

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF COMPLIANCE AND INSPECTION

In Re: Town of West Warwick.

File No.: 2007-1482-SR

AAD No.: 08-004/SRE

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 the Town of West Warwick ("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 September 5, 2008.

B. STIPULATED FACTS

- (1) WHEREAS, the subject properties are located at 145 Washington Street (formerly identified as 167 Washington Street), Assessor's Plat 6, Lot 482 (the "Washington Street Property") and at Hay Street, Assessor's Plat 26, Lots 6 and 38 (the "Hay Street Property"), both located in the town of West Warwick.
- (2) WHEREAS, the Respondent owns the Washington Street Property and the Hay Street Property.
- (3) WHEREAS, on September 5, 2008, RIDEM issued a NOV to the Respondent alleging certain violations of Rhode Island's Refuse Disposal Act and RIDEM's *Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases* (the "Remediation Regulations").
- (4) WHEREAS, the Respondent requested an administrative hearing to contest the NOV.
- (5) WHEREAS, the Respondent complied with sections D.1 and D.2 of the Order section of the NOV.
- (6) WHEREAS, on May 13, 2013 RIDEM received a Remedial Action Work Plan that was prepared by Fuss & O'Neill on behalf of the Respondent for the Hay Street Property (the "RAWP").
- (7) WHEREAS, RIDEM approved the RAWP in a letter dated August 14, 2013 ("RAL"). The RAL 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, 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, RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with Rhode Island's Refuse Disposal Act and RIDEM's Remediation 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 days of receipt of the fully executed Agreement from RIDEM, the Respondent shall record this Agreement with the Town of West Warwick, 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 complete the following actions:
 - (i) **Within ninety (90) days of the execution of this Agreement**, complete the remedial action at the Hay Street Property as stated in the RAWP and in accordance with Section 9.00 of the RIDEM's Remediation Regulations.
 - (ii) **IMMEDIATELY notify RIDEM** if any soil is discovered during remediation activities that is visually or suspected to be impacted by releases of oil or hazardous material. Respondent shall excavate and remove for disposal any such soil in accordance with the RIDEM's Remediation Regulations.
 - (iii) **Within thirty (30) days of RIDEM's approval of the completion of the RAWP**, submit to the RIDEM a post remediation Soil Management Plan, a

proposed Environmental Land Use Restriction (“ELUR”) and a remedial action Closure Report (the “Closure Report”).

(iv) **Within ten (10) days of the RIDEM’s approval of the Closure Report,** record the ELUR in the Town of West Warwick land evidence records

(b) Penalty – Respondent shall pay to RIDEM the sum of Three Thousand Seven Hundred Eighteen Dollars (\$3,718.00) in administrative penalties assessed as follows:

(i) Upon execution of this Agreement by the Respondent, the Respondent shall pay to RIDEM the sum of Three Thousand Seven Hundred Eighteen Dollars (\$3,718.00).

(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 check, payable to the ***R.I. General Treasurer – Environmental Response Fund Account*** All payments shall be delivered to:

Chief, RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767

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 Respondents successful completion of the requirements set forth in this Agreement, and upon the recordation of the Approved ELUR, 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 the items specified in Section C (5)(a) 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 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 until such time as the conditions of this Agreement set forth in Section C(4) above have been completed.
- (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:

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

Susan Forcier, Esq.
RIDEM Office of Legal Services
235 Promenade Street
Providence, RI 02908-5767
222-6607

Brian A. Wagner, Esq.
Tower Hill Law Center
4879 Tower Hill Road
Wakefield, RI 02879
788-0600

- (8) EFFECTIVE DATE – This Agreement shall be deemed entered as of the date of execution by all parties.

- (9) 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.
- (10) AMENDMENT – The Agreement may be amended by mutual agreement of the parties in writing.

IN WITNESS WHEREOF, the undersigned consent to this Agreement in substance and in form.

For Town of West Warwick

By: _____ (Print Name)

Dated: _____

*For the State of Rhode Island Department of
Environmental Management*

David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____