

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

IN RE: The Estate of Marjorie G. McGinnes	File Nos.: UST 10-00720, UST 09-00720,
Clifford R. McGinnes, Sr.	UST 05-00720, UST 03-00720,
Clifford R. McGinnes, Jr.	UST 93-00720, and
M & C Associates, LLC	UST 93-00721
Ballard's Service Center, Inc.	
Marjorie G. McGinnes	AAD File No.: 011-005/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 Estate of Marjorie G. McGinnes, Clifford R. McGinnes, Sr., Clifford R. McGinnes, Jr., M & C Associates, LLC, and Ballard's Service Center, 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") for the purpose of resolving the administrative enforcement actions set forth in Notices of Violation issued to the Respondents by RIDEM on September 22, 1993, December 5, 2003, December 28, 2005, February 19, 2009 and February 18, 2011.

B. STIPULATED FACTS

- (1) WHEREAS, the subject properties are located at 596 Corn Neck Road, Assessor's Plat 5, Lot 9 and Ocean Avenue, Assessor's Plat 6, Lot 35, both located in the town of New Shoreham (the "Properties").
- (2) WHEREAS, the Properties include a gasoline service station (the "Facilities").
- (3) WHEREAS, the Estate of Marjorie G. McGinnes owns the Properties.
- (4) WHEREAS, M & C Associates, LLC, Clifford R. McGinnes, Jr. d/b/a Ballards Service Center, and Clifford R. McGinnes, Sr. are the current or former operators of the Facilities.
- (5) WHEREAS, Respondents are/were the owners and operators of underground storage tanks ("USTs" or "tanks") that are located on the Properties, which tanks are used for the storage of petroleum products and which are subject to the RIDEM's Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials, as amended (the "UST Regulations").

- (6) WHEREAS, the Facilities are registered with RIDEM in accordance with Section 6.00 of the UST Regulations and are identified as UST Facility No. 00720 and UST Facility No. 00721.
- (7) WHEREAS, on September 22, 1993, December 5, 2003, December 28, 2005, February 19, 2009 and February 18, 2011, RIDEM issued a Notice of Violation to one or more of the Respondents alleging certain violations of the UST Regulations (collectively, the “NOVs”).
- (8) WHEREAS, the Respondents named in the Notice of Violation issued on February 18, 2011 (the “2011 NOV”) requested an administrative hearing to contest the 2011 NOV.
- (9) WHEREAS, the Respondents complied with the Order sections of the NOVs.
- (10) WHEREAS, the Respondents completed a supplemental environmental project to upgrade the tank instrumentation at the facility located on Corn Neck Road (the “SEP”). The cost to complete the SEP was Twenty Nine Thousand One Hundred Twenty Five Dollars (\$29,125.00).
- (11) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the 2011 NOV and in order to affect a timely and amicable resolution of the NOVs, RIDEM and the 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 NOVs.
- (12) WHEREAS, RIDEM finds that this Consent 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 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. 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 Respondents and their 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 – The Respondents shall pay to RIDEM the sum of **Ten Thousand Dollars (\$10,000.00)** in administrative penalties assessed as follows:

- (a) Upon Respondents’ execution of this Consent Agreement, the Respondents shall pay to RIDEM the sum of **Ten Thousand Dollars (\$10,000.00)** in administrative penalties.
- (b) Penalties that the Respondents agree 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.
- (c) All penalty payments shall be in the form of a certified check, cashiers check or money order, payable to the ***R.I. General Treasurer –Water and Air Protection Program Account***. All payments shall be delivered, along with a copy of this Agreement 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’s. RIDEM shall issue a Release and Discharge of the NOV’s that are recorded in the Office of Land Evidence Records to the Estate of Marjorie G. McGinnes for recording. The recordings shall be at the sole expense of the Estate of Marjorie G. McGinnes.
- (2) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve the Respondents 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 Respondents 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 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 only violations alleged in the NOV.s.

(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 The Estate of Marjorie G. McGinnes

Dated: _____

Clifford R. McGinnes, Sr.

Dated: _____

Clifford R. McGinnes, Jr.

Dated: _____

For M & C Associates, LLC.

Dated: _____

For the Department of Environmental Management

David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____