

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

IN RE: Edward A. Johnson, Jr. and
Kevin F. Johnson
d/b/a Universal Plating Co., Inc

FILE NO.: OCI-HW-15-76
AAD No.: 16-006/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 Edward A. Johnson, Jr. and Kevin F. Johnson d/b/a Universal Plating Co., 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") to resolve alleged violations set forth in a Notice of Violation ("NOV") issued to Respondents by the RIDEM on 21 November 2016.

B. STIPULATED FACTS

- (1) WHEREAS, the property is located at 25 River Avenue in the City of Providence, Rhode Island (the "Property"). The Property includes a facility used for the application of metal coatings to jewelry products through an electroplating process (the "Facility").
- (2) WHEREAS, Respondents operate the Facility d/b/a Universal Plating Co., Inc.
- (3) WHEREAS, on 7 October 2005, the Rhode Island Secretary of State revoked the Certificate of Registration/Organization for Universal Plating Co., Inc. Edward A. Johnson, Jr. is the last known president of the corporation. Kevin F. Johnson is the last known vice president of the corporation.
- (4) WHEREAS, Universal Plating Co., Inc. is registered with the DEM as a small quantity hazardous waste generator ("SQG") at the Facility pursuant to the DEM'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 "Universal Plating Co Inc." with the U.S. Environmental Protection Agency identification number RID982748022.

- (5) WHEREAS, on 21 November 2016, the RIDEM issued a NOV to Respondents alleging certain violations of the RIDEM's Hazardous Waste Regulations and 40 CFR.
- (6) WHEREAS, Respondents requested an administrative hearing to contest the NOV.
- (7) WHEREAS, Respondents complied with the Order Section of the NOV.
- (8) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to effect a timely and amicable resolution of the NOV, the RIDEM and 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.
- (9) 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 Hazardous Waste Regulations and 40 CFR.

C. AGREEMENT

- (1) JURISDICTION – The RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over 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. 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, Respondents and their agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for Respondents in the performance of work relating to or impacting the requirements of this Agreement.
- (4) PENALTY – Respondents shall pay to the RIDEM the sum of **\$16,050** in administrative penalties assessed as follows:
 - (a) Upon execution of this Agreement by Respondents, Respondents shall pay to the RIDEM the sum of **\$4,050**.
 - (b) The remainder of the penalty, **\$12,000**, shall be paid to the RIDEM in equal and consecutive monthly installments of **\$1,000**. The remaining payments shall be made on the first of the month for every month beginning on 1 July 2018. Total payment of the penalty shall be on or before 1 July 2019.
 - (c) Penalties that Respondents 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) If Respondents fail to remit to the RIDEM a payment on or before its due date, that payment will be considered late and Respondents 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:

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 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 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 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 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 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 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

Joseph J. LoBianco, Esq.
RIDEM Office of Legal Services
235 Promenade Street
Providence, RI 02908-5767

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.

Edward A. Johnson, Jr.

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2018, before me personally appeared Edward A. Johnson, Jr. 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: _____

Kevin F. Johnson

Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2018, before me personally appeared Kevin F. Johnson 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.

State of Rhode Island, Department of Environmental
Management

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

Dated: _____