

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

OFFICE OF COMPLIANCE AND INSPECTION

In Re: Pawtucket Asphalt Corporation

File No.: AIR 10-16

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 Pawtucket Asphalt 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.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 26 August 2010.

B. STIPULATED FACTS

- (1) WHEREAS, the subject facility is located at 25 Concord Street in the city of Pawtucket, Rhode Island and is operated by the Respondent.
- (2) WHEREAS, on 4 December 2007 RIDEM issued Approval Nos. 2016 and 2017 (the “Permit”) to the Respondent. The Permit authorized the installation of an asphalt drum mix plant and dust collection system (the “equipment”).
- (3) WHEREAS, on 26 August 2010, RIDEM issued an NOV to the Respondent alleging certain violations of RIDEM Air Pollution Control Regulation No. 9 entitled “Air Pollution Control Permits”.
- (3) WHEREAS, the Respondent requested an administrative hearing to contest the NOV.
- (4) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and in order to affect 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.
- (5) 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.

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) On or before 25 February 2011, the Respondent shall conduct initial performance emission testing of the equipment to demonstrate compliance with the emission limitations for particulate matter, nitrogen oxide and carbon monoxide set forth in the Permit.
 - (b) Penalty – The Respondent shall pay to RIDEM the sum of Three Thousand Dollars (\$3,000.00) in administrative penalties.
 - (c) Penalty Schedule – The total administrative penalty, Three Thousand Dollars (\$3,000.00), shall be paid as follows:
 - (i) The Respondent shall pay to the RIDEM the sum of One Thousand Five Hundred Dollars (\$1,500.00) upon Respondent’s execution of this Consent Agreement.
 - (ii) The remainder of the penalty, One Thousand Five Hundred Dollars (\$1,500.00), shall be paid to RIDEM in three equal and consecutive installments of Five Hundred Dollars (\$500.00) on or before 1 January 2011, 1 February 2011, and 1 March 2011.
 - (iii) 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.
 - (iv) In the event that the Respondent fails to remit to the RIDEM an installment 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 days of its due date, interest shall begin to accrue on the unpaid balance at the rate of twelve percent 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 payment(s) and interest owed are remitted.

Interest shall be calculated using the following generally established accounting principle:

$$(\text{number of days late}/365) \times (0.12) \times (\text{entire balance of unpaid balance}) = \text{interest due}$$

- (v) 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) FAILURE TO COMPLY – In the event that the Respondent fails to comply with Section C(4)(a) of this 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 paragraph 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.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.
- (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:

Christopher John, Supervising Air Quality Specialist
DEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360 ext. 7023

- (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 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 Pawtucket Asphalt Corporation

By: _____ (Print Name)

Its: _____ (Title)

Date: _____

In my capacity as _____ of Pawtucket Asphalt Corporation, I hereby aver that I am authorized to enter into this Agreement and thereby bind Pawtucket Asphalt Corporation to satisfy any obligation imposed upon it pursuant to said Agreement.

In _____, on the _____ day of _____ 2010, before me personally appeared _____, to me known and known by me to be the party executing the foregoing Consent Agreement on behalf of Pawtucket Asphalt Corporation, and he/she acknowledged said instrument executed by him/her to be his/her 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: _____