

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

OFFICE OF COMPLIANCE AND INSPECTION

In Re: Fadette Vilson

File Nos.: OCI-OWTS-15-71
and CI09-70

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 Joao L. DePina ("DePina"). This Agreement is entered in accordance with Section 42-17.1-2 et seq. of the Rhode Island General Laws ("R.I. Gen. Laws") to resolve alleged violations set forth in a Notice of Violation ("NOV") issued to Vilson by the RIDEM on 7 June 2010.

B. STIPULATED FACTS

- (1) WHEREAS, the property is located at 27 Highland Avenue, Assessor's Plat 9, Lt 521 in Cumberland (the "Property").
- (2) WHEREAS, Fadette Vilson ("Vilson") owns the Property.
- (3) WHEREAS, DePina will be purchasing the Property.
- (3) WHEREAS, on 7 June 2010, the RIDEM issued a NOV to Vilson alleging certain violations of the RIDEM's *Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems* (the "OWTS Regulations"). The violations involved the overflow of sewage from the onsite wastewater treatment system ("OWTS") on the Property to the ground surface.
- (4) WHEREAS, Vilson failed to request an administrative hearing to contest the NOV and failed to comply with the NOV.
- (5) WHEREAS, in lieu of proceeding to Superior Court to enforce the NOV and to effect a timely and amicable resolution of the NOV, the RIDEM and DePina 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.

- (6) WHEREAS, the RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the RIDEM's OWTS Regulations.

C. AGREEMENT

- (1) JURISDICTION – The RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over DePina.
- (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. 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) APPLICATION – The provisions of this Agreement shall apply to and be binding upon the RIDEM, DePina and his agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for DePina in the performance of work relating to or impacting the requirements of this Agreement.
- (4) RECORDING OF AGREEMENT– **Forthwith upon the transfer of title of the Property to DePina**, record this Agreement with Cumberland and provide a copy of the recorded Agreement to the RIDEM.
- (5) CONDITIONS –
- (a) The OWTS shall be pumped by a permitted septage transporter **as frequently as necessary** to prevent sewage from overflowing or breaking out onto the surface of the ground. A list of permitted septage transporters can be obtained by contacting the DEM at (401) 222-1680 or from the DEM's web page at www.dem.ri.gov/programs/benviron/waste/transpor/septage.pdf.
- (b) **By 30 June 2018**, connect the sewerage system at the Property to the public sewerage system and properly abandon the OWTS in accordance with Rule 52 of the DEM's OWTS Regulations.
- (6) RIGHT OF ACCESS – DePina provides to the RIDEM, its authorized officers, employees and representatives an irrevocable right of access to the Property at all reasonable times to monitor compliance with this Agreement. DePina 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 if they control the Property. DePina 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 DePina’s successful completion of the requirements set forth in this Agreement, the RIDEM shall issue a Release and Discharge of the Agreement to DePina for recording. The recording shall be at the sole expense of DePina.
- (2) FAILURE TO COMPLY – If DePina fails to comply with Sections C (5) of the Agreement, DePina shall pay a stipulated penalty of \$500 per month for every month during which the noncompliance continues, except that the RIDEM may, for good cause shown, defer or reduce such penalty. The payment of a penalty in accordance with this section shall not preclude the 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 DePina of any obligation to comply with any other applicable laws or regulations administered by, through or for the 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, the 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). This Agreement shall not restrict any right to hearing or other right available by statute or regulation that DePina may have regarding any new enforcement action commenced by the RIDEM after the execution of this Agreement.
- (5) FUTURE ACTIVITIES AND UNKNOWN CONDITIONS – This Agreement shall not operate to shield DePina 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 limited to violations alleged in the NOV.
- (7) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

David E. Chopy, Chief
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360 ext. 7400

Joao L. DePina
27 Highland Avenue
Cumberland, RI 02864

- (a) At any time prior to full compliance with the terms of this Agreement, DePina agrees to notify the 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 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 the RIDEM in writing at least 15 days prior to the prescribed deadline.
- (9) AMENDMENT – The Agreement may be amended by agreement of the parties in writing.
- (10) EFFECTIVE DATE – This Agreement shall be deemed entered as of the date of execution by all parties.

[SIGNATURES ON FOLLOWING PAGES]

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

Joao L. DePina

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2017, before me personally appeared Joao L. DePina 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, Chief
Office of Compliance and Inspection

Dated: _____