

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

OFFICE OF COMPLIANCE AND INSPECTION

In Re: Stuart A. Tucker

File No.: CI 10-38

AAD No.: 10-009/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 Stuart A. Tucker (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 Stuart A. Tucker by RIDEM on June 25, 2010.

B. STIPULATED FACTS

- (1) WHEREAS, the subject property is located at 161 Oak Hill Road (also known as 121/123 Sweet Lane), Assessor's Plat 85, Lot 93 in the town of North Kingstown, Rhode Island (the "Property").
- (2) WHEREAS, on June 25, 2010, RIDEM issued an NOV to the Respondent alleging certain violations of the RIDEM Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems.
- (3) WHEREAS, the Respondent requested an administrative hearing to contest the NOV.
- (4) WHEREAS, the Respondent complied with the Order section of the NOV.
- (5) 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 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 the Respondent and adequately protects the public interest in accordance with the RIDEM Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems.

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 AND RELEASE OF NOV – Within ten (10) days of the receipt of the fully executed Agreement from RIDEM, the Respondent shall record this Agreement with the town of North Kingstown, 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) Penalty – The Respondent shall pay to RIDEM the sum of **One Thousand Dollars (\$1,000.00)** 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 Hundred Dollars (\$100.00)**.
 - (ii) The remainder of the penalty, **Nine Hundred Dollars (\$900.00)**, shall be paid to RIDEM in nine equal and consecutive monthly installments of **One Hundred Dollars (\$100.00)**. The remaining payments shall be made on the first of the month.
 - (iii) 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.
 - (iv) In the event that the Respondent fails to remit to RIDEM a payment on or before its due date, that payment will be considered late and the Respondent will be in default. If the payment is not received within thirty 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

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 the Agreement to the Respondent for recording. The recordings shall be at the sole expense of the Respondent.
- (2) 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.
- (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, 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.
- (4) 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.
- (5) SCOPE OF THE AGREEMENT – The scope of the Agreement is only violations alleged in the NOV.

- (6) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

Patrick Hogan
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360 extension 7119

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

Stuart A. Tucker
161 Oak Hill Road
North Kingstown, RI 02852

- (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.
- (7) 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.
- (8) AMENDMENT – The Agreement may be amended by mutual agreement of the parties in writing.
- (9) 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 Stuart A. Tucker:

By: _____ (Print Name)

Date: _____

STATE OF RHODE ISLAND
COUNTY OF _____

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