

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

OFFICE OF COMPLIANCE AND INSPECTION

In Re: Level 3 Communications, LLC

**File No.: AIR 10-03
AAD No.: 10-003/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 Level 3 Communications, LLC (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 a Notice of Violation (“NOV”) issued to the Respondent by RIDEM on 17 February 2010.

B. STIPULATED FACTS

- (1) WHEREAS, the subject sites are located at 275 Promenade Street, Providence, Rhode Island and 375 Promenade Street, Providence, Rhode Island (the “Sites”) and are operated by the Respondent.
- (2) WHEREAS, on 17 February 2010, RIDEM issued a NOV to the Respondent alleging certain violations of RIDEM *Air Pollution Control Regulation No. 9 entitled, “Air Pollution Control Permits”* (“APC Regulation No. 9”) relating to the Sites.
- (3) WHEREAS, the Respondent requested an administrative hearing to contest the NOV.
- (4) WHEREAS, the Respondent demonstrated to the satisfaction of RIDEM that the provisions of APC Regulation No. 9 do not apply to the 275 Promenade Street, Providence, Rhode Island site.
- (5) WHEREAS, the Respondent has submitted a permit application for the 375 Promenade Street, Providence, Rhode Island site to comply with the Order section of the NOV.
- (6) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and in order 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.
- (7) 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 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) Penalty – The Respondent shall pay to RIDEM the sum of Two Thousand Twenty Two Dollars (\$2,022.00) in administrative penalties upon Respondent’s execution of this Consent Agreement.
 1. 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.
 2. The penalty payment 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) 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 Level 3 Communications, LLC

Date: _____

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

David E. Chopy, Chief
Office of Compliance and Inspection

Date: _____