

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

**OFFICE OF COMPLIANCE AND INSPECTION**

In Re:     Antone Moniz  
          Georgianna Moniz

File No.: FW C05-0224  
AAD No.: 09-006/FWE

**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 Antone Moniz and Georgianna Moniz (the "Respondents"). 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 October 21, 2009.

**B. STIPULATED FACTS**

- (1) WHEREAS, the subject property is located approximately 300 feet east of Stafford Road (Route 81), adjacent to number 454 Stafford Road, approximately 700 feet northeast of the intersection of Briggs Lane and Stafford Road, Assessor's Plat 99, Lot 76, in the town of Tiverton, Rhode Island (the "Property").
- (2) WHEREAS, the Respondents own the Property.
- (3) WHEREAS, on October 21, 2009, RIDEM issued a NOV to the Respondents alleging certain violations of Rhode Island's Freshwater Wetlands Act and RIDEM's Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act (the "Violations").
- (4) WHEREAS, the Respondents requested an administrative hearing to contest the NOV.
- (5) WHEREAS, the Respondents are farmers as that term is defined in Rhode Island's Freshwater Wetlands Act.
- (6) WHEREAS, the Violations are in an area of actively managed farmland that is essential to the agricultural operation.
- (7) WHEREAS, full resolution of the Violations in accordance with the Order section of the NOV will significantly impact the viability of the agricultural operation.

- (8) WHEREAS, completion of the work described in Section C(5)(a) of the Agreement will mitigate the Violations to the greatest extent practicable without impacting the viability of the agricultural operation.
- (9) WHEREAS, the terms of the Agreement will not pose an undue risk to public health and/or the environment or conflict with the terms and conditions of federally delegated environmental programs.
- (10) WHEREAS, the Respondents have demonstrated a sincere effort to protect farmland and promote farming.
- (11) WHEREAS, the Respondents did not knowingly or willfully cause the Violations.
- (12) WHEREAS, on November 21, 2011, the RIDEM received a document entitled “Revised Conservation Plan, Prepared for Antone/Geogianna Moniz, 408 Stafford Road, Tiverton, RI”, dated 3/1/11, that was prepared by Tom Sandham for the Eastern Rhode Island Conservation District (the “Conservation Plan”). The Conservation Plan is attached hereto and incorporated herein as Attachment A.
- (13) WHEREAS, 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.
- (14) WHEREAS, RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the Rhode Island’s Freshwater Wetlands Act and RIDEM’s Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act.

### **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 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, 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, the Respondents shall record this Agreement with

the town of Tiverton, Rhode Island and shall provide a copy of the recorded Agreement to RIDEM. The recording shall be at the sole expense of the Respondents.

(5) CONDITIONS –

- (a) **By September 30, 2012**, the Respondents shall complete the work described in the Conservation Plan and submit a letter to the RIDEM's Office of Compliance and Inspection certifying that all the work is complete.
- (b) The Respondents shall comply with the Order section of the NOV when one of the following occurs:
  - (i) The Property is no longer being managed by a farmer;
  - (ii) The area of farmland where the Violations exist is no longer essential to the agricultural operation;
  - (iii) The agricultural operation changes such that compliance with the Order section of the NOV will not jeopardize the viability of the agricultural operation; or
  - (iv) The agricultural operation changes such that it is no longer critical to meeting the RIDEM's duty to protect farmland and promote farming.
- (c) Penalty – Respondents shall pay to RIDEM the sum of **Three Thousand Dollars (\$3,000.00)** in administrative penalties assessed as follows:
  - (i) Upon execution of this Agreement by the Respondents, the Respondents shall pay to RIDEM the sum of **Three Thousand Dollars (\$ 3,000.00)**.
  - (ii) Penalties that the Respondents agree 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, 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 – The Respondents 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. The Respondents 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. The Respondents 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. RIDEM shall give twenty-four (24) hours notice by telephone to the Respondents prior to its attempt to access the Property. The Respondents hereby designate Joseph Moniz as the individual assigned to receive notice for such access. If the primary designee cannot be notified, the Respondents designate Jean Moniz as a secondary contact. Respondents hereby reserve the right to accompany RIDEM staff during right of access visits to the Property.

#### ***D. COMPLIANCE***

- (1) EFFECT OF COMPLIANCE – Compliance with and fulfillment of this Agreement shall be deemed to resolve all issues. 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 the Respondents for recording. The recordings shall be at the sole expense of the Respondents.
- (2) FAILURE TO COMPLY – In the event that the Respondents fail to comply with items specified in Sections C (5)(a) and C (5)(b) of the Agreement, the Respondents 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 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 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

**Joseph Moniz**  
454 Stafford Road  
Tiverton, RI 02878  
(401) 316-6843

**Jean Moniz**  
454 Stafford Road  
Tiverton, RI 02878  
(401) 624-8898

- (a) At any time prior to full compliance with the terms of this Agreement, the Respondents agree to notify the 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 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 Antone Moniz

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

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

**STATE OF RHODE ISLAND**  
**COUNTY OF \_\_\_\_\_**

In \_\_\_\_\_, in said County and State, on this \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me personally appeared Antone Moniz 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: \_\_\_\_\_

For Georgianna Moniz

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

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

**STATE OF RHODE ISLAND**  
**COUNTY OF \_\_\_\_\_**

In \_\_\_\_\_, in said County and State, on this \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me personally appeared Georgianna Moniz to me

known and known by me to be the party executing the foregoing instrument and she acknowledged said instrument and the execution thereof, to be her free act and deed.

\_\_\_\_\_  
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: \_\_\_\_\_