

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

OFFICE OF COMPLIANCE AND INSPECTION

In Re: D&L Service, Inc.
Robert Gervasio
Diane Gervasio

File Nos.: CI11-118 & HW 2011-37
AAD No.: 12-001/MM

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 D&L Service, Inc., Robert Gervasio, and Diane Gervasio (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 D&L Service, Inc., Robert Gervasio, and Diane Gervasio by RIDEM on March 29, 2012.

B. STIPULATED FACTS

- (1) WHEREAS, the subject property is located at 30 Kowal Court, Assessor's Plat 35, Lot 2, in the town of Coventry, Rhode Island (the "Property").
- (2) WHEREAS, the Property is owned by Robert Gervasio and Diane Gervasio (the "Owners").
- (3) WHEREAS, D&L Service, Inc. conducts business at the Property ("D&L").
- (4) WHEREAS, on March 29, 2012, RIDEM issued a 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") and the RIDEM's *Rules and Regulations for Hazardous Waste Management* (the "Hazardous Waste Regulations").
- (5) WHEREAS, the Respondents requested an administrative hearing to contest the NOV.
- (6) WHEREAS, the Owners complied with the Order section of the NOV as it relates to the RIDEM's OWTS Regulations.
- (7) 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.

- (8) WHEREAS, RIDEM finds that this Agreement is a reasonable and fair settlement of all claims against Respondents and adequately protects the public interest in accordance with the RIDEM's OWTS Regulations and the RIDEM's Hazardous Waste 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 AND RELEASE OF NOV – Within ten (10) days of the receipt of the fully executed Agreement from RIDEM, the Owners 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 Owners.
- (5) CONDITIONS –
- (a) Penalty – Respondents shall pay to RIDEM the sum of **Three Thousand Four Hundred Seventy Five Dollars (\$3,475.00)** 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 Thousand Seven Hundred Thirty Seven and 50/100 Dollars (\$1,737.50)**.
- (ii) The remainder of the penalty, **One Thousand Seven Hundred Thirty Seven and 50/100 Dollars (\$1,737.50)**, shall be paid to RIDEM in ten equal and consecutive monthly installments of **One Hundred Seventy Three and 75/100 Dollars (\$173.75)**. The remaining payments shall be made on the first of the month.

(iii) 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.

(iv) In the event that the Respondents fail to remit to RIDEM a payment on or before its due date, that payment will be considered late and the Respondents 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 entire unpaid balance at the rate of twelve percent (12%) 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 payments and interest owed are remitted. Interest shall be calculated using the following generally established accounting principle:

Interest due = (number of days late/365) x (0.12) x (amount of unpaid balance)

This provision does not preclude RIDEM from seeking additional penalties according to 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, 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 Owners 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 Owners 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 Owners 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 Owners for recording. The recordings shall be at the sole expense of the Owners.
- (2) FAILURE TO COMPLY – In the event that D&L fails to comply with the item specified in Section C(5)(a) of the Agreement, D&L shall pay a stipulated penalty of Two Hundred Dollars (\$200.00) 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 extension 7119

Gary Powers, Esq.

RIDEM Office of Legal Services
235 Promenade Street
Providence, RI 02908-5767
(401) 222-6607 extension 2308

D&L Service, Inc.
P.O. Box 214
Coventry, RI 02816

Robert Gervasio
Diane Gervasio
42 Kiley Way
Coventry, RI 02816

- (a) At any time prior to full compliance with the terms of this Agreement, the Owners 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 D&L Service, Inc.:

By: _____ (Print Name)

Its: _____ (Title)

Dated: _____

In my capacity as _____ of _____, I hereby aver that I am authorized to enter into this Agreement and thereby bind D&L Service, Inc. to satisfy any obligation imposed upon it pursuant to said Agreement.

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2012, before me personally appeared _____, the _____ of D&L Service, Inc., a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of D&L Service, Inc., and he acknowledged said instrument by him executed, to be his free act and deed in said capacity and the free act and deed of D&L Service, Inc.

Notary Public
My Commission Expires: _____

For Robert Gervasio:

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 Robert Gervasio 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 Diane Gervasio:

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 Diane Gervasio 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: _____