

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

In Re: James and Melissa Pelletier

**FILE Nos.:2007 1517 SW and SW 07-02
AAD No.: 09-020/WME**

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 James Pelletier and Melissa Pelletier (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 the Respondents by RIDEM on August 31, 2009.

B. STIPULATED FACTS

- (1) WHEREAS, the subject property is located at Crandall Road, otherwise identified as Assessor's Plat 128, Lot 4N, in the town of Tiverton, Rhode Island (the "Property").
- (2) WHEREAS, the Respondents own the Property.
- (3) WHEREAS, on August 31, 2009, RIDEM issued an NOV to the Respondents alleging certain violations of Rhode Island's Refuse Disposal Act and RIDEM's Rules and Regulations for Composting Facilities and Solid Waste Management Facilities.
- (4) WHEREAS, the Respondents requested an administrative hearing to contest the NOV.
- (5) WHEREAS, approximately nine hundred and sixteen (916) cubic yards of leaf and yard waste is currently present on the Property that has been composted or is in the process of being composted (the "Composted Material").
- (6) 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.
- (7) WHEREAS, RIDEM finds that this Consent Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with Rhode

Island's Refuse Disposal Act and RIDEM's Rules and Regulations for Composting Facilities and Solid Waste Management Facilities.

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 – Within ten (10) days of the receipt of the fully executed Agreement from RIDEM, the Respondents shall record this Agreement with the town of Tiverton, Rhode Island and shall provide a copy of the recorded Agreement to RIDEM. The recording shall be at the sole expense of the Respondents.
- (5) CONDITIONS –
 - (a) Respondents shall stop accepting and composting any additional leaf and yard waste and/or taking any action to increase the amount of compost material in the form of leaf and yard waste beyond that which is already present on the Property effective June 27, 2011, and that no additional leaf and yard waste will be accepted or composted and no action will be taken to increase the amount of compost material in the form of leaf and yard waste beyond that which is already present on the Property unless and until such time as Respondents obtain RIDEM's approval to commence leaf and yard waste composting on the Property in the form of either an Agricultural Composting registration or other appropriate registration, license or permit issued by RIDEM. For purposes of this Agreement, the term "acceptance" shall include leaf and yard waste that Respondents generate off of the Property in the course of landscaping.
 - (b) **By June 30, 2012**, the Respondents shall spread all the Composted Material across the Property in an effort to reclaim lost topsoil unless the Respondents obtain RIDEM's approval to commence leaf and yard waste composting on the Property in the form of either an Agricultural Composting registration or other

appropriate registration, license or permit issued by RIDEM. If the Respondents obtain said approval from RIDEM, the Composted Material shall be used in a manner that is consistent with that approval. In the event that the Respondents' Agricultural Composting Registration Application is denied and the Respondents do not appeal said denial, Respondents shall permanently stop accepting leaf and yard waste at the Property and further agree to spread all Composted Material across the Property in an effort to reclaim lost topsoil. In the event that RIDEM denies the Respondents' Application for Agricultural Composting registration and the Respondents appeal said denial, Respondents shall not accept leaf and yard waste at the Property during the pendency of said appeal.

(c) Penalty – Respondents shall pay RIDEM the sum of Thirteen Thousand Dollars (\$13,000.00) in an administrative penalty to be assessed as follows:

- i) The Respondents shall pay to RIDEM the sum of Six Thousand Five Hundred Dollars (\$6,500.00) and perform a Supplemental Environmental Project (“SEP”) also valued at Six Thousand Five Hundred Dollars (\$6,500.00).
- ii) The penalty of Six Thousand Five Hundred Dollars (\$6,500.00) shall be paid to RIDEM in three (3) installments. The first installment of Two Thousand Five Hundred Dollars (\$2,500.00) shall be paid to RIDEM upon execution of the Agreement by the Respondents. The second installment of Two Thousand Dollars (\$2,000.00) shall be paid to RIDEM within six (6) months of execution of the Agreement by the parties. The third installment of Two Thousand Dollars (\$2,000.00) shall be paid to RIDEM within one (1) year of execution of the Agreement by the parties.
- iii) The penalty that the Respondents agree to pay in this Agreement is payable to and for the benefit of the State of Rhode Island and is 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) The SEP, also valued at Six Thousand Five Hundred Dollars (\$6,500.00) will make up the remaining amount of the total penalty due to RIDEM. The Respondents agree to perform the following activities as an SEP:

1. Reduce the vehicle traffic to and from the Property in the following manner:

a. Class 5 Vehicles

- i. Current Conditions: According to the neighbors, there are approximately 30-35 trucks entering and exiting the Property every day, Monday through Saturday. The Respondents believe it is probably much less and closer to approximately 15 to 20 trucks per day.
- ii. Respondents Propose: A reduction in vehicle traffic for Class 5 Vehicles in peak season (March to July, and September to November) to include maximum of six (6) trucks per day not to exceed 20 trucks per week, Monday through Saturday.
- iii. Class 5 Vehicles in non peak season (November to February and August) will be even further limited to a maximum of four (4) trucks per day not to exceed ten (10) trucks per week.

b. One-Ton Dump Trucks

- i. Current Conditions: There are approximately twelve (12) One-Ton Dump Trucks coming to the Property per week, Monday through Saturday.
- ii. Respondents Propose: A maximum of eight (8) trucks per week not to exceed two (2) trucks per day.

c. Loaders:

- i. Current Conditions: The Loaders mainly stay on the Property. However, on occasion, a Loader will make one (1) trip per day as needed.
- ii. Respondents Propose: No change to loader access to the Property and the Loader traffic should remain on an as-needed basis.

2. Restrict sales at the Property in the following manner:

- a. Current Conditions: Sales from the Property are currently not monitored and no restriction is placed on the number or type of sales taking place there. The Respondents' sales at the Property are taken as they come in.

- b. Respondents Propose: There will be no onsite sales transactions. No customers will be present at the Property to purchase farm products, and all farm sales will be delivered or picked up at other locations.
- 3. Compost generated on the Property will be used on the Property and will be spread across the Property in an effort to reclaim lost topsoil. Composting will also be used on the Property in conjunction with the growth and harvesting of nursery trees.
- 4. Create a one hundred (100) foot landscaped setback area from the street at an estimated cost of Five Thousand Five Hundred Dollars (\$5,750.00) and to include the following:

- a. Screening Trees: Screening trees will be planted in the cleared area between the first and second existing stone walls. Plantings will include Evergreens, Theja Pliccata and/or Great Western American Arborvitae. The screening trees will be planted 10 feet on center. Respondents expect that the mature growth of these trees will reach 65 feet in height and a 25 feet spread. It is expected that this will provide a complete screen of the activities on the Property while also increasing aesthetic value from the roadway.

A total of 12 screening trees will be planted. Screening trees are expected to cost \$350.00 per tree for an 8 to 10 foot tree. The total cost of screening trees is therefore \$4,200.00 plus planting and maintenance. All planting proposed in the SEP include that if any planting should die within three years of planting, it will be replaced with the same or similar species.

- b. Hydrangeas: The Respondents also propose plantings in front of the screening trees and behind the first existing stone wall. Respondents propose that Endless Summer Hydrangeas will be planted in this area.

A total of 20 plants will be placed in this area. Hydrangeas are expected to cost \$40.00 per plant, for a total of \$800.00 plus planting and maintenance. Again, any planting that should die within the first three years will be replaced with the same or similar species.

- c. Day Lilies: The Respondents propose additional plantings in front of the first existing stone wall. Day Lilies of a variety mix, including Stella Deirdre and Happy Returns will be planted in this area. It is expected that these planting will provide color and aesthetic value to the front most portion of the Property along the street.

A total of 50 plants will be planted. The plants cost approximately \$15.00 each, for a total of \$750.00 plus planting and maintenance.

Again, any planting that should die within the first three years will be replaced with the same or similar species.

5. Create a seventy five (75) foot buffer on all sides of the Property at an estimated cost of One Thousand Dollars (\$1,000.00) to include the following:
 - a. Forsythia bushes will be planted in any and all open areas within 75 feet from the Property lines that have visibility to farming or agricultural activities. These plantings will be allowed to grow naturally and are expected to provide additional screening of agricultural activities on the property, as well as color and aesthetic value. Plantings of this type will be placed at four (4) feet on center where needed.

It is expect that a minimum of 50 plants will be placed in these areas and as needed. The plants cost \$15.00 to \$20.00 per plant, for a total of \$1,000.00 plus planting and maintenance. Again, any planting that should die in the first three years will be replaced with the same or similar species.

The SEP activities described in paragraphs C.5.c.v.4 and C.5.c.v.5 shall be completed on or before June 30, 2012.

- vi) All penalty payments shall be in the form of a certified check, cashiers check, or money order, payable to the ***R.I. General Treasurer – Environmental Response Fund 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 Respondents 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 Respondents 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 Respondents 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 Respondents’ successful completion of all requirements set forth in this Agreement, RIDEM shall issue a Release and Discharge of the NOV and the Agreement to the Respondents for recording. The recordings shall be at the sole expense of the Respondents.
- (2) FAILURE TO COMPLY – In the event that the Respondents fail to comply with the items specified in Section C.5.a or C.5.b of the Agreement, the Respondents shall pay a stipulated penalty of One Thousand Dollars (\$1000.00) 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 (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 violations or 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:

For RIDEM:

- Tracey Tyrrell, Supervising Environmental Scientist, RIDEM Office of Compliance and Inspection, 235 Promenade Street, Providence, RI 02908. Tel. (401) 222-4700, ext. 7407.
- Susan Forcier, Esq. RIDEM Office of Legal Services, 235 Promenade Street, Providence, RI 02908. Tel. (401) 222-6607.

For Respondents:

- Michael Kelly, Esq., Law Offices of Michael A. Kelly, PC, 128 Dorrance Street, Suite 300, Providence, RI 02903. Tel. (401) 490-7334.
- (a) At any time prior to full compliance with the terms of this Agreement, the Respondents 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 (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.

Respondent, James Pelletier

James Pelletier

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2011, before me personally appeared James Pelletier 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: _____

Respondent, Melissa Pelletier

Melissa Pelletier

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2011, before me personally appeared Melissa Pelletier 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

Terrence Gray
Assistant Director for Air, Waste and Compliance

Dated: _____