

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

OFFICE OF COMPLIANCE AND INSPECTION

In Re: Town of Lincoln

File Nos.: Dam State I.D. 097 and
Dam State I.D. 391
AAD No.: 11-006/DE

CONSENT AGREEMENT

A. INTENT & PURPOSE

This Agreement is entered by and between the Rhode Island Department of Environmental Management's Office of Compliance & Inspection (the "RIDEM") and the Town of Lincoln (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 actions set forth in a Notice of Violation (the "NOV") issued to the Respondent by the RIDEM on May 3, 2011 and a second NOV issued to the Respondent by the RIDEM on May 24, 2011 (collectively, the "NOVs").

B. STIPULATED FACTS

- (1) WHEREAS, the subject properties are dams identified as Butterfly Pond Dam, State I.D. 097, located immediately northwest of the intersection of Breakneck Hill Road and Great Road in the Town of Lincoln (the "Dam 097") and Handy Upper Dam, State I.D. 391, located immediately west of Old River Road, south of the intersection of Old River Road and Mussey Brook Road and north of the intersection of Old River Road and Crestwood Lane in the Town of Lincoln (the "Dam 391").
- (2) WHEREAS, the Respondent owns Dam 097 and Dam 391.
- (3) WHEREAS, on May 3, 2011, the RIDEM issued a NOV to the Respondent for Dam 097 and on May 24, 2011 the RIDEM issued a NOV to the Respondent for Dam 391, both alleging certain violations of the RIDEM's Rules and Regulations for Dam Safety (the "Dam Safety Regulations").
- (4) WHEREAS, the Respondent requested an administrative hearing to contest the NOV issued for Dam 097.
- (5) WHEREAS, the Respondent failed to file a request for an administrative hearing to contest the NOV issued for Dam 391.

- (6) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV issued for Dam 097 and to Superior Court to enforce the NOV issued for Dam 391 and to effect a timely and amicable resolution of the NOVs, 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 NOVs.
- (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 –
 - (a) **By September 30, 2012** the Respondent shall complete the following actions on Dam 391:
 - (i) Remove the excess vegetation from the embankment and spillway.
 - (ii) Retain a professional engineer fully registered in the State of Rhode Island, who is experienced with dam inspections, to complete a visual inspection of the dam in accordance with the Dam Safety Regulations, Rule 11C and submit a report of the inspection findings to the RIDEM. The report must specify the actions necessary to return the dam to a safe condition and include a schedule to complete the work. The inspection must include an assessment of the possible sediment transport through the embankment. For any proposed repairs to the dam, the report must include an application prepared in accordance with the Dam Safety Regulations, Rule 10B.
 - (b) **By June 30, 2013** the Respondent shall 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 for Dam 097 to repair the low level gate or permanently lower the water level behind the dam such that the dam can be classified as a low hazard dam. The application must include a schedule to complete the work.

- (c) The report and application/s required in Sections C(4)(a) and C(4)(b) 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, and/or schedule or additional information necessary to correct the deficiencies.
- (d) The Respondent shall complete all work approved by the RIDEM in accordance with the approved schedules.

D. COMPLIANCE

- (1) EFFECT OF COMPLIANCE – Compliance with and fulfillment of this Agreement shall be deemed to resolve all issues raised in the NOV's.
- (2) FAILURE TO COMPLY – In the event that the Respondent fails to comply with any of the items specified in Section C(4) 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 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).
- (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's.
- (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

Richard M. Bianculli, Jr., Esquire
RIDEM Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767
(401) 222-4700 ext. 2023

Anthony DeSisto, Esquire
Anthony DeSisto Law Associates, LLC
450 Veterans Memorial Parkway, Suite 103
East Providence, RI 02914
(401) 421-0170

T. Joseph Almond, Town Administrator
Town of Lincoln
100 Old River Road
P.O. Box 100
Lincoln, RI 02865
(401) 333-8419

All communications regarding compliance with this Agreement shall be forwarded to the above-referenced addressees by certified mail.

- (8) DEFERRAL – The RIDEM 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 (15) 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 Town of Lincoln

T. Joseph Almond, Town Administrator

Dated: _____

For the State of Rhode Island Department of
Environmental Management

David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____