

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

OFFICE OF COMPLIANCE AND INSPECTION

In Re: Rhode Island Department of Transportation

File No.: WP 06-04

AAD No.: 06-003/WRE

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 Rhode Island Department of Transportation (the "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 administrative enforcement action set forth in a Notice of Violation ("NOV") issued to the Respondent by the RIDEM on July 28, 2006.

B. STIPULATED FACTS

- (1) WHEREAS, the Respondent is the owner and operator of a public works facility located on Route #14, Plainfield Pike, in the town of Foster, Rhode Island (the "Facility").
- (2) WHEREAS, on July 28, 2006, the RIDEM issued a NOV to the Respondent alleging certain violations of Rhode Island's *Water Pollution Act*, the RIDEM's *Rules and Regulations for Groundwater Quality* and the RIDEM's *Water Quality Regulations*.
- (3) WHEREAS, the Respondent requested an administrative hearing to contest the NOV.
- (4) WHEREAS, the Respondent complied with D.1 and D.2 of the Order section of the NOV.
- (5) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to effect a timely and amicable resolution of the NOV, the RIDEM 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, RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with Rhode Island's *Water Pollution Act*, the RIDEM's *Rules and Regulations for Groundwater Quality* and the RIDEM's *Water Quality Regulations*.

C. AGREEMENT

- (1) JURISDICTION – RIDEM 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 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 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) The Respondent shall complete the following actions to comply with the remaining Order Sections of the NOV:
 - (i) Annually collect samples from all drinking water wells in the area shown on the attached map (the “Potentially Impacted Wells”) and analyze the samples for chloride using an approved Environmental Protection Agency method (the “Approved Method”). The map is attached hereto and incorporated herein as Attachment A.
 - (ii) Within six (6) months of receipt of written notification from the RIDEM or from a property owner of one of the Potentially Impacted Wells that the drinking water well has chloride levels that exceed 125 milligrams per liter (“mg/l”) or receipt of analytical results that show chloride levels greater than 125 mg/l in a drinking water well, sample the well and analyze the sample for chloride using an Approved Method. Sampling of the well shall continue thereafter on a twice yearly basis until the chloride levels are below 125 mg/l.
 - (iii) Within (90) days of receipt of analytical results that show chloride levels of 200 mg/l or greater, replace the well or provide treatment of said well or both in order to achieve chloride levels below 125 mg/l. If a property owner refuses remedial activity this must be supported by a letter from the property owner.
 - (iv) Within fourteen (14) days of receipt of the Respondent’s receipt of any written notices from a property owner of one of the Potentially Impacted Wells that the well has chloride levels that exceed 125 mg/l provide a copy of said notice to the RIDEM Office of Compliance and Inspection.

- (v) If the analytical sampling results show chloride levels that are below 125 mg/l in a drinking water well for four (4) consecutive years, the annual testing for that property shall be suspended from the requirements under this Consent Agreement.
 - (vi) Provide an annual written report to the RIDEM Office of Compliance and Inspection summarizing the testing results and any remedial activity work performed in accordance with Section C (4)(a)(iii) herein in the form attached hereto and incorporated herein as Attachment B.
 - (vii) Within thirty (30) days of execution of the Agreement, send a certified letter to the property owner/s with a Potentially Impacted Well advising the owner/s of the terms of the Agreement (identified on Attachment C attached hereto and incorporated herein). Copies of the letters must be sent to the RIDEM Office of Compliance and Inspection. Should a property owner refuse to allow the Respondent access to the property to conduct testing, the Respondent shall report same in accordance with Section C (4)(a)(vi) herein.
 - (viii) The above requirements shall remain in effect for ten (10) years from the date of execution of the Agreement.
- (b) Penalty – The Respondent shall pay to the RIDEM the sum of **One Hundred Twenty Five Thousand Dollars (\$125,000.00)** in administrative penalties assessed as follows:
- (i) The Respondent shall pay to the RIDEM the sum of **Twenty Five Thousand Dollars (\$ 25,000.00)** within 30 days of execution of this Agreement.
 - (ii) The remainder of the penalty, **One Hundred Thousand Dollars (\$100,000.00)**, shall be addressed in the form of two Supplemental Environmental Projects (“SEPs”). The SEPs are as follows:
 - (1) Provide assistance to the town of Scituate in the removal of approximately eight hundred (800) cubic yards of sediment consisting of road sand and soil from a freshwater pond located at the intersection of Route 6 and Crestview Drive in the towns of Johnston and Scituate. The Respondent shall pay to the town of Scituate one-half of the cost of the work for removal and transport of excavated material and provide a location for the excavated material to be stockpiled for drying (the “Crestview Drive SEP”). The Respondent and the town of Scituate shall enter into an agreement reflecting the terms of this section prior to the commencement of any work. The Crestview Drive SEP must be completed by December 31, 2012. The Respondent shall be given a credit of Forty Thousand Dollars (\$40,000.00) for the Crestview Drive SEP.
 - (2) Conduct an environmental management system audit of the Respondent’s environmental policies, practices and controls that, at a minimum, meets the criteria set forth in R.I. Gen. Laws Section 42-17.8-2, (the “Audit”) and

implement the findings of the Audit in accordance with a schedule approved by RIDEM (collectively, the “EMS SEP”). The Audit must encompass the need for: (1) a formal environmental compliance policy, and procedures for implementation of that policy; (2) educational and training programs for Respondent’s employees; (3) equipment purchase, operation and maintenance programs; (4) environmental compliance officer programs; (5) budgeting and planning systems for environmental compliance; (6) monitoring, record keeping and reporting systems; and (7) internal communications and control systems. The Audit must be completed by December 31, 2012. The Respondent shall be given a credit of Sixty Thousand Dollars (\$60,000.00) for the EMS SEP.

- (3) If the Respondent fails to timely complete the Crestview Drive SEP or the EMS SEP, the RIDEM shall notify the Respondent that it intends to rescind the credit for that SEP. Within fourteen (14) days of Respondent’s receipt of written notification by the RIDEM that the RIDEM intends to rescind the credit for the SEP, the Respondent shall either complete the SEP or demonstrate that good cause exists for delay in completion of the SEP. If the Respondent fails to complete the SEP within the fourteen (14) day period or does not demonstrate good cause for delay in completion of the SEP, the Respondent shall, within ten (10) days of the Respondent’s receipt of written notification from the RIDEM, submit to the RIDEM a check in the amount of the credit of the SEP identified in Sections C(4)(b)(ii)(1) and C(4)(b)(ii)(2) above, and the Respondent shall be under no further obligation to complete the SEP.
- (iii) Penalties that the 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.
- (iv) 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 to:

Chief, RIDEM 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.
- (2) FAILURE TO COMPLY – In the event that the Respondent fails to comply with items specified in Section C (4)(a) of the Agreement, the Respondent shall pay a stipulated penalty of Five Hundred Dollars (\$ 500.00) per week for each and every week 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). In the event that the Respondent fails to remit to the RIDEM a check within fourteen (14) days of the Respondent's receipt of written notification from the RIDEM that the credit for the SEP has been rescinded as specified in the requirements set forth in Section C(4)(b)(ii)(3) of the Agreement, the payment shall be considered late and the Respondent will be in default. If the payment is not received within thirty (30) days of the Respondent's receipt of written notification from the RIDEM that the credit for the SEP has been rescinded, interest shall begin to accrue on the unpaid balance at the rate of twelve percent (12%) per annum. Interest will accrue at this rate beginning on the thirty-first (31st) day after the date specified by the RIDEM's notification that the credit has been rescinded until such date all past due payments and interest owed are remitted. Interest shall be calculated using the following generally established accounting principle:

$$\text{Balance due} = (\text{number of days late}/365) \times (0.12) \times (\text{payment amount})$$

- (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 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 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 Respondent 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 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 only violations alleged in the NOV.
- (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
Providence, RI 02908-5767
222-1360 ext. 7400

Marisa Desautel, Esquire

RIDEM Office of Legal Services
235 Promenade Street
Providence, RI 02908-5767
222-6607 ext. 2408

Peter Healey, PE
RIDOT Natural Resources Unit
2 Capitol Hill, Room 234E
Providence, RI 02903-1124
222-2023 ext. 4039

Annette P. Jacques, Esquire
RIDOT Office of Legal Counsel
2 Capitol Hill, Room 251
Providence, RI 02903-1124
222-6510 ext. 4580

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 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 Rhode Island Department of Transportation

By: Michael P. Lewis

Its: Director

Dated: _____

For the State of Rhode Island Department of
Environmental Management

David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____