

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

**IN RE: Michael J. Smith  
Debra A. Smith**

**FILE NO.: CI09-0049  
AAD NO.: 10-011/IE**

**CONSENT AGREEMENT**

**A. INTENT & PURPOSE**

This Agreement is entered by and between the Rhode Island Department of Environmental Management, Office of Compliance & Inspection (“RIDEM”), and Michael J. Smith and Debra A. Smith (the “Respondents”). This Agreement is entered in accordance with Section 42-17.1-2 et seq. of the Rhode Island General Laws (“R.I.G.L.”) for the purpose of resolving the administrative enforcement action set forth in a Notice of Violation (“NOV”) issued by RIDEM on July 28, 2010.

**B. STIPULATED FACTS**

- (1) WHEREAS, the subject property is located at 27 Hazard Street (also identified as 2 Knight Street) in the town of Coventry, otherwise identified as Tax Assessor’s Plat 63, Lot 125 (the “Property”).
- (2) WHEREAS, the Property includes a two family residential dwelling and an onsite wastewater treatment system (“OWTS”) to treat sewage from the dwelling.
- (3) WHEREAS, the Respondents own the Property.
- (4) WHEREAS, on July 28, 2010 RIDEM issued an NOV to the Respondents alleging certain violations of the RIDEM Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems (the “OWTS Regulations”).
- (5) WHEREAS, the Respondents requested an administrative hearing to contest the NOV.
- (6) WHEREAS, on December 22, 2010 RIDEM received an email from Weston and Sampson Engineers, Inc. (“Weston & Sampson”) that included a letter dated September 3, 2010 from Weston & Sampson to the Town of Coventry. The letter stated that a sanitary sewerage system will be constructed that will provide a sanitary sewage connection to the Property in calendar year 2012.
- (7) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and in order to affect 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.

- (8) 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 administrative order pursuant to the Administrative Procedures Act, R.I.G.L. § 42-35-1 et seq. from which no timely appeal was taken, and which is enforceable in Superior Court in accordance with R.I.G.L. §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) CONDITIONS
- (a) The Respondents shall retain a permitted septage transporter to pump the OWTS as often as necessary to prevent any and all sanitary sewage from overflowing to the surface of the ground until all plumbing from the dwelling is connected to the Town of Coventry sanitary sewerage system. A list of permitted septage transporters can be obtained by contacting the RIDEM Office of Waste Management at 222-2797 or from the RIDEM's web page at:
- <http://www.dem.ri.gov/programs/benviron/waste/transpor/septage.pdf>.
- (b) The Respondents shall discontinue all use of the washing machine at the dwelling until all plumbing from the dwelling is connected to the town of Coventry sanitary sewerage system.
- (c) The Respondents shall limit the occupancy of the dwelling to no more than five (5) persons until all plumbing from the dwelling is connected to the Town of Coventry sanitary sewerage system.
- (d) **Within thirty days of execution of the Agreement**, install low flow shower heads in the dwelling and submit receipts to RIDEM documenting that the work was completed.

- (e) **Within six months of execution of the Agreement**, install low flow toilets in the dwelling as part of the planned dwelling renovation project and submit receipts to RIDEM documenting that the work was completed.
- (f) **Within thirty days of receipt of notification from the Town of Coventry that sewers are available for connection**, the Respondents shall connect all plumbing from the dwelling to the town of Coventry sewerage system. Upon connection of the plumbing to the sewerage system, the Respondents shall retain a permitted septage transporter to pump out the OWTS and shall retain a contractor to properly abandon the OWTS in accordance with Rule 52 of the OWTS regulations.
- (f) Penalty - Respondents shall pay to RIDEM the sum of Two Hundred Fifty Dollars (\$250.00).
- (g) Payment Schedule – The Respondents’ total penalty, Two Hundred Fifty Dollars (\$250.00), shall be paid as follows:
  - (i) **Upon execution of this Agreement by the Respondents**, the Respondents shall pay to RIDEM the sum of Two Hundred Fifty Dollars (\$250.00).
  - (ii) Penalties that the respondents agree to pay in this Consent 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 certified check, payable to the **R.I. General Treasurer – Water and Air Protection Account**. All payments shall be delivered, along with a copy of this Agreement, to:

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

- (5) RIGHT OF ACCESS – The Respondents provide 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 Respondents 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 Respondents shall provide a copy of this Agreement to any current lessee, sublessees, and 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 dated July 28, 2010.
- (2) FAILURE TO COMPLY – In the event that the Respondents fail to comply with the items specified in paragraphs C(4)(a) through C(4)(e) of the Agreement, the Respondents 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 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 law or regulation, including, but not limited to, the issuance of “Immediate Compliance Orders” as authorized by R.I. Gen. Laws §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.
- (5) 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.
- (6) NOTICE OF COMMUNICATION – Communications regarding this Agreement shall be directed to:

Patrick J. Hogan  
Office of Compliance & Inspection  
Department of Environmental Management  
235 Promenade Street  
Providence, RI 02908  
(401) 222-4700 extension 7119

- (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 the Respondents*

SIGNED:

\_\_\_\_\_  
Michael J. Smith

\_\_\_\_\_  
Date

\_\_\_\_\_  
Debra A. Smith

\_\_\_\_\_  
Date

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

In \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 2011 before me personally appeared Michael J. Smith and Debra A. Smith, to me known and known by me to be the parties executing the foregoing Consent Agreement on behalf of themselves and they acknowledged said instrument executed by them to be their 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

\_\_\_\_\_  
Date