

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE AND INSPECTION

In Re: Sprague Operating Resources LLC

**File Nos.: OCI-AIR-18-112 and
OCI-AIR-19-58**

AAD No.: 19-001/ARE

CONSENT AGREEMENT

A. INTENT & PURPOSE

This Agreement is entered by and between the Rhode Island Department of Environmental Management (“RIDEM”) and Sprague Operating Resources LLC (“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 alleged violations set forth in an amended Notice of Violation issued to Respondent by RIDEM on 13 September 2021 (“Amended NOV”).

B. STIPULATED FACTS

- (1) WHEREAS the property is located at 120 Allens Avenue (also identified as 144 Allens Avenue), Assessor’s Plat 46, Lot 160 in Providence, Rhode Island (“Property”). The Property includes a facility that receives and distributes liquid asphalt and other petroleum products that are stored in above ground storage tanks (“Facility”).
- (2) WHEREAS the Facility is a stationary source of air pollutants subject to Rhode Island’s regulations titled *Odors* (“Odor Rules”).
- (3) WHEREAS Respondent operates the Facility and is registered with the Rhode Island Secretary of State as a wholesale distributor of natural gas, coal, and petroleum products.
- (4) WHEREAS on 20 July 2018, Respondent began notifying RIDEM by electronic correspondence when vessels were scheduled to offload asphalt products at the Facility.
- (5) WHEREAS on 6 August 2018, RIDEM began notifying Respondent by electronic correspondence when RIDEM received complaints about odors that RIDEM believed could be attributed to the Facility.

- (6) WHEREAS on 11 December 2018, RIDEM met with Respondent's representatives to discuss odor complaints RIDEM had received and RIDEM's inspection findings regarding the same. During this meeting, Respondent's representatives presented a plan and implementation schedule to install equipment to control odors from the Facility. The schedule included submission of an application to RIDEM for a permit for the system.
- (7) WHEREAS on 17 May 2019, RIDEM issued a Notice of Violation ("NOV") to Respondent alleging certain violations of the Odor Rules.
- (8) WHEREAS Respondent requested an administrative hearing with the Administrative Adjudication Division ("AAD") to contest the NOV.
- (9) WHEREAS to address concerns about odors, upon receipt of the NOV Respondent placed mobile deodorizer units at the Facility and began taking steps to install permanent odor control equipment at the Facility.
- (10) WHEREAS on 21 June 2019, Respondent applied to RIDEM for a permit for the installation and operation of equipment to controls odors from two bulk storage tanks at the Facility ("Odor Control Equipment").
- (11) WHEREAS in 2019 Respondent proceeded with installation of the Odor Control Equipment with RIDEM's approval although RIDEM had not yet issued the permit.
- (12) WHEREAS on 7 October 2020 Respondent amended its application to RIDEM for a permit to install and operate the Odor Control Equipment to include a third bulk storage tank at the Facility.
- (13) WHEREAS on 13 September 2021, RIDEM issued the Amended NOV.
- (14) WHEREAS on 14 January 2022 RIDEM issued Respondent a Minor Source Permit (Approval Nos. 2513 and 2514) (collectively, "Permit") for the installation and operation of the Odor Control Equipment.
- (15) WHEREAS AAD is a division of RIDEM.
- (16) WHEREAS in lieu of proceeding to an administrative adjudicatory hearing on the Amended NOV and to effect a timely and amicable resolution of the Amended NOV, RIDEM and 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 Amended NOV.
- (17) WHEREAS RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the Odor Rules.
- (18) WHEREAS Respondent finds that this Agreement is reasonable and fair and enters into this Agreement with full knowledge and understanding of its terms, without any admission of liability.

C. *AGREEMENT*

- (1) JURISDICTION – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over 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. and R.I. Gen. Laws Section 42-17.7-1 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)(vi).
- (3) APPLICATION – The provisions of this Agreement shall apply to and be binding upon RIDEM, Respondent and its agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for Respondent in the performance of work relating to or impacting the requirements of this Agreement.
- (4) CONDITIONS –
 - (a) Respondent shall comply with all conditions of the Permit.
 - (b) **Within one business day of RIDEM’s receipt of a complaint about odors that RIDEM believes to be reasonably attributable to the Facility**, RIDEM shall notify Respondent by electronic correspondence sent to Jay Leduc at JLeduc@spragueenergy.com; Jason Littlefield at JLittlefield@spragueenergy.com; and Eric Smith at EDSmith@spragueenergy.com (“Complaint Notification”). The Complaint Notification shall be deemed received by Respondent upon RIDEM’s transmission to Respondent.
 - (c) **Within one business day of Respondent’s receipt of a complaint about odors at the Facility from other than RIDEM that Respondent believes to be reasonably attributable to the Facility**, Respondent shall notify RIDEM by electronic correspondence sent to DEM.Compliance2@dem.ri.gov. The notification shall include the date and time of the complaint, the name of the person that filed the complaint and contact information (if provided) and a description of the complaint.
 - (d) **Within three business days of Respondent’s receipt of a complaint pursuant to subsections C(4)(b) and C(4)(c) above**, Respondent shall complete an investigation of the odor complaint and submit a report to RIDEM that includes the following information: a summary of the complaint (including date and time of the complaint, the name of the complainant and contact information if provided, and a description of the complaint); the actions taken to investigate the complaint; the findings of the investigation; and any changes made to the practices or procedures of the Facility resulting from the investigation. Investigations of odor complaints shall include an evaluation of Facility’s compliance with the terms of its Permit as the Permit relates to odors, Facility activities, arrival of vessels, weather conditions at the time of the complaint (if known), including

wind direction and wind speed, an inspection of the Facility and area(s) which were the subject of the odor complaint, and interviews with relevant Facility personnel. Reports submitted to RIDEM pursuant to this paragraph shall be submitted by electronic mail to the Administrator of RIDEM's Office of Compliance and Inspection ("OCI") with copies to the air pollution program managers within OCI. The names and email addresses of the individuals currently in these positions are as follows:

Shawna Smith, Principal Environmental Scientist
shawna.smith@dem.ri.gov

Patrick Hogan, Environmental Engineer IV
patrick.hogan@dem.ri.gov

David E. Chopy, Administrator
david.chopy@dem.ri.gov

(5) PENALTY – Respondent shall pay to RIDEM \$20,000 in administrative penalties assessed as follows:

- (a) **Upon execution of this Agreement by Respondent**, Respondent shall pay to RIDEM \$20,000.
- (b) Penalties that 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.
- (c) Penalty payments shall be by one of the following two methods:

By certified check, cashier's check, or money order made payable to the **General Treasury – Water and Air Protection Program** and forwarded to:

Administrator, RIDEM Office of Compliance and Inspection
235 Promenade Street, Suite 220
Providence, RI 02908-5767.

OR

By wire transfer in accordance with instructions provided by RIDEM.

(6) RIGHT OF ACCESS – Respondent provides to RIDEM, its authorized officers, employees, and representatives an irrevocable right of access to the Property at all reasonable times to monitor compliance with this Agreement. Respondent 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 if they control the Property. Respondent 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 Amended NOV.
- (2) DURATION OF AGREEMENT – This Agreement shall expire two years from the date of execution.
- (3) FAILURE TO COMPLY – If Respondent fails to comply with the items specified in subsection C (4) of the Agreement, Respondent shall pay a stipulated penalty of \$250 per day for each day 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).
- (4) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve Respondent of any obligation to comply with any other applicable laws or regulations administered by, through or for RIDEM or any other governmental entity.
- (5) 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 statute 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 Respondent may have regarding any new enforcement action commenced by RIDEM after the execution of this Agreement.
- (6) FUTURE ACTIVITIES AND UNKNOWN CONDITIONS – This Agreement shall not operate to shield Respondent from liability arising from future activities, as of the date of execution of this Agreement.
- (7) SCOPE OF THE AGREEMENT – The scope of the Agreement is limited to violations alleged in the Amended NOV.
- (8) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

Shawna Smith
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767

(401) 222-1360 ext. 2777427

shawna.smith@dem.ri.gov

Tricia Quest, Esquire
RIDEM Office of Legal Service
235 Promenade Street
Providence, RI 02908-5767

(401) 222-6607

tricia.quest@dem.ri.gov

Michelle N. O'Brien, Esquire
Pierce Atwood, LLP
100 Summer Street #2250
Boston, MA 02110

(617) 488-8146

mobrien@pierceatwood.com

Jason Littlefield
Director of Environment
Sprague Operating Resources, LLC
185 International Drive
Portsmouth, NH 03801

(603) 430-7205

jlittlefield@spragueenergy.com

- (a) At any time during the duration of this Agreement, Respondent agrees to notify RIDEM in writing of any change in ownership of the Property or Facility and provide the name and address of the new owner(s). In addition, either party may change the recipient of notice and communication by sending a notice of any change in address/telephone/fax to all other parties by First Class mail.
- (b) All communications regarding this Agreement shall be forwarded to the above-referenced addressees by First Class mail.
- (9) 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 15 days prior to the prescribed deadline.
- (10) AMENDMENT – The Agreement may be amended by agreement of the parties in writing.

(11) 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.

Sprague Operating Resources LLC

By: _____
Print Name: _____ Title: _____

Dated: _____

In my capacity, as _____ of Sprague Operating Resources LLC, I hereby aver that I am authorized to enter into this Agreement and thereby bind Sprague Operating Resources LLC 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 _____, 2022, before me personally appeared _____, the _____ of Sprague Operating Resources LLC, a State of Delaware corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of Sprague Operating Resources LLC, and he/she/they acknowledged said instrument by him/her/them executed, to be his/her/their free act and deed in said capacity and the free act and deed of Sprague Operating Resources LLC.

Notary Public
My Commission Expires: _____

**State of Rhode Island, Department of Environmental
Management**

By: _____
David E. Chopy, Administrator
Office of Compliance and Inspection

Dated: _____