

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

OFFICE OF COMPLIANCE AND INSPECTION

In Re: Michael A. St. Angelo, Jr.
Lisa A. St. Angelo

File No.: OWTS CI 10-21
AAD No.: 11-003/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"), Michael A. St. Angelo, Jr. and Lisa A. St. Angelo (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 Michael A. St. Angelo, Jr. and Lisa A. St. Angelo by RIDEM on May 4, 2011.

B. STIPULATED FACTS

- (1) WHEREAS, the subject property is located at 19 Pine Lane, Assessor's Plat 61, Lot 31 in the town of Johnston, Rhode Island (the "Property").
- (2) WHEREAS, on May 4, 2011, RIDEM issued a NOV to the Respondents alleging certain violations of RIDEM's Rules and Regulations Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Individual Sewage Disposal Systems.
- (3) WHEREAS, the Respondents requested an administrative hearing to contest the NOV.
- (4) WHEREAS, on September 12, 2011 the Respondents submitted a site plan to RIDEM that depicts the proposed location of a new drinking water well to be installed to resolve the Order section of the NOV (the "Plan"). The Plan is attached hereto and incorporated herein as Attachment A.
- (5) 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.

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) RECORDING OF AGREEMENT – Within ten (10) days of the receipt of the fully executed Agreement from RIDEM, the Respondents shall record this Agreement with the town of Johnston, Rhode Island and shall provide a copy of the recorded Agreement to RIDEM. The recording shall be at the sole expense of the Respondents.
- (5) CONDITIONS
 - (a) The Respondents shall complete the following actions on or before November 1, 2011 to comply with the Order section of the NOV:
 - (i) Abandon the private drinking water well located in the front yard of the Property in accordance with Rule 9.00 of RIDEM’s Rules and Regulations Governing the Enforcement of Chapter 46-13.2 Relating to the Drilling of Drinking Water Wells; and
 - (ii) Install a new private drinking water well in the location depicted on the Plan.
 - (b) Penalty – The Respondents shall pay to RIDEM the sum of **One Hundred Fifty Dollars (\$150.00)** in administrative penalties assessed as follows:
 - (i) Upon execution of this Agreement by the Respondents, the Respondents shall pay to RIDEM the sum of **One Hundred Fifty Dollars (\$150.00)**.
 - (ii) 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.
 - (iii) 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

- (6) 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, 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 Respondents successful completion of the requirements set forth in this Agreement, RIDEM shall issue a Release and Discharge of the NOV and the Agreement to the Respondents for recording. The recordings shall be at the sole expense of the Respondents.
- (2) FAILURE TO COMPLY – In the event that the Respondents fail to comply with items specified in Section C(5)(a) 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 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.
- (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) 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.
Principal Sanitary Engineer
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360 ext. 7119

Joseph J. LoBianco, Esq.
RIDEM Office of Legal Services
235 Promenade Street
Providence, RI 02908-5767
(401) 222-6607 ext. 2302

Steven H. Surdut, Esq.
29 Post Road, 2nd Floor
Westerly, RI 02891-2606
(401) 837-2428

Michael A. St. Angelo, Jr.
Lisa A. St. Angelo
46 Kent View Drive
Hope, RI 02831-1126
(401) 265-0330

- (a) At any time prior to full compliance with the terms of this Agreement, the Respondents agree 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 Michael A. St. Angelo, Jr.

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 Michael A. St. Angelo, Jr. 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 Lisa A. St. Angelo

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 Lisa A. St. Angelo 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: _____