

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

**OFFICE OF COMPLIANCE AND INSPECTION**

**In Re: Robert C. Schultz**

**License No. D3057 and D4002  
AAD No. 02-013/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 Robert C. Schultz (the "Respondent"). 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 and Suspension of License ("NOV") issued to the Respondent by RIDEM on October 30, 2002.

**B. STIPULATED FACTS**

- (1) WHEREAS, the Respondent is currently licensed by RIDEM as a Class III and Class IV individual sewage disposal system ("ISDS") designer (License #D3057 and License #D4002, respectively).
- (2) WHEREAS, on March 20, 2002 RIDEM issued to the Respondent a Notice of Intent to Suspend or Revoke the Respondent's Class III and Class IV ISDS designer licenses relating to the Respondent's actions in the preparation and submission of seven (7) separate ISDS applications between March 2, 2000 and March 8, 2001.
- (3) WHEREAS, on October 30, 2002, RIDEM issued a NOV to the Respondent alleging certain violations of the *Rules and Regulations Establishing Minimum Standards Relating to Location, Design, Construction, and Maintenance of Individual Sewage Disposal Systems (the "ISDS Regulations")*.
- (4) WHEREAS, on November 20, 2002, the Respondent requested an administrative hearing to contest the NOV.
- (5) WHEREAS, the signing of this Agreement is for settlement purposes only and does not constitute an admission by the Respondent that the law or regulations have been violated as alleged in the NOV.

- (6) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and in order to effect a timely and amicable resolution of the NOV, RIDEM and the Respondent hereby agree that it is in the best interest of the parties and in the public interest to resolve the disputed issues by the terms of the Agreement set forth herein.
- (7) WHEREAS, RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the Designers Of Individual Sewage Disposal Systems Act, R.I.G.L. § 56.1 et seq. and the ISDS Regulations.

### **C. AGREEMENT**

- (1) JURISDICTION – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over the Respondent.
- (2) FORCE and EFFECT – This Agreement shall have the full force and effect of a final compliance order of the Director issued after a full hearing on the merits 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(u)(5).
- (3) APPLICATION – The provisions of this Agreement shall apply to and be binding upon RIDEM, the Respondent and its agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for the Respondent in the performance of work relating to or impacting the requirements of this Agreement.
- (4) CONDITIONS –
  - (a) Upon execution of this Consent Agreement by the parties, the Respondent's Class III and Class IV ISDS designer licenses are suspended and shall remain suspended for a period of twelve (12) consecutive months thereafter.
  - (b) The Respondent agrees not to seek renewal of the Class III and Class IV licenses throughout the period of the suspension.
  - (c) Within seven (7) days of execution of this Agreement, the Respondent shall provide written notification of the suspension to every client who has retained the Respondent to perform any activities associated with the design, site evaluation, or installation of an ISDS that has not been issued a Certificate of Conformance by RIDEM. The written notification must be in the form of a letter sent by certified mail for confirmation of receipt by the Respondent's client. The letter must at a minimum:
    - (i) Identify the license that was suspended that relates to the work that the Respondent was retained to perform and the length of time of the license suspension;

- (ii) Explain that the Respondent will not be able to perform any further work during the term of the license suspension including responsibilities required by Section SD 27.00 of the ISDS Regulations;
- (iii) Offer the person the option of having a replacement designer (retained at the sole expense of the Respondent) to complete the work that the Respondent was retained and paid to perform; and
- (iv) Explain that the person has the right to apply to RIDEM to retain a licensed designer of his/her choosing to complete the work that the Respondent was retained to perform as specified in Section SD 27.00 (d) and (e) of the ISDS Regulations and describe the process that must be followed.

A copy of each letter shall be forwarded to RIDEM within seven (7) days of mailing to the Respondent's client.

- (d) Penalty – Respondent shall pay to RIDEM the sum of Five Thousand Dollars (\$5,000.00) in administrative penalties.
- (e) Payment Schedule- Respondent's total penalty, Five Thousand Dollars (\$5,000.00) shall be paid as follows:
  - (i) Upon execution of this Agreement by the Respondent, the Respondent shall pay to RIDEM the sum of One Thousand Dollars (\$1,000.00).
  - (ii) The remainder of the penalty, Four Thousand Dollars (\$4,000.00) shall be paid to RIDEM in four (4) equal and quarterly installments of One Thousand Dollars (\$1000.00). The remaining payments shall be made by June 30, 2003, September 30, 2003, December 31, 2003, and March 31, 2004.
  - (iii) Penalties that the Respondent agrees 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.
  - (iv) In the event that the Respondent fails to remit to RIDEM an installment payment on or before its due date, that payment will be considered late and the Respondent 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 unpaid balance at the rate of 12 percent 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 payment(s) and interest owed are remitted. Interest shall be calculated using the following generally established accounting principle:

$$\text{interest due} = (\text{number of days late}/365) \times (0.12) \\ \times (\text{entire amount of unpaid balance})$$

This provision does not preclude RIDEM from seeking additional penalties in accordance with Section D for failure to comply with the remaining provisions of this Agreement.

- (v) 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, DEM Office of Management Services  
235 Promenade Street  
Providence, RI 02908-5767

#### ***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 October 30, 2002.
- (2) FAILURE TO COMPLY – In the event that the Respondent fails to comply with the items specified in Section C (4)(c) of the Agreement, the remainder of the penalty assessed in the NOV (Two Thousand Dollars (\$2,000.00)) shall immediately become due and payable. In addition, the entire term of the license suspensions specified in the NOV (Eighteen (18) months) shall be completed. The payment of a penalty in accordance with this paragraph shall not preclude RIDEM from seeking any other appropriate remedy (i.e., injunctive relief in Superior Court).
- (3) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve the Respondent 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.G.L. § 42-17.1-2(u). This Agreement shall not restrict any right to hearing or other right available by statute or regulation that the Respondent 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 Respondent from liability arising from future activities, as of the date of execution of this Agreement.
- (6) NOTICE AND COMMUNICATION - Communications regarding this Agreement shall be directed to:

David Chopy, Supervising Sanitary Engineer  
DEM Office of Compliance and Inspection

235 Promenade Street  
Providence, RI 02908-5767  
(401) 222-1360 ext. 7257

- (a) Communications forwarded to the above-referenced address by certified mail, return receipt requested, shall be deemed received.
- (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 (15) 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 Respondent*

\_\_\_\_\_  
Robert C. Schultz

Date: \_\_\_\_\_

In \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_ 2003,  
before me personally appeared Robert C. Schultz, to me known and known by me to be the party executing the foregoing Consent Agreement on behalf of himself and he acknowledged said instrument executed by him to be his free act and deed.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

*For the State of Rhode Island Department of Environmental Management*

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Dean H. Albro, Chief  
Office of Compliance and Inspection

Date: \_\_\_\_\_