

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

OFFICE OF COMPLIANCE AND INSPECTION

In Re: Cherenzia Excavation, Inc.

File No.: AIR 13-03

AAD No.: 13-005/ARE

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 Cherenzia Excavation, 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. Gen. Laws") for the purpose of resolving the administrative enforcement action set forth in a Notice of Violation ("NOV") issued to the Respondent by RIDEM on 18 July 2013.

B. STIPULATED FACTS

- (1) WHEREAS, the subject facilities are located at 64 Old Hopkinton Road and 109 White Rock Road in the town of Westerly, Rhode Island (the "Facilities").
- (2) WHEREAS, the Facilities are operated by the Respondent.
- (3) WHEREAS, on 18 July 2013, RIDEM issued a NOV to the Respondent alleging certain violations of Rhode Island's Clean Air Act and RIDEM's Air Pollution Control Regulations.
- (4) WHEREAS, the Respondent requested an administrative hearing to contest the NOV.
- (5) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to effect 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.
- (6) WHEREAS, RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with Rhode Island's Clean Air Act and the RIDEM's Air Pollution Control Regulations.

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 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 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) PENALTY – Respondent shall pay to RIDEM the sum of **Eight Thousand Six Hundred Forty Four Dollars (\$8,644.00)** in administrative penalties assessed as follows:
 - (a) **Upon execution of this Agreement by the Respondent**, the Respondent shall pay to RIDEM the sum of **One Thousand Six Hundred Forty Four Dollars (\$1,644.00)**.
 - (b) The remainder of the penalty, **Seven Thousand Dollars (\$7,000.00)**, shall be paid to RIDEM in fourteen equal and consecutive monthly installments of **Five Hundred Dollars (\$ 500.00)**. The remaining monthly payments shall be made on or before the first of the month commencing on 1 October 2013.
 - (c) Penalties that the 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.
 - (d) In the event that the Respondent fails to remit to RIDEM a 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 entire 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:

$$\text{Interest due} = (\text{number of days late}/365) \times (0.12) \times (\text{amount of unpaid balance})$$
 - (e) 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 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. 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 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) SCOPE OF THE AGREEMENT – The scope of the Agreement is only violations alleged in the NOV.
- (6) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

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

Joseph LoBianco, Esquire
RIDEM Office of Legal services
235 Promenade Street
Providence, RI 02908-5767
(401) 222-6607

Thomas Liguori, Esquire
Cherenzia Excavation, Inc.
P.O. Box 513
Westerly, RI 02891
(401) 596-2857

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

- (7) 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 days prior to the prescribed deadline.
- (8) AMENDMENT – The Agreement may be amended by mutual agreement of the parties in writing.
- (9) 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 Cherenzia Excavation, Inc.

By: _____ (Print Name)

Its: _____ (Title)

Dated: _____

In my capacity as _____ of Cherenzia Excavation, Inc., I hereby aver that I am authorized to enter into this Agreement and thereby bind Cherenzia Excavation, Inc. to satisfy any obligation imposed upon it pursuant to said Agreement.

STATE OF RHODE ISLAND
COUNTY OF _____

In said County and State, on this _____ day of _____, 2013, before me personally appeared _____, the _____ of Cherenzia Excavation, Inc., a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of Cherenzia Excavation, 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 Cherenzia Excavation, Inc.

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: _____