

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

IN RE: AP ENTERPRISE, LLC

FILE NO.: OCI-SR-16-8

AAD No.: 18-01/SRE

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 AP Enterprise, LLC, ("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 alleged violations set forth in a Notice of Violation ("NOV") issued to Respondent by the RIDEM on 30 April 2018.

B. STIPULATED FACTS

- (1) WHEREAS, the properties are located on Walnut Street, Russell Avenue, Highland Avenue and Park Avenue, Assessor's Plat 20, Lots 1, 2 and 13 and Plat 25, Lot 2 in the Town of Portsmouth, Rhode Island (the "Property"). The Property is a former solid waste landfill (the "Landfill").
- (2) WHEREAS, Respondent owns the Property. Respondent acquired the Property on 27 June 2005.
- (3) WHEREAS, on 19 March 2010, the DEM received a Remedial Action Work Plan ("RAWP") for the Property. The RAWP included construction of a soil cap (the "Cap") for the Landfill.
- (4) WHEREAS, on 20 September 2010, the DEM issued an approval to Respondent for use of soils for the Cap, and on 28 September 2010, the DEM issued an approval to Respondent for the RAWP (collectively, the "Approvals").
- (5) WHEREAS, on 9 September 2014, the DEM renewed the Approvals. The renewal required completion of the Cap by 20 September 2016.
- (6) WHEREAS, on 21 September 2016, 31 May 2017 and 27 March 2018 the DEM inspected the Property. The inspections revealed that the Cap was not completed.

- (7) WHEREAS, on 30 April 2018, the RIDEM issued a NOV to Respondent alleging certain violations of *Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases* (the “Remediation Regulations”).
- (8) WHEREAS, Respondent denied the allegations and timely requested an administrative hearing to contest the NOV.
- (9) WHEREAS, RIDEM and the Respondent have engaged in multiple attempts to resolve the NOV since Respondent’s requested an administrative hearing in the Spring of 2018;
- (10) WHEREAS, Respondent submitted to the RIDEM on June 17, 2019 a written scheduling plan to resolve the Order section of the NOV (the “Plan”), which was updated on November 4, 2019 The Plan is attached hereto and incorporated herein as Attachment A.
- (11) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to affect a timely and amicable resolution of the NOV, the RIDEM and 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.
- (12) WHEREAS, the RIDEM finds that this Agreement is a reasonable and fair settlement of all claims against Respondent and adequately protects the public interest in accordance with Remediation Regulations.

C. AGREEMENT

- (1) JURISDICTION – The RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over 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. 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, Respondent and its agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for Respondent 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**, Respondent shall record this Agreement with the town of Portsmouth, RI and shall provide a copy of the recorded Agreement to the RIDEM. The recording shall be at the sole expense of Respondent.

(5) CONDITIONS –

- (a) Respondent shall complete the following actions to comply with the Order section of the NOV:
- (i) Respondent shall continue the Landfill Closure activities in accordance with the Plan. Respondent shall continue to bring in soils for the Landfill Closure at least quarterly for 9 consecutive quarters, starting at the beginning of Quarter 1 2020 (January 2020) and ending at the end of Quarter 1, 2022 (March 31, 2020) in an annual average amount of 2526 tons per quarter. Respondent shall notify RIDEM of any change in the amount or schedule outlined in Attachment A in writing within 60 days. Any amount or schedule change approved by RIDEM shall become enforceable as part of this Agreement and shall be adjusted accordingly in determining the quarterly averages as outlined in Attachment A.
 - (ii) Respondent shall continue to submit quarterly status reporting in the form set out in Attachment B, beginning on April 1, 2020, and for each consecutive quarter thereafter until capping work is complete.
 - (iii) Exempting post-closure reports and activities, Respondent shall complete all Landfill Closure activities in accordance with the **Remediation Regulations and any notifications by RIDEM by March 31, 2022.**
- (b) Penalty – Respondent shall pay to the RIDEM the sum of \$12,141 in administrative penalties assessed as follows:
- (i) Upon execution of this Agreement by Respondent(s), Respondent(s) shall pay to the RIDEM the sum of \$2,000.
 - (ii) The remainder of the penalty, \$10,141, shall be paid to the RIDEM, in seven equal and consecutive quarterly installments of \$1,267.62 and a final quarterly installment of \$1,267.66. The remaining payments shall be made starting on the first of April 2020 and continuing for every consecutive quarter until 1 January 2022. The total amount shall be paid by 1 January 2022. See Payment Schedule as set out in Attachment C.
 - (iii) Penalties that 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.
 - (iv) In the event that Respondent fails to remit to the RIDEM a payment on or before its due date, that payment will be considered late and Respondent 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)

This provision does not preclude the RIDEM from seeking additional penalties according to Section D for failure to comply with the remaining provisions of this Agreement.

- (v) 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

- (6) RIGHT OF ACCESS – Respondent provides to the RIDEM, its authorized officers, employees and representatives an irrevocable right of access to the Property at all reasonable times to monitor compliance with this Agreement. Respondent 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 if they control the Property. Respondent 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 issue raised in the NOV. Upon Respondent’s successful completion of the requirements set forth in this Agreement, the RIDEM shall issue an Interim Letter of Compliance, as well as a Release and Discharge of the NOV and Agreement to Respondent for recording. The recording shall be at the sole expense of Respondent.
- (2) FAILURE TO COMPLY – If Respondent fails to comply with items specified in Section C (5)(a) of the Agreement, Respondent 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 Respondent 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 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 Respondent 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 Respondent 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 limited to violations alleged in the 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

Susan B. Forcier
RIDEM Office of Legal Services
235 Promenade Street
Providence, RI 02908-5767
(401) 222-6607

Jennifer R. Cervenka
Cervenka Green & Ducharme. LLC
235 Promenade Street
Providence, RI 02908-5767
(401) 214-1022

- (a) At any time prior to full compliance with the terms of this Agreement, Respondent agrees to notify the RIDEM in writing of any change in ownership of the Property and provide the name and address of the new owner. Notice of any change in address/telephone/fax of either party shall be sent to all other parties by certified mail.
- (b) All communications regarding compliance with this Agreement shall be forwarded to the above-referenced addressees by certified mail, with the exception of quarterly reports, which may continue to be emailed by Respondent to RIDEM, and installment payments, which may be sent by Respondent to RIDEM via regular mail.

- (8) 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.
- (9) AMENDMENT – The Agreement may be amended by 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.

AP Enterprises, LLC

By: _____
Print Name: _____ Title: _____

Dated: _____

In my capacity, as _____ of _____, I hereby aver that I am authorized to enter into this Agreement and thereby bind _____ 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 _____, 2020, before me personally appeared _____, the _____ of _____, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of _____, and he/she acknowledged said instrument by him/her executed, to be his/her/ free act and deed in said capacity and the free act and deed of _____.

Notary Public
My Commission Expires: _____

State of Rhode Island, Department of Environmental
Management

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

Dated: _____