

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

OFFICE OF COMPLIANCE AND INSPECTION

In Re: Material Sampling Technologies, LLC

File No.: AIR-12-02

AAD No.: 13-001/ARE

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 Material Sampling Technologies, LLC (the "Respondent") and LKQ Precious Metals, Inc. 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 the Respondent by RIDEM on 26 December 2012.

B. STIPULATED FACTS

- (1) WHEREAS, the subject facility is located at 800 Central Street in the town of North Smithfield, Rhode Island (the "Facility").
- (2) WHEREAS, the Respondent operates the Facility.
- (3) WHEREAS, on 25 March 2011 the RIDEM issued Permit Approval No. 2125 to the Respondent to install and operate an incinerator at the Facility (the "Permit").
- (4) WHEREAS, the Permit sets an emission limit of particulate matter in the incinerator exhaust flue at 0.08 grains per dry standard cubic foot corrected to 12% CO₂ (the "Permit Emission Limit").
- (5) WHEREAS, on 7 June 2012, the Respondent was acquired by LKQ Precious Metals, Inc. ("LKQ").
- (6) WHEREAS, on 26 December 2012, RIDEM issued a NOV to the Respondent alleging certain violations of the RIDEM's *Air Pollution Control Regulations*.
- (7) WHEREAS, the Respondent requested an administrative hearing to contest the NOV.
- (8) WHEREAS, on 7 November 2013, the Respondent notified RIDEM that the Permit was transferred from the Respondent to LKQ on 7 June 2012.

- (9) WHEREAS, without admission of liability by Respondent and 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 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.
- (10) WHEREAS, RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with Rhode Island's Clean Air Act and the RIDEM's *Air Pollution Control Regulations*.

C. AGREEMENT

- (1) JURISDICTION – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over the 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. 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 Respondent and its agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for the Respondent in the performance of work relating to or impacting the requirements of this Agreement.
- (4) CONDITIONS – The Respondent and/or LKQ Precious Metals, Inc. shall complete the following actions to comply with the Order section of the NOV:
- (a) **Within one (1) year of the date of execution of this Agreement**, conduct compliance testing on the Penram Model C-700 starved air incinerator to demonstrate continued compliance with the particulate emission limit in the Permit during the processing of circuit board material and submit the results of the testing to the RIDEM.
 - (b) The Respondent shall provide the Office of Air Resources (“OAR”) at least 60 days prior notice of the compliance testing. The requirements contained in conditions D.1.c through D.1.g of the Permit shall apply to this compliance test.
 - (c) For purposes of the compliance testing described in paragraph C(4)(a) above, the Respondent shall comply with RIDEM's approved test protocol dated 18 April 2011 as supplemented by CK Environmental's 27 June 2012 revised testing strategy. Said approval and revised testing strategy are attached hereto and incorporated herein as Attachment A. The parties agree that the order of the two test runs required by the 27 June 2012 revised testing strategy will be reversed for purposes of compliance testing under this Agreement. Any changes to the approved test protocol or to the order of the two test runs approved by this Agreement must be submitted by the Respondent to the OAR to be approved prior to said compliance testing.

- (d) Should testing results conducted pursuant to this Agreement fail to demonstrate compliance with the particulate emission limit in the Permit during the processing of circuit board material, the Respondent shall immediately discontinue processing circuit board material. No processing of circuit board material shall commence until such time that compliance with the particulate emission limit in the Permit can be demonstrated to the RIDEM's satisfaction. Respondent shall not be cited for violation of the particulate emission limit in the Permit or this Consent Agreement or assessed any administrative penalties for particulate emissions associated with the processing of circuit board material prior to the compliance testing that is specifically based upon the results of said compliance testing.
- (e) Penalty – Respondent shall pay to RIDEM the sum of Two Thousand Dollars (\$2,000.00) in settlement of the assessed administrative penalties as follows:
 - (i) Upon execution of the Agreement by the Respondent, the Respondent shall pay to the RIDEM the sum of Two Thousand Dollars (\$2,000.00).
 - (ii) Amounts that the Respondent agrees to pay in this Agreement are amounts payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
 - (iii) All payments shall be in the form of a check 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 raised in the NOV.
- (2) FAILURE TO COMPLY – In the event that the Respondent fails to comply with the items specified in paragraph C(4)(a) through (e) of the Agreement, the Respondent shall pay a stipulated penalty of One Thousand Dollars (\$1,000.00) 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 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 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 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) 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:

Christopher John, Supervising Air Quality Specialist
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360

Marisa Desautel, Esquire
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-6607

Jennifer R. Cervenka, Esquire
Partridge Snow & Hahn LLP
40 Westminster Street
Providence, RI 02903
(401) 861-8228

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 (15) 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 Material Sampling Technologies, LLC

By: _____ (Print Name)

Its: _____ (Title)

Dated: _____

In my capacity as _____ of Material Sampling Technologies, LLC I hereby aver that I am authorized to enter into this Agreement and thereby bind Material Sampling Technologies, 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 _____, 2013, before me personally appeared _____, the _____ of Material Sampling Technologies, LLC, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of Material Sampling Technologies, LLC, 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 Material Sampling Technologies, LLC.

Notary Public
My Commission Expires: _____

IN WITNESS WHEREOF, the undersigned consent to this Agreement in substance and in form.

For LKQ Precious Metals, Inc.

By: _____ (Print Name)

Its: _____ (Title)

Dated: _____

In my capacity as _____ of LKQ Precious Metals, Inc., I hereby aver that I am authorized to enter into this Agreement and thereby bind LKQ Precious Metals, 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 _____, the _____ of LKQ Precious Metals, Inc., a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of LKQ Precious Metals, 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 LKQ Precious Metals, 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: _____

ATTACHMENT A