

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

**OFFICE OF COMPLIANCE AND INSPECTION**

In Re: Key Container Corporation

File No.: AIR-12-10

AAD No.: 12-008/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 Key Container Corporation (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 the RIDEM on 5 December 2012.

**B. STIPULATED FACTS**

- (1) WHEREAS, the subject facility is located at 21 Campbell Street in the city of Pawtucket, Rhode Island (the "Facility").
- (2) WHEREAS, the Respondent operates the Facility.
- (3) WHEREAS, on 5 December 2012, the 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, the Respondent has converted Boiler No.1 at the Facility to be fueled by natural gas.
- (6) WHEREAS, the Respondent submitted to the RIDEM on 28 February 2013 a proposal prepared by the Respondent's counsel to resolve the Order section of the NOV (the "Proposal") and included a Supplemental Environmental Project ("SEP").
- (7) WHEREAS, the signing of this Agreement is for settlement purposes only and does not constitute an admission by the Respondent that the law or regulations have been violated as alleged in the NOV.

- (8) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to effect a timely and amicable resolution of the NOV, the 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.
- (9) 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 Clean Air Act and the RIDEM's *Air Pollution Control Regulations*.

### **C. AGREEMENT**

- (1) JURISDICTION – The 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 the 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) Penalty – Respondent shall pay to the RIDEM the sum of Twelve Thousand Four Hundred Sixty Five Dollars (\$12,465.00) in administrative penalties assessed as follows:
    - (i) **Upon execution of this Agreement by the Respondent**, the Respondent shall pay to the RIDEM the sum of Two Thousand Four Hundred Sixty Five Dollars (\$ 2,465.00).
    - (ii) The remainder of the penalty, Ten Thousand Dollars (\$ 10,000.00), shall be paid to the RIDEM in the form of the SEP. The SEP involves the replacement of Boiler No. 2 at the Facility that is fueled with number 6 oil with a new boiler fueled by natural gas (“Boiler No. 2”). The SEP is attached hereto and incorporated herein as Attachment A.
    - (iii) The Respondent shall submit documentation of the SEP as follows:
      - (1) **Within fourteen (14) days of the execution of this Agreement**, the Respondent shall submit to the RIDEM a copy of the execution of the contract to replace Boiler No. 2 with a new boiler fueled by natural gas.

- (2) **Within sixty (60) days of the execution of this Agreement**, the Respondent shall submit to the RIDEM documentation related to the installation of the new boiler including an anticipated start-up date.
  - (3) **By 17 June 2013**, the Respondent shall submit to the RIDEM documentation of the completion of the SEP.
- (iv) The Respondent shall receive a credit of Ten Thousand Dollars (\$10,000.00) upon the completion of the SEP (the “SEP credit”).
- (v) If the Respondent fails to timely complete the SEP, the RIDEM shall notify the Respondent that it intends to rescind the SEP credit. Within fourteen (14) days of Respondent’s receipt of written notification by the RIDEM that the RIDEM intends to rescind the SEP credit, the Respondent shall either complete the SEP or demonstrate that good cause exists for the delay in completing the SEP. If the Respondent fails to complete the SEP or does not demonstrate good cause for the delay within said fourteen (14) days, the Respondent shall, within ten (10) days of the Respondent’s receipt of a written notification from the RIDEM, submit to the RIDEM a check in the amount of Ten Thousand Dollars (\$10,000.00) after which the Respondent shall be under no further obligation to complete the SEP.
- (vi) 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.
- (vii) All penalty payments shall be in the form of a check 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 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 the 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, 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 the Respondent may have regarding any new enforcement action commenced by the 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 Compliance and Inspection

235 Promenade Street

Providence, RI 02908-5767

(401) 222-6607

**Bret Jedele, Esquire**

Chace Ruttenberg & Freedman, LLP

One Park Row, Suite 300

Providence, RI 02903

(401) 453-6400

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

*For Key Container Corporation*

\_\_\_\_\_  
By: \_\_\_\_\_ (Print Name)

Its: \_\_\_\_\_ (Title)

Dated: \_\_\_\_\_

In my capacity as \_\_\_\_\_ of Key Container Corporation I hereby aver that I am authorized to enter into this Agreement and thereby bind Key Container Corporation to satisfy any obligation imposed upon it pursuant to said Agreement.

**STATE OF RHODE ISLAND**  
**COUNTY OF \_\_\_\_\_**

In \_\_\_\_\_, in said County and State, on this \_\_\_\_\_ day of \_\_\_\_\_, 2013, before me personally appeared \_\_\_\_\_, the \_\_\_\_\_ of Key Container Corporation, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of Key Container Corporation, 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 Key Container Corporation.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

*For the State of Rhode Island Department of  
Environmental Management*

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David E. Chopy, Chief  
Office of Compliance and Inspection

Dated: \_\_\_\_\_