

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

**IN RE: Robert McGovern
Kimberly McGovern**

**FILE NO.: CI04-0262
AAD NO.: 07-015/IE**

CONSENT AGREEMENT

A. *INTENT & PURPOSE*

This Agreement is entered by and between the Rhode Island Department of Environmental Management, Office of Compliance & Inspection (“DEM”) and Kimberly McGovern. 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 (“NOV”) issued by DEM on July 31, 2007.

B. *STIPULATED FACTS*

- (1) WHEREAS, the subject property is located at 655 Ocean Road in the Town of Narragansett, otherwise identified as Tax Assessor’s Plat T, Lot 182 (the “Property”).
- (2) WHEREAS, on July 31, 2007 DEM issued an NOV to Robert McGovern and Kimberly McGovern (the “Respondents”) alleging certain violations of the DEM Rules and Regulations Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Individual Sewage Disposal Systems.
- (3) WHEREAS, on September 4, 2007, the Respondents requested an administrative hearing to contest the NOV.
- (4) WHEREAS, on November 12, 2007, Robert McGovern passed away.
- (5) WHEREAS, Kimberly McGovern complied with the Order section of the NOV.
- (6) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and in order to affect a timely and amicable resolution of the NOV, DEM and Kimberly McGovern 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, DEM finds that this Consent Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the DEM Rules and Regulations Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Individual Sewage Disposal Systems.

C. AGREEMENT

- (1) JURISDICTION – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over Kimberly McGovern.
- (2) FORCE and EFFECT – This Agreement shall have the full force and effect of a final administrative order 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(21)(v).
- (3) APPLICATION – The provisions of this Agreement shall apply to and be binding upon DEM, Kimberly McGovern and her agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for Kimberly McGovern in the performance of work relating to or impacting the requirements of this Agreement.
- (4) PENALTY – The administrative penalty of Eight Hundred Dollars (\$800) assessed in the NOV is waived in its entirety.

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 July 31, 2007.
- (2) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve Kimberly McGovern of any obligation to comply with any other applicable laws or regulations administered by, through or for DEM or any other governmental entity.
- (3) 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, DEM 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 §42-17.1-2(21). This Agreement shall not restrict any right to hearing or other right available by statute or regulation that Kimberly McGovern may have regarding any new enforcement action commenced by DEM after the execution of this Agreement.
- (4) FUTURE ACTIVITIES AND UNKNOWN CONDITIONS – This Agreement shall not operate to shield Kimberly McGovern from liability arising from future activities, as of the date of execution of this Agreement.

(5) 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 Kimberly McGovern

Kimberly McGovern

Date

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

David E. Chopy, Chief
Office of Compliance and Inspection

Date