

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

**OFFICE OF COMPLIANCE AND INSPECTION**

In Re: Stanley J. Mruk, Sr.

File Nos.: C-948 and C-2177

**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 The Estate of Stanley J. Mruk (the "Estate"). 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 Notices of Violation issued to Stanley J. Mruk, Sr. by the RIDEM on 31 March 1981 and 26 March 1987 and the alleged noncompliance with an Amended Consent Agreement that was executed by the RIDEM and Mr. Mruk on 2 May 1988.

**B. STIPULATED FACTS**

- (1) WHEREAS, the property is located at 34 Black Rock Road, Assessor's Plat 63, Lot 160.1 (formerly Plat 4, Lot 533), in the town of Coventry, Rhode Island (the "Property").
- (2) WHEREAS, Stanley J. Mruk, Sr. owned the Property.
- (3) WHEREAS, on 31 March 1981, the RIDEM issued a Notice of Violation to Mr. Mruk alleging certain violations of Rhode Island's Freshwater Wetlands Act on the Property (the "1981 NOV").
- (4) WHEREAS, on 26 March 1987, the RIDEM issued a Notice of Violation to Mr. Mruk alleging certain violations of Rhode Island's Freshwater Wetlands Act on the Property (the "1987 NOV").
- (5) WHEREAS, on 2 May 1988, the RIDEM and Mr. Mruk executed an Amended Consent Agreement (the "1988 Agreement").
- (6) WHEREAS, the 1988 Agreement required Mr. Mruk to restore the freshwater wetlands on the Property by 15 October 1988. The Agreement further stipulated that if Mr. Mruk failed to comply with the Agreement he agreed to pay a penalty of \$1,000 and further agreed to pay a penalty of \$1,000 per month for each and every month that he remained in noncompliance with the Agreement.

- (7) WHEREAS, on 22 August 2014, Mr. Mruk died.
- (8) WHEREAS, on 22 January 2016, the RIDEM received a site plan of the Property that was prepared by Natural Resources Services, Inc. ("NRS") on behalf of the Estate. The plan showed that the freshwater wetlands on the Property had not been restored.
- (9) WHEREAS, on 10 March 2016, the RIDEM received a plan that was prepared by NRS on behalf of the Estate, 2 sheets, last revised 7 March 2016, to restore the freshwater wetlands on the Property (the "Plan").
- (10) WHEREAS, on 22 March 2016, the RIDEM approved the Plan. The stamped approved plan is attached hereto and incorporated herein as Attachment A (the "Approved Plan").
- (11) WHEREAS, in lieu of proceeding to Superior Court to enforce the 1988 Agreement and to effect a timely and amicable resolution of the 1981 NOV, the 1987 NOV, and the 1988 Agreement, the RIDEM and the Estate hereby agree that it is in the best interest of the parties and in the public interest to resolve the issues raised in the 1981 NOV and the 1987 NOV and the 1988 Agreement.
- (12) 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 Freshwater Wetlands Act.

### **C. AGREEMENT**

- (1) JURISDICTION – The RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over the Estate.
- (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 the RIDEM, the Estate and its agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for the Estate 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 the RIDEM, the Estate shall record this Agreement with the town of Coventry, Rhode Island and shall provide a copy of the recorded Agreement to the RIDEM. The recording shall be at the sole expense of the Estate. Upon receipt of the recorded Agreement, the RIDEM shall issue a Release and Discharge of the 1981 NOV and the 1987 NOV to the Estate for recording. The recordings shall be at the sole expense of the Estate.

(5) CONDITIONS –

- (a) **By 30 September 2016**, the Estate shall complete the wetland restoration on the Property in accordance with the Approved Plan and the requirements below. It is acknowledged that any discrepancy between the Approved Plan and the requirements of this Agreement shall be governed by the Agreement.
- (i) If necessary, prior to the commencement of restoration of the freshwater wetlands, a continuous uninterrupted line of staked haybales, silt fence, and/or straw wattle tubes (fiber logs) shall be installed between those portions of the wetlands that have been altered without authorization and the undisturbed freshwater wetlands. 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 surrounding areas are properly stabilized. At the discretion and direction of the RIDEM, additional soil erosion and sediment controls must be installed on-site, as deemed necessary, to protect any and all freshwater wetlands.
  - (ii) Upon stabilization of all disturbed areas, any artificial erosion and sedimentation controls must be removed from the freshwater wetland (i.e., staked haybales and wattle tubes may remain in place). 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.
  - (iii) All restored wetland areas, including replanted areas, must be allowed to revegetate naturally and revert to a natural wild state. No future clearing, mowing, cutting, trimming, or other alterations are allowed in the restored wetland areas, or within other previously undisturbed freshwater wetlands on Property, without first obtaining a permit from the RIDEM, with the exception of any work allowed as an exempt activity under the RIDEM's Freshwater Wetland Regulations, Rule 6.00.
- (b) Penalty – The Estate shall pay to the RIDEM the sum of **\$3,000** in administrative penalties assessed as follows:
- (i) **Upon execution of this Agreement by the Estate**, the Estate shall pay to the RIDEM the sum of **\$3,000**.
  - (ii) Penalties that the Estate 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 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 Estate provides 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 Estate 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 Estate 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 1981 NOV, the 1987 NOV and the 1988 Agreement. Upon the Estate's successful completion of the requirements set forth in this Agreement, the RIDEM shall issue a Release and Discharge of this Agreement to the Estate for recording. The recording shall be at the sole expense of the Estate.
- (2) **FAILURE TO COMPLY** – In the event that the Estate fails to comply with items specified in Section C (5)(a) of the Agreement, the Estate shall pay a stipulated penalty of \$500 per month for each and every month 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 Estate 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 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 the Estate 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 Estate 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 1981 NOV, the 1987 NOV and the 1988 Agreement.
- (7) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

**David E. Chopy, Chief**  
RIDEM Office of Compliance and Inspection  
235 Promenade Street, Room 220  
Providence, RI 02908-5767  
(401) 222-1360 ext. 7400

**Joseph J. LoBianco, Esquire**  
RIDEM Office of Legal Services  
235 Promenade Street, 4<sup>th</sup> Floor  
Providence, RI 02908-5767  
(401) 222-6607 ext. 2302

**Robert D. Murray, Esquire**  
Taft & McSally LLP  
21 Garden City Drive  
Cranston, RI 02920  
(401) 946-3800

- (a) At any time prior to full compliance with the terms of this Agreement, the Estate agrees 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 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.

**IN WITNESS WHEREOF, the undersigned consent to this Agreement in substance and in form.**

*For The Estate of Stanley J. Mruk, Sr.*

\_\_\_\_\_  
 Karen A. Haxton, Executrix

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

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

In \_\_\_\_\_, in said County and State, on this \_\_\_\_\_ day of March, 2016, before me personally appeared Karen A. Haxton, Executrix under the Will of Stanley J. Mruk, to me known and known by me to be the party executing the foregoing instrument and she acknowledged said instrument, by her executed to be her free act and deed, individually and in her capacity as aforesaid, as Executrix under the Will of Stanley J. Mruk.

*State of Rhode Island, Department of Environmental Management*

By: \_\_\_\_\_  
 David E. Chopy, Chief  
 Office of Compliance and Inspection

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