

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

OFFICE OF COMPLIANCE AND INSPECTION

IN RE: Kisco LLC

**File Nos.: UST 2010-00914
and AIR 11-20**

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 MADJOE LLC ("MADJOE"). 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 administrative enforcement actions set forth in a Notice of Violation ("NOV") issued to KISCO LLC ("KISCO") by RIDEM on 20 March 2011 and a second NOV issued to KISCO by RIDEM on 24 August 2011.

B. STIPULATED FACTS

- (1) WHEREAS, the subject property is located at 957 Broad Street, Assessor's Plat 2, Lot 21, in the city of Central Falls, Rhode Island (the "Property").
- (2) WHEREAS, the Property includes a gasoline station and five underground storage tank (the "USTs") (collectively, the "Facility"), which USTs are used for the storage of petroleum products and are subject to RIDEM's *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the "UST Regulations").
- (3) WHEREAS, on 20 March 2012, RIDEM issued a NOV to KISCO alleging certain violations of the RIDEM's Air Pollution Control Regulations (the "Air Regulations") at the Property associated with the Facility (the "AIR NOV").
- (4) WHEREAS, on 24 August 2011, RIDEM issued a NOV to KISCO alleging certain violations of the RIDEM's UST Regulations at the Property associated with the Facility (the "UST NOV").
- (5) WHEREAS, KISCO failed to request an administrative hearing to contest the AIR NOV or the UST NOV (collectively, the "NOVs").
- (6) WHEREAS, KISCO owned the Property and operated the Facility at the time of the issuance of the NOVs.

- (7) WHEREAS, on 1 August 2012 KISCO had its Certificate of Registration revoked by the Rhode Island Secretary of State.
- (8) WHEREAS, MADJOE currently owns the Property and operates the Facility.
- (9) WHEREAS, MADJOE closed UST No. 007 in compliance with the RIDEM's UST Regulations as evidenced by the issuance of a Closure Certificate by the RIDEM to MADJOE dated 16 December 2013.
- (10) WHEREAS, in lieu of proceeding to Superior Court to enforce the NOV's and to effect a timely and amicable resolution of the NOV's, RIDEM and Madjoe 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's.
- (11) WHEREAS, RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the RIDEM's Air Regulations and UST Regulations.

C. AGREEMENT

- (1) **JURISDICTION** – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over MADJOE.
- (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, MADJOE and its agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for Madjoe in the performance of work relating to or impacting the requirements of this Agreement.
- (4) **RECORDING OF AGREEMENT**– Within 10 days of the receipt of the fully executed Agreement from RIDEM, Madjoe shall record this Agreement with the city of Central Falls, Rhode Island and shall provide a copy of the recorded Agreement to RIDEM. The recording shall be at the sole expense of MADJOE.
- (5) **CONDITIONS** – MADJOE shall complete the following actions to comply with the Order sections of the NOV's:
 - (a) **Upon execution of this Agreement**, pay to RIDEM the sum of Four Thousand Three Hundred and Five Dollars (\$4,305.00) in UST registration and late fees. The payment shall be in the form of a certified check, cashiers check, or money order, payable to the **R.I. General Treasurer**. The payment shall be delivered to:

RIDEM - Office of Waste Management
235 Promenade Street, Suite 340

Providence, RI 02908-5767
Attention: UST Registration

- (b) **Within 30 days of execution of this Agreement**, seek approval from RIDEM's Office of Waste Management ("OWM") to place the USTs back into service. If approval is granted, within 90 days of MADJOE's receipt of approval, complete all requirements to ensure that UST Nos. 010, 011 and 012 are in compliance with the RIDEM's UST Regulations and that the vapor recovery system is in compliance with RIDEM's Air Regulations No. 11, entitled "Petroleum Liquids Marketing and Storage", prior to placing the USTs back into service. Respondent shall submit all documentation to RIDEM within 15 days of the completion of the above requirements.
 - (c) If MADJOE does not receive approval to place the USTs back into service, **within 60 days of notification of such**, file a permanent closure application for the removal of UST Nos. 010, 011 and 012 with OWM and, within 90 days of notification of such, permanently close the USTs in accordance with the RIDEM's UST Regulations.
 - (d) **Within 60 days of the execution of this Agreement**, abandon all the remaining groundwater wells on the Property in full compliance with Rule 8.19(E) of the RIDEM's UST Regulations and Section 8 of Appendix 1 of the RIDEM's *Rules and Regulations for Groundwater Quality*.
- (6) PENALTY – MADJOE shall pay to RIDEM the sum of Nine Thousand Nine Hundred and Forty One Dollars (\$9,941.00) in administrative penalties assessed as follows:
- (a) **Upon execution of this Agreement by MADJOE**, MADJOE shall pay to RIDEM the sum of One Thousand Nine Hundred and Forty One Dollars (\$1,941.00).
 - (b) The remainder of the penalty, Eight Thousand Dollars (\$8,000.00), shall be paid to RIDEM in equal and consecutive monthly installments of One Thousand Dollars (\$1,000.00). The remaining payments shall be made starting on 15 March 2014 and continuing on the fifteenth of each and every consecutive month until the entire penalty is paid in full.
 - (c) Penalties that MADJOE 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.
 - (d) In the event that MADJOE fails to remit to RIDEM a payment on or before its due date, that payment will be considered late and MADJOE will be in default. If the payment is not received within 30 days of its due date, interest shall begin to accrue on the entire 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 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.

- (e) 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, Suite 220
Providence, RI 02908-5767

- (7) RIGHT OF ACCESS – MADJOE provides 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. MADJOE 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. MADJOE 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, with regard to RIDEM and MADJOE, raised in the NOV's. Upon MADJOE's successful completion of the requirements set forth in this Agreement, RIDEM shall issue a Release and Discharge of the UST NOV and Agreement to MADJOE for recording. The recordings shall be at the sole expense of MADJOE.
- (2) FAILURE TO COMPLY – In the event that MADJOE fails to comply with the items specified in Section C (5)(b), (c) and (d) of the Agreement, MADJOE 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 MADJOE 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 MADJOE 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 MADJOE 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 Tyrrell
RIDEM Office of Compliance and Inspection
235 Promenade Street, Room 220
Providence, RI 02908-5767
(401) 222-1360 ext. 7407

Joseph LoBianco, Esq.
RIDEM Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767
(401) 222-6607

MADJOE, LLC
c/o Joseph Raheb, Esq., Registered Agent
650 George Washington Highway
Lincoln, Rhode Island 02865
(401) 333-3377

- (a) At any time prior to full compliance with the terms of this Agreement, MADJOE agrees to notify RIDEM in writing of any change in ownership of the Property, and provide the name and address of the new owner. 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 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 MADJOE, LLC

By: _____ (Print Name)

Its: _____ (Title)

Dated: _____

In my capacity as _____ of _____, I hereby aver that I am authorized to enter into this Agreement and thereby bind MADJOE, 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 _____, 2014, before me personally appeared _____, the _____ of MADJOE, LLC, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of MADJOE, LLC, and he/she acknowledged said instrument by him/her executed, to be his/her/ free act and deed in said capacity and the free act and deed of MADJOE, LLC.

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: _____