

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

IN RE: Town of Cumberland

FILE No.: UST 2010-02969

AAD No.: 11-007/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 the Town of Cumberland (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 March 21, 2011.

B. STIPULATED FACTS

- (1) WHEREAS, the subject property is located at 37 Blackstone Street in the town of Cumberland, Rhode Island. The property includes a public works garage and an underground storage tank ("UST" or "tank") used for storage of petroleum product (the "Facility").
- (2) WHEREAS, Respondent owns and operates the Facility.
- (3) WHEREAS, the Facility is subject to RIDEM's *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials*, as amended (the "UST Regulations").
- (4) WHEREAS, the Facility is registered with RIDEM in accordance with Section 6.00 of the RIDEM's UST Regulations and is identified as UST Facility No. 02969.
- (5) WHEREAS, on March 21, 2011, RIDEM issued a NOV to the Respondent alleging certain violations of the RIDEM's UST Regulations.
- (6) WHEREAS, the Respondent requested an administrative hearing to contest the NOV.
- (7) WHEREAS, the Respondent complied with sections D (1), (2) (3) and (5) of the Order section of the NOV.
- (8) 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.

- (9) WHEREAS, RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the RIDEM's UST 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 its 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) CONDITIONS –
- (a) The Respondent shall complete the following actions to comply with the remaining Order portion of the NOV:
- (i) **By December 31, 2013**, Respondent shall complete the permanent closure of the UST in accordance with the RIDEM's UST Regulation 13.09. Respondent must file a Permanent Closure Application and receive approval from RIDEM's OWM prior to undertaking the closure of the UST, in accordance with RIDEM's UST Regulations Rules 13.06. and 13.07
 - (ii) **Within thirty (30) days of the permanent closure of the UST**, Respondent shall submit a Closure Assessment Report in accordance with RIDEM's UST Regulations Rule 13.11 (the "Closure Assessment Report").
 - (iii) Upon receipt of the Closure Assessment Report, RIDEM may request that a site investigation be conducted and a Site Investigation Report ("SIR") be submitted. **Within sixty (60) days of notification by RIDEM that a site investigation is necessary**, Respondent shall conduct a site investigation and submit a SIR in accordance with RIDEM's UST Regulations Rules 12.00 through 12.10.
 - (iv) Upon receipt of the SIR, RIDEM may request that a Corrective Action Plan ("CAP") be submitted to address any contamination discovered during the site

investigation. **Within sixty (60) days of notification by RIDEM that a CAP is necessary**, Respondent shall submit a CAP in accordance with RIDEM's UST Regulations Rules 12.12 and 12.13.

(v) Upon approval of the CAP, RIDEM will issue an Order of Approval to govern the CAP in accordance with RIDEM's UST Regulations Rule 12.14. **Within sixty (60) days of receipt of the Order of Approval from RIDEM**, Respondent shall undertake the corrective action in accordance with the Order of Approval.

(vi) **By July 1, 2014** the Respondent shall complete all corrective action contained within the Order of Approval.

(b) Penalty – In lieu of payment of any cash to RIDEM, the total penalty of Nine Thousand Two Hundred and Fifty Dollars (\$9,250.00) shall be paid to the RIDEM in the form of a Supplemental Environmental Project (“SEP”). The SEP involves completion of the work in Section C(4)(a) of the 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.
- (2) FAILURE TO COMPLY – In the event that the Respondent fails to comply with items specified in Section C (4)(a) of the Agreement, the Respondent shall pay a stipulated penalty of Five Hundred Dollars (\$500.00) 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:

Tracey D’Amadio Tyrrell
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360 ext. 7407

Joseph J. LoBianco
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-6607

Thomas E. Heffner, Esq Town Solicitor
Cumberland

Town of
45 Broad Street

Cumberland, RI 02864

(401) 728-2400 ext. 50

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 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 the Town of Cumberland

By: Daniel J. McKee, Mayor

Dated: _____

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

David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____