

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

RE: ACN-Providence, LLC

**FILE NO.: 2008-2490 HW
AAD No.: 09-018/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 ACN-Providence, LLC (the "Respondent"). This Agreement is entered in accordance with Section 42-17.1-2 *et seq.* of the Rhode Island General Laws ("R.I.G.L.") for the purpose of resolving the administrative enforcement action set forth in a Notice of Violation ("NOV") issued to the Respondent by RIDEM on August 17, 2009.

B. STIPULATED FACTS

- (1) WHEREAS, the subject property is located at 455 George Washington Highway in the town of Smithfield, Rhode Island (the "Property"). The Property includes a commercial business engaged in industrial containers (the "Facility").
- (2) WHEREAS, the Property and Facility are owned by Respondent.
- (3) WHEREAS, the Respondent is registered with RIDEM pursuant to RIDEM's *Rules and Regulations for Hazardous Waste Management* (the "Hazardous Waste Regulations") under the name of "American Container Network-Providence LLC" as a large quantity hazardous waste generator with the EPA Identification Number RIR000504936.
- (4) WHEREAS, on August 17, 2009, RIDEM issued a NOV to the Respondent alleging certain violations of the Hazardous Waste Regulations.
- (5) WHEREAS, the Respondent timely requested an administrative hearing to contest the NOV.
- (6) WHEREAS, the Respondent has complied with the Order portion of the NOV.
- (7) 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.

- (8) WHEREAS, RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the Hazardous Waste 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 of the Director issued after a full hearing on the merits pursuant to the Administrative Procedures Act, R.I.G.L. § 42-35-1 et seq. from which no timely appeal was taken, and which is enforceable in Superior Court in accordance with R.I.G.L. § 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) PENALTY – Upon Respondent’s execution of this Consent Agreement, Respondent shall pay to RIDEM the total sum of Twenty-Five Thousand Dollars (\$25,000.00) in administrative penalties.
 - (a) Penalties that the Respondent agrees to pay in this Consent Agreement are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
 - (b) All penalty payments shall be in the form of a certified check, 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 dated August 17, 2009.
- (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.G.L. § 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) NOTICE AND COMMUNICATION - Communications regarding this Agreement shall be directed to:
 - (a) Tracey Tyrrell, Supervising Environmental Scientist, RIDEM Office of Compliance and Inspection, 235 Promenade Street, Providence, RI 02908-5767. Tel. (401) 222-1360, ext. 7407.
 - (b) Richard M. Bianculli, Jr., Esq., RIDEM Office of Legal Services, 235 Promenade Street, Providence, RI 02908- 5767. Tel. (401) 222-6607.
 - (c) Edward Desilets, Plant Manager, ACN-Providence, LLC, 455 George Washington Hwy, Smithfield, RI 02917. Tel. (401) 231-2100.
- (6) 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 ACN-Providence, LLC

Date: _____

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

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