

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

OFFICE OF COMPLIANCE AND INSPECTION

In Re: Rhode Island Recycled Metals, LLC
ACR Realty LLC

File Nos.: WP12-9 and WP10-049
AAD No.: 12-003/WRE

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"), Rhode Island Recycled Metals, LLC ("RIRM") and ACR Realty LLC ("ACR") (collectively, the "Respondents"). 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 Respondents by RIDEM on May 7, 2012.

B. STIPULATED FACTS

- (1) WHEREAS, the subject property is located at 434 Allens Avenue, Assessor's Plat 47, Lot 601 and 444 Allens Avenue, Assessor's Plat 55, Lot 10 in the city of Providence, Rhode Island (the "Property").
- (2) WHEREAS, the Property includes a business engaged in the recycling of metal (the "Facility").
- (3) WHEREAS, ACR owns the Property.
- (4) WHEREAS, RIRM operates the Facility.
- (5) WHEREAS, on September 14, 2011 the Respondents obtained authorization from the RIDEM for coverage under the Rhode Island Pollutant Discharge Elimination System 2006 Multi-Sector General Permit for Storm Water Discharge Associated with Industrial Activities on the Property (the "MSGP").
- (6) WHEREAS, on May 7, 2012 the RIDEM issued an NOV to the Respondents alleging certain violations of Rhode Island's *Water Pollution Act*, Chapter 46-12, the RIDEM's *Water Quality Regulations* and the RIDEM's *Regulations for the Rhode Island Pollutant Discharge Elimination* (the "RIPDES Regulations"). The violations involve failure to comply with the MSGP and unauthorized activities in the Providence River, including the dismantling of derelict vessels.

- (7) WHEREAS, the Respondents requested an administrative hearing to contest the NOV.
- (8) WHEREAS, the Respondents have taken the following short term actions to address some of the issues raised in the NOV (the “Short Term Mitigative Actions”):
- (a) Ceased receiving any additional derelict vessels for dismantling;
 - (b) Constructed a temporary dismantling/storage area that has a concrete base and canvas cover (the “Dismantling/Storage Area”);
 - (c) Perform removal of vehicle engines and fluids and storage of vehicle engines only in the Dismantling/Storage Area; and
 - (d) Crush vehicles using a crusher that is equipped with a fluid collection system that prevents any release of fluids to the ground.
- (9) WHEREAS, as of the date of this Agreement, the Respondents have four (4) derelict vessels in the Providence River, which are the sunken submarine *Juliet*, the sunken tug boat *Akron*, a ferry, and a barge (collectively, the “Derelict Vessels”).
- (10) WHEREAS, on September 4, 2012 the Respondents submitted to the RIDEM a Notice of Intent (“NOI”) and Storm Water Pollution Prevention Plan (“SWPPP”) for authorization of storm water discharges associated with industrial activity from the Property (the “Stormwater Industrial Activity Application”).
- (11) WHEREAS, on September 4, 2012 the Respondents submitted to the RIDEM a NOI, a SWPPP and associated engineering plans for authorization of storm water discharges associated with construction activity from the Property (the “Stormwater Construction Activity Application”).
- (12) WHEREAS, on December 5, 2012 the RIDEM issued a letter to the Respondents in response to the Stormwater Industrial Activity Application and the Stormwater Construction Activity Application (the “Comment Letter”).
- (13) WHEREAS, on January 10, 2013 the Respondents submitted to the RIDEM revised SWPPPs, engineering plans and design calculations in response to the Comment Letter.
- (14) WHEREAS, on May 2, 2013 the Respondents obtained an amended authorization from the RIDEM for coverage under the MSGP (the “Stormwater Discharge Approval”). The Stormwater Discharge Approval is attached hereto and incorporated herein as Attachment A.
- (15) WHEREAS, on May 3, 2013 the Respondents obtained authorization from the RIDEM for coverage under the 2008 General Permit for Construction Activity through the issuance of a Water Quality Certificate in accordance with Part I.C.2.a of the 2008 General Permit for Construction Activity (the “Water Quality Certificate”). The Water Quality Certificate is attached hereto and incorporated herein as Attachment B.

- (16) 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 Respondents 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.
- (17) 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 *Water Pollution Act*, Chapter 46-12, the RIDEM's *Water Quality Regulations* and the RIDEM's RIPDES Regulations.

C. **AGREEMENT**

- (1) **JURISDICTION** – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over the Respondents.
- (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 Respondents and its agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for the Respondents 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, RIRM shall record this Agreement with the city of Providence, Rhode Island and shall provide a copy of the recorded Agreement to RIDEM. The recording shall be at the sole expense of RIRM.
- (5) **CONDITIONS** –
- (a) The Respondents shall maintain the Short Term Mitigative Actions until such time that it has complied with Section C(5)(c) below.
 - (b) The Respondents shall comply at all times with the Water Quality Certificate and the 2008 General Permit for Construction Activity.
 - (c) **By September 30, 2014** the Respondents shall complete all work required under the Water Quality Certificate as evidenced by the submission of a letter from the Respondents to the RIDEM's Office of Compliance and Inspection certifying that all work is complete.
 - (d) Upon compliance with Section C(5)(c) above, the Respondent must at all times comply with the MSGP in effect at that time except as noted below:

- (i) Beginning on October 1, 2014 and continuing for one (1) year, in lieu of the monitoring frequency specified in the MSGP, the Respondents shall collect and analyze samples monthly rather than quarterly. For the metals and samples must be analyzed for both total and dissolved fractions.
- (ii) By January 15, 2016 the Respondents shall submit a report to the RIDEM's Office of Compliance and Inspection. The report shall include the following:
 - 1. The results of the monthly sampling performed pursuant to Section C(5)(d)(i) above and the average of all the monthly samples, including both the total and dissolved fractions for the metals. Pollutant concentrations reported as less than the minimum detection limit shall be replaced with zeros.
 - 2. A detailed review of all storm water controls, best management practices, and maintenance schedules contained in the SWPPP and reasonable amendments to reduce the pollutant levels, if the average concentration for any one pollutant exceeds its applicable benchmark concentration. The review must also include the submission of the compliance evaluation report required in the MSGP. If the review includes changes to structural controls, the report must include a schedule for the implementation of the proposed structural controls.
 - 3. The report shall be subject to RIDEM's review and approval. Upon review, the RIDEM shall provide written notification to either granting formal approval or stating the deficiencies therein. Within fourteen (14) days (unless a longer time is specified) of receiving a notification of deficiencies, the Respondents must submit to the RIDEM a modified report or additional information necessary to correct the deficiencies.
 - 4. Upon RIDEM's approval of the changes to structural controls, the Respondents shall complete the work in accordance with the approved schedule.
- (e) The Respondents shall complete removal of the Derelict Vessels as follows:
 - (i) Prior to commencing work on the sunken tug boat *Akron*, the Respondents shall install oil/petroleum containment boom surrounding all in water operations associated with the *Akron* removal.
 - (ii) During the work on the sunken tug boat *Akron* the Respondents shall maintain the containment boom and collect all oil/petroleum captured by the boom and dispose of the oil/petroleum in accordance with all applicable laws and regulations.
 - (iii) During work all ballast and bilge water must be contained so that there is no discharge of pollutants to the Providence River and properly disposed of in accordance with all applicable laws and regulations.

- (iv) **By November 1, 2013** the Respondents shall commence the removal of the Derelict Vessels.
 - (v) **By September 30, 2014** the Respondents shall complete the removal of the Derelict Vessels.
 - (vi) **By December 31, 2014** the Respondents shall restore the shoreline of the Providence River in the area that was regraded/filled to access the Derelict Vessels as shown on the 2012 aerial photograph, attached hereto and incorporated herein as Attachment C (the “Regraded/Filled Area”). The Respondents shall restore the shoreline of the Providence River in the Regraded/Filled Area to the condition that existed as shown on the 2009 aerial photograph, attached hereto and incorporated herein as Attachment D.
- (f) Penalty – Rhode Island Recycled Metals, LLC shall pay to RIDEM the sum of **Thirty Three Thousand Seven Hundred and Fifty Dollars (\$33,750.00)** in administrative penalties assessed as follows:
- (i) Upon execution of this Agreement by the Respondents, RIRM shall pay to RIDEM the sum of Five Thousand Dollars (\$5,000.00). The remaining cash penalty shall be paid in equal and consecutive monthly installments of Five Thousand Dollars (\$5,000.00). All payments are due by the first of each month, with the first payment due by July 31, 2013.
 - (ii) The remainder of the penalty shall be paid to RIDEM in the form of a Supplemental Environmental Project (“SEP”). The SEP involves the installation of a SEDA vehicle decommissioning system at an approximate cost of Seventy Eight Thousand Two Hundred Dollars (\$78,200.00). The SEDA vehicle decommissioning system shall be installed as part of the Construction Activity Approval at the expense of RIRM. RIRM shall be given a credit of Eight Thousand Seven Hundred and Fifty Dollars (\$8,750.00) for the SEP (the “SEP Credit”).
 - (iii) If the Respondents fail to timely complete the SEP, the RIDEM shall notify the Respondents that it intends to rescind the SEP Credit. Within fourteen (14) days of Respondents’ receipt of written notification by the RIDEM that the RIDEM intends to rescind the SEP Credit, the Respondents shall either complete the SEP or demonstrate that good cause exists for the delay in completing the SEP. If the Respondents fail to complete the SEP or do not demonstrate good cause for the delay within said fourteen (14) days, the RIRM shall, within ten (10) days of the RIRM receipt of a written notification from the RIDEM, submit to the RIDEM a check in the amount of Eight Thousand Seven Hundred and Fifty Dollars (\$8,750.00) after which the Respondents shall be under no further obligation to complete the SEP.
 - (iv) Penalties that the Respondents agree 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.

- (v) In the event that RIRM fails to remit to RIDEM a payment on or before its due date, that payment will be considered late and the Respondents will be in default. If the payment is not received within thirty days of its due date, interest shall begin to accrue on the entire 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 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.

- (vi) All penalty payments shall be in the form of a certified check, cashiers check, or money order, 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

- (6) **RIGHT OF ACCESS** – The Respondents provide 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 Respondents 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 Respondents 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 NOV. Upon the Respondents' successful completion of the requirements set forth in this Agreement, RIDEM shall issue a Release and Discharge of the NOV and the Agreement to ACR for recording. The recording shall be at the sole expense of ACR.
- (2) **FAILURE TO COMPLY** – In the event that the Respondents fail to comply with Section C (5)(a), C(5)(b), C(5)(c), C(5)(d) or C(5)(e) of the Agreement, the Respondents shall pay a stipulated penalty of Two Hundred and Fifty Dollars (\$250.00) per day for each and every day 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 Respondents 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 Respondents 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 Respondents 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 the violations alleged in the NOV.
- (7) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

David E. Chopy, Chief

RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360 ext. 7400

Susan Forcier, Esquire

RIDEM Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767
(401) 222-6607

Sean O. Coffey, Esquire

Burns & Levinson LLP
One Citizens Plaza, Suite 1100
Providence, RI 02903
(401) 831-8330

Edward J. Sciaba III, General Manager

Rhode Island Recycled Metals

434 Allens Avenue
Providence, RI 02903
(401) 461-9700

Joseph Raheb, Esq.
650 Washington Hwy.
Lincoln, RI 02865

- (a) At any time prior to full compliance with the terms of this Agreement, the Respondents agree 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 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 Rhode Island Recycled Metals, LLC

By: _____ (Print Name)

Its: _____ (Title)

Dated: _____

In my capacity as _____ of Rhode Island Recycled Metals, LLC, I hereby aver that I am authorized to enter into this Agreement and thereby bind Rhode Island Recycled Metals, LLC 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 Rhode Island Recycled Metals, LLC, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of Rhode Island Recycled Metals, LLC, 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 Rhode Island Recycled Metals, LLC.

Notary Public
My Commission Expires: _____

For ACR Realty LLC

By: Antonio C. Ramos
Its: Member

Dated: July 18, 2013

In my capacity as Member of ACR Realty, LLC, I hereby aver that I am authorized to enter into this Agreement and thereby bind ACR Realty, LLC to satisfy any obligation imposed upon it pursuant to said Agreement.

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

In Lincoln, in said County and State, on this 18th day of July, 2013, before me personally appeared Antonio C. Ramos, Member of ACR Realty, LLC, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of ACR Realty, LLC, 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 ACR Realty, LLC.

Joseph Raheb, Notary Public
My Commission Expires: 6-18-17

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

David E. Chopy, Chief
Office of Compliance and Inspection