

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

**IN RE: John J. Gregory, Jr. and  
J. J. Gregory & Son Inc.**

**FILE NO.: UST 09-01760  
AAD File NO: 09-008/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 John J. Gregory, Jr. and J. J. Gregory & Son Inc. (the "Respondents"). 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 to the Respondents by RIDEM on March 5, 2009.

**B. STIPULATED FACTS:**

- (1) WHEREAS, the subject property is located at 77 Highland Avenue in the City of East Providence, Rhode Island (the "Property"). The Property includes a commercial facility (the "Facility").
- (2) WHEREAS, John J. Gregory, Jr. is the owner of the Property.
- (3) WHEREAS, J. J. Gregory & Son Inc. is the operator of the Facility.
- (4) WHEREAS, Respondents are the owners and operators of underground storage tanks ("USTs" or "tanks") that are located on the Property, which tanks are used for storage of petroleum products and which are subject to the DEM *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials*, as amended (the "UST Regulations").
- (5) WHEREAS, the Facility is registered with DEM in accordance with Section 6.00 of the UST Regulations and is identified as UST Facility No. 01760.
- (6) WHEREAS, on March 5, 2009, RIDEM issued a NOV to the Respondents alleging certain violations of the UST Regulations.
- (7) WHEREAS, the Respondents requested an administrative hearing to contest the NOV.
- (8) WHEREAS, the Respondents have fully complied with the Order section of the NOV.

- (9) 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, 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.
- (10) WHEREAS, RIDEM finds that this Consent Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the R.I.G.L. § 42-17.1 et seq. and the UST Regulations.

**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 administrative order of the Director issued after a full hearing on the merits 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 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) CONDITIONS –

Penalty – Upon Respondents execution of this Consent Agreement, Respondents shall pay to RIDEM the sum of One Thousand Two Hundred Dollars (\$1,200.00) in administrative penalties.

- (a) Payment Schedule – Respondents total penalty, One Thousand Two Hundred Dollars (\$1,200.00) shall be paid as follows:
  - 1. Upon execution of this Agreement by the Respondents, Respondents shall pay to RIDEM the sum of Two Hundred Dollars (\$200.00).
  - 2. The remainder of the penalty, One Thousand Dollars (\$1000.00) shall be paid to RIDEM in (10) equal and consecutive monthly installments of One Hundred Dollars (\$100.00). The remaining payments shall be made starting on July 15, 2010 and continuing on the 15<sup>th</sup> of each and every consecutive month until the entire penalty is paid in full.
  - 3. 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 unpaid balance at the rate of 12 percent 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 payment(s) 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 (entire amount of unpaid balance)

- (b) Penalties that the Respondents agree to pay in this Consent Agreement are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (c) All penalty payments shall be in the form of a certified check, payable to the *R.I. General Treasurer –Water and Air Protection Program Account*. All payments shall be delivered, along with a copy of this Agreement to:

Chief, RIDEM Office of Compliance and Inspection  
235 Promenade Street  
Providence, RI 02908

- (d) All penalty payments shall be in the form of a certified check, payable to the *R.I. General Treasurer –Water and Air Protection Program Account*. All payments shall be delivered, along with a copy of this Agreement to:

Chief, RIDEM Office of Compliance and Inspection  
235 Promenade Street  
Providence, RI 02908

**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 March 5, 2009.
- (2) 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.
- (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 § 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.

(4) FUTURE ACTIVITIES AND UNKNOWN CONDITIONS – This Agreement shall not operate to shield the Respondents 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 the Respondents*

John J. Gregory, Jr.

\_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_ In \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_ 2010, before me personally appeared \_\_\_\_\_ (*signing party's name*), to me known and known by me to be the party executing the foregoing Consent Agreement on behalf of Aisha Tassaraw Inc. and he/she acknowledged said instrument executed by him/her to be his/her free act and deed.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

J. J. Gregory & Son Inc.

\_\_\_\_\_  
Date: \_\_\_\_\_

In \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_ 2010, before me personally appeared \_\_\_\_\_ (*signing party's name*), to me known and known by me to be the party executing the foregoing Consent Agreement on behalf of Aisha Tassawar Inc. and he/she acknowledged said instrument executed by him/her to be his/her free act and deed.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

For the Department of Environmental Management

\_\_\_\_\_  
David E. Chopy, Chief  
Office of Compliance and Inspection

Date: \_\_\_\_\_