

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

**In Re: Emory Chapman
The Indian River Company**

**File No.: OCI-HW-16-54
AAD No.: 22-002/WME**

CONSENT AGREEMENT

A. INTENT & PURPOSE

This Consent Agreement (“Agreement”) is entered by and between the Rhode Island Department of Environmental Management (“RIDEM”) and The Indian River Company (“IRC”). 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 (“NOV”) issued to IRC and Emory Chapman (“Chapman”) (collectively, “Respondents”) by RIDEM on 24 January 2022.

B. STIPULATED FACTS

- (1) WHEREAS the property is located at 41 Rocky Hollow Road, Assessor’s Plat 3, Lot 276 in East Greenwich, Rhode Island (“Property”). The Property formerly included a facility used as a motor vehicle repair service business (“Facility”).
- (2) WHEREAS IRC owns the Property.
- (3) WHEREAS Chapman formerly operated the Facility.
- (4) WHEREAS on 6 May 2016, RIDEM inspected the Property. The inspection revealed several instances of non-compliance with Rhode Island’s Oil Pollution Control Act (“OPC Act”) and *Oil Pollution Control Regulations* (“OPC Regulations”) including the failure to contain and clean-up a release of used oil.
- (5) WHEREAS on 24 January 2022, RIDEM issued an NOV to Respondents alleging certain violations of the OPC Act and OPC Regulations.
- (6) WHEREAS IRC denied that it is liable for the violations of the OPC Act and OPC Regulations set forth in the NOV, and requested an administrative hearing with the Administrative Adjudication Division (“AAD”) to contest the NOV.
- (7) WHEREAS after RIDEM issued the NOV, RIDEM learned that Chapman passed away prior to RIDEM’s issuance of the NOV.

- (8) WHEREAS IRC fully complied with the Order section of the NOV.
- (9) WHEREAS AAD is a division of RIDEM.
- (10) WHEREAS in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to affect a timely and amicable resolution of the NOV, RIDEM and IRC 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.
- (11) WHEREAS RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the OPC Act and OPC Regulations.
- (12) WHEREAS IRC, without admission of liability under the OPC Act and OPC Regulations, finds that this Agreement is reasonable and fair and enters into this Agreement with full knowledge and understanding of its terms.

C. AGREEMENT

- (1) RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over IRC.
- (2) 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) The provisions of this Agreement shall apply to and be binding upon RIDEM, IRC and its agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for IRC in the performance of work relating to or impacting the requirements of this Agreement.
- (4) IRC shall pay to RIDEM the sum of **\$6,250** in administrative penalties assessed as follows:
 - (a) **Upon execution of this Agreement by IRC**, IRC shall pay to RIDEM the sum of **\$2,250**.
 - (b) The remainder of the penalty, **\$4,000**, shall be paid to RIDEM in 2 equal installments of **\$2,000**. The remaining payments shall be made on the first day of April 2023 and June 2023. The entire penalty must be paid in full on or before 1 June 2023.

- (c) Penalties that IRC 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 IRC fails to remit to RIDEM a payment on or before its due date, that payment will be considered late, and IRC 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:

$$\text{Interest due} = (\text{number of days late}/365) \times (0.12) \times (\text{amount of unpaid balance})$$

- (e) Payments shall be by one of two methods:
 - (i) By certified check, cashier's check, or money order made payable to the **General Treasury – *Water and Air Protection Program*** and forwarded to:

Administrator, RIDEM Office of Compliance and Inspection
235 Promenade Street, Suite 220
Providence, RI 02908-5767
 - (ii) By wire transfer in accordance with instructions to be provided by RIDEM.

D. COMPLIANCE

- (1) Compliance with and fulfillment of this Agreement shall be deemed to resolve all issues raised in the NOV. Upon IRC's successful completion of the requirements set forth in C (4) of this Agreement, RIDEM shall issue a Release and Discharge of the NOV to IRC for recording. The recording shall be at the sole expense of IRC.
- (2) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve IRC 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 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 IRC 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 IRC 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
Supervising Environmental Scientist
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360 ext. 2777407
tracey.tyrrell@dem.ri.gov

Joseph J. LoBianco, Esquire
RIDEM Office of Legal Services
235 Promenade Street
Providence, RI 02908-5767
(401) 222-6607 ext. 2772302

Jennifer R. Cervenka, Esquire
Cervenka, Green and Ducharme, LLC
225 Dyer St., 2nd Floor
Providence, RI 02902
(401) 214-1022

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 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.

The Indian River Company

By: _____

Print Name: _____

Title: _____

Dated: _____

In my capacity, as _____ of The Indian River Company, I hereby aver that I am authorized to enter into this Agreement and thereby bind The Indian River Company 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 _____ 2023, before me personally appeared _____, the _____ of The Indian River Company, a Rhode Island company, to me known and known by me to be the party executing the foregoing instrument on behalf of The Indian River Company, and he/she/they acknowledged said instrument by him/her/them executed, to be his/her/their free act and deed in said capacity and the free act and deed of The Indian River Company.

Notary Public
My Commission Expires: _____

State of Rhode Island, Department of Environmental
Management

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

Dated: _____