

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

OFFICE OF COMPLIANCE AND INSPECTION

In Re: American Baptist Churches
of Rhode Island

File No.: Dam State I.D. 239

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 American Baptist Churches of Rhode Island (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 RIDEM on April 3, 2011.

B. STIPULATED FACTS

- (1) WHEREAS, the subject property is a dam identified as Slocum Reservoir Dam, State I.D. 239, located south of Exeter Road, west of Railroad Avenue, north of Liberty Road and east of South County Trail (Route 2), in the town of Exeter, Rhode Island ("Dam 239").
- (2) WHEREAS, the Respondent owns Dam 239.
- (3) WHEREAS, Dam 239 is classified by the RIDEM as High Hazard.
- (4) WHEREAS, on April 3, 2011, the RIDEM issued a NOV to the Respondent alleging certain violations of the RIDEM's Rules and Regulations for Dam Safety (the "Dam Safety Regulations").
- (5) WHEREAS, the Respondent did not request an administrative hearing to contest the NOV.
- (6) WHEREAS, in lieu of proceeding to Superior Court to enforce 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.

- (7) WHEREAS, the RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the Dam Safety Regulations.

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 the 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 – The Respondent shall complete the following actions to comply with the Order section of the NOV:
- (a) **By January 1, 2012** retain a professional engineer fully registered in the State of Rhode Island, who is experienced with design, construction and repair, to submit an application to the RIDEM in accordance with the Dam Safety Regulations, Rule 10B to repair the low level gate for Dam 239. The application must include a schedule to complete the work.
- (b) The application required in Section C.4.a above shall be subject to the RIDEM's review and approval. Upon review, the RIDEM shall provide written notification to the Respondent either granting formal approval or stating the deficiencies therein. **Within fourteen (14) days (unless a longer time is specified) of receiving a notification of deficiencies**, the Respondent shall submit to the RIDEM a modified report, application, or schedule or additional information necessary to correct the deficiencies.
- (c) Commence work specified in the schedule approved by the RIDEM within twenty (20) days of approval (unless otherwise expressly authorized by the RIDEM in writing to commence work at a later time), and complete such work in accordance with the approved schedule.

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 the items specified in Section C.4 of the Agreement, the Respondent shall pay a stipulated penalty of One Hundred Dollars (\$ 100.00) 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:

Paul Guglielmino
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
401.222.1360 ext. 7122

Reverend Nikita McCalister

American Baptist Churches of Rhode Island
54 Exeter Road
Exeter, RI 02822
800.294.6318

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 American Baptist Churches of Rhode Island

By: _____ (Print Name)

Its: _____ (Title)

Dated: _____

In my capacity as _____ of American Baptist Churches of Rhode Island, I hereby aver that I am authorized to enter into this Agreement and thereby bind American Baptist Churches of Rhode Island to satisfy any obligation imposed upon it pursuant to said Agreement.

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2011, before me personally appeared _____, the _____ of American Baptist Churches of Rhode Island, to me known and known by me to be the party executing the foregoing instrument on behalf of American Baptist Churches of Rhode Island, and he/she acknowledged said instrument by him/her executed, to be his/her/ free act and deed in said capacity and the free act and deed of American Baptist Churches of Rhode Island.

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: _____