

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

OFFICE OF COMPLIANCE AND INSPECTION

In Re: Cardi Corporation and
R.I. Department of Transportation

File No.: OC&I 2007-598-SR
AAD No.: 08-003/SRE

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 Cardi Corporation and the Rhode Island Department of Transportation (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 Cardi Corporation ("Cardi") and the Rhode Island Department of Transportation ("RIDOT") by RIDEM on June 13, 2008.

B. STIPULATED FACTS

- (1) WHEREAS, the property is located at 7 Rustic Hill Road in the town of Glocester, Rhode Island (the "Property").
- (2) WHEREAS, the Property is the site for a school and is owned by the town of Glocester.
- (3) WHEREAS, on June 13, 2008, RIDEM issued a NOV to the Respondents alleging certain violations of the Rhode Island Refuse Disposal Act and the RIDEM's *Rules and Regulations for the Investigation and Remediation of Hazardous Materials* (the "Remediation Regulations").
- (4) WHEREAS, the violations involve the alleged release of hazardous materials at the Property.
- (5) WHEREAS, prior to the issuance of the NOV, Cardi properly removed and disposed of the alleged hazardous materials brought to the Property at the Central Landfill in the town of Johnston, Rhode Island.
- (6) WHEREAS, the Respondents requested an administrative hearing to contest the NOV.

- (7) WHEREAS, at the close of the RIDEM's case in chief, the Respondents filed a Motion for Judgment as a Matter of Law on Partial Findings with the RIDEM's Administrative Adjudication Division (the "AAD").
- (8) WHEREAS, on November 8, 2012, the AAD hearing officer issued a Decision and Order denying the Respondents' Motion for Judgment as a Matter of Law on Partial Findings.
- (9) WHEREAS, the Respondents filed an appeal of the Decision and Order with the Superior Court.
- (10) WHEREAS, to satisfy in its entirety the administrative penalty assessed against the RIDOT in the NOV, the RIDOT completed a Supplemental Environmental Project ("SEP"). The SEP involved the clearing of vegetation at the Rocky Point property in the city of Warwick, Rhode Island ("Rocky Point") to accommodate emergency and public access (the "Rocky Point Public Access SEP"). The location of the Rocky Point Public Access SEP is shown on the plan that is attached hereto and incorporated herein as Attachment A. The RIDOT completed the Rocky Point Public Access SEP to the RIDEM's satisfaction and has been given a credit of \$20,000 for the Rocky Point Public Access SEP.
- (11) WHEREAS, Rocky Point includes a former solid waste landfill (the "Rocky Point Landfill"). The location of the Rocky Point Landfill is shown on the plan that is attached hereto and incorporated herein as Attachment B.
- (12) WHEREAS, 4 groundwater monitoring wells are located on and around the Rocky Point Landfill. The wells are shown on Attachment B and are identified as "GZ-1", "GZ-2", "GZ-3" and "GZ-4" (the "Groundwater Monitoring Wells").
- (13) WHEREAS, in lieu of litigating the case further in Superior Court or at the AAD and to effect a timely and amicable resolution of the NOV, the 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.
- (14) WHEREAS, the RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with Rhode Island's *Refuse Disposal Act* and the RIDEM's Remediation Regulations.

C. AGREEMENT

- (1) JURISDICTION – The 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 the RIDEM, the Respondents and their successors and assigns. The Respondents enter into this Agreement without admitting or denying the facts or allegations set forth herein.
- (4) PENALTY – To satisfy in its entirety the administrative penalty assessed against Cardi in the NOV, Cardi shall complete the closure of the Rocky Point Landfill (the "Rocky Point Landfill SEP"). Cardi shall be given a credit of \$100,000 for the Rocky Point Landfill SEP (the "Rocky Point Landfill SEP Credit"). The Rocky Point Landfill SEP is more specifically described below.
- (a) Cover all areas of the landfill with a soil thickness cap of not less than 2 feet of clean fill. The final layer of the cap shall include organic soil (loam) to support vegetative growth and control erosion and direct exposure risks.
 - (b) Analyze the cover material and certify that it meets the RIDEM's Residential Direct Exposure Criteria, as defined by the RIDEM's Remediation Regulations, for all constituents, and is suitable for the site.
 - (c) Re-grade portions of the landfill, as needed, to meet minimum drainage slope (that is, 3 % to 5 %) and maximum stable slope (that is, 3:1) requirements of Section 2.2.12 of the RIDEM's *Solid Waste Regulations* to control erosion, reduce infiltration and manage storm water drainage.
 - (d) Seed the re-graded landfill to establish an effective, stable vegetative cover.
 - (e) Properly mark the location of the Groundwater Monitoring Wells to minimize the likelihood of damage and repair any wells that are damaged so that the well functions as designed.
 - (f) Perform all work at the direction of the RIDEM and in an expeditious and professional manner.
 - (g) Obtain any necessary permits/assents from the Coastal Resources Management Council (the "CRMC") for the work. The RIDEM agrees to cooperate with Cardi to obtain the necessary signatures from the owner of the landfill that is/are necessary for any application to CRMC.
 - (h) Coordinate all work with the RIDEM in conjunction with all public events that will be held at Rocky Point.
 - (i) Maintain all equipment within the gated area of the Rocky Point Landfill.
 - (j) Within 60 days of execution of the Agreement, prepare a closure plan that includes the elements above and a schedule for completion of the work (collectively, the "Closure Plan") and submit the Closure Plan to the RIDEM for review and approval prior to implementation of the work. Upon review, the RIDEM shall provide written notification either granting formal approval or stating the deficiencies therein. Within 14 days (unless a longer time is

specified) of receiving a notification of deficiencies in the Closure Plan, Cardi shall submit to the RIDEM a modified plan or additional information necessary to address the deficiencies.

- (k) Unless affected by a “force majeure event” as that term is defined below, complete all work within 90 days of receipt of either written approval of the Closure Plan by the RIDEM or the necessary permits/assents from CRMC, whichever is later.
- (l) Within 90 days of completion of the work described in the Closure Plan, submit a report to the RIDEM detailing the activities. The report shall include any disposal documentation.
- (m) If Cardi fails to timely complete the Rocky Point Landfill SEP, the RIDEM shall notify Cardi that it intends to rescind the Rocky Point Landfill SEP Credit. Within 14 days of Cardi’s receipt of written notification by the RIDEM that the RIDEM intends to rescind the Rocky Point Landfill SEP Credit, Cardi shall either complete the SEP or demonstrate that good cause exists for the delay in completing the SEP. If Cardi fails to complete the SEP or does not demonstrate good cause for the delay within said 14 days, Cardi shall, within 10 days of the Cardi’s receipt of a written notification from the RIDEM, submit to the RIDEM a check in the amount of the Rocky Point Landfill SEP Credit after which Cardi shall be under no further obligation to complete the SEP. Notwithstanding anything herein to the contrary, Cardi reserves any rights it may have to appeal or defend any such order, claim, action, suit, cause of action, or demand, except that Cardi shall not challenge the validity, terms and binding nature of this Agreement. Cardi reserves whatever rights it may have to contest RIDEM’s determination that Cardi failed to comply with the Agreement.
- (n) Penalties that Cardi 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.
- (o) 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 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 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 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 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 the 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:

David E. Chopy, Chief
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360 ext. 7400

Mary Kay, Executive Counsel
RIDEM Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767

(401) 222-6607 ext. 2304

Annette Jacques, Esquire
RIDOT Office of Legal Counsel
Two Capitol Hill
Providence, RI 02903

(401) 222-6510

Robin L. Main, Esquire
Hinckley Allen Snyder LLP
50 Kennedy Plaza

Suite 1500
Providence, RI 02903-2319
(401) 274-2000

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

- (7) DEFERRAL – The RIDEM 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, if possible, prior to the prescribed deadline. In addition, the RIDEM agrees to extend the time for performance of any requirement of this Agreement if the RIDEM reasonably determines that such failure to perform is caused by a Force Majeure Event. The failure to perform a requirement of this Agreement shall be considered to have been caused by a Force Majeure Event if all of the following criteria are met: (1) an event delays performance of a requirement of this Agreement beyond the deadline established herein; (2) such event is beyond the control and without the fault of Cardi and Cardi's employees, agents, consultants, and contractors; and (3) such delay could not have been prevented, avoided or minimized by the exercise of due care by Cardi or Cardi's employees, agents, consultants, and contractors. If any Force Majeure Event occurs that delays or may delay the performance of any requirement of this Agreement, Cardi shall immediately, but in no event later than 5 days after obtaining knowledge of such event, notify the RIDEM in writing of such event. The notice shall describe in detail: (i) the reason for and the anticipated length of the delay or potential delay; (ii) the measures taken and to be taken to prevent, avoid, or minimize the delay or potential delay; and (iii) the timetable for taking such measures. Such notice shall also include the rationale for attributing such delay or potential delay to a Force Majeure event and shall include all available documentation supporting a claim of Force Majeure for the event. If the RIDEM determines that Cardi's failure to perform a requirement of this Agreement is caused by a Force Majeure Event, and Cardi otherwise complies with the notice provisions set forth above, the RIDEM agrees to extend in writing the time for performance of such requirement. The duration of this extension shall be equal to the period of time the failure to perform is caused by the Force Majeure Event. No penalties shall become due for Cardi's failure to perform a requirement of this Agreement during the extension of the time for performance resulting from a Force Majeure Event.
- (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 Cardi Corporation

By: _____ (Print Name)

Its: _____ (Title)

Dated: _____

In my capacity as _____ of Cardi Corporation, I hereby aver that I am authorized to enter into this Agreement and thereby bind Cardi Corporation 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 _____, 2015, before me personally appeared _____, the _____ of Cardi Corporation, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of Cardi Corporation, 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 Cardi Corporation.

Notary Public
My Commission Expires: _____

*For the State of Rhode Island Department of
Transportation*

By: _____ (Print Name)

Its: _____ (Title)

Dated: _____

*For the State of Rhode Island Department of
Environmental Management*

David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____