

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

**OFFICE OF COMPLIANCE AND INSPECTION**

In Re: Town of Scituate

File No.: WP99-110

AAD No.: 10-006/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 town of Scituate (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 town of Scituate on August 12, 2010.

**B. STIPULATED FACTS**

- (1) WHEREAS, the subject property is located off of Hartford Avenue in the town of Johnston, Rhode Island and Crestview Drive in the towns of Scituate and Johnston, Rhode Island (the "Property"). The Property includes a freshwater pond.
- (2) WHEREAS, on August 12, 2010, RIDEM issued a NOV to the Respondent alleging certain violations of Rhode Island's *Water Pollution Act*, the RIDEM's *Water Quality Regulations*, and the RIDEM's *Rules and Regulations Governing the Administration and Enforcement of the Fresh Water Wetlands Act*.
- (3) WHEREAS, the Respondent requested an administrative hearing to contest the NOV.
- (4) WHEREAS, on September 29, 2010 and February 24, 2011 the Respondent submitted documents to the RIDEM to install storm water controls to capture sediment runoff from Crestview Drive (the "Stormwater Mitigation Plan").
- (5) WHEREAS, on March 15, 2011, the RIDEM approved the Stormwater Mitigation Plan.
- (6) WHEREAS, the Respondent completed all work associated with the Stormwater Mitigation Plan.

- (7) WHEREAS, on August 17, 2011, the Respondent submitted a plan to the RIDEM to restore the freshwater pond (the “Wetland Restoration Plan”). The Wetland Restoration Plan requires the removal of approximately Eight Hundred (800) cubic yards of sediment from the eastern portion of the freshwater pond located in the town of Johnston (the “Deposited Sediment”). The Wetland Restoration Plan is attached hereto and incorporated herein as Attachment A.
- (8) WHEREAS, the Respondent and the RIDEM agree that not all of the Deposited Sediment is the result of storm water runoff from the Respondent’s roads.
- (9) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to affect 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.
- (10) 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 *Water Pollution Act*, the RIDEM’s *Water Quality Regulations*, and the RIDEM’s *Rules and Regulations Governing the Administration and Enforcement of the Fresh Water Wetlands Act*.

### **C. AGREEMENT**

- (1) JURISDICTION – The 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) **By June 30, 2012**, the Respondent shall retain a qualified contractor to restore the freshwater pond in accordance with the Wetland Restoration Plan.
  - (b) **By July 31, 2012** the Respondent shall evaluate the sediment trap that it constructed adjacent to Crestview Drive to determine its effectiveness in preventing sedimentation of the freshwater wetlands from stormwater runoff and submit an evaluation report to RIDEM (the “Evaluation Report”). The Evaluation Report must include all inspection results and photographs. If the evaluation concludes that the

sediment trap is not effective in preventing sediments from entering the freshwater wetlands, the Evaluation Report must include recommendations for repair and/or improvements (within the existing easement of the sediment trap) along with a schedule to complete the work.

- (c) **By October 31, 2012**, the Respondent shall complete all work in accordance with the Wetland Restoration Plan. The specific limits of the work shall be determined in the field by the RIDEM during execution of the project. The Respondent is allowed to cut only those trees and shrubs necessary to gain access to the freshwater pond for the work. No grubbing or removal of rootstock shall be undertaken within any freshwater wetlands. Appropriate erosion and sediment controls must be installed to prevent sediment transport from the area where excavation is ongoing to the adjacent open water areas. Upon completion of the work and stabilization of the freshwater wetlands, the Respondent shall remove all sediment and erosion controls from the freshwater wetlands.
- (d) Completion of the work described in Section C(4)(c) of the Agreement is contingent upon the Respondent receiving financial and non-financial assistance from the Rhode Island Department of Transportation (the "RIDOT"). Specifically, the RIDOT has agreed to provide the following assistance to the Respondent as a Supplemental Environmental Project ("SEP") unrelated to the NOV issued to Respondent in this matter:
  - (i) Within sixty (60) days of receipt of written notice from the Respondent that the work described in Section C(4)(c) of the Agreement has been initiated, RIDOT shall pay to the Respondent Twenty Five Thousand Dollars (\$25,000.00) for the removal of approximately Five Hundred (500) cubic yards of the Deposited Sediment, which represents the total cost for removal of the 500 cubic yards of the Deposited Sediment at a rate of Fifty Dollars (\$50.00) per cubic yard.
  - (ii) RIDOT shall provide to the Respondent appropriate jersey barriers to be used in the area designated for stockpiling of the sediment.
- (e) **By December 31, 2012** the Respondent shall remove the Stockpiled Sediment unless the RIDOT provides written notice to the Respondent that the RIDOT wants the Stockpiled Sediment to remain. If the RIDOT provides written notice to the Respondent that the RIDOT wants the Stockpiled Sediment to remain, the Respondent shall be under no further obligation to remove the Stockpiled Sediment.
- (f) The Evaluation Report is subject to the RIDEM's review and approval. Upon review, the RIDEM shall provide written notification to the Respondent either approving the Evaluation Report or stating any deficiencies therein. Within fourteen days (unless a longer time is specified) of receiving a notification of deficiencies, the Respondent shall submit to the RIDEM any additional information necessary to correct the deficiencies. The Respondent shall complete any necessary work to repair and/or improve the sediment trap in accordance with the approved schedule.

- (g) Penalty – In satisfaction of the administrative penalty assessed in the NOV, the Respondent agrees to remove an additional One Hundred Twenty Five (125) cubic yards of the Deposited Sediment as an SEP. The Respondent shall be given a credit in the amount of Six Thousand Two Hundred Fifty Dollars (\$6,250.00), which represents the total cost for removal of the additional 125 cubic yards of Deposited Sediment at a rate of Fifty Dollars (\$50.00) per cubic yard.
- (h) In the event that Respondent seeks and obtains bids for the removal of the Deposited Sediment and that said bids demonstrate an increase of twenty percent (20%) or more of the stated rate of Fifty Dollars (\$50.00) per cubic yard for said Deposited Sediment, RIDEM and Respondent agree to meet for the purpose of negotiating the penalty identified in Section C (4)(g) 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.
- (2) FAILURE TO COMPLY – In the event that the Respondent fails to comply with items specified in Sections C(4)(a), C(4)(b), C(4)(c), C(4)(e) and C(4)(f) of the Agreement, the Respondent 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 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, 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 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:

Patrick J. Hogan, P.E.  
RIDEM Office of Compliance and Inspection  
235 Promenade Street  
Providence, RI 02908-5767  
(401) 222-1360 ext. 7119

Joseph LoBianco, Esq.  
RIDEM Office of Legal Services  
235 Promenade Street  
Providence, RI 02908-5767  
(401) 222-6607 ext. 2302

David E. Provonsil, P.E.  
Town of Scituate  
P.O. Box 328  
North Scituate, RI 02857  
(401) 647-5901

David M. D'Agostino, Esq.  
Town Solicitor  
C/o Gorham & Gorham  
25 Danielson Pike  
P.O. Box 46  
North Scituate, RI 02857

- (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 the Respondent*

:

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

Its: \_\_\_\_\_ (Title)

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

For the State of Rhode Island Department of  
Environmental Management

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

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