

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

IN RE: ASAD ALI, LLC

FILE NO.: UST 2018-25-00609

AAD No.: 18-007/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 Asad Ali, LLC ("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 alleged violations set forth in a Notice of Violation ("NOV") issued to Respondent by the RIDEM on July 12, 2018.

B. STIPULATED FACTS

- (1) WHEREAS, the property is located at 302 Broad Street, Assessor's Plat 3, Lot 137 in the Town of Cumberland, Rhode Island and includes a motor fuel filling station and underground storage tanks ("USTs" or "tanks") that are used for storage of petroleum products (the "Facility").
- (2) WHEREAS, Respondent owns the Facility.
- (3) WHEREAS, the Facility is registered with the DEM and is identified as UST Facility No. 00609.
- (3) WHEREAS, on July 12, 2018, the RIDEM issued a NOV to Respondent alleging certain violations of Rhode Island's *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the "UST Regulations").
- (4) WHEREAS, Respondent requested an administrative hearing to contest the NOV.
- (5) WHEREAS, Respondent complied with the Order section of the NOV.
- (6) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to affect a timely and amicable resolution of the NOV, the RIDEM and 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.

- (7) WHEREAS, the RIDEM finds that this Agreement is a reasonable and fair settlement of all claims against Respondent and adequately protects the public interest in accordance with the UST Regulations.

C. AGREEMENT

- (1) JURISDICTION – The RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over 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. and R.I. Gen. Laws Section 42-17.7-1 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)(vi).
- (3) APPLICATION – The provisions of this Agreement shall apply to and be binding upon the RIDEM, Respondent and its agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for Respondent in the performance of work relating to or impacting the requirements of this Agreement.
- (4) CONDITIONS – Penalty – Respondent shall pay to the RIDEM the sum of **\$10,000** in administrative penalties assessed as follows:
- (a) Upon execution of this Agreement by Respondent, Respondent shall pay to the RIDEM the sum of **\$ 1,000**.
 - (b) The remainder of the penalty, **\$9,000**, shall be paid to the RIDEM in 9 equal and consecutive monthly installments of \$1,000. The remaining payments shall be made starting on December 1, 2019 and continue to be paid on the first of every consecutive month until the entire amount shall be paid in full. The entire penalty shall be paid in full by August 1, 2020.
 - (c) Penalties that Respondent 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 Respondent fails to remit to the RIDEM a payment on or before its due date, that payment will be considered late and Respondent 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:

$$\text{Interest due} = (\text{number of days late}/365) \times (0.12) \times (\text{amount of unpaid balance})$$

This provision does not preclude the 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
Providence, RI 02908-5767

D. COMPLIANCE

- (1) EFFECT OF COMPLIANCE – Compliance with and fulfillment of this Agreement shall be deemed to resolve all issues, regarding the RIDEM and Respondent, raised in the NOV. Upon Respondent successful completion of the requirements set forth in this Agreement, the RIDEM shall issue a Release and Discharge of the NOV for recording. The recording shall be at the sole expense of Respondent.
- (2) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve Respondent of any obligation to comply with any other applicable laws or regulations administered by, through or for the 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, the RIDEM reserves the right to take additional enforcement actions as provided by statute 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 Respondent may have regarding any new enforcement action commenced by the RIDEM after the execution of this Agreement.
- (4) FUTURE ACTIVITIES AND UNKNOWN CONDITIONS – This Agreement shall not operate to shield Respondent 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 limited to 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

Tricia Quest, Esq.
Senior Legal Counsel
RIDEM Office of Legal Services
235 Promenade Street
Providence, RI 02908-5767
(401) 222-6607

Kevin F. Bowen, Esq.
Law Offices of Kevin F. Bowen
The Alpha Building, 395 Smith Street
Providence, RI 02908
(401) 831-1600

- (a) At any time prior to full compliance with the terms of this Agreement, Respondent agrees to notify the RIDEM in writing of any change in ownership of the Facility 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.
- (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 the RIDEM in writing at least 15 days prior to the prescribed deadline.
- (8) AMENDMENT – The Agreement may be amended by 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.

Asad Ali, LLC

By: _____
Print Name: _____ Title: _____

Dated: _____

In my capacity, as _____ of Asad Ali, LLC, I hereby aver that I am authorized to enter into this Agreement and thereby bind _____ 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 _____, 2019, before me personally appeared _____, the _____ of Asad Ali, LLC a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of Asad Ali, 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 _____.

Notary Public
My Commission Expires: _____

State of Rhode Island, Department of Environmental
Management

By: _____
David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In Providence, in said County and State, on this _____ day of _____, 2019, before me personally appeared David E. Chopy the Chief of the Office of Compliance and Inspection of the RIDEM, to me known and known by me to be the party executing the foregoing instrument for and on behalf of the RIDEM and he acknowledged said instrument by him executed to be his free act and deed, his free act and deed in his capacity as aforesaid, and the free act and deed of the RIDEM.

Notary Public
My Commission Expires: _____