

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

IN RE: Cesar Costa and
Cesar Costa's Auto Service, Inc

FILE NO.: UST 2010-00674
AAD No.: 10-009/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 Cesar Costa and Cesar Costa's Auto Service, 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 action set forth in a Notice of Violation ("NOV") issued to Respondents by RIDEM on May 26, 2010.

B. STIPULATED FACTS

- (1) WHEREAS, the subject property is located at 635 Bullocks Point Avenue in the city of East Providence, Rhode Island (the "Property").
- (2) WHEREAS, the Property includes a service station and two underground storage tanks ("USTs" or "tanks"), which tanks are used for storage of petroleum products (the "Facility").
- (3) WHEREAS, Cesar Costa owns the Property.
- (4) WHEREAS, Cesar Costa's Auto Service, Inc. operates the Facility.
- (5) WHEREAS, the Facility is subject to RIDEM's Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials, as amended (the "UST Regulations").
- (6) WHEREAS, the Facility is registered with RIDEM in accordance with Section 6.00 of the UST Regulations and is identified as UST Facility No. 00674.
- (7) WHEREAS, on May 26, 2010, RIDEM issued a NOV to the Respondents alleging certain violations of the UST Regulations.
- (8) WHEREAS, the Respondents requested an administrative hearing to contest the NOV.
- (9) WHEREAS, the Respondents complied with the Order section of the NOV.

- (10) 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 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 NOV.
- (11) WHEREAS, RIDEM finds that this 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) CONDITIONS –
 - (a) **Penalty – Upon Respondents execution of the Consent Agreement,** Respondents shall pay to RIDEM the sum of One Thousand Five Hundred Dollars (\$1,500.00) in administrative penalties.
 - (b) Penalties that the respondents agree 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.
 - (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 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 in the NOV.
- (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.
- (6) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

Tracey D’Amadio Tyrrell, Supervising Environmental Scientist
RIDEM Office of Compliance and Inspection
235 Promenade Street, Providence, RI 02908-5767
Tel. (401) 222-1360, ext. 7407

Joseph J. LoBianco, Esq.
RIDEM Office of Legal Services
235 Promenade Street, Providence, RI 02908-5767
Tel. (401) 222-6607

William C. Maia, Esq.
349 Warren Avenue, East Providence, RI 02914
Tel (401) 438-8211

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

- (7) 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 Cesar Costa:

By: _____ (Print Name)

Its: _____ (Title)

Dated: _____

For Cesar Costa's Auto Service, Inc.:

By: _____ (Print Name)

Dated: _____

For the State of Rhode Island Department of
Environmental Management:

David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____