

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

OFFICE OF COMPLIANCE AND INSPECTION

In Re: Michael A. Tucciarone
Annette R. Sousa

File No.: OWTS CI 11-32
AAD No.: 11-008/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 Michael A. Tucciarone and Annette R. Sousa (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 September 14, 2011.

B. STIPULATED FACTS

- (1) WHEREAS, the subject property is located at 1708 Flat River Road, Assessor's Plat 58, Lot 4, in the town of Coventry, Rhode Island (the "Property").
- (2) WHEREAS, the Respondents own the Property.
- (3) WHEREAS, on September 14, 2011, RIDEM issued an NOV to the Respondents 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").
- (4) WHEREAS, the Respondents requested an administrative hearing to contest the NOV.
- (5) WHEREAS, the Respondents have submitted documentation to the RIDEM to show that they do not have the financial means to repair the onsite wastewater treatment system on the Property (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 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 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 – 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 Coventry, 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 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.
 - (b) The Respondents 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.
 - (c) The Respondents shall limit the occupancy of the dwelling at the Property to no more than 4 persons until the OWTS is repaired to the satisfaction of RIDEM as evidenced by the issuance of a Certificate of Conformance by RIDEM.
 - (d) **Within thirty (30) days of the signing of this Agreement**, the Respondents shall install low flow water fixtures (2.5 gallons per minute or less) on the shower and sinks in the dwelling and install a 1.6 gallon (or less) flush toilet and provide an affidavit to the RIDEM from a licensed plumber certifying that the fixtures and toilet were installed.

- (e) 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).
- (f) **Within sixty (60) days of any Property sale or transfer of ownership of the Property**, the Respondents and subsequent grantee(s) or assignee(s) agree to submit an application to RIDEM to repair the OWTS in accordance with RIDEM's OWTS Regulations (the "Application").
- (g) The Respondents 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 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, Respondents and the subsequent grantee(s) or assignee(s) shall submit to RIDEM a modified proposal or additional information necessary to correct the deficiencies.
- (h) The Respondents and the subsequent grantee(s) or assignee(s) agree to commence work on the OWTS repair 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 as evidenced by the issuance of a Certificate of Conformance by RIDEM.
- (i) 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 OWTS repair as outlined above. Prior to transfer, a licensed OWTS designer shall determine the extent of repairs required at the Property and the exact costs of the OWTS repair. Once determined, the total cost for such work shall be placed in an escrow account, along with a buffer amount of ten (10%) percent of the total cost, and shall be held by the escrow agent. The escrow agent shall be authorized to release fifty (50%) percent of the funds upon the initiation of the required work. The escrow agent shall release forty (40%) percent of the remaining funds when a valid "Certificate of Construction" is submitted to RIDEM by the licensed OWTS designer. The escrow agent shall release the remaining ten (10%) percent of the funds only when RIDEM has issued the Certificate of Conformance for the OWTS. Once the Certificate of Conformance has been issued, the buffer amount shall be returned, less any costs or expenses which exceeded the estimated cost of repairs.
- (j) If the Respondents fail to comply with the provisions of paragraphs 5(a), 5(f), 5(g), or 5(h) of this Agreement, the dwelling at the Property shall be vacated until such time as the required work is completed.

- (k) The administrative penalty assessed in the NOV against the Respondents is waived.
- (l) The Respondents shall continue to apply for financial assistance for septic repairs from the town of Coventry and/or Rhode Island Housing until they are approved for such assistance. Applications shall be sent to the town and/or Rhode Island Housing every six (6) months. Copies of all approval and rejection letters received from the town and Rhode Island Housing shall be provided to the RIDEM.
- (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 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 the items specified in Section C(5), with the exception of C(5)(e) and C(5)(k), 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

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

Michael A. Tucciarone
Annette R. Sousa
1708 Flat River Road
Coventry, RI 02816

(401) 385-9847

- (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. Tucciarone

By: _____ (Print Name)

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2012, before me personally appeared Michael A. Tucciarone 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 Annette R. Sousa

By: _____ (Print Name)

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2012, before me personally appeared Annette R. Sousa 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: _____