

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

**OFFICE OF COMPLIANCE AND INSPECTION**

In Re: SMM New England Corporation

File Nos.: WP12-5 and WP11-089

AAD No.: 12-002/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 SMM New England Corporation (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 SMM New England Corporation by RIDEM on May 8, 2012.

**B. STIPULATED FACTS**

- (1) WHEREAS, the subject property is located at 242 Allens Avenue, Assessor's Plat 46, Lot 326 in the city of Providence, Rhode Island (the "Property").
- (2) WHEREAS, on February 12, 2012 the Respondent submitted to the RIDEM a Notice of Intent ("NOI") and a Stormwater Pollution Prevention Plan ("SWPPP") for authorization to discharge storm water associated with industrial activity to the Providence River from the Property (the "Stormwater Industrial Activity Application").
- (3) WHEREAS, on February 15, 2012 the RIDEM inspected the Property and determined that the Respondent had constructed a concrete wall around the scrap metal recycling area in late January 2012 and that the wall would prevent storm water runoff from the scrap metal recycling area from entering the Providence River (the "Short Term Mitigative Action").
- (4) WHEREAS, on February 23, 2012 the Respondent submitted to the RIDEM a NOI, a SWPPP and associated engineering plans for authorization to discharge stormwater to the Providence River from the Property associated with construction activity (the "Stormwater Construction Activity Application").
- (5) WHEREAS, on May 8, 2012 the RIDEM issued an NOV to the Respondent alleging certain violations of Rhode Island's *Water Pollution Act*, Chapter 46-12, the RIDEM's

*Water Quality Regulations* and the RIDEM's *Regulations for the Rhode Island Pollutant Discharge Elimination* (the "RIPDES Regulations").

- (6) WHEREAS, the Respondent requested an administrative hearing to contest the NOV.
- (7) WHEREAS, on May 24, 2012 the RIDEM issued a letter to the Respondent in response to the Stormwater Industrial Activity Application and the Stormwater Construction Activity Application (the "Comment Letter"). The Comment Letter is attached hereto and incorporated herein as Attachment A.
- (8) 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.
- (9) WHEREAS, the signing of this Agreement is for settlement purposes only and does not constitute an admission by the Respondent that the law or regulations have been violated as alleged 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*, Chapter 46-12, the RIDEM's *Water Quality Regulations* and the RIDEM's RIPDES 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) RECORDING OF AGREEMENT – Within ten (10) days of the receipt of the fully executed Agreement from RIDEM, the Respondent shall record this Agreement with the city of Providence, Rhode Island and shall provide a copy of the recorded Agreement to RIDEM. The recording shall be at the sole expense of the Respondent.
- (5) CONDITIONS –

- (a) The Respondent shall maintain the Short Term Mitigative Action until such time that it has complied with Section C(4)(c) of this Agreement.
- (b) **Within seven (7) days of execution of this Agreement**, the Respondent shall submit a revised SWPPP and engineering plans that address all the issues in the Comment Letter.
- (c) **Within six (6) months of RIDEM's approval of the Stormwater Discharge Construction Application and the Stormwater Discharge Permit Application (the "Approval")**, the Respondent shall complete all work associated with said applications in accordance with the Approval as evidenced by the submission of a letter from the Respondent to the RIDEM's Office of Compliance and Inspection certifying that all work is complete.
- (d) Penalty – The Respondent shall pay to RIDEM the sum of **Twenty Five Thousand Dollars (\$25,000.00)** in administrative penalties assessed as follows:
  - (i) Upon execution of this Agreement by the Respondent, the Respondent shall pay to RIDEM the sum of **Twenty Five Thousand Dollars (\$25,000.00)**.
  - (ii) 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.
  - (iii) All penalty payments shall be in the form of a certified check, cashiers 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 Respondent provides to 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 Respondent 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 Respondent 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 NOV. Upon the Respondent’s successful completion of the requirements set forth in this Agreement, RIDEM shall issue a Release and Discharge of the Agreement to the Respondent for recording. The recording shall be at the sole expense of the Respondent.
- (2) FAILURE TO COMPLY – In the event that the Respondent fails to comply with Section C (5)(a), C(5)(b) or C(5)(c) of the Agreement, the Respondent shall pay a stipulated penalty of Two Hundred and Fifty Dollars (\$250.00) per day for each and every day 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 the 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  
(401) 222-1360 ext. 7400

**Susan Forcier, Esquire**  
RIDEM Office of Legal Services

235 Promenade Street, 4<sup>TH</sup> Floor  
Providence, RI 02908-5767  
(401) 222-6607

**Gregory L. Benik, Esquire**  
Benik & Associates  
128 Dorrance Street, Suite 450  
Providence, RI 02903  
(401) 454-0054

- (a) At any time prior to full compliance with the terms of this Agreement, the Respondent agrees to notify 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 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 SMM New England Corporation:

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

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

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

In my capacity as \_\_\_\_\_ of SMM New England Corporation, I hereby aver that I am authorized to enter into this Agreement and thereby bind SMM New England Corporation 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 \_\_\_\_\_, 2012, before me personally appeared \_\_\_\_\_, the \_\_\_\_\_ of SMM New England Corporation, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of SMM New England Corporation, 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 SMM New England Corporation.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

For the State of Rhode Island Department of  
Environmental Management

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