

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

In Re: Carmine Groccia

File Nos.: UST 02-02160 and
UST 05-02160

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 Carmine Groccia (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 actions set forth in Notices of Violation issued to the Respondent by RIDEM on August 28, 2002 and December 28, 2005 (the "NOVs").

B. STIPULATED FACTS

- (1) WHEREAS, the subject property is located at 247 Ashaway Road, Assessor's Plat 23, Lot 48 in the Town of Hopkinton, Rhode Island (the "Property").
- (2) WHEREAS, the Property includes a gasoline station and three underground tanks (the "tanks or USTs") for the storage of gasoline (the "Facility").
- (3) WHEREAS, the Facility is owned and operated by the Respondent and is registered with RIDEM pursuant to Section 8.00 of the RIDEM Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials (the "UST Regulations") as UST Facility No. 02160.
- (4) WHEREAS, on August 28, 2002 and December 28, 2005, RIDEM issued a Notice of Violation to the Respondent alleging certain violations of the UST Regulations.
- (5) WHEREAS, the Respondent failed to request an administrative hearing to contest the NOVs.
- (6) WHEREAS, the Respondent has provided RIDEM with documents showing that the Respondent complied with some of the ordered actions in the NOVs.

- (7) WHEREAS, in lieu of proceeding to Superior Court to enforce the NOV's and in order to effect a timely and amicable resolution of the NOV's, 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's.
- (8) WHEREAS, RIDEM finds that this Consent Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the R.I.G.L. § 46-12.1 et seq. and the UST 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 administrative 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 his 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) RECORDING OF AGREEMENT–Within ten (10) days of the receipt of the fully executed Agreement from RIDEM, the Respondent shall record this Agreement with the Office of Land Evidence Records for the Town of Hopkinton and shall provide a copy of the recorded Agreement to RIDEM. The recording of the Agreement shall be at the sole expense of the Respondent.
- (5) CONDITIONS – The Respondent agrees to complete the following **within sixty (60) days of execution of this Agreement**:
 - (a) Notify the DEM Office of Waste Management in writing that the tanks have been placed into temporary closure in accordance with Rule 13.03 of the UST Regulations.
 - (b) If the sacrificial anode cathodic protection for the tanks has not been tested within the last three years, procure the services of a qualified cathodic protection tester to perform a complete operational survey of the cathodic protection for the tanks in accordance with Rule 8.07 of the UST Regulations. A copy of the survey must be provided to RIDEM.
 - (c) Equip the tanks with continuous, electronic interstitial space monitoring consistent with the requirements of Rules 9.15 and 9.17 of the UST Regulations and submit documentation to RIDEM of compliance.

- (d) Perform inventory control in accordance with Rules 8.08(A)(2), 11.02(B)(4) and 11.03 of the UST Regulations when the tanks are returned to service and submit documentation to RIDEM of compliance.
 - (e) Submit written verification that the new continuous monitoring system is being tested on a monthly basis by the owner/operator to ensure that it is operating effectively in accordance with Rule 8.15 (E) of the UST Regulations.
 - (f) Submit the following documentation associated with the installation of replacement product piping:
 - 1) A completed UST registration form, equipment list addendum, and supplemental information;
 - 2) A *Certificate of Installation or Modification* of UST form signed by the installer and the owner;
 - 3) A completed *pipng manufacturer's installation checklist*;
 - 4) A *Certificate of Completion* from Total Containment, Inc. certifying that the piping installer has successfully completed the requirements necessary for becoming a "certified contractor" for the installation of Enviroflex underground piping systems; and
 - 5) A site plan that includes the tanks, piping layout, dispensers, buildings, street boundaries, location of private wells within 200 feet of the facility, and a north arrow.
 - (g) Install and operate leak monitors activated by water, the regulated substance, or its vapors in each of the piping collection sumps, in accordance with Rules 9.16 and 9.17 of the UST Regulations and submit documentation to RIDEM of compliance.
 - (h) Submit a letter and diagram to RIDEM for review and approval detailing a proposal for locating and installing three groundwater monitor wells and setting forth the inferred groundwater flow. Specifications for well construction are outlined in Appendix I of the RIDEM Rules and Regulations for Groundwater Quality. The screened portion of all wells must extend a minimum of five feet below the average dry season water table elevation. Installation of the monitor wells must be completed within 15 days of RIDEM approval and documentation must be submitted to RIDEM of compliance.
 - (i) Upon installation of the monitor wells, collect and laboratory analyze a groundwater sample from each well for methyl tertial butyl ether using EPA Method 8260 and submit a copy of the results of the sampling to RIDEM.
 - (j) Submit a completed UST Environmental Response Program Compliance Certification Checklist to RIDEM in accordance with Rule 8.03 of the UST Regulations.
- (6) PENALTY – Respondent shall pay to RIDEM the sum of Thirty-Eight Thousand Two Hundred and Eleven Dollars (\$38,211.00) in administrative penalties.

- (a) Upon execution of the Agreement by the Respondent, the Respondent shall pay to RIDEM the sum of Thirty-Eight Thousand Two Hundred and Eleven Dollars (\$38,211.00).
- (b) 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.
- (c) 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 to:

Chief, DEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908

- (7) RIGHT OF ACCESS – The Respondent provides to 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. The Respondent 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. The Respondent 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 NOVs dated August 28, 2002 and December 28, 2005. Upon Respondent’s successful completion of the requirements set forth in this Agreement, including penalty payments, RIDEM shall issue a Release and Discharge of the NOV issued on August 28, 2002 and the Consent Agreement to Respondent for recordation in the Office of Land Evidence Records for the Town of Hopkinton. The Respondent shall provide a copy of the recorded Releases to RIDEM within ten (10) days of recording. The recording of the Releases shall be at the sole expense of the Respondent.
- (2) FAILURE TO COMPLY –In the event that the Respondent fails to comply with items specified in Section C (5)(a) through (j) of the Agreement, Respondent shall pay a stipulated penalty of Five Hundred Dollars (\$500.00) per month for each and every month during which the noncompliance continues. The payment of a penalty in accordance with this paragraph shall not preclude RIDEM from seeking any other appropriate remedy (i.e., injunctive relief in Superior Court).

- (3) 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.
- (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, 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 § 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.
- (5) 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.
- (6) NOTICE AND COMMUNICATION - Communications regarding this Agreement shall be directed to:

Tracey Tyrrell, Supervising Environmental Scientist
RIDEM – Office of Compliance and Inspection
235 Promenade Street, Providence, RI 02908-5767

401.222.1360, ext. 7407

Carmine Groccia, Charlie’s Mobil
247 Ashaway Road, Hopkinton, RI 02833

401.377.4619

- (a) At any time prior to full compliance with the terms of this Agreement, Respondent agrees to notify RIDEM in writing of any change in ownership of the Property, 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.
- (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 (15) 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.

Carmine Groccia

Date: _____

In _____, on the ____ day of _____, 2010, before me personally appeared Carmine Groccia to me known and known by me to be the party executing the foregoing Consent Agreement on behalf of himself and he acknowledged said instrument executed by him to be his 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: _____