

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

**OFFICE OF COMPLIANCE AND INSPECTION**

In Re: Calise & Sons Bakery, Inc.

FILE No.: AIR 10-13  
AAD No. 10-008/ARE

**CONSENT AGREEMENT**

***A. INTENT & PURPOSE***

This Agreement is entered by and between the Rhode Island Department of Environmental Management (“RIDEM”) Office of Compliance & Inspection and Calise & Sons Bakery, Inc. (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 the Notice of Violation (“NOV”) issued to the Respondent by RIDEM on 10 September 2010.

***B. STIPULATED FACTS***

- (1) WHEREAS, the subject facility is located at 2 Quality Drive, Lincoln, Rhode Island (the “Facility”) and is operated by the Respondent.
- (2) WHEREAS, on 6 July 2010 the RIDEM Office of Air Resources (“OAR”) issued a permit to the Respondent for the installation of air pollution control equipment and operation of three (3) natural gas ovens installed at the Facility (“Approval Nos. 2105-2108”).
- (3) WHEREAS, Approval Nos. 2105-2108 require the Respondent to perform emissions testing of the catalytic oxidizer controlling emissions from its three ovens.
- (4) WHEREAS, on 10 September 2010, RIDEM issued a NOV to the Respondent alleging certain violations of RIDEM Air Pollution Control Regulation No. 9 entitled, “Air Pollution Control Permits”, Air Pollution Control Regulation No 14 entitled, “Record Keeping and Reporting”, and the Rhode Island Clean Air Act. The violations related to the installation and operation of the three (3) natural gas ovens without prior approval from OAR.
- (5) WHEREAS, the Respondent requested an administrative hearing to contest the NOV.
- (6) WHEREAS, the Respondent has submitted a permit application to OAR for the installation of a new fourth natural gas oven.

- (7) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and in order to affect 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 Rhode Island Clean Air Act, Chapter 23-23, R.I.G.L. § 42-17.1 and 42-17.6 et seq. and the RIDEM Air Pollution Control Regulations adopted in accordance thereto.

### **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) CONDITIONS –
- (a) Immediately upon execution of the Agreement by the parties and in consideration of the subject resolution, the Respondent is authorized to install and conduct pilot operations on the new fourth natural gas oven prior to obtaining a permit from OAR. The pilot operations do not allow the production of established products through established processes, except for standard testing of equipment. Under no circumstances shall the Respondent produce product for sale from the fourth natural gas oven until a permit is received from OAR.
  - (b) Within six months of execution of the Agreement, the Respondent shall complete catalytic oxidizer emissions testing for all four (4) natural gas ovens consistent with the requirements of Condition D(1) of Approval 2105-2108 and submit the results of the testing to OAR.
  - (c) Penalty – The Respondent shall pay to RIDEM the sum of Two Hundred Seventy Five Thousand Dollars (\$275,000.00) in administrative penalties.
  - (d) Penalty Schedule – The total administrative penalty, Two Hundred Seventy Five Thousand Dollars (\$275,000.00), shall be paid as follows:

1. The Respondent shall pay to the RIDEM the sum of One Hundred Thousand Dollars (\$100,000.00) upon Respondent's execution of this Consent Agreement.
2. The remainder of the penalty, One Hundred Seventy Five Thousand Dollars (\$175,000.00), shall be paid to RIDEM in three equal and consecutive installments of Fifty Thousand Dollars (\$50,000.00) on or before 1 April 2011, 1 July 2011, and 1 October 2011, and one installment of Twenty Five Thousand Dollars (\$25,000.00) on or before 1 December 2011.
3. 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.
4. In the event that the Respondent fails to remit to the RIDEM an installment payment on or before its due date, that payment will be considered late and the Respondent will be in default. If the payment is not received within thirty (30) days of its due date, interest shall begin to accrue on the unpaid balance at the rate of twelve percent (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 payment(s) and interest owed are remitted.

Interest shall be calculated using the following generally established accounting principle:

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

5. All penalty payments shall be in the form of a certified check, payable to the R.I. General Treasurer – Water and Air Protection Account. All payments shall be delivered, along with 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.
- (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:

Christopher John, Supervising Air Quality Specialist  
DEM Office of Compliance and Inspection  
235 Promenade Street  
Providence, RI 02908-5767  
(401) 222-1360 ext. 7023

- (a) At any time prior to full compliance with the terms of this Agreement, the Respondent agrees to notify RIDEM in writing of any change in ownership of the facility and/or site, and provide the name and address of the new owner(s). Notice of any change in address/telephone/fax of either party shall be sent to all other parties by certified mail.
- (b) Communications forwarded to the above-referenced address by certified mail shall be deemed received.
- (6) 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 RIDEM in writing at least fifteen (15) days prior to the prescribed deadline.
- (7) AMENDMENT – The Agreement may be amended by mutual agreement of the parties in writing.
- (8) 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 Calise & Sons Bakery, Inc.*

\_\_\_\_\_  
*Name and Title*

Date: \_\_\_\_\_

In \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me personally appeared \_\_\_\_\_ (signing party's name), to me known and known by me to be the party executing the foregoing Consent Agreement on behalf of Calise & Sons Bakery, Inc. and he/she acknowledged said instrument executed by him/her 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

Date: \_\_\_\_\_