

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

IN RE: Alan J. Pine

FILE No.: UST 2015-0893
and LUST No. 2609

CONSENT AGREEMENT

A. INTENT & PURPOSE

This Agreement is entered by and among the Rhode Island Department of Environmental Management ("RIDEM") Office of Compliance & Inspection, and Caldas Enterprises, LLC (referred to as "Caldas"). 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 action set forth in a Notice of Violation ("NOV") issued to Alan J. Pine ("Pine") by the RIDEM on 2 December 1994.

B. STIPULATED FACTS

- (1) WHEREAS, the property is located at 347-351 Broadway, Assessor's Plat 20, Lot 528, in the city of Pawtucket, Rhode Island (the "Property").
- (2) WHEREAS, Pine owned the Property at the time the NOV was issued.
- (3) WHEREAS, the Property included 6 underground storage tanks that were used for the storage of petroleum products (the "USTs").
- (4) WHEREAS, on 17 July 1991, the RIDEM observed the removal of the USTs and that a release of petroleum to the ground had occurred at the Property (the "Release").
- (6) WHEREAS, on 2 December 1994, the RIDEM issued a NOV to Pine alleging certain violations of Rhode Island's General Laws and the RIDEM's regulations regarding the Release.
- (7) WHEREAS, Pine did not request an administrative hearing to contest the NOV and did not comply with the NOV.
- (8) WHEREAS, Pine died on 28 February 2012.
- (9) WHEREAS, on or about 28 April 2015, the RIDEM received a Site Investigation Report dated April 2015 for the Property that was prepared by Sage Environmental, Inc. on behalf of Caldas (the "SIR").
- (10) WHEREAS, the SIR states that volatile organic compounds ("VOCs") are present in the groundwater at the Property.

- (11) WHEREAS, in lieu of proceeding to Superior Court to enforce the NOV and to effect a timely and amicable resolution of the NOV, the RIDEM and Caldas 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 and adequately protects the public interest in accordance with Rhode Island's General Laws and the RIDEM's regulations.

C. AGREEMENT

- (1) JURISDICTION – The RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over both Mr. Caldas and Caldas Enterprises, LLC.
- (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, Caldas and their agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for Caldas in the performance of work relating to or impacting the requirements of this Agreement.
- (4) RECORDING OF AGREEMENT AND RELEASE OF NOV – **Within 10 days of the receipt of the fully executed Agreement from the RIDEM**, Caldas shall record this Agreement with the city of Pawtucket, Rhode Island and shall provide a copy of the recorded Agreement to the RIDEM. Upon receipt of a copy of the recorded Agreement, the RIDEM shall issue a Release of the NOV to Caldas for recording. The recording shall be at the sole expense of Caldas.
- (5) CONDITIONS –
 - (a) Caldas shall complete the following actions to comply with the Order section of the NOV:
 - (i) **Beginning on 15 August 2015 and continuing until 15 August 2016**, conduct quarterly sampling of the groundwater for the VOCs identified in the SIR in each of the monitoring wells identified in the SIR.
 - (ii) **Within 30 days of each sampling event**, submit a written report to the RIDEM that includes the analytical results and recommendations, if any, for future monitoring, investigation or remedial work at the Property (the "Reports").

- (iii) The Reports shall be subject to the RIDEM's review. Following its review, the RIDEM may require the submission of additional information. **Within 30 days of the written receipt of a request for information (unless a longer period is specified by the RIDEM),** submit the required information to the RIDEM.
 - (iv) If the RIDEM determines that a Corrective Action Plan (“CAP”) is necessary, **within 60 days of written receipt of notification from the RIDEM,** submit a CAP in accordance with Rules 12.12 and 12.13 of the RIDEM’s *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials*.
 - (v) The CAP shall be subject to the RIDEM's review and approval. Within 30 days of written receipt of any deficiencies with the CAP (unless a longer period is specified by the RIDEM), submit a revised CAP to the RIDEM that fully addresses the deficiencies.
 - (vi) **Within 60 days of written receipt of the approval of the CAP from the RIDEM,** undertake the corrective action in accordance with approval.
- (b) Caldas shall pay to the RIDEM \$6,000 in administrative penalties assessed as follows:
- (i) **Upon execution of this Agreement by Caldas,** pay, in good and sufficient sums, to the RIDEM \$6,000 in administrative penalties.
 - (ii) Penalties that Caldas 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. 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.
 - (iii) 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 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 – Caldas shall provide to the RIDEM, its authorized officers, employees and representatives an irrevocable right of access to the Property at all reasonable times for the purpose of monitoring compliance with this Agreement. Caldas 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 as long as they control the Property. Caldas 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 issues raised in the NOV. Upon the successful completion of the requirements set forth in this Agreement, the RIDEM shall issue a Release and Discharge of the Agreement to Caldas for recording. The recording shall be at the sole expense of Caldas.
- (2) FAILURE TO COMPLY – In the event that Caldas fails to comply with items specified in Section C (5)(a) of the Agreement, Caldas 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 Caldas 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 RIDEM 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 Caldas 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 Caldas 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.

- (7) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

To RIDEM: Tracey D’Amadio Tyrrell
RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
P: (401) 222-1360 ext. 7407
F: (401) 222-3811
tracey.tyrrell@dem.ri.gov

with a copy to: Christina A. Hoefsmit, Esq.
RI DEM/Office of Legal Services
235 Promenade Street
Providence, RI 02908
P: (401) 222-4700 ext. 2023
F: (401) 222-3378
christina.hoefsmit@dem.ri.gov

To Caldas Enterprises, LLC Jeffrey F. Caffrey, Esq.
Summit West, Suite 300
300 Centerville Road
Warwick, RI 02886
P: (401) 738-4500
F: (401) 738-5892
jcaffrey@resnickandcaffrey.com

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.

Caldas Enterprises, LLC

By:

Its: _____

Dated: _____

STATE OF RHODE ISLAND COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2015, before me personally appeared Alberto Caldas, in his capacity as the member, of Caldas Enterprises, LLC to me known and known by me to be the party executing the foregoing instrument for and on the behalf of Caldas Enterprises, LLC and he acknowledged said instrument by him executed to be his free act and deed, his free act and deed in his capacity as aforesaid, and the free act and deed of said Caldas Enterprises, LLC.

Notary Public
My Commission Expires: _____

State of Rhode Island Department of Environmental Management

David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____