

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

**OFFICE OF COMPLIANCE AND INSPECTION**

**In Re: John S. Dolinski**

**File No.: OCI-FW-16-130**

**X-ref C09-0049**

**AAD No.: 20-001/FWE**

**CONSENT AGREEMENT**

**A. INTENT & PURPOSE**

This Consent Agreement (“Agreement”) is entered by and between the Rhode Island Department of Environmental Management (“RIDEM”) and John S. Dolinski (“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 alleged violations set forth in a Notice of Violation (“NOV”) issued to Respondent by RIDEM on 18 February 2020.

**B. STIPULATED FACTS**

- (1) WHEREAS the properties are 205 Reservoir Road, Assessor’s Plat 210, Lot 28 (“Lot 28”), an island southwest of 205 Reservoir Road, Assessor’s Plat 209, Lot 33 (“Lot 33”) and Pascoag Reservoir (“Pond”) in Burrillville, Rhode Island (collectively, “Properties”).
- (2) WHEREAS the Properties include a freshwater marina (“Marina”).
- (3) WHEREAS Respondent owns Lot 28 and Lot 33 and operates the Marina.
- (4) WHEREAS on 18 February 2020, RIDEM issued a NOV to Respondent alleging certain violations of Rhode Island’s *Freshwater Wetlands Act* (“FWW Act”) and *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* (250-RICR-150-15-1) (“FWW Rules”).
- (5) WHEREAS Respondent requested an administrative hearing with the Administrative Adjudication Division (“AAD”) to contest the NOV.
- (6) WHEREAS AAD is a division of RIDEM.
- (7) WHEREAS on 15 February 2022 RIDEM received a plan titled *DOCK FACILITY INSTALLATION PLAT 210, LOT 28 and PLAT 209, LOT 33 205 RESERVOIR ROAD BURRILLVILLE, RHODE ISLAND* that was submitted by Crossman Engineering on behalf of Respondent (“Plan”). The Plan 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 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 the Agreement allows Respondent to apply to RIDEM for a freshwater wetland permit to maintain some of the alterations described in subsection C (3) of the NOV. Respondent acknowledges and agrees to waive all rights of appeal of RIDEM's decision on the application at AAD or Superior Court.
- (10) WHEREAS RIDEM finds that the Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the FWW Act and FWW Rules.
- (11) WHEREAS Respondent acknowledges that he had an opportunity to consult with and be represented by counsel of his choosing and that he finds that the Agreement is reasonable and fair and enters into the Agreement with full knowledge and understanding of its terms.

### C. AGREEMENT

- (1) RIDEM has jurisdiction over the subject matter of the Agreement and has personal jurisdiction over Respondent.
- (2) The 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) The provisions of the Agreement shall apply to and be binding upon RIDEM, Respondent and his 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 the Agreement.
- (4) **Within 10 days of the receipt of the fully executed Agreement from RIDEM,** Respondent shall record the Agreement in the land evidence records for the Town of Burrillville, Rhode Island and shall provide a copy of the recorded Agreement to RIDEM. The recording shall be at the sole expense of Respondent.
- (5) Respondent shall complete the following actions to comply with the Order section of the NOV:
  - (a) **By 30 April 2024,** restore all freshwater wetlands on the Properties that are located outside of the boundary of the red line shown on the Plan in accordance with the RESTORATION REQUIREMENTS described in the NOV.

- (b) **By 30 April 2025**, restore the remaining freshwater wetlands on the Properties that RIDEM alleges in the NOV were altered that are located inside the boundary of the red line shown on the Plan in accordance with the Order section of the NOV unless Respondent obtains a permit from RIDEM allowing some or all the alterations to remain.
- (c) If RIDEM issues a permit to Respondent, Respondent shall fully comply with all conditions of the permit within 1 year of RIDEM's issuance of the permit.
- (6) Penalty – Respondent shall perform a supplemental environmental project (“SEP”) to satisfy the administrative penalty assessed in the NOV as follows:
  - (a) **Within 90 days of execution of the Agreement**, Respondent shall submit an Operations and Maintenance Program for the Marina (“Marina O&M Program”) to RIDEM that is consistent with the proposal submitted to RIDEM by Respondent’s attorney on 5 October 2022. The proposal is attached hereto and incorporated herein as Attachment B. The Marina O&M Program must also state that:
    - (i) The Marina O&M Program shall be implemented for 5 years.
    - (ii) Written reports shall be submitted to RIDEM by 30 January each year that describe the activities undertaken to comply with the Marina O&M Program during the prior calendar year.
    - (iii) The written reports shall be delivered to the owners/operators of each of the following freshwater marinas located in Rhode Island along with a cover letter, a copy of which is attached hereto and incorporated herein as Attachment C:
      - 1. Waterman Lake Marina  
c/o Waterman Lake Enterprises Inc  
15 Pine Ledge Road  
PO Box 822  
Greenville, RI 02828  
(401) 949-1743
  - (b) The Marina O&M Program shall be subject to RIDEM’s review and approval. Upon review, RIDEM shall provide written notification either granting formal approval or stating the deficiencies therein. Within 14 days (unless a longer time is specified) of receiving a notification of deficiencies, submit to RIDEM additional information to correct the deficiencies.
  - (c) Respondent shall be given a credit of \$20,000 for the SEP (“SEP Credit”) in accordance with subsection C(6)(f) below.
  - (d) **Within 7 days of completion of the submission of the written report due by 30 January 2025, pursuant to subsection C(6)(a)(ii) above**, provide to RIDEM a letter that states:

- (i) No Federal or State grants or low interest loans were used to complete the SEP.
  - (ii) The actual cost to complete the SEP (“SEP Cost”) and references the documents used to determine the cost.
  - (iii) The SEP was completed in accordance with the Agreement.
- (e) If Respondent fails to timely complete the SEP, RIDEM shall notify Respondent that RIDEM intends to rescind the SEP Credit. Within 14 days of Respondent’s receipt of written notification by RIDEM that RIDEM intends to rescind the SEP Credit, Respondent shall either complete the SEP or demonstrate that good cause exists for the delay in completing the SEP. If Respondent fails to complete the SEP or does not demonstrate good cause for the delay within said 14 days, Respondent shall, within 10 days of Respondent’s receipt of a written notification from RIDEM, submit to RIDEM a check in the amount of the SEP Credit after which Respondent shall be under no further obligation to complete the SEP.
  - (f) If the SEP Cost is less than \$20,000, Respondent shall, within 30 days of its submission of the letter to RIDEM in subsection C(4)(d) of the Agreement, pay to RIDEM the amount calculated using the following formula:

$$\text{Payment Due} = \$20,000 - \text{SEP Cost}$$

- (g) Penalties that Respondent agrees to pay in the Agreement are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (h) If Respondent fails to remit to RIDEM a payment pursuant to subsections C(6)(e) or C(6)(f) of the Agreement on or before its due date, that payment will be considered late and Respondent will be in default. If the payment is not received within 30 days of its due date, interest shall begin to accrue on the entire unpaid balance at the rate of 12 percent per annum. Interest will accrue at this rate beginning with the day after the due date specified in the Agreement until such date all past due installment payments and interest owed are remitted. Interest shall be calculated using the following generally established accounting principle:

$$\text{Interest due} = (\text{number of days late}/365) \times (0.12) \times (\text{amount of unpaid balance}).$$

- (i) Penalty payments shall be by one of two methods:
  - (i) By certified check, cashier’s check, or money order made payable to the **General Treasury – *Water and Air Protection Program*** and forwarded to:

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

- (ii) By wire transfer in accordance with instructions provided by RIDEM.

- (7) Respondent provides to RIDEM, its authorized officers, employees, and representatives an irrevocable right of access to Lot 28 and Lot 33 at all reasonable times to monitor compliance with the Agreement. Respondent shall ensure that assignees, successors in interest, lessees, sublessees, tenants in possession and/or occupants of Lot 28 or Lot 33 shall provide the same access and cooperation if they control Lot 28 or Lot 33. Except as to third parties utilizing and/or renting dock space at the Marina, Respondent shall provide a copy of the Agreement to any current lessee, sublessee, tenant in possession and/or occupant of Lot 28 or Lot 33 as of the effective date of the Agreement. Except as to third parties utilizing and/or renting dock space at the Marina, any subsequent leases, subleases, assignments or transfers of Lot 28 or Lot 33 or an interest in Lot 28 or Lot 33 shall include this right of access provision and shall otherwise be consistent with the terms of the Agreement.
- (8) Waiver – pursuant to subsection C(5)(b) of this Agreement, Respondent may submit a freshwater wetland permit application to RIDEM. Respondent waives any right to appeal a final decision by RIDEM on the application submitted pursuant to the Agreement.

#### **D. COMPLIANCE**

- (1) Compliance with and fulfillment of the Agreement shall be deemed to resolve all issues raised in the NOV. Upon Respondent’s successful completion of the requirements set forth in the Agreement, RIDEM shall issue a Release and Discharge of the Agreement to Respondent for recording. The recordings shall be at the sole expense of Respondent.
- (2) If Respondent fails to comply with items specified in subsection C (5) of the Agreement, Respondent shall pay a stipulated penalty of \$1,000 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 the terms of the 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) 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). The 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 the Agreement.
- (5) The Agreement shall not operate to shield Respondent or his assignees, successors in interest, lessees, sublessees, tenants in possession and/or occupants of Lot 28 or Lot

33 from liability arising from future activities, after the date of execution of the Agreement.

- (6) The scope of the Agreement is limited to violations alleged in the NOV.
- (7) Communications regarding this Agreement shall be directed to:

**Bruce Ahern, Principal Environmental Scientist**

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

(401) 222-1360 ext. 2777703

[bruce.ahern@dem.ri.gov](mailto:bruce.ahern@dem.ri.gov)

**Jenna Giguere, Esquire**

RIDEM Office of Legal Services  
235 Promenade Street  
Providence, RI 02908-5767

(401) 222-6607 ext. 2772306

[jenna.giguere@dem.ri.gov](mailto:jenna.giguere@dem.ri.gov)

**Nicholas Goodier, Esquire**

Mancini Carter PC  
56 Pine Street, 3<sup>rd</sup> Floor  
Providence, RI 02903

(401) 343-7000

[ngoodier@mancinicarter.com](mailto:ngoodier@mancinicarter.com)

- (a) At any time prior to full compliance with the terms of the Agreement, Respondent agrees to notify RIDEM in writing of any change in ownership of Lot 28 or Lot 33 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 the Agreement shall be forwarded to the above-referenced addressees by certified mail.
- (8) 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 RIDEM in writing at least 15 days prior to the prescribed deadline.
  - (9) The Agreement may be amended by agreement of the parties in writing.
  - (10) The Agreement shall be deemed entered as of the date of execution by all parties.

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

John S. Dolinski

\_\_\_\_\_

Dated: \_\_\_\_\_

**STATE OF RHODE ISLAND**  
**COUNTY OF \_\_\_\_\_**

In \_\_\_\_\_, in said County and State, on this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me personally appeared John S. Dolinski to me known and known by me to be the party executing the foregoing instrument and he acknowledged said instrument and the execution thereof, to be his free act and deed.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

State of Rhode Island, Department of Environmental Management

By: \_\_\_\_\_  
David E. Chopy, Administrator  
Office of Compliance and Inspection

Dated: \_\_\_\_\_