *Freshwater Wetlands Act* (the “Act”) and the Rhode Island Code of Regulations titled *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act (250-RICR-150-15-1)* (the “Rules”).
- (4) WHEREAS, on April 21, 2010, the NOV was recorded in the land evidence records of the Town of Westerly, Rhode Island.
- (5) WHEREAS, Derek Keniston failed to request an administrative hearing to contest the NOV and failed to comply with the NOV.
- (6) WHEREAS, upon acquiring title to the Property, Respondent became responsible for complying with the NOV.

- (7) WHEREAS, on 20 March 2020, RIDEM inspected the Property (the “Inspection).
- (8) WHEREAS, on 11 June 2020, Respondent submitted electronic correspondence to RIDEM (the “Correspondence”).
- (9) WHEREAS, based on the Inspection and Correspondence, RIDEM has determined that Respondent restored the freshwater wetlands on the Property in compliance with the NOV. The restoration involved the removal of fill and the planting of trees and shrubs (the “Plantings”).
- (10) WHEREAS, the Administrative Adjudication Division is a division of RIDEM.
- (11) WHEREAS, in lieu of proceeding to Superior Court to enforce the NOV and to affect 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.
- (12) WHEREAS, RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the Act and the Rules.

C. AGREEMENT

- (1) JURISDICTION – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over 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. 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) APPLICATION – The provisions of this Agreement shall apply to and be binding upon RIDEM, Respondent and his 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) RECORDING OF AGREEMENT AND RELEASE OF NOV – **Within 10 days of the receipt of the fully executed Agreement from RIDEM**, Respondent shall record this Agreement with the Town of Westerly, Rhode Island and shall provide a copy of the recorded Agreement to RIDEM. Upon receipt of a copy of the recorded Agreement, RIDEM shall issue a Release of the NOV to Respondent for recording. The recordings shall be at the sole expense of Respondent.

(5) CONDITIONS –

- (a) Respondent shall complete the following actions to comply with the Order section of the NOV:
- (i) If any Plantings fail to survive at least 1 year from 11 June 2020, the same plant species shall be replanted and maintained until such time that survival occurs for at least 1 year.
 - (ii) 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 valid permit from RIDEM, unless the activity is exempt under Part 1.6 of the Rules.
- (b) Penalty – Respondent shall pay to RIDEM the sum of **\$1,500** in administrative penalties assessed as follows:
- (i) Upon execution of this Agreement by Respondent, Respondent shall pay to RIDEM the sum of **\$1,500**.
 - (ii) Penalties that Respondent agrees to pay in this Agreement are 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 Program***. All payments shall be delivered to:

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

- (6) RIGHT OF ACCESS – Respondent provides to RIDEM, its authorized officers, employees and representatives an irrevocable right of access to the Property at all reasonable times to monitor compliance with this Agreement. Respondent 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. Respondent 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.

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 Respondent’s successful completion of the requirements set forth in the Agreement, RIDEM shall issue a Release and Discharge of the Agreement to Respondent for recording. The recording shall be at the sole expense of Respondent.
- (2) FAILURE TO COMPLY – If Respondent fails to comply with items specified in subsection C(5)(a) of the Agreement, Respondent shall pay a stipulated penalty of \$500 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 section shall not preclude 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 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 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.
- (5) FUTURE ACTIVITIES AND UNKNOWN CONDITIONS – This Agreement shall not operate to shield 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 limited to violations alleged in the NOV.
- (7) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

Shawna Smith, Senior Environmental Scientist
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360 ext. 7427
shawna.smith@dem.ri.gov

Leo P. DeRoy
75 General Stanton Lane
Charlestown, RI 02813
(800) 343-3500 ext. 2542

lderoy@arpintl.com

- (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) 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 15 days prior to the prescribed deadline.
- (9) AMENDMENT – The Agreement may be amended by agreement of the parties in writing.
- (10) EFFECTIVE DATE – This 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 this Agreement in substance and in form.

Leo P. DeRoy

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2020, before me personally appeared Leo P. DeRoy to me known and known by me to be the party executing the foregoing instrument and he acknowledged said instrument and the execution thereof, to be his free act and deed.

Notary Public
My Commission Expires: _____

State of Rhode Island, Department of Environmental
Management

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

Dated: _____