

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

IN RE: ASAD ALI, LLC
Desai, Inc.
Ahmed Choudhry

UST FILE NOs.: 2014-24-0535, 2013-77-0607,
2013-77-0607, and
2014-44-0609

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 Desai, Inc. ("Desai") and Ahmed Choudhry ("Choudhry") (collectively, 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 by the RIDEM to ASAD ALI, LLC ("ALI") and Desai on 15 April 2014 and to Choudhry on 24 June 2014 and 3 December 2014.

B. STIPULATED FACTS

- (1) WHEREAS, the facilities that are the subject of this Consent Agreement (collectively, the "Facilities") are as follows:
 - (a) Facility 00535 is located at 5300 Post Road, Assessor's Plat 5, Lot 96 in the town of Charlestown, Rhode Island and includes a former gasoline service station ("Facility 535").
 - (b) Facility 00607 is located at 1353 Park Avenue, Assessor's Plat 11/1, Lot 3559 in the city of Cranston, Rhode Island and includes a convenience store, a motor fuel filling station and underground storage tanks ("Facility 607").
 - (c) Facility 00609 is located at 302 Broad Street, Assessor's Plat 3, Lot 137 in the town of Cumberland, Rhode Island and includes a convenience store and a motor fuel filling station and 4 groundwater monitoring wells ("Facility 609").
- (2) WHEREAS, the Facilities 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").
- (3) WHEREAS, the Facilities are registered with the RIDEM in accordance with Section 6.00 of the RIDEM's UST Regulations and are identified as UST Facility Nos. 00535, 00607 and 00609.
- (4) WHEREAS, ALI owns the Facilities.

- (5) WHEREAS, on 14 May 2014, the Rhode Island Secretary of State revoked the *Certificate of Organization/Registration* for ALI.
- (6) WHEREAS, Choudhry is the last known president of ALI.
- (7) WHEREAS, Facility 607 and Facility 609 are in operation.
- (8) WHEREAS, Facility 535 is currently not in operation.
- (9) WHEREAS, Desai operates Facility 607.
- (10) WHEREAS, on 7 March 2013, the RIDEM received a site investigation report for Facility 535, which was prepared by Proulx Environmental, LLC (the "SIR"). The SIR revealed that 1 groundwater monitoring well had levels of ethylbenzene and toluene in the groundwater that exceeded the groundwater standards in the DEM's *Groundwater Quality Rules*.
- (11) WHEREAS, on 2 April 2013, the RIDEM issued a letter to Choudhry that required Choudhry to implement a quarterly groundwater monitoring program and submit quarterly analytical reports to the RIDEM for Facility 535 (the "Corrective Action Plan").
- (12) WHEREAS, on 15 April 2014, the RIDEM issued a Notice of Violation ("NOV") to ALI and Desai alleging certain violations of the RIDEM's UST Regulations at Facility 607 (the "April NOV").
- (13) WHEREAS, on 24 June 2014, the RIDEM issued a NOV to Choudhry alleging certain violations of the RIDEM's UST Regulations at Facility 535 (the "June NOV").
- (14) WHEREAS, on 3 December 2014, the RIDEM issued a NOV to Choudhry alleging certain violations of the RIDEM's UST Regulations at Facility 609 (the "December NOV").
- (15) WHEREAS, the Respondents did not request an administrative hearing to contest the April NOV, the June NOV, or the December NOV (collectively, the "NOVs").
- (16) WHEREAS, Choudhry complied with the Order section of the December NOV.
- (17) WHEREAS, Choudhry advised the RIDEM that he wants to place Facility 535 back into operation.
- (18) WHEREAS, in lieu of proceeding to Superior Court to enforce the NOVs and to effect a timely and amicable resolution of the NOVs, the 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.
- (19) WHEREAS, the RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the RIDEM's UST Regulations.

C. AGREEMENT

- (1) **JURISDICTION** – The 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 the 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) CONDITIONS –
- (a) **By 15 June 2015**, Choudhry shall complete the following actions at Facility 535 to allow the facility to be placed back into operation:
- (i) Replace all steel flexlines in accordance with the RIDEM's UST Regulations;
 - (ii) Pay to the RIDEM the sum of \$225 for the registration fees for the USTs. Payment shall be in the form of a certified check, cashier's check or money order, payable to the ***R.I. General Treasurer***. The payment shall be delivered to:
Sophia Kaczor, Office of Waste Management
235 Promenade Street, Suite 380
Providence, RI 02908-5767
 - (iii) Assign at least 1 trained and International Code Council (“ICC”) certified Class A UST facility operator and at least 1 trained and ICC certified Class B UST facility operator to the facility in accordance with Rule 8.22 of the RIDEM’s UST Regulations. Written verification of compliance shall be submitted to the DEM’s Office of Compliance and Inspection (“OC&I”) at 235 Promenade Street, Suite 220, Providence, RI 02908-5767;
 - (iv) Train all facility employees as (at least) Class C UST facility operators and compile a written list of Class C UST facility operators that have been trained and assigned to the facility, as per Rules 8.22 (A) and (D) of the RIDEM’s UST Regulations. Written verification of compliance shall be submitted to the OC&I;
 - (v) Complete a *Certified UST Facility Operators Registration Form* in accordance with Rule 8.22(A)(4) of the RIDEM’s UST Regulations and submit the form to the RIDEM – Office of Waste Management (“OWM”) at 235 Promenade Street, Suite 380, Providence, RI 02908-5767 along with copies of the Class A and Class B UST facility operators’ examination certificates. Copies of the form and certificates shall also be submitted to the OC&I; and
 - (vi) Commence quarterly groundwater monitoring evaluations in accordance with the Corrective Action Plan and submit the evaluations to the OWM at 235 Promenade Street, Suite 380, Providence, RI 02908-5767 until the groundwater is in compliance with the GA Groundwater Objectives in the DEM's *Groundwater Quality Rules* for 4 consecutive hydrogeological cycles.

(b) **By 15 June 2015**, Choudhry and Desai shall complete the following actions at Facility 607:

- (i) Submit to the OWM a completed registration form for the current owner;
- (ii) Pay to the RIDEM the sum of \$225 for the outstanding registration fees for the USTs. Payment shall be in the form of a certified check, cashier's check or money order, payable to the **R.I. General Treasurer**. The payment shall be delivered to:
Sophia Kaczor, Office of Waste Management
235 Promenade Street, Suite 380
Providence, RI 02908-5767

(iii) Submit completed Compliance Certification Forms in accordance with Rule 8.03 of the RIDEM's UST Regulations to the OC&I at 235 Promenade Street, Suite 220, Providence, RI 02908-5767.

(5) **PENALTY** – The Respondents shall pay to the RIDEM \$20,000 in administrative penalties as follows:

(a) **Upon execution of this Agreement by the Respondents**, the Respondents shall pay \$8,000 to the RIDEM.

(b) **By 1 December 2015**, the Respondents shall pay \$9,000 to the RIDEM.

(c) **By 1 June 2016**, the Respondents shall pay \$3,000 to the RIDEM.

(d) 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.

(e) In the event that the Respondents fail to remit to the RIDEM a payment on or before its due date, that payment will be considered late and the Respondents 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% 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:

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

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.

(f) All penalty payments shall be in the form of a certified check, cashier's 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. Upon the Respondents successful completion of the requirements set forth in this Agreement, the RIDEM shall issue a Release and Discharge of the NOV's to Choudhry for recording. The recordings shall be at the sole expense of Choudhry.
- (2) FAILURE TO COMPLY – In the event that the Respondents fail to comply with the items specified in Section C (4) of the Agreement, the Respondents shall pay the total amount assessed in the NOV's (\$30,270), less any amounts paid, and 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 the Respondents 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 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 the RIDEM after the execution of this Agreement.
- (5) 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.
- (6) SCOPE OF THE AGREEMENT – The scope of the Agreement is only violations alleged in the NOV's.
- (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

Mary Kay, Executive Counsel
RIDEM Office of Legal Services
235 Promenade Street
Providence, RI 02908-5767
(401) 222-6607

Kevin F. Bowen, Esquire
The Alpha Building
395 Smith Street
Providence, RI 02908
(401) 831-1600

All communications regarding compliance with this Agreement shall be forwarded to the above-referenced addressees by certified mail.

- (8) DEFERRAL – The RIDEM 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 mutual 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.

For Desai, Inc.

By: _____ (Print Name)

Its: _____ (Title)

Dated: _____

In my capacity as _____ of Desai, Inc., I hereby aver that I am authorized to enter into this Agreement and thereby bind Desai, Inc. 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 _____, 2015, before me personally appeared _____, the _____ of Desai, Inc., a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of Desai, Inc., 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 Desai, Inc.

Notary Public
My Commission Expires: _____

For Ahmed Choudhry

By:
Dated: _____

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2015, before me personally appeared _____ to me known and known by me to be the party executing the foregoing instrument and he/she acknowledged said instrument and the execution thereof, to be his/her free act and deed.

Notary Public
My Commission Expires: _____

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

David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____