

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

**IN RE: Sakonnet Point Club  
Reagan Construction Corp.**

**FILE NO.: OC&I/ WP08-010  
AAD NO.: 08-004/WRE**

**AMENDED CONSENT AGREEMENT**

**A. INTENT & PURPOSE**

This Agreement is entered by and between the Rhode Island Department of Environmental Management, Office of Compliance & Inspection (“RIDEM”), the Sakonnet Point Club (“SPC”), and the Town of Little Compton (“Little Compton”). This Agreement is entered in accordance with Section 42-17.1-2 et seq. of the Rhode Island General Laws (“R.I.G.L.”) and modifies and supersedes the Consent Agreement entered into between RIDEM and SPC on May 13, 2009 (the "Original Agreement").

**B. STIPULATED FACTS**

- (1) WHEREAS, SPC is incorporated as a Rhode Island non-profit corporation and is the owner of a yacht club located at 11 Bluff Head Avenue in Little Compton, Rhode Island (the “Property”). The Property includes a desalination water treatment facility (the “Facility”) to supply drinking water to the yacht club.
- (2) WHEREAS, RIDEM issued Rhode Island Pollutant Discharge Elimination System (“RIPDES”) Permit No. RI0023558 to SPC (the “RIPDES Permit”). The RIPDES Permit became effective January 1, 2003 and authorizes SPC to discharge treated wastewater from the Facility to the Sakonnet River.
- (3) WHEREAS, RIDEM and SPC executed the Original Agreement in an effort to resolve alleged violations of the RIPDES Permit, the Water Pollution Act (R.I.G.L. 46-12), the RIDEM Water Quality Regulations, and the RIDEM RIPDES Regulations.
- (4) WHEREAS, on May 13, 2009, SPC paid Ten Thousand Dollars (\$10,000.00) towards the Twenty Thousand Dollar (\$20,000.00) administrative penalty in accordance with the Original Agreement.
- (5) WHEREAS, circumstances have changed that require an amendment to the Original Agreement.
- (6) WHEREAS, RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the Water Pollution

Act (R.I.G.L. 46-12), the RIDEM Water Quality Regulations, and the RIDEM RIPDES Regulations.

**C. AGREEMENT**

- (1) **JURISDICTION** – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over SPC and Little Compton.
- (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 RIDEM, SPC and Little Compton and their agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for SPC and Little Compton in the performance of work relating to or impacting the requirements of this Agreement.
- (4) **CONDITIONS** –
  - (a) **Penalty** - SPC’s remaining penalty, Ten Thousand Dollars (\$10,000.00), shall be addressed as follows:
    - (i) **Upon execution of this Agreement by SPC**, SPC shall pay to RIDEM the sum of Five Thousand Eight Hundred and Fifty Dollars (\$5,850.00) and shall pay to Little Compton Four Thousand One Hundred and Fifty Dollars (\$4,150.00).
    - (ii) The funds paid to Little Compton by SPC shall be used to complete a Supplemental Environmental Project (“SEP”) to alleviate flooding at Pennsylvania Road. The SEP involves:
      - a. removal of excessive vegetation and sediment from a storm water drainage swale located adjacent to Pennsylvania Road that is owned by RIDEM (the “drainage swale”) and is further described in a proposal prepared by Oceanview Construction Co., LLC, attached hereto as Attachment A (the “swale restoration”);
      - b. treatment of the drainage swale with an appropriate rate of Fusilade to reduce occurrence of grasses in the swale after the swale restoration is completed (the “swale treatment”); and
      - c. overseeding of the drainage swale with broadleaf perennials after the swale treatment is completed.
    - (iii) **Within thirty (30) days of approval of the SEP by the Coastal Resource Management Council (“CRMC”)**, Little Compton shall initiate the work described in Section C.4.a.ii above. **Within sixty (60) days of approval of the SEP by CRMC**, Little Compton shall

complete all the work described in Section C.4.a.ii above and shall submit a letter to RIDEM certifying that all work was completed.

- (iv) RIDEM is solely responsible for filing the application with CRMC for approval of the SEP and taking all necessary action to obtain the approval from CRMC for the SEP.
- (v) Except as otherwise provided or permitted herein, if Little Compton fails to timely complete the SEP, RIDEM shall notify Little Compton that it intends to rescind the credit for the SEP. Within fourteen (14) days of Little Compton's receipt of written notification by RIDEM that RIDEM intends to rescind the credit for the SEP, Little Compton shall either complete the SEP or demonstrate that good cause exists for delay in completion of the SEP. If Little Compton fails to complete the SEP within the fourteen (14) day period or does not demonstrate good cause for delay in completion of the SEP, Little Compton shall, within ten (10) days of Little Compton's receipt of written notification from RIDEM, submit to RIDEM a check in the amount of Four Thousand One Hundred and Fifty Dollars (\$4,150.00) and Little Compton shall be under no further obligation to complete the SEP.
- (vi) Penalties that SPC agrees to pay in accordance with this Agreement are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (vii) The penalty payment from SPC shall be in the form of a certified check, payable to the **R.I. General Treasurer – Water and Air Protection Account** and shall be delivered, along with a copy of this Agreement, to:

Chief, RI 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 Original Agreement.
- (2) NULLIFICATION OF PRIOR AGREEMENT – This Agreement hereby supercedes the Original Agreement.
- (3) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve SPC or Little Compton 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 §42-17.1-2(21). This Agreement shall not restrict any right to hearing or other right available by statute or regulation that SPC or Little Compton 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 SPC or Little Compton 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:

David E. Chopy, Chief, Office of Compliance and Inspection  
Department of Environmental Management  
235 Promenade Street  
Providence, RI 02908  
(401) 222-1360, ext. 7400

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 RIDEM in writing at least fifteen (15) days prior to the prescribed deadline.
- (8) AMENDMENT – This 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 SPC*

\_\_\_\_\_  
John F. Hurley, General Manager  
Sakonnet Point Club

\_\_\_\_\_  
Date

In my capacity as General Manager of the Sakonnet Point Club, I hereby aver that I am authorized to enter into the within Agreement and thereby bind Sakonnet Point Club to satisfy any obligations imposed upon it pursuant to said Agreement.

In \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_ 2010, before me personally appeared John F. Hurley, to me known and known by me to be the party executing the foregoing Agreement on behalf of the Sakonnet Point Club and he acknowledged said instrument executed by him to be his free act and deed.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

*For Little Compton*

\_\_\_\_\_  
Robert L. Mushen, Town Council President

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
David E. Chopy, Chief  
Department of Environmental Management  
Office of Compliance and Inspection

\_\_\_\_\_  
Date