

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

**OFFICE OF COMPLIANCE AND INSPECTION**

In Re: Jan M. McIntyre-Ba

File No.: CI 10-008

AAD No.: 10-008/IE

**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 Jan M. McIntyre-Ba (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 RIDEM on June 25, 2010.

***B. STIPULATED FACTS***

- (1) WHEREAS, the subject property is located at 6 Old Angell Road, Tax Assessor's Plat 39, Lot 89, in the town of Cumberland, Rhode Island (the "Property").
- (2) WHEREAS, the Respondent owns the Property.
- (3) WHEREAS, RIDEM issued an NOV to the Respondent on June 25, 2010 alleging certain violations of RIDEM's Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems (the "OWTS Regulations").
- (4) WHEREAS, the Respondent requested an administrative hearing to contest the NOV.
- (5) WHEREAS, the Respondent has submitted documentation to RIDEM to show that she does not have the financial means to repair the OWTS or pay the administrative penalty assessed in the NOV.
- (6) 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.

- (7) WHEREAS, RIDEM finds that this Consent Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the OWTS 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 her 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 AND RELEASE OF NOV – **Within ten (10) days of the receipt of the fully executed Agreement from RIDEM**, the Respondent shall record this Agreement with the town of Cumberland, 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 to comply with the Order section of the NOV:
- (i) The Respondent shall retain a licensed septage hauler to pump the OWTS as often as necessary to prevent any and all sanitary sewage from overflowing to the surface of the ground until the OWTS is repaired to the satisfaction of RIDEM as evidenced by the issuance of a “Certificate of Conformance” by RIDEM or until the sewerage system at the Property is connected to the public sewerage system.
- (ii) The Respondent shall discontinue **all** use of the washing machine at the Property until the OWTS is repaired to the satisfaction of RIDEM as evidenced by the issuance of a “Certificate of Conformance” by RIDEM or until the sewerage system at the Property is connected to the public sewerage system.
- (iii) **Within thirty (30) days of execution of the Agreement**, the Respondent shall install low flow water fixtures on the shower and sinks in the dwelling at the Property and install a 1.6 gallon flush toilet and provide an

affidavit to the RIDEM from a licensed plumber certifying that the fixtures and toilet were installed.

- (iv) The Respondent shall limit the occupancy of the dwelling to no more than six (6) persons until the OWTS is repaired to the satisfaction of RIDEM as evidenced by the issuance of a “Certificate of Conformance” by RIDEM or until the sewerage system at the Property is connected to the public sewerage system.
- (v) The Respondent and the subsequent grantee(s) or assignee(s) agree to submit an application to RIDEM to repair the OWTS in accordance with the OWTS Regulations (the “Application”) within sixty (60) days of any Property sale or transfer of ownership.
- (vi) The Respondent and the subsequent grantee(s) or assignee(s) agree that the Application 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 fourteen (14) days (unless a longer time is specified) of receiving a notification of deficiencies in the Application, you must submit to RIDEM a modified proposal or additional information necessary to correct the deficiencies.
- (vii) The Respondent and the subsequent grantee(s) or assignee(s) agree to commence work on the OWTS repair project in accordance with the method approved by RIDEM within twenty (20) days of RIDEM’s approval (unless otherwise expressly authorized by RIDEM in writing to commence work at a later time), and complete such work within one hundred twenty (120) days of said approval or other date specified by RIDEM.
- (viii) Any subsequent transfer of the Property shall include, as a formal condition accurately represented on the HUD-1 Settlement Sheet, an escrow requirement for the costs of the septic system repair as required in Section C(5)(a)(v) through C(5)(a)(vii). Prior to transfer, a licensed OWTS designer shall determine the extent of repairs required at the Property and the exact costs of the septic system repair. Once determined, the total cost for such work shall be placed in an escrow account, along with a buffer amount of ten percent (10%) of the total cost, and shall be held by the escrow agent. The escrow agent shall be authorized to release fifty percent (50%) of the cost to repair the OWTS upon the initiation of the required work. The escrow agent shall release fifty percent (50%) of the cost to repair the OWTS when a valid “Certificate of Construction” is submitted to RIDEM by the licensed OWTS designer. Once the “Certificate of Conformance” has been issued by RIDEM, the buffer amount shall be returned, less any costs or expenses which exceeded the estimated cost of repairs.

**OR**

- (b) In lieu of compliance with sections C(5)(a)(v) through C(5)(a)(viii) above, the Respondent shall complete the following actions to comply with the Order section of the NOV:
- (i) The Respondent and the subsequent grantee(s) or assignee(s) agree to connect the sewerage system at the Property to the public sewerage system within thirty (30) days of any Property sale or transfer of ownership.
  - (ii) Any subsequent transfer of the Property shall include, as a formal condition accurately represented on the HUD-1 Settlement Sheet, an escrow requirement for the costs to connect the sewerage system at the Property to the public sewerage system as required in section C(5)(b)(i) above. Prior to transfer, a licensed contractor shall determine the costs to connect the sewerage system at the Property to the public sewerage system (“cost to connect”). Once determined, the total cost for such work shall be placed in an escrow account, along with a buffer amount of ten percent (10%) of the total cost, and shall be held by the escrow agent. The escrow agent shall be authorized to release fifty percent (50%) of the cost to connect upon the initiation of the required work. The escrow agent shall release fifty percent (50%) of the cost to connect when valid proof of connection is submitted to RIDEM. Once the proof of connection has been submitted to RIDEM, the buffer amount shall be returned, less any costs or expenses which exceeded the estimated cost of connection.
- (c) Penalty – The administrative penalty assessed in the NOV against the Respondent is waived.
- (6) RIGHT OF ACCESS – The Respondent provides to RIDEM, its authorized officers, employees and representatives an irrevocable right of access to the Property at all reasonable times for the purpose of monitoring compliance with this Agreement. The 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 as long as they control the Property. The 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 the Respondent’s successful completion of the requirements set forth in this Agreement, 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 items specified in Section C(5)(a) or C(5)(b) of the Agreement, the Respondent shall pay a stipulated penalty of One Hundred Dollars (\$100.00) 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.
- (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:

Patrick J. Hogan, P.E.  
RIDEM Office of Compliance and Inspection  
235 Promenade Street  
Providence, RI 02908-5767  
(401) 222-1360 ext. 7119

Richard M. Bianculli, Jr.  
RIDEM Office of Legal Services  
235 Promenade Street  
Providence, RI 02908-5767  
(401) 222-6607 ext. 2023

Jan M. McIntyre-Ba

6 Old Angell Road  
Cumberland, RI 02864

- (a) At any time prior to full compliance with the terms of this Agreement, the 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 fifteen 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.**

For Jan M. McIntyre-Ba:

\_\_\_\_\_  
By: \_\_\_\_\_ (Print Name)  
Dated: \_\_\_\_\_

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

In \_\_\_\_\_, in said County and State, on this \_\_\_\_\_ day of \_\_\_\_\_, 2011, before me personally appeared \_\_\_\_\_ to me known and known by me to be the party executing the foregoing instrument and she acknowledged said instrument and the execution thereof, to be her free act and deed.

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

For the State of Rhode Island Department of  
Environmental Management

\_\_\_\_\_  
David E. Chopy, Chief  
Office of Compliance and Inspection

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