

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

OFFICE OF COMPLIANCE AND INSPECTION

In Re: Richard J. Martinelli
Rita L. Martinelli

File No.: CI 10-060
AAD No.: 11-005/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 Richard J. Martinelli and Rita L. Martinelli (the "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 administrative enforcement action set forth in a Notice of Violation ("NOV") issued to the Respondents by RIDEM on July 27, 2011.

B. STIPULATED FACTS

- (1) WHEREAS, the subject property is located at 33 Gould Street, Assessor's Plat 53, Lot 1383, in the town of Cumberland, Rhode Island (the "Property").
- (2) WHEREAS, the Respondents own the Property.
- (3) WHEREAS, on July 27, 2011, RIDEM issued a NOV to the Respondents 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 Respondents requested an administrative hearing to contest the NOV.
- (5) WHEREAS, the Respondents complied with the Order section of 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 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.
- (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 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. 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 Respondents and their agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for the Respondents in the performance of work relating to or impacting the requirements of this Agreement.
- (4) **PENALTY** – Respondents shall pay to RIDEM the sum of **Eight Hundred Dollars (\$800.00)** in administrative penalties assessed as follows:
 - (a) Upon execution of this Agreement by the Respondents, the Respondents shall pay to RIDEM the sum of **One Hundred Dollars (\$100.00)**.
 - (b) The remainder of the penalty, **Seven Hundred Dollars (\$700.00)**, shall be paid to RIDEM in seven equal and consecutive monthly installments of **One Hundred Dollars (\$100.00)**. The remaining payments shall be made on the first of the month.
 - (c) Penalties that the Respondents agree 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.
 - (d) In the event that the Respondents fail to remit to RIDEM a payment on or before its due date, that payment will be considered late and the Respondents will be in default. If the payment is not received within thirty (30) days of its due date, interest shall begin to accrue on the entire unpaid balance at the rate of twelve percent (12%) per annum. Interest will accrue at this rate beginning with the day after the due date specified in this 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:
$$\text{Interest due} = (\text{number of days late}/365) \times (0.12) \times (\text{amount of unpaid balance})$$
 - (e) All penalty payments shall be in the form of a certified check, cashiers check, or money order, payable to the **R.I. General Treasurer – Water and Air Protection Account**. All payments shall be delivered to:

Chief, RIDEM Office of Compliance and Inspection
235 Promenade Street

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, RIDEM shall issue a Release and Discharge of the NOV to the Respondents for recording. The recording shall be at the sole expense of the Respondents.
- (2) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve the Respondents of any obligation to comply with any other applicable laws or regulations administered by, through or for RIDEM or any other governmental entity.
- (3) 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 Respondents may have regarding any new enforcement action commenced by RIDEM after the execution of this Agreement.
- (4) FUTURE ACTIVITIES AND UNKNOWN CONDITIONS – This Agreement shall not operate to shield the Respondents from liability arising from future activities, as of the date of execution of this Agreement.
- (5) SCOPE OF THE AGREEMENT – The scope of the Agreement is only violations alleged in the NOV.
- (6) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

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

Richard M. Bianculli, Jr., Esq.
RIDEM Office of Legal Services
235 Promenade Street
Providence, RI 02908-5767
(401) 222-4700 ext. 2023

Richard Martinelli

7 Beachwood Road
Bellingham, MA 02019
(508) 883-6926

All communications regarding compliance with this Agreement shall be forwarded to the above-referenced addressees by certified mail.

- (7) 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.
- (8) AMENDMENT – The Agreement may be amended by mutual agreement of the parties in writing.
- (9) 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 Richard J. Martinelli

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 Richard J. Martinelli 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: _____

For Rita L. Martinelli

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 Richard J. Martinelli 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: _____

For the State of Rhode Island Department of
Environmental Management

David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____