

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

**IN RE:** James J. Morris and  
The David J. and Theresa M. Morris  
Revocable Living Trust

FILE NO.: UST 2009-02994  
AAD No. 10-001/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 James J. Morris and The David J. and Theresa M. Morris Revocable Living Trust (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 Respondent by RIDEM on December 17, 2009.

**B. STIPULATED FACTS:**

- (1) WHEREAS, the subject property is located at 1054 (a/k/a 1050) Narragansett Boulevard in the City of Cranston, Rhode Island, otherwise identified as Cranston Tax Assessor's Plat 2/4, Lot 442 (the "Property"). The Property includes a service station (the "Facility").
- (2) WHEREAS, Respondent The David J. and Theresa M. Morris Revocable Living Trust is the owner of the Property.
- (3) WHEREAS, Respondent James J. Morris is the operator of the Facility.
- (4) WHEREAS, Respondents are the owner and operator of two 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 RIDEM *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. 02994.
- (6) WHEREAS, on December 17, 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, 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.
- (9) 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 –
  - (a) **Within Ninety (90) days of execution of this Agreement**, Respondents shall submit a permanent closure application to the DEM – Office of Waste Management and complete the removal of the subject UST’s in accordance with Section 13.00 of the UST Regulations.
  - (b) **Within thirty (30) days of the removal of the UST’s**, Respondents shall complete and submit to DEM a Closure Assessment in accordance with Section 13.11 of the UST Regulations, the UST Closure Assessment Guidelines and Section 13.00 of the Rhode Island Oil Pollution Control Regulations (1990).
  - (c) **Within thirty (30) days of the removal of the UST’s**, Respondents shall remove and properly dispose of any contaminated soil encountered during the tank closure and within ten (10) days of the soil disposal, submit documentation of disposal to DEM, in accordance with Section 13 of the Rhode Island Oil Pollution Control Regulations (1990).
  - (d) Based on the information in the Closure Assessment, DEM may require that a site investigation be conducted and that a Site Investigation Report (“SIR”) be submitted

in accordance with Rules 12.08, 12.09, and 12.10 of the UST Regulations and within a time frame specified by DEM. In the event that DEM requires a SIR, Respondents shall complete the SIR as ordered.

- (e) Based on the information in the SIR, DEM may require submittal of a Corrective Action Plan (“CAP”) within a time frame specified by DEM and in accordance with Rules 12.12 - 12.18 of the UST Regulations. The CAP must be implemented in accordance with any Order of Approval issued by DEM.
  - (f) Respondents and their agents, servants, employees, successors assigns and all persons, firms and corporations acting under, through and for the Respondents shall not open the UST Facility without written approval from the DEM’s Office of Waste Management.
- (5) PENALTY – Upon Respondents execution of the Consent Agreement, Respondents shall pay to RIDEM the sum of Six Thousand Three Hundred and Thirteen Dollars (\$6,313.00) in administrative penalties.
- (6) RECORDING OF AGREEMENT– Within ten (10) days of the receipt of the fully executed Agreement from RIDEM, the Respondent shall record this Agreement with the Office of Land Evidence Records for the City of Cranston, Rhode Island and shall provide a copy of the recorded Agreement to RIDEM.

***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 December 17, 2009. Upon Respondent’s successful completion of the requirements set forth in this Agreement, RIDEM shall, upon written request by Respondent, issue a Release and Discharge of the Agreement to Respondent.
- (2) FAILURE TO COMPLY – In the event that the Respondent fails to comply with items specified in Section C (4)(a) through (f) of the Agreement, the Respondent shall pay an administrative 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 paragraph shall not preclude RIDEM from seeking any other appropriate remedy (i.e., 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 § 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) 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 (15) days prior to the prescribed deadline.
- (7) 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 David J. and Theresa M. Morris Revocable Living Trust.

\_\_\_\_\_  
name and title of signing party  
Date: \_\_\_\_\_

James J. Morris

\_\_\_\_\_  
Name and title of signing party  
Date: \_\_\_\_\_

For the Department of Environmental Management

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