

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

IN RE: *Charles C. Potter*
Providence Petroleum, Inc. and Charles C. Potter

File Nos.: UST 2014-1-02296
and OPC 05-01

AAD No.: 15-001/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 Charles C. Potter ("Potter"). 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 issued by the RIDEM to Potter on 3 December 2014 and a Notice of Violation issued by the RIDEM to Potter and Providence Petroleum, Inc. on 8 March 2005.

B. STIPULATED FACTS

- (1) WHEREAS, the property is located at 1304 Eddy Street, Assessor's Plat 87, Lot 1 in Providence (the "Property"). The Property includes a former gasoline service station (the "Facility").
- (2) WHEREAS, Potter owns the Property.
- (3) WHEREAS, Potter and Providence Petroleum, Inc. operated the Facility.
- (4) WHEREAS, underground storage tanks ("USTs" or "tanks") are located on the Property, which tanks were used for storage of petroleum products and which are subject to the RIDEM's *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the "UST Regulations").
- (5) WHEREAS, the Facility is registered with the RIDEM in accordance with the RIDEM's UST Regulations and is identified as UST Facility No. 02996.
- (6) WHEREAS, the Facility is currently not in operation.
- (7) WHEREAS, on 8 March 2005, the RIDEM issued a Notice of Violation to Providence Petroleum, Inc. and Potter alleging certain violations of the RIDEM's UST Regulations at the Facility (the "2005 NOV").

- (8) WHEREAS, neither Providence Petroleum, Inc. nor Potter requested an administrative hearing to contest the 2005 NOV and did not comply with the 2005 NOV.
- (9) WHEREAS, on 3 December 2014, the RIDEM issued a Notice of Violation to Potter alleging certain violations of the RIDEM's UST Regulations at the Facility (the "2014 NOV").
- (10) WHEREAS, Potter requested an administrative hearing on the 2014 NOV.
- (11) WHEREAS, Potter provided documents to the RIDEM to demonstrate that he has no financial ability to pay any portion of the administrative penalties assessed in the 2005 NOV or the 2014 NOV.
- (12) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the 2014 NOV and to Superior Court to enforce the 2005 NOV and to effect a timely and amicable resolution of the 2005 NOV and the 2014 NOV, the RIDEM and Potter hereby agree that it is in the best interest of the parties and in the public interest to resolve the issues raised in the 2005 NOV and the 2014 NOV.
- (13) WHEREAS, the RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the RIDEM's UST Regulations.

C. AGREEMENT

- (1) JURISDICTION – The RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over Potter.
- (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)(vi).
- (3) APPLICATION – The provisions of this Agreement shall apply to and be binding upon the RIDEM, Potter and his agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for Potter in the performance of work relating to or impacting the requirements of this Agreement.
- (4) RECORDING OF AGREEMENT– Within 10 days of the receipt of the fully executed Agreement from the RIDEM, Potter shall record this Agreement with the City of Providence and shall provide a copy of the recorded Agreement to the RIDEM. The recording shall be at the sole expense of Potter.

(5) CONDITIONS –

- (a) Potter shall have 6 months from the execution of this Agreement to sell the Property.
- (b) If the Property is sold within the 6 months referenced in Section C(5)(a) of this Agreement, the buyer of the Property (the “Buyer”) will have 1 year from the date of the closing to complete one of the following:
 - (i) Submit a permanent closure application for the USTs to the RIDEM and complete the removal of the USTs in full compliance with Rule 13.00 of the RIDEM's UST Regulations and Sections C(5)(d) through (g) of the Agreement.

OR

- (ii) Comply with all of the requirements prescribed by the RIDEM in accordance with the RIDEM's UST Regulations to reopen the Facility as evidenced by the issuance of a letter from the RIDEM certifying that the Facility is in compliance with the RIDEM's UST Regulations (the “Certification Letter”). These requirements include, but are not limited to, the following:
 - 1. Removal of all existing USTs and their product pipelines with prior written notification to and approval by the RIDEM;
 - 2. Installation of a new replacement UST system with prior written notification to and approval by the RIDEM;
 - 3. Assignment of a new ICC-certified Class A and a new Class B UST Facility operator; and
 - 4. Payment of the UST registration fees.

The Buyer shall NOT reopen the Facility until the RIDEM issues the Certification Letter.

- (c) If the Property is not sold within the 6 months referenced in Section C(5)(a) of this Agreement, Potter shall within 1 year from the expiration of the aforesaid 6 months submit a permanent closure application to the RIDEM for the USTs and complete the removal of the USTs in full compliance with Rule 13.00 of the RIDEM's UST Regulations.
- (d) Within 30 days of the removal of the USTs, a Closure Assessment shall be completed and submitted to the RIDEM in accordance with Rule 13.11 of the RIDEM's UST Regulations, the UST Closure Assessment Guidelines, and Section 13.00 of the RIDEM's *Oil Pollution Control Regulations* (the “OPC Regulations”).

- (e) Within 30 days of the removal of the USTs, any contaminated soil encountered during the tank closure shall be removed and properly disposed. Within 10 days of the soil disposal, documentation of disposal shall be submitted to the RIDEM in accordance with Section 13.00 of the RIDEM's OPC Regulations.
 - (f) Based on the information in the Closure Assessment, the RIDEM 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 RIDEM's UST Regulations. If the RIDEM requires a SIR, the SIR shall be completed and submitted to the RIDEM within the time frame specified by the RIDEM.
 - (g) Based on the information in the SIR, the RIDEM may require submittal of a Corrective Action Plan ("CAP") in accordance with Rules 12.12 – 12.18 of the RIDEM's UST Regulations. If the RIDEM requires a CAP, the CAP must be completed and submitted to the RIDEM within the time frame specified by the RIDEM and must be implemented in accordance with an Order of Approval issued by the RIDEM.
 - (h) Penalty – The administrative penalties assessed in the 2005 NOV and the 2014 NOV are hereby waived.
- (6) RIGHT OF ACCESS – Potter provides to the RIDEM, its authorized officers, employees and representatives an irrevocable right of access to the Property at all reasonable times for the purpose of monitoring compliance with this Agreement. Potter shall ensure that assignees, successors in interest, lessees, sublessees, tenants in possession and/or occupants of the Property shall provide the same access and cooperation as long as they control the Property. Potter shall provide a copy of this Agreement to any current lessee, sublessee, tenant in possession and/or occupant of the Property as of the effective date of this Agreement. Any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property shall include this right of access provision and shall otherwise be consistent with the terms of this Agreement.

D. COMPLIANCE

- (1) EFFECT OF COMPLIANCE – Compliance with and fulfillment of this Agreement shall be deemed to resolve all issues raised in the 2005 NOV and the 2014 NOV. Upon the successful completion of the requirements set forth in this Agreement, the RIDEM shall issue a Release and Discharge of the 2005 NOV, the 2014 NOV and the Agreement to the owner of the Property for recording. The recordings shall be at the sole expense of the owner of the Property.
- (2) FAILURE TO COMPLY – In the event that the owner of the Property fails to comply with the items specified in Section C (5) of the Agreement, the owner of the Property shall pay a stipulated penalty of \$500 per month for each and every month during which the noncompliance continues, except that the RIDEM may, for good cause shown, defer or reduce such penalty. The payment of a penalty in accordance with

this section shall not preclude the 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 Potter of any obligation to comply with any other applicable laws or regulations administered by, through or for the 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, 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 Potter may have regarding any new enforcement action commenced by the RIDEM after the execution of this Agreement.
- (5) FUTURE ACTIVITIES AND UNKNOWN CONDITIONS – This Agreement shall not operate to shield Potter 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 2005 NOV and the 2014 NOV.
- (7) 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

Joseph J. LoBianco, Esquire
RIDEM Office of Legal Services
235 Promenade Street
Providence, RI 02908-5767
(401) 222-6607

Thomas Lynch, Esquire
122 Gray Street
Warwick, RI 02889
(401) 524-3070

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

- (8) 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 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.

Charles C. Potter

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2017, before me personally appeared Charles C. Potter to me known and known by me to be the party executing the foregoing instrument and he acknowledged said instrument and the execution thereof, to be his free act and deed.

 Notary Public
 My Commission Expires: _____

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

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

Dated: _____