

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

IN RE: Town of Johnston

**FILE NO.: WP06-071
AAD No. 10-007/WRE**

CONSENT AGREEMENT

A. INTENT & PURPOSE

This Agreement is entered by and between the Rhode Island Department of Environmental Management, Office of Compliance & Inspection (“DEM”) and the Town of Johnston (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 by DEM on August 13, 2010.

B. STIPULATED FACTS

- (1) WHEREAS, the subject property is located at 1260 Central Pike, Johnston, Rhode Island (the “Property”).
- (2) WHEREAS, on August 13, 2010, DEM issued an NOV to the Respondent alleging certain violations of the Rhode Island Water Pollution Act R.I.G.L. §46-12-5(b), the Rhode Island Freshwater Wetlands Act R.I.G.L §2-1-21, the DEM Water Quality Regulations and the DEM Rules and Regulations for Governing the Administration and Enforcement of the Freshwater Wetlands Act.
- (3) WHEREAS, the Respondent requested an administrative hearing to contest the NOV.
- (4) WHEREAS, on December 8, 2010 the DEM received a plan entitled “*Proposed Wetland Restoration Plan Existing Proposed Conditions 1260 Central Pike A.P. 43-2 Lot 96 Johnston, Rhode Island*” dated 9/27/10 and revised 12/8/10 that was prepared by Natural Resources Services, Inc. on the Respondent’s behalf (the “Wetland Restoration Plan”). The Wetland Restoration Plan is attached hereto and incorporated herein as Attachment A.
- (5) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and in order to affect a timely and amicable resolution of the NOV, DEM 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, DEM finds that this Consent Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the Rhode Island Water Pollution Act R.I.G.L. §46-12-5(b), the Rhode Island Freshwater Wetlands Act R.I.G.L §2-1-21, the DEM Water Quality Regulations and the DEM Rules and Regulations for Governing the Administration and Enforcement of the Freshwater Wetlands Act.

C. AGREEMENT

- (1) JURISDICTION – DEM 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 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 DEM, 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) **On or before July 1, 2011** the Respondent shall remove the existing culvert pipe shown on the Wetland Restoration Plan. Prior to initiation of the work, the Respondent shall install staked haybales at the eastern limit of the work. Upon completion of the work, the Respondent shall remove the haybales and stabilize the drainage swale with a mat of loose hay mulch and/or rip rap.
- (b) The Respondent shall remove the accumulated road sand from the freshwater pond located on the Property in accordance with the Wetland Restoration Plan. The work shall be completed **between July 1, 2011 and October 31, 2011**.
- (c) Penalty - In satisfaction of the administrative penalty assessed in the NOV, the Respondent shall pay One Thousand Dollars (\$1,000.00).
- (d) Payment Schedule – The Respondent’s total penalty, One Thousand Dollars (\$1,000.00), shall be paid as follows:

- (i) Upon execution of this Agreement by the Respondent, the Respondent shall pay to DEM the sum of One Thousand Dollars (\$1,000.00).
- (ii) Penalties that the Respondent agrees to pay in this Consent 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 check, payable to the **R.I. General Treasurer – Water and Air Protection Account**. All payments shall be delivered, along with a copy of this Agreement, to:

David E. Chopy, Chief
DEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767

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 August 13, 2010.
- (2) FAILURE TO COMPLY – In the event that the Respondent fails to comply with the items specified in Section C (4) (a) and (b) of the Agreement, the Respondent 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 DEM may, for good cause shown, defer or reduce such penalty. The payment of a penalty in accordance with this section shall not preclude DEM 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 DEM 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, DEM 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 DEM 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 OF COMMUNICATION – Communications regarding this Agreement shall be directed to:

Patrick J. Hogan
Office of Compliance & Inspection
Department of Environmental Management
235 Promenade Street
Providence, RI 02908
(401) 222-4700 extension 7119

- (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 DEM in writing at least fifteen days prior to the prescribed deadline.
- (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

The Honorable Joseph M. Polisena, Mayor

Date

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

David E. Chopy, Chief
Office of Compliance and Inspection

Date