

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE AND INSPECTION

**In re: Providence Water Supply Board
City of Providence**

**File Nos.: Dam State I.D. 161, 163,
345, 346, 354, and 361**

CONSENT AGREEMENT

A. INTENT & PURPOSE

This Agreement is entered by and between the Rhode Island Department of Environmental Management (“RIDEM”) and the City of Providence, Rhode Island and the Providence Water Supply Board (“Respondents”). 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 alleged violations set forth in a Notice of Violation (“NOV”) issued to Respondent by RIDEM on 29 November 2016.

B. STIPULATED FACTS

(1) WHEREAS the properties are as follows:

- (a) A dam identified as Gainer Memorial Dam, State Identification Number 161, located approximately 5,000 feet northeast of the intersection of Howard Avenue and Scituate Avenue, immediately on Scituate Avenue, in the town of Scituate (“Dam 161”).
- (b) A dam identified as Westconnaug Reservoir Dam, State Identification Number 163, located approximately 3,800 feet east of the intersection of Foster Center Road and Plainfield Pike, approximately 1,600 feet south of Plainfield Pike, in the town of Foster (“Dam 163”).
- (c) A dam identified as Jordan Pond Dam, State Identification Number 345, located approximately 336 feet north of the intersection of Field Hill Road and Plainfield Pike, approximately 275 feet east of Plainfield Pike, in the town of Scituate (“Dam 345”).
- (d) A dam identified as Kimball Reservoir Dam, State Identification Number 346, located approximately 1100 feet north of the intersection of Hartford Avenue and Hopkins Avenue, approximately 800 feet east of Hopkins Avenue, in the town of Johnston (“Dam 346”).

- (e) A dam identified as Coomer Dam, State Identification Number 354, located approximately 6,200 feet west of the intersection of Saw Mill Road and Snake Hill Road, approximately 118 feet north of Snake Hill Road, in the town of Gloucester ("Dam 354").
- (f) A dam identified as Pine Swamp Dam No. 1, State Identification Number 361, located approximately 770 feet north of the intersection of Brandy Brook Road and Central Avenue, approximately 400 feet east of Central Avenue, in the town of Scituate ("Dam 361").

Collectively, the six dams are referred to as the "Dams".

- (2) WHEREAS Respondents own the Dams.
- (3) WHEREAS on 29 November 2016, RIDEM issued a NOV to Respondents alleging certain violations of Rhode Island's *Rules and Regulations for Dam Safety* at the Dams ("Dam Safety Rules").
- (4) WHEREAS Respondents did not request an administrative hearing to contest the NOV.
- (5) WHEREAS Respondents fully complied with the Order section of the NOV for Dam Dam 161, Dam 163, Dam 346, and Dam 361.
- (6) WHEREAS on 3 March 2022, RIDEM received a letter from Tighe & Bond on behalf of Respondents that included proposed actions to comply with the Order section of the NOV for Dam 345 and Dam 354. A copy of the letter is attached hereto and incorporated herein as Attachment A.
- (7) WHEREAS in lieu of proceeding to Superior Court to enforce the NOV and to effect a timely and amicable resolution of the NOV, RIDEM and Respondents 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.
- (8) WHEREAS RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the Dam Safety Rules.
- (9) WHEREAS Respondents find that this Agreement is reasonable and fair and enter into this Agreement with full knowledge and understanding of its terms.

C. *AGREEMENT*

- (1) JURISDICTION – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over Respondents.
- (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, Respondents 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) CONDITIONS – Respondents shall complete the following actions to comply with the Order section of the NOV. A Qualified Engineer, as referenced below, is defined in Part 1.5(A) of the Dam Safety Rules:

Dam 345

- (a) **By 1 July 2022**, Respondents shall notify RIDEM in writing whether the low-level outlet will be repaired, or the water level will be permanently lowered.
- (b) If Respondents notify RIDEM that the low-level outlet will be repaired, **by 1 September 2022** submit to RIDEM an application to repair the low-level outlet that is prepared by a Qualified Engineer in accordance with Part 1.10(B) of the Dam Safety Rules. The application shall include a schedule to complete the work by 1 June 2023. **Within 60 days of completion of the work**, the Qualified Engineer shall certify in writing to RIDEM that the work is complete.
- (c) If Respondents notify RIDEM that the water level will be permanently lowered, **by 1 October 2022** submit to RIDEM an application to permanently open the low-level outlet that is prepared by a Qualified Engineer in accordance with Part 1.10(B) of the Dam Safety Rules. The application must include a study showing the water elevation resulting from a 500-year storm event with the low-level outlet permanently open (“500-year elevation”), the time for the 500-year elevation to return to the permanently lowered elevation and the impacts to property if the dam failed at the 500-year elevation. The application shall also include a schedule to complete the work within 6 months of RIDEM’s approval.

Dam 354

- (d) **By 1 August 2022**, Respondents shall provide to RIDEM in writing a legal assessment of whether Respondents own the low-level outlet.
- (e) If Respondents notify RIDEM that Respondents own the low-level outlet, **by 1 June 2023** notify RIDEM in writing whether the low-level outlet can be operated without a diver present. If the low-level outlet cannot be operated without a diver present, **by 1 September 2023**, submit to RIDEM an application to repair or replace the low-level outlet that is prepared by a Qualified Engineer in accordance with Part 1.10(B) of the Dam Safety Rules. The application shall include a schedule to complete the work by 1 June 2024 if the low-level outlet requires repair or by 1 June 2025 if the low-level outlet requires replacement. **Within 60 days of completion of the work**, the Qualified Engineer shall certify in writing to RIDEM that the work is complete.
- (f) The reports, applications, plans, and schedules required in subsections C (4)(b), C (4)(c), C (4)(d), and C (4)(e) above shall be subject to RIDEM's review and approval. Upon review, RIDEM shall provide written notification to Respondents either granting formal approval or stating the deficiencies therein. Within 30 days (unless a longer time is specified) of receiving a notification of deficiencies, Respondent shall submit to RIDEM a modified report, application, 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 – If Respondents fail to comply with items specified in subsection C (4) of the Agreement, Respondents 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 Respondents 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 Respondents 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 Respondents 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.
- (7) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

Stacey Kurbiec Pinto

RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360 ext. 2777409
stacey.pinto@dem.ri.gov

Joseph J. LoBianco, Esquire

RIDEM Office of Legal Services
235 Promenade Street
Providence, RI 02908-5767
(401) 222-6607
joseph.lobianco@dem.ri.gov

Leo E. Fontaine, Engineer, Project Manager

Providence Water Supply Board
125 Dupont Drive
Providence, RI 02907
(401) 521-6300 ext. 7284
leof@provwater.com

Joseph P. DiPina, Chief Operating Officer

City of Providence
25 Dorrance Street
Providence, RI 02903
(401) 680-5000
jdipina@providenceri.gov

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.

City of Providence

By: _____

Print Name: _____

Title: _____

Dated: _____

Providence Water Supply Board

By: _____

Print Name: _____

Title: _____

Dated: _____

State of Rhode Island, Department of Environmental Management

By: _____

David E. Chopy, Administrator
Office of Compliance and Inspection

Dated: _____