

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

In Re: Symmetry International, Inc.
Lance Industries, Inc.

FILE No.: 2010-66-HW
AAD No.: 13-001/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 Symmetry International, Inc. and Lance Industries, 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. Gen. Laws") for the purpose of resolving the administrative enforcement action set forth in a Notice of Violation ("NOV") issued to Respondents by RIDEM on October 26, 2011.

B. *STIPULATED FACTS*

- (1) WHEREAS, the subject property is located at 55 Industrial Circle in the town of Lincoln, Rhode Island (the "Property"). The Property includes a building that is used for the fabrication, design, manufacture, marketing and distribution of foam products (the "Facility").
- (2) WHEREAS, the Facility is operated by Symmetry International, Inc.
- (3) WHEREAS, the Respondents are registered with the RIDEM as a small quantity hazardous waste generator at the Facility pursuant to the RIDEM's *Rules and Regulations for Hazardous Waste Management* (the "Hazardous Waste Regulations") and pursuant to Title 40 of the Code of Federal Regulations ("40 CFR") under the name of "Lance Industries" with the U. S. Environmental Protection Agency identification number RIR000509075.
- (4) WHEREAS, on October 26, 2011, RIDEM issued a NOV to the Respondents alleging certain violations of the RIDEM's Hazardous Waste Regulations and 40 CFR.
- (5) WHEREAS, the Respondents requested an administrative hearing to contest the NOV.
- (6) WHEREAS, Respondents have complied with the Order section of the NOV.
- (7) 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

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.

- (8) WHEREAS, RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the RIDEM's Hazardous Waste Regulations and 40 CFR.

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 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 Respondents and its 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) PENALTY – Respondents shall pay to RIDEM the sum of **Eighteen Thousand Dollars (\$18,000.00)** in administrative penalties assessed as follows:
- (a) **Upon execution of this Agreement by the Respondents**, the Respondents shall pay to RIDEM the sum of **One Thousand Two Hundred Dollars (\$1,200.00)**.
 - (b) The remainder of the penalty, **Sixteen Thousand Eight Hundred Dollars (\$16,800.00)**, shall be paid to RIDEM in twenty-one equal and consecutive monthly installments of **Eight Hundred Dollars (\$800.00)**. The remaining payments shall be made starting on August 15, 2013 and continue on the 15th of each and every consecutive month until the entire penalty is paid. Respondents shall pay the entire penalty in full on or before April 15, 2015.
 - (c) Penalties that the Respondents agree 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 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 entire unpaid balance at the rate of twelve percent (12%) 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)

- (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 – Environmental Response Fund***. All payments shall be delivered to:

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

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) 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 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 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) SCOPE OF THE AGREEMENT – The scope of the Agreement is only violations alleged in the NOV.
- (6) 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

Richard M. Bianculli, Jr., Esquire
RIDEM Office of Legal Services
235 Promenade Street
Providence, RI 02908-5767
(401) 222-6607

Steven A. Lancia
Symmetry International, Inc.
55 Industrial Circle
Lincoln, RI 02865
(401) 365-6272

All communications regarding compliance with this Agreement shall be forwarded to the above-referenced addressees by certified mail.

- (7) 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.
- (8) AMENDMENT – The Agreement may be amended by mutual agreement of the parties in writing.
- (9) 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 Symmetry International Inc.

By: Steven A. Lancia
Its: President
Dated: _____

In my capacity as President of Symmetry International, Inc., I hereby aver that I am authorized to enter into this Agreement and thereby bind Symmetry International, Inc. 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 _____, 2013, before me personally appeared Steven A. Lancia, the President of Symmetry International, Inc., a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of Symmetry International, Inc., and he acknowledged said instrument by him executed, to be his free act and deed in said capacity and the free act and deed of Symmetry International, Inc.

Notary Public
My Commission Expires: _____

For Lance Industries Inc.

By: Steven A. Lancia
Its: President
Dated: _____

In my capacity as President of Lance Industries, Inc., I hereby aver that I am authorized to enter into this Agreement and thereby bind Lance Industries, Inc. 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 _____, 2013, before me personally appeared Steven A. Lancia, the President of Lance Industries, Inc., a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of Lance Industries, Inc., 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 Lance Industries, Inc.

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: _____