

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

In Re: Harold E. Beaudoin, Jr.

FILE No.: OC&I/ISDS CI02-0066
and FWW No. C02-0212

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 Harold E. Beaudoin, Jr. (the "Respondent"). 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 Respondent by RIDEM on June 5, 2006.

B. *STIPULATED FACTS*

- (1) WHEREAS, the subject property is located at 195 Ayoho Road, Assessor's Plat 630, Lot 7, in the town of Coventry, Rhode Island (the "Property").
- (2) WHEREAS, the Respondent owns the Property.
- (3) WHEREAS, on June 5, 2006 RIDEM issued a NOV to the Respondent alleging certain violations of Rhode Island's Freshwater Wetlands Act, the RIDEM's *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* (the "Wetland Regulations") and the RIDEM's *Rules and Regulations Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Individual Sewage Disposal Systems* (the "ISDS Regulations").
- (4) WHEREAS, the Respondent failed to request an administrative hearing to contest 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, RIDEM and the Respondent 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, RIDEM finds that this Agreement is a reasonable and fair settlement of all claims against Respondent and adequately protects the public interest in accordance with Rhode Island's Freshwater Wetlands Act, the RIDEM's Wetland Regulations, and the RIDEM's 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. 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 Respondent and his 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) **RECORDING OF AGREEMENT** – Within ten (10) days of the receipt of the fully executed Agreement from RIDEM, the Respondent 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 Respondent.
- (5) **CONDITIONS** –
 - (a) **Within thirty (30) days of the execution of this Agreement**, the Respondent shall submit to RIDEM a site plan, engineering calculations, and a report prepared and stamped by a professional engineer that shows the existing conditions on the Property and assesses the impacts the unauthorized work described in Section B of the NOV had on the Floodplain (the “Assessment Report”). If the Assessment Report concludes that the work resulted in more than minimal displacement within the Floodplain, the report must describe the actions that will be taken to address the impacts and a schedule to complete the actions.
 - (b) **Within thirty (30) days of the execution of this Agreement**, the Respondent shall submit an Application for a System Suitability Determination to the RIDEM’s Office of Water Resources in accordance with the RIDEM’s Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems (the “Application”).
 - (c) The Assessment Report and Application required above shall be subject to RIDEM’s review and approval. Upon review, the RIDEM shall provide written notification to the Respondent either granting formal approval or stating the deficiencies therein. Within fourteen (14) days (unless a longer time is specified) of receiving a notification of deficiencies, the Respondent must submit to the RIDEM a revised Assessment Report and/or Application or additional information necessary to correct the deficiencies.

- (d) The Respondent shall complete all work in accordance with the method and schedule approved by the RIDEM.
- (e) Penalty – Respondent shall pay to RIDEM the sum of **One Thousand Four Hundred Dollars (\$1,400.00)** in administrative penalties assessed as follows:
 - (i) Upon execution of this Agreement by the Respondent, the Respondent shall pay to RIDEM the sum of One-Thousand Four-Hundred Dollars (\$1,400.00).
 - (ii) Penalties that the Respondent agrees 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
235 Promenade Street
Providence, RI 02908-5767

- (6) RIGHT OF ACCESS – The Respondent shall provide to RIDEM, his 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 Respondent 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 Respondent 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 successful completion of the requirements set forth in this Agreement, RIDEM shall issue a Release and Discharge of the NOV and Agreement to the Respondent for recording. The recording of the Release shall be at the sole expense of the Respondent.
- (2) FAILURE TO COMPLY – In the event that the Respondent fails to comply with the items specified in Sections C(5)(a), (b), (c) or (d) of the Agreement, the

Respondent 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 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. 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 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) 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:

Harold K. Ellis, Supervising Environmental Scientist
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360 ext. 7401

- (a) 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). 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 (15) 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 Harold E. Beaudoin, Jr.

By: _____ (Print Name)

Dated: _____

In _____, in said County and State, on this _____ day of _____, 2012, before me personally appeared Harold E. Beaudoin, 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 the State of Rhode Island Department of Environmental Management

David E. Chopy, Chief
Office of Compliance and Inspection

Date: _____