

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

IN RE: Town of West Warwick

File Nos.: UST 2010-03159 and
UST 2010-03294
AAD No.: 11-001/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 the Town of West Warwick (the "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 administrative enforcement action set forth in a Notice of Violation ("NOV") issued to the Respondent by RIDEM on December 31, 2010.

B. STIPULATED FACTS

- (1) WHEREAS, the subject properties are located at 1 Pontiac Avenue and 0 Main Street in the town of West Warwick, Rhode Island (the "Properties"). The Properties include a municipal wastewater treatment facility and a sewerage pumping station, respectively (the "Facilities").
- (2) WHEREAS, the Respondent owns the Properties.
- (3) WHEREAS, the Respondent operates the Facilities.
- (4) WHEREAS, the Respondent is the owner and operator of underground storage tanks ("USTs" or "tanks") that are located at the Facilities, which tanks are used for storage of petroleum products and which are subject to DEM's Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials, as amended (the "UST Regulations").
- (5) WHEREAS, the Facilities are registered with DEM in accordance with Section 6.00 of the UST Regulations and are identified as UST Facility Nos. 03159 and 03294.
- (6) WHEREAS, on December 31, 2010, RIDEM issued a NOV to the Respondent alleging certain violations of the UST Regulations.
- (7) WHEREAS, the Respondent requested an administrative hearing to contest the NOV.

- (8) WHEREAS, the Respondent complied with the Order section of the NOV.
- (9) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and in order 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 the UST 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 Respondents in the performance of work relating to or impacting the requirements of this Agreement.
- (4) **PENALTY** – Respondent shall pay to RIDEM the sum of **One Thousand One Hundred and Forty Dollars (\$1,140.00)** in administrative penalties assessed as follows:
- (a) Upon execution of this Consent Agreement by the Respondent, Respondent shall pay to RIDEM the sum of **One Thousand One Hundred and Forty Dollars (\$1,140.00)**.
- (b) Penalties that the 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.
- (c) The penalty payment 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) 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.
- (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, 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.
- (4) 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.
- (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:
 - (a) Tracey D’Amadio Tyrrell, Supervising Environmental Scientist, RIDEM Office of Compliance and Inspection, 235 Promenade Street, Providence, RI 02908-5767. Tel. (401) 222-1360, ext. 7407.
 - (b) James J. Geremia, P.E., President, James J. Geremia & Associates, Inc., 272 W. Exchange St., Suite 201. Providence, RI 02903. Tel. (401) 454-7000.
 - (c) Peter D. Eldridge, Superintendent, West Warwick Regional Wastewater Treatment Facility, 1 Pontiac Ave., West Warwick, RI 02893. Tel. (401) 822-9228.
- (7) 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 the Town of West Warwick:

By: _____ (Print Name)

Dated: _____

For the State of Rhode Island Department of
Environmental Management

David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____