

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

In Re: Paul J. McCabe, Jr.

File No.: CI 10-103

AAD No.: 11-002/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 Paul J. McCabe, 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 December 31, 2010.

B. STIPULATED FACTS

- (1) WHEREAS, the subject property is located at 12 Allen's Cove Road, Assessor's Plat 9, Lot 216, in the town of Charlestown, Rhode Island (the "Property"). The Property includes a two bedroom dwelling (the "Dwelling").
- (2) WHEREAS, the Respondent owns the Property.
- (3) WHEREAS, on December 31, 2010 RIDEM issued an NOV to the Respondent alleging certain violations of RIDEM's Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems (the "OWTS Regulations").
- (4) WHEREAS, the Respondent requested an administrative hearing to contest the NOV.
- (5) WHEREAS, the Respondent has submitted documentation to RIDEM that shows he does not have the financial means to pay the administrative penalty assessed in the NOV.
- (6) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to affect 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.
- (7) WHEREAS, RIDEM finds that this Consent Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the OWTS 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 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 days of the receipt of the fully executed Agreement from RIDEM, the Respondent shall record this Agreement with the town of Charlestown, 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) The Respondent shall complete the following actions to comply with the Order section of the NOV:
 - (i) 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 RIDEM’s satisfaction as evidenced by the issuance of a Certificate of Conformance by RIDEM or RIDEM determines that the OWTS can function properly without repair.
 - (ii) Discontinue **all** use of the washing machine at the Dwelling until the OWTS is repaired to RIDEM’s satisfaction as evidenced by the issuance of a Certificate of Conformance by RIDEM or RIDEM determines that the OWTS can function properly without repair.
 - (iii) Submit a written proposal for a permanent solution to the violation, that must include an inspection of the OWTS by a licensed OWTS designer to determine the cause of the failure (the “System Assessment”). The System Assessment must be signed by the licensed designer who inspected the OWTS, must identify the size and location of the OWTS components, must set forth the probable cause(s) for the failure, and propose a plan, including a proposed timetable, for any repair work for the correction of the failure. For any proposed repair or alteration to the OWTS, the System Assessment must include the submittal of a formal application and plan to the RIDEM in accordance with the OWTS Regulations (the “Application”). **Any repairs or modifications to the OWTS require the prior approval of RIDEM.** The list of licensed OWTS designers can be obtained by contacting Deb Knauss at 222-4700, extension 7612 or from RIDEM’s web page at:

- (iv) The System Assessment and Application shall be subject to RIDEM's review and approval. Upon review, RIDEM shall provide written notification either granting formal approval or stating the deficiencies therein. Within fourteen days (unless a longer time is specified) of receiving a notification of deficiencies, the Respondent shall submit to the RIDEM a modified System Assessment or Application or additional information necessary to correct the deficiencies.
 - (v) **On or before December 15, 2011**, the Respondent shall complete the work in Sections C(5)(a)(iii) and C(5)(a)(iv) of the Agreement in accordance with the method approved by the RIDEM (unless otherwise expressly authorized by the RIDEM in writing to complete work at a later time).
- (b) Penalty – The administrative penalty assessed in the NOV against the Respondent is waived.
- (6) **RIGHT OF ACCESS** – The Respondent shall 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 Respondent shall ensure that assignees, successors in interest, lessees, sub-lessees, 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, sub-lessees, and 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 Respondent's 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 recordings shall be at the sole expense of the Respondent.
- (2) **FAILURE TO COMPLY** – In the event that the Respondent fails to comply with items specified in Section C (5)(a) 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 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 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:

Patrick J. Hogan
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360, extension 7117

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

Paul J. McCabe, Jr.
12 Allen’s Cove Road
Charlestown, RI 02813

- (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) Communications forwarded to the above-referenced address by certified mail shall be deemed received.
- (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 Paul J. McCabe, Jr.

By: _____ (Print Name)

Dated: _____, 2011.

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2011, before me personally appeared Paul J. McCabe, 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

Dated: _____, 2011.