

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

**In Re: Paul Mastrobuono**

**OC&I File No.: FW C05-0172**

**AAD File No.: 08-007/FWE**

**CONSENT AGREEMENT**

**A. INTENT & PURPOSE**

This Agreement is entered by and between the Rhode Island Department of Environmental Management ("RIDEM"), Office of Compliance & Inspection ("OC&I") and Paul Mastrobuono (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 OC&I on June 4, 2008.

**B. STIPULATED FACTS**

- (1) WHEREAS, the subject site is located approximately 60 feet south of Starline Drive at utility pole number 7, and approximately 1,000 feet south of the intersection of Starline Drive and Plainfield Pike, Plat 35 Lot 200, in the City of Cranston, Rhode Island (the "Property").
- (2) WHEREAS, on June 4, 2008, OC&I issued a NOV to 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, Respondent timely requested an administrative adjudicatory hearing on the NOV.
- (4) 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, OC&I and the Respondent hereby agree that it is in the best interest of the parties and in the public interest to resolve the disputed issues by the terms of the Agreement set forth herein.
- (5) WHEREAS, OC&I 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 – OC&I has jurisdiction over the freshwater wetlands at issue in its NOV File C05-0172 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 OC&I, 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 Cranston, Rhode Island within ten days of the receipt of the fully executed Consent Agreement from OC&I. The Respondent shall ensure that the original Consent Agreement is recorded and returned to OC&I at the sole expense of the Respondent.
- (5) CONDITIONS –
  - (a) Wetland Restoration
    - (1) Prior to the commencement of restoration, the Respondent shall install a continuous uninterrupted line of staked hay bales or silt fence between those portions of the wetlands that have been altered without authorization and the remaining undisturbed wetland. 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 the required wetland restoration, and until such time that all of the surrounding areas are properly stabilized. At the discretion and direction of representatives of OC&I, additional soil erosion and sediment controls must be installed on-site, as deemed necessary, to protect any and all freshwater wetlands.
    - (2) **By April 1, 2011** the Respondent shall remove all unauthorized fill material (in the form of at least soil material) that has been placed within the Swamp as located east, southeast, and south of flag line B-10 through B-14 shown on Insignificant Alteration Permit 01-0067 that was approved by the RIDEM Office of Water Resources (“OWR”) on March 6, 2001 (the “Permit”) that has not been authorized to be altered pursuant to a permit issued by OWR. All fill material that is removed must be deposited in an appropriate upland location, outside of any and all wetlands.
    - (3) Following the removal of fill in paragraph C(5)(a)(2) above, Respondent shall regrade all remaining slopes to a 3:1 grade or shallower. Finished slopes shall be stabilized by seeding with a wildlife conservation grass seed mixture and by mulching with a mat of loose hay.

- (4) Following finish grading required in paragraph C(5)(a)(3) above, Respondent shall plant a line of tree plantings consisting of Arborvitae (*Thuja occidentalis*), along the flag line B-9 through B-14. All trees shall be planted ten feet on center, three feet tall after planting.
- (5) The Respondent shall seed all disturbed soil in the restored Swamp with a wetland seed mixture and shall mulch the restored area with a mat of loose hay mulch.
- (6) The Respondent is allowed to apply for a permit from OWR to seek approval for some or all of the unauthorized wetland alterations in the fifty foot Perimeter Wetland and the Swamp identified in the NOV. Regardless of the outcome of the application process and of the Respondent's intent or actions to re-file and/or appeal the outcome, the deadline to restore the Perimeter Wetland and the Swamp as set forth in this paragraph shall apply. Respondent acknowledges that RIDEM has made no representations that any application as described in this paragraph will be approved or is approvable and the Respondent assumes responsibility in electing a particular application.
- (7) **By July 1, 2011** the Respondent shall restore all portions of the Perimeter Wetland that have not been authorized to be altered pursuant to a permit issued by OWR. Restoration shall include the removal of all unauthorized fill in the Perimeter Wetland located to the west, northwest, north, and northeast of flag line B-9 through B-14 shown on the Permit and planting of the Perimeter Wetland as stated below.

Specifically, balled and burlapped or transplanted tree species shall be planted in an interspersed fashion ten feet on center, four feet tall after planting, throughout the area defined above. Tree species must include an equal distribution of at least three of the following selections:

White pine, *Pinus strobus*  
Red Spruce, *Picea rubens*  
Red maple, *Acer rubrum*  
Silver maple, *Acer saccharinum*  
Black gum (tupelo), *Nyssa sylvatica*  
Northern red oak, *Quercus rubra*  
Pin oak, *Quercus palustris*  
Weeping willow, *Salix babylonica*

In addition, balled and burlapped or transplanted shrub species shall be planted in an interspersed fashion five feet on center, three feet tall after planting, throughout the area defined above. Shrub species must include an equal distribution of at least four of the following selections:

Mountain laurel, *Kalmia latifolia*  
Giant rhododendron, *Rhododendron maximum*

Silky dogwood, *Cornus amomum*  
Flowering dogwood, *Cornus florida*  
Winterberry, *Ilex verticillata*  
Inkberry, *Ilex glabra*  
Highbush blueberry, *Vaccinium corymbosum*  
Lowbush blueberry, *Vaccinium angustifolium*  
Sweet pepperbush, *Clethra alnifolia*  
Black chokeberry, *Aronia melanocarpa*

- (8) The Respondent shall ensure the survival of all installed plants (shrubs and trees) for one full year from the time that planting has been verified by OC&I. In the event that the plants do not survive, the Respondent shall replant and ensure the survival of the new plantings for another year and shall continue this process until such time that the plantings survive at least one full year. The Respondent shall notify OC&I in writing upon completion of the required planting.
  - (9) Upon stabilization of all restored areas the Respondent shall remove all erosion and sedimentation controls from the freshwater wetland. Prior to the removal of the controls, all accumulated sediment must be removed to a suitable upland area, outside of any and all freshwater wetlands.
  - (10) The Respondent shall allow all restored areas, including replanted areas, to revert to a natural wild condition. No clearing, mowing, cutting, trimming, or other alterations shall be allowed without prior written authorization from RIDEM.
  - (11) With the exception of any work required by this Consent Agreement, or authorized by OWR, 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 agrees not to 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 shall pay to OC&I the sum of **Eight Hundred and Ninety Dollars and no cents (\$890.00)** in administrative penalties.
  - (2) 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.

- (3) 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:

RIDEM Office of Compliance and Inspection  
235 Promenade Street  
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. 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, OC&I 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 Cranston. The Respondent agrees that the recordings shall be at the sole expense of the Respondent.
- (2) FAILURE TO COMPLY – In the event that Respondent fails to comply with any provision of paragraphs C(5)(a) above, the Respondent agrees to pay an administrative penalty of Five Hundred Dollars (\$500.00) per month for each and every month that the Respondent remains in non-compliance with this Agreement, except that OC&I may, for good cause shown, defer or reduce such penalty. The payment of a penalty in accordance with this paragraph shall not preclude OC&I 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, OC&I 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 OC&I 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 OC&I 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 OC&I 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 Mastrobuono

Date: \_\_\_\_\_

In \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 2011, before me personally appeared Paul Mastrobuono 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: \_\_\_\_\_