

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

IN RE: Kevin Villeneuve

FILE NO.: OCI-HW-12-93

AAD No.: 13-004/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 Kevin Villeneuve (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 Respondent by RIDEM on April 4, 2013.

**B. STIPULATED FACTS**

- (1) WHEREAS, the subject property is located at 1452 Park Avenue in the city of Cranston, Rhode Island. The Property includes a business for automobile body repair (the "Facility").
- (2) WHEREAS, the Respondent owns the Property.
- (3) WHEREAS, Auto Restorations Unlimited, Inc. d/b/a Maaco Auto Painting & Body Works ("Maaco") operates the Facility.
- (4) WHEREAS, Maaco is registered with the RIDEM as a small quantity hazardous waste generator at the Facility pursuant to the RIDEM's *Rules and Regulations for Hazardous Waste Management* (the "Hazardous Waste Regulations") and pursuant to Title 40 of the Code of Federal Regulations ("40 CFR") under the name of "Maaco Auto Painting & Body Works" with the U. S. Environmental Protection Agency identification number RID037104288.
- (5) WHEREAS, on April 4, 2013, RIDEM issued a Notice of Violation (the "NOV") to the Respondent alleging certain violations of 40 CFR and the RIDEM's Hazardous Waste Regulations.

- (6) WHEREAS, the Respondent requested an administrative hearing to contest the NOV.
- (7) WHEREAS, the Respondent complied with sections D (1), (2) (3) (4) (5) (6) and (9) of the Order section of the NOV.
- (8) WHEREAS, on May 13, 2013 the RIDEM received a contingency plan that was submitted by the Respondent (the “Contingency Plan”).
- (9) 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.
- (10) WHEREAS, RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with 40 CFR and the RIDEM’s Hazardous Waste 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 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 city of Cranston, Rhode Island and shall provide a copy of the recorded Agreement to RIDEM. The recording shall be at the sole expense of the Respondent.
- (5) CONDITIONS –
  - (a) The Respondent shall complete the following actions to comply with the Order section of the NOV:
    - (i) **Within sixty (60) days of the execution of this Agreement**, revise the Contingency Plan as specified in the letter sent by RIDEM to Respondent dated May 20, 2013 and submit the revised Contingency Plan to the RIDEM.

A copy of the May 20, 2013 letter is attached hereto and incorporated herein as Attachment A.

- (ii) **Within ninety (90) days of the execution of this Agreement**, complete hazardous waste generator training for all employees that manage hazardous waste at the Facility, as specified in 40 CFR 265.16(a) and Section 5.2 of the RIDEM's Hazardous Waste Regulations.
- (b) Penalty – Respondent shall pay to RIDEM the sum of **Nine Thousand One Hundred Thirteen and Fifty One Hundreds Dollars (\$9,113.50)** in administrative penalties assessed as follows:
  - (i) Upon execution of this Agreement by the Respondent, the Respondent shall pay to RIDEM the sum of **One Thousand One Hundred Thirteen and Fifty One Hundreds Dollars (\$1,113.50)**.
  - (ii) The remainder of the penalty, **Eight Thousand Dollars (\$ 8,000.00)**, shall be paid to RIDEM in sixteen (16) equal and consecutive monthly installments of **Five Hundred Dollars (\$500.00)**. The remaining payments shall be made on the 15<sup>th</sup> of the month starting on August 15, 2013 and continuing for each and every consecutive month until the entire penalty is paid in full. All penalty payments must be made by December 15, 2014.
  - (iii) 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.
  - (iv) 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 payments and interest owed are remitted. Interest shall be calculated using the following generally established accounting principle:  
  
$$\text{Interest due} = (\text{number of days late}/365) \times (0.12) \times (\text{amount of unpaid balance})$$
  
  
This provision does not preclude RIDEM from seeking additional penalties according to Section D for failure to comply with the remaining provisions of this Agreement.
- (v) All penalty payments shall be in the form of a certified check, cashiers check, or money order, payable to the **R.I. General Treasurer – Environmental Response Fund 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. Upon the Respondent’s successful completion of the requirements set forth in this Agreement, RIDEM shall issue a Release and Discharge of the Agreement to the Respondent for recording. The recording shall be at the sole expense of the Respondent.
- (2) FAILURE TO COMPLY – In the event that the Respondent fails to comply with the items specified in Section C (4) (a) of the Agreement, the Respondent shall pay a stipulated penalty of Five Hundred Dollars (\$ 500.00) per month for each and every month during which the noncompliance continues, except that RIDEM may, for good cause shown, defer or reduce such penalty. The payment of a penalty in accordance with this section shall not preclude RIDEM from seeking any other appropriate remedy (e.g., 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 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.
- (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) SCOPE OF THE AGREEMENT – The scope of the Agreement is only violations alleged in the NOV.
- (7) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

Tracey D’Amadio Tyrrell  
RIDEM Office of Compliance and Inspection  
235 Promenade Street

Providence, RI 02908-5767

1360 ext. 7407

(401) 222-

Richard M. Bianculli Jr. Esq.

Office of Legal Services  
235 Promenade Street

RIDEM

Providence, RI 02908-5767

6607

(401) 222-

Kevin Villeneuve  
Painting and Body Works  
Avenue  
02920

Maaco  
1452 Park  
Cranston, Rhode Island  
(401) 943-1100

- (a) At any time prior to full compliance with the terms of this Agreement, the 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) All communications regarding compliance with this Agreement shall be forwarded to the above-referenced addressees by certified mail.
- (8) 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.
- (9) AMENDMENT – The Agreement may be amended by mutual agreement of the parties in writing.
- (10) 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 the Respondent*

\_\_\_\_\_  
Kevin Villeneuve

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

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

In \_\_\_\_\_, in said County and State, on this \_\_\_\_\_ day of \_\_\_\_\_, 2013, before me personally appeared Kevin Villeneuve to me known and known by me to be the party executing the foregoing instrument and he acknowledged said instrument and the execution thereof, 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

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