

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

OFFICE OF COMPLIANCE AND INSPECTION

In Re: Boone Lake Dam Management District

File No.: Dam State I.D. 219

AAD No.: 14-007/DE

CONSENT AGREEMENT

A. INTENT & PURPOSE

This Agreement is entered into by and between the Rhode Island Department of Environmental Management's Office of Compliance & Inspection ("RIDEM") and the Boone Lake Dam Management District (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 the RIDEM on 4 August 2014.

B. STIPULATED FACTS

- (1) WHEREAS, the property is a dam identified as the Boone Lake Dam, State Identification Number 219, located approximately 5,600 feet north of the intersection of Ten Rod Road (Route 165) and Nooseneck Hill Road (Route 3), approximately 329 feet north of the intersection of Boone Lake Road and West Shore Road, in the town of Exeter, Rhode Island ("Dam 219").
- (2) WHEREAS, the Respondent owns Dam 219.
- (3) WHEREAS, on or about 4 August 2014, the RIDEM issued a NOV to the Respondent alleging certain violations of the RIDEM's *Rules and Regulations for Dam Safety*.
- (4) WHEREAS, on or about 18 August 2014, the Respondent requested an administrative hearing to contest the NOV.
- (5) WHEREAS, on or about 12 December 2014, the RIDEM received a letter dated 8 December 2014 that was prepared by Pare Corporation ("Pare") on behalf of the Respondent. The letter contained findings from a visual inspection completed in accordance with the Order section of the NOV (the "Inspection Report"). The Inspection Report revealed, among other things, an accumulation of sand and gravel in a seepage pool at the toe of the dam.

- (6) WHEREAS, on or about 23 December 2014, the RIDEM issued a letter to the Respondent indicating that the conditions of the seepage noted in the Inspection Report may be an unsafe condition, and required the Respondent to hire an engineer to develop a plan to monitor the seepage and return the dam to a safe condition.
- (7) WHEREAS, on or about 8 May 2015, the RIDEM received a letter dated 4 May 2015, that was prepared by Pare on behalf of the Respondent. The letter provided a leakage monitoring program (the "Leakage Monitoring Program"). The Leakage Monitoring Program is attached hereto and incorporated herein as Attachment A.
- (8) WHEREAS, on 4 September 2015, the RIDEM approved the Leakage Monitoring Program.
- (9) 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.
- (10) WHEREAS, the RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the RIDEM's *Rules and Regulations for Dam Safety*.

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 their 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) Vegetation Clearing
 - (i) **Within 45 days of execution of the Agreement**, the Respondent shall remove vegetation and stabilize the area beyond the downstream toe of the bench, as referenced in the Vegetation Clearing section of the Leakage Monitoring Program.

- (ii) **Within 60 days of execution of the Agreement**, the Respondent shall forward to the RIDEM a certification completed by a professional engineer fully registered in the State of Rhode Island and experienced with dam inspections, stating that the vegetation has been removed and the area has been stabilized.
- (b) **Within ten (10) days of the completion of the clearing as required by paragraph C(4)(a)(i) and for a period of 2 years thereafter**, the Respondent shall monitor Dam 219 in accordance with the Leakage Monitoring Program. Monitoring may be temporarily postponed due to adverse weather conditions that have the effect of making the monitoring areas and access thereto excessively dangerous. Respondent shall provide notice to RIDEM of any temporary postponement and the reasons therefore. Respondent shall also provide notice to RIDEM of recommencement of monitoring activities. The length of the monitoring program shall be extended by the same amount of time monitoring was postponed.
- (c) At any time, if the monitoring thresholds identified in the Leakage Monitoring Program as T1, T2 or T3a are observed, the Respondent shall immediately contact a professional engineer fully registered in the State of Rhode Island and experienced with dam inspections, to assess the safety of Dam 219 and shall immediately contact the RIDEM.
- (d) **Within 60 days of completion of the monitoring as required in Section C(4)(b) above**, the Respondent shall forward to the RIDEM a report, prepared by a professional engineer fully registered in the State of Rhode Island and experienced with dam inspections. The report must assess the collected data, provide an opinion on the safety of Dam 219 and recommend any further action that may be required, including a schedule for its completion.
- (e) The report and/or schedule required in Section C(4)(d) 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 14 days (unless a longer time is specified) of receiving a notification of deficiencies, the Respondent shall submit to the RIDEM a modified report and/or schedule or additional information necessary to correct the deficiencies.

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 Section C (4) of the Agreement, the Respondent shall pay a stipulated penalty of \$500 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 RIDEM 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 limited to the violations alleged in the NOV.
- (7) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed:

To RIDEM: Paul Guglielmino, Senior Sanitary Engineer
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360 ext. 7122
paul.guglielmino@dem.ri.gov

To Respondent: Gary Casaly, Chairman of the Board
Boone Lake Dam Management District
P.O. Box 444
Wyoming, RI 02898-0444
(617) 462-6523
gcasaly@comcast.net

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 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.

Boone Lake Management District

Gary Casaly
Chairman of the Board

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on the ___ day of _____, 2015, before me personally appeared Gary Casaly, in his capacity as the Chairman of the Board of the Boone Lake Management District, to me known and known by me to be the party executing the foregoing instrument for and on behalf of the Boone Lake Management District and he acknowledged said instrument by him executed to be his free act and deed, his free act and deed in his capacity as aforesaid, and the free act and deed of the Boone Lake Management District.

Notary Public
My Commission Expires: _____

*State of Rhode Island Department of Environmental
Management*

David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____