

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF COMPLIANCE AND INSPECTION**

In Re: Viola T. Manfredi

File Nos: OCI-SW-15-42, OCI-SW-15-68
and OCI-FW-17-85
AAD No.: 17-006/WME

CONSENT AGREEMENT

A. INTENT & PURPOSE

This Agreement is entered by and between the Rhode Island Department of Environmental Management (“RIDEM”) and The Estate of Viola T. Manfredi (“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”) to resolve the alleged violations set forth in a Notice of Violation (“NOV”) issued to Viola T. Manfredi by RIDEM on 29 March 2017 and to resolve alleged violations set forth in a Notice of Intent to Enforce (“NIE”) issued to Viola T. Manfredi by RIDEM on 7 August 2017.

B. STIPULATED FACTS

- (1) WHEREAS, the property is located at 77 Dunns Corner Bradford Road, Assessor’s Plat 92, Lot 1 in the Town of Westerly, Rhode Island (the "Property").
- (2) WHEREAS, on 29 March 2017, RIDEM issued a NOV to Viola T. Manfredi alleging certain violations at the Property of R.I. Gen. Laws Section 23-18.9-5 and Section 23-18.9-8 titled *Refuse Disposal* (the “Refuse Disposal Act”), the Rhode Island Code of Regulations titled *Rules and Regulations for Hazardous Waste Management (250-RICR-140-10-1)* (the “HW Rules”) and the Rhode Island Code of Regulations titled *Oil Pollution Control Regulations (250-RICR-140-25-2)* (the “OPC Rules”). The areas of the violations are shown on a map that is attached hereto and incorporated herein as Attachment 1.
- (3) WHEREAS, Viola T. Manfredi requested an administrative hearing to contest the NOV.
- (4) WHEREAS, on 7 August 2017, RIDEM issued an NIE to Viola T. Manfredi alleging certain violations at the Property of the R.I. Gen. Laws Section 2-1-21 *et. seq.* titled *Freshwater Wetlands* (the “Freshwater Wetlands Act”) and the Rhode Island Code of Regulations titled *Rules and Regulations Governing the Administration and Enforcement of the Fresh Water Wetlands Act (RICR-250-150-15-1)* (the “FWW Rules”). The areas of the violations are shown on sketch that is attached hereto and incorporated herein as Attachment 2.
- (5) WHEREAS, on 4 March 2018, Viola T. Manfredi passed away.

- (6) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to affect a timely and amicable resolution of the NOV and the NIE, RIDEM and 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 and the NIE.
- (7) WHEREAS, RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the Refuse Disposal Act, the Freshwater Wetlands Act, the HW Rules, the OPC Rules and the FWW Rules.

C. AGREEMENT

- (1) JURISDICTION – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over 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. and R.I. Gen. Laws Section 42-17.7-1 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)(vi).
- (3) APPLICATION – The provisions of this Agreement shall apply to and be binding upon RIDEM, Respondent and its agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for Respondent in the performance of work relating to or impacting the requirements of this Agreement.
- (4) RECORDING OF AGREEMENT– **Within 10 days of the receipt of the fully executed Agreement from RIDEM**, Respondent shall record this Agreement and Attachments 1 and 2 within the land evidence records of the Town of Westerly, Rhode Island and shall provide a copy of the recorded Agreement to RIDEM. The recording shall be at the sole expense of Respondent.
- (5) CONDITIONS –
 - (a) Solid Waste: Respondent shall complete the following actions to comply with the Order section of the NOV:
 - (i) **IMMEDIATELY cease the disposal of used oil onto the land.**
 - (ii) **Within 30 days of execution of this Agreement**, dispose or recycle all containers on the Property holding petroleum products at a licensed hazardous waste management facility or oil recycling facility in full compliance with Part 1.7.3 and Part 1.16.4(A)(7) of the HW Rules. Written verification of compliance shall be submitted to RIDEM. (See Attachment 1, area marked i)

- (iii) **Within 30 days of execution of this Agreement**, remove the oil contaminated soil in the area of the uncovered concrete slab in the westernmost portion of the Property, and other areas as marked on Attachment 1, and containerize and ship the soil off-site for proper disposal or recycling at a licensed hazardous waste management facility, solid waste management facility or oil recycling facility in full compliance with Part 1.16.4(A)(4) of the HW Rules and Part 2.12 and Part 2.13 of the OPC Rules. Written verification of compliance and confirmatory soil sampling analysis shall be submitted to RIDEM. (See Attachment 1, areas marked i and ii)

- (iv) **Within 30 days of execution of this Agreement**, excavate exploratory test pits in the easternmost portion of the Property in the areas where RIDEM observed buried and partially buried solid waste. RIDEM must be present to witness the excavation. If the exploratory test pit excavations reveal evidence of the presence of hazardous materials or petroleum wastes, within 90 days of completion of the excavations conduct a site investigation (“SI”) pursuant to Part 1.5.2 of the Rhode Island Code of Regulations titled *Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases (250-RICR-140-30-1)* (the “Remediation Rules”) and Part 2.12(E) of the OPC Rules and submit a Site Investigation Report (“SIR”) in full compliance with Part 1.8 of the Remediation Rules and Part 2.12(E) of the OPC Rules. The SI and SIR shall be performed by qualified environmental consultant. (See Attachment 1, area marked iii)

- (v) **Within 60 days of execution of this Agreement**, remove all solid waste (including all used vehicle tires Respondent determines are solid waste) from the Property. The solid waste in question shall not be burned. All solid waste removed from the Property shall be disposed at a licensed solid waste management facility or composting facility. All used vehicle tires removed from the Property shall be sent to a licensed rubber tire recycling facility. (See Attachment 1, areas marked iv)

- (vi) **Within 60 days of execution of this Agreement**, dig test pits in the areas immediately to the east and south of the commercial buildings under RIDEM’s supervision. Any areas requiring test pits will be approved by RIDEM. Respondent shall dispose of any solid waste discovered during the digging of the test pits at a licensed solid waste management facility. The amount of test pits required will be determined by RIDEM in the field. (See Attachment 1, area marked v)

- (vii) **Within 60 days of execution of this Agreement**, create an inventory of any materials deemed useful that is regulated as solid waste by RIDEM, including vehicle tires, containers of chemicals or fuel or other petroleum products. The inventory must include the amount and type of material, intended purpose and when it will be used. Within 30 days of notification by RIDEM, Respondent shall dispose any materials with no use within the foreseeable future that has been deemed solid waste by RIDEM. (See Attachment 1, area marked vi)

- (viii) **Within 60 days of execution of this Agreement**, all containers of chemicals, oil and painted or treated wood must be moved to an area not exposed to the weather. Respondent shall store such materials under a roof and on an impermeable surface. Respondent shall store, containerize and label any materials approved by RIDEM to remain on the Property in accordance with any Federal, State, or local regulation. (see Attachment 1, area marked vii)
 - (ix) **Within 120 days of execution of this Agreement**, any scrap metal stored on the Property must be removed and recycled at licensed facility, including the oil tank in contact with the ground. Any fuel remaining in the tank must be removed and recycled, used or disposed in a manner approved by RIDEM. Scrap metal shall not be stored on the Property for more than 120 days. (see Attachment 1, area marked viii)
 - (x) **Within 120 days of execution of this Agreement**, any wood waste (stumps, brush, branches and logs) must be used or removed from the Property. Respondent's use of any wood waste must be in accordance with RIDEM regulations. (See Attachment 1, area marked ix)
 - (xi) **Within 10 days of completion of the solid waste removal**, submit to RIDEM written verification that the solid waste has been disposed at a licensed solid waste management facility or recycling facility.
- (b) Wetlands Restoration: Respondent shall complete the following actions **within 60 days of execution of this Agreement** to comply with the Required Actions section of the NIE:
- (i) Within Area 1 as shown on Attachment 2, remove all unauthorized fill (including wood chips) from within 50 feet of the Pond edge (the "Perimeter Wetland"), then seed with conservation seed and mulch with straw.
 - (ii) Within Area 2 as shown on Attachment 2, remove all mounds of dirt at the top of the Pond. The water elevation of the Pond may be sufficiently lowered to allow for the removal of any fill material that had been deposited below mean high water, provided the Pond is not drained in its entirety. Any removal of fill material from the Pond must be completed within a single working day following the lowering of the water. Following fill removal, the original (unaltered) water elevation must immediately be re-established within the Pond. If it is anticipated that suspended sediments will be transported to downstream wetlands (that is, beyond the limits of the Pond feature), then a weighted silt curtain (or other sediment control device) must be installed along the outer limits of disturbance of the required restoration area. Plant highbush blueberry shrubs 3 feet tall, 5 feet on center after planting within the Perimeter Wetland and seed and mulch as in subsection C(5)(b)(i) above.
 - (iii) Within Area 3 as shown on Attachment 2, remove the trailer from the Pond and Perimeter Wetland.

- (iv) Within Area 4 as shown on Attachment 2, remove the asphalt and concrete from the section of the driveway that is running down the hill next to the Pond to the gravel surface.
 - (v) Within Area 5 as shown on Attachment 2, in the location where the greenhouse was torn down, let all vegetation grow back naturally.
- (6) **PENALTY** – Respondent shall pay to RIDEM the sum of **Five Thousand and 00/100 Dollars (\$5,000.00)** in administrative penalties assessed as follows:
- (i) Upon execution of this Agreement by Respondent, Respondent shall pay to RIDEM the sum of **Five Thousand and 00/100 Dollars (\$5,000.00)**.
 - (ii) Penalties that 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 – Environmental Response Fund***. All payments shall be delivered to:

Administrator, RIDEM Office of Compliance and Inspection
235 Promenade Street, Suite 220
Providence, RI 02908-5767

- (7) **RIGHT OF ACCESS** – Respondent provides to RIDEM, its authorized officers, employees and representatives an irrevocable right of access to the Property at all reasonable times to monitor compliance with this Agreement. 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 if they control the Property. 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 Respondent's successful completion of the requirements set forth in this Agreement, RIDEM shall issue a Release and Discharge of the NOV and this Agreement to Respondent for recording. The recordings shall be at the sole expense of Respondent.
- (2) **FAILURE TO COMPLY** – If Respondent fails to comply with any of the items specified in subsection C(5) (a) or (b) of the Agreement, Respondent shall pay a stipulated penalty of \$500 per month for each 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 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 statute 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 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 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 violations alleged in the NOV and NIE.
- (7) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

Tracey D’Amadio Tyrrell
Supervising Environmental Scientist
RIDEM Office of Compliance and Inspection
235 Promenade Street, Suite 220
Providence, RI 02908-5767
(401) 222-1360 ext. 7407

Christina Hoefsmit, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767
(401) 222-6607

Robert E. Craven, Esq., Administrator
Estate of Viola T. Manfredi
7405 Post Road
North Kingstown, RI 02852-3216
(401) 453-2700

Roberta J. Mulholland, Esquire
175 Matunuck School House Road
P.O. Box 310
Wakefield, RI 02880-0310
(401) 782-8700

- (a) At any time prior to full compliance with the terms of this Agreement, 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 15 days prior to the prescribed deadline.
- (9) AMENDMENT – The Agreement may be amended by 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.

THE ESTATE OF VIOLA T. MANFREDI

By: _____

Print Name: Robert E. Craven, Administrator

Dated: _____

In my capacity as Administrator of The Estate of Viola T. Manfredi, I hereby aver that I am authorized to enter into this Agreement pursuant to the attached Order of the Probate Court of Westerly, Rhode Island, and thereby bind The Estate of Viola T. Manfredi 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 _____, 2020, before me personally appeared ROBERT E. CRAVEN, the Administrator of The Estate of Viola T. Manfredi, to me known and known by me to be the party executing the foregoing instrument on behalf of the Estate of Viola T. Manfredi, and hee acknowledged said instrument by him executed, to be his free act and deed in said capacity and the free act and deed of The Estate of Viola T. Manfredi.

Notary Public
My Commission Expires: _____

STATE OF RHODE ISLAND, DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

By: _____
David E. Chopy, Administrator
RIDEM Office of Compliance and Inspection

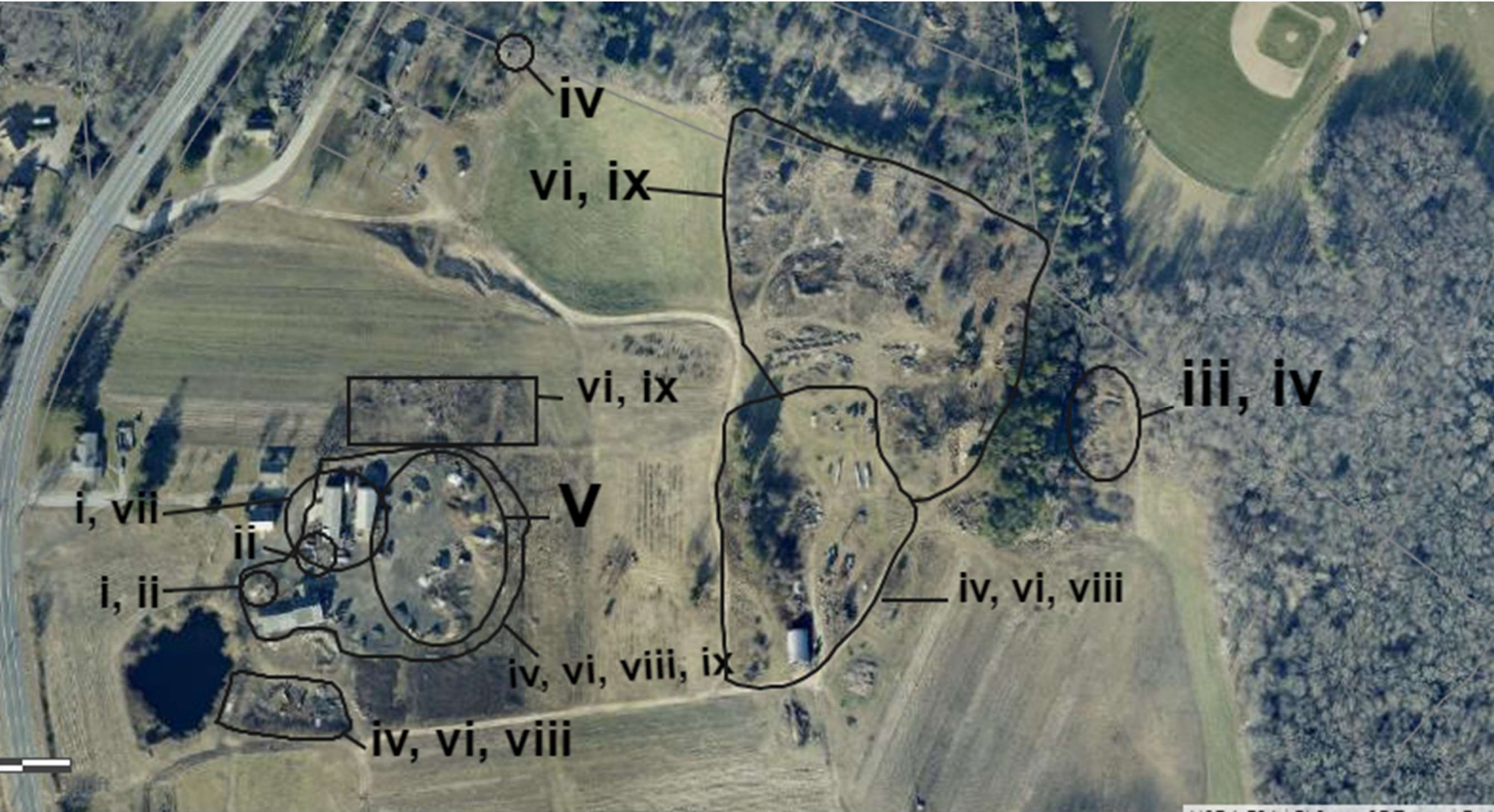
Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2020, before me personally appeared David E. Chopy, Administrator of the RIDEM Office of Compliance and Inspection, to me known and known by me to be the party executing the foregoing instrument on behalf of RIDEM, and he acknowledged said instrument by him executed, to be his free act and deed in said capacity and the free act and deed of RIDEM.

Notary Public
My Commission Expires: _____

ATTACHMENT 1
to Consent Agreement
Estate of Viola T. Manfredi
AAD No. 17-006/WME



ATTACHMENT 2
77 Dunns Bradford Corner Road, Westerly
OCI-FW-17-95

Owner: Viola Manfredi
 Plat/Lot: 92/001



Legend

- Instance_1_approx_200_sqft_Pond
- Instance_2_approx_1400_sqft_PW
- Instance_3_approx_1320_sqft_PW
- _____ Abandoned_greenhouse
- _____ Solid waste fill

Map is not to scale; all areas are approximate

t
v