

STATE OF RHODE ISLAND  
PROVIDENCE, SC

SUPERIOR COURT

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THE STATE OF RHODE ISLAND, BY AND THROUGH  
THE ATTORNEY GENERAL,  
PETER F. NERONHA, AND  
THE RHODE ISLAND DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT, BY AND  
THROUGH ITS DIRECTOR, JANET L. COIT

C.A. No.: PC20-

Plaintiffs,

v.

SMM NEW ENGLAND CORPORATION, d/b/a SIMS  
METAL MANAGEMENT,

Defendant.

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**CONSENT JUDGMENT**

WHEREAS, Plaintiff, the State of Rhode Island (“Rhode Island”), acting by and through its Attorney General, Peter F. Neronha, and the Rhode Island Department of Environmental Management (“RIDEM”), acting by and through its Director, Janet Coit (together referred to as, the “State”) filed this civil action in the Superior Court of the State of Rhode Island, Providence County, against SMM New England Corporation, d/b/a SIMS Metal Management, (“SMMNEC”) (referred to as, “Defendant”), alleging violations of the Rhode Island Clean Air Act (“RI CAA”) found in Rhode Island General Laws (“R.I.G.L.”) § 23-23-1, *et seq.*, and its implementing Air Pollution Control Regulations (“APCR”) codified at 250-RICR-120-05 *et seq.*, including APCR No. 1, *Visible Emissions*, APCR No. 5, *Fugitive Dust*, APCR No. 7, *Emission of Air Contaminants Detrimental to Person or Property*, APCR No. 9, *Air Pollution Control Permits*, and APCR No.

29, *Operating Permits*; the Environmental Rights Act, R.I.G.L. § 10-20-1, *et seq.*; and, the common law of public nuisance; allegations that Defendant expressly denies; and

WHEREAS, the Complaint alleges that the violations occurred at a metal shredding facility owned and operated by Defendant at 15-17 Green Earth Avenue, Johnston, Rhode Island, where Defendant accepts delivery of, stores, prepares and/or maintains scrap metal for off-site shipment or sale, and/or shreds end-of-life automobiles and end-of-life appliances and other light gauge recyclable metal-bearing materials using a metal shredder along with other stationary and mobile equipment. (the “Facility”); and

WHEREAS, the Complaint alleges that Defendant illegally commenced construction and is or was operating the metal shredder at the Facility in violation of the RI CAA through the APCRs, namely the requirements to secure a major source permit and a Title V operating permit, to limit emissions of Toxic Air Contaminants (“TAC”), and to control fugitive dust and visible emissions as specified in RI CAA § 23-23-1, *et seq.*, and APCR Nos. 1, 5, 7, 9, and 29, 250-RICR-120-05-0, *et seq.*, allegations that Defendant expressly denies; and

WHEREAS, the United States Environmental Protection Agency (“EPA”) issued to the Defendant a Notice of Violation (“NOV”) on February 16, 2018, alleging that Defendant illegally constructed and is operating the metal shredder at the Facility in violation of the CAA and the APCR approved as part of Rhode Island’s state implementation plan (“RI SIP”) requirements to apply for and operate in accordance with a major source permit and a Title V operating permit; and

WHEREAS, Rhode Island served Defendant on August 9, 2019, with a 60-Day Notice of Intent to File a Citizens Suit (“60-Day Notice”) for violations of the CAA, the RI SIP along with notice regarding violations of pendant state and common law claims.

WHEREAS, RIDEM issued Defendant on August 9, 2019 a Notice of Intent to Enforce (“RIDEM NOI”) for violations of APCR Nos. 1, 5, and 7; and

WHEREAS, the State and Defendant anticipate that the CAA claims alleged in the NOV will be addressed between EPA and Defendant in a separate Consent Agreement and Final Order with reference to this Consent Judgment;

WHEREAS, the State seeks injunctive relief and the assessment of penalties; and

WHEREAS, Defendant does not admit to any liability to the State arising out of the allegations contained herein or in the Complaint, and the State and Defendant enter into this Consent Judgment without Defendant admitting or denying any of the facts or factual or legal allegations set forth herein or in the Complaint, except as provided in Section II (Jurisdiction and Venue), and Defendant agrees, however, not to contest such facts and allegations for the sole purpose of the enforcement of this Consent Judgment; and

WHEREAS, at the time the State and Defendant enter into this Consent Judgment, Defendant is not conducting shredding operations at the Facility as a result of the pandemic conditions created by the novel coronavirus (COVID-19); and

WHEREAS, at the time this Consent Judgment is entered, Defendant is uncertain as to when or if shredding operations at the Facility will resume; and

WHEREAS, the State and Defendant agree that the settlement of this matter has been negotiated in good faith and at arm’s length, that implementation of this Consent Judgment will avoid prolonged, complicated and costly litigation between the State and Defendant, and that this Consent Judgment is consistent with the goals of the State laws and regulations set forth above, and is an appropriate means to resolve this case; and

NOW, THEREFORE, based on the Joint Motion of the State and Defendant for the entry of this Consent Judgment, and before taking any testimony and without the adjudication of any issue of fact or law except as provided in Section II (Jurisdiction and Venue), it is **ADJUDGED, ORDERED AND DECREED:**

### **I. DEFINITIONS**

1. Capitalized terms used herein shall have the following meanings (in alphabetical order):

- (a) “Attorney General” means the Attorney General of Rhode Island.
- (b) “Business Day” shall mean a Day other than a Saturday, Sunday, or a State or Federal holiday.
- (c) “Cash” means the portion of the Total Penalty Amount that is to be paid in dollars to the State.
- (d) “Covered Conduct” means any and all acts or omissions, including all communications, occurring up to and including the Effective Date of this Consent Judgment, relating to Defendant’s construction and operation of the Facility.
- (e) “Day” shall mean a calendar day.
- (f) “Dispute Resolution” means the informal and formal processes for resolving disputes set forth in Section X of this Consent Judgment.
- (g) “Effective Date” means the date on which this Consent Judgment has been signed by the parties and entered as an order by the Court.
- (h) “Environmental Claims” means claims the State asserted or could have asserted under State law, common law, or State rules and regulation prior to the Effective Date.
- (i) “EPA” means the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.
- (j) “Facility” means the property owned and operated by Defendant at 15-17 Green Earth Avenue, Johnston, Rhode Island, where Defendant accepts delivery of, stores, prepares and/or maintains scrap metal for off-site shipment or sale, and/or shreds end-of-life automobiles and end-of-life appliances and other light gauge recyclable metal-bearing materials using a metal shredder along with other stationary and mobile equipment. The Facility includes the Shredder.

- (k) “Force Majeure” is as defined in Paragraph 26 of Section IX (Force Majeure) of this Consent Judgment.
- (l) “Month” means a calendar month.
- (m) “Notice of Shredder Operation” means the Defendant’s option to resume Shredder operations at the Facility between the Effective Date and any date within twelve (12) Months of the effective date of the Permit issued by RIDEM, provided that a written notice of intent to resume operations of the Shredder is given to the State at least thirty (30) Days prior to the date that Shredder operations are resumed.
- (n) “Notice of Permanent Cessation” means Defendant’s notification to the State in writing between the Effective Date and any date within twelve (12) Months of the effective date of the Permit issued by RIDEM of its decision to permanently cease operations of the Shredder at the Facility.
- (o) “Paragraph” means a portion of this Consent Judgment identified by an Arabic numeral.
- (p) “Permit” means the minor source air permit to be issued by RIDEM to Defendant for the operation and maintenance of an air pollution control train for the Shredder that addresses particulate matter, volatile organic compounds (“VOCs”) and any applicable listed toxic air contaminants specified under ACPR No. 9.17, Appendix A: *Minimum Quantities and List of Federal Hazardous Air Pollutants*.
- (q) “PMIC” means the particulate matter interim control plan developed by Defendant and approved by RIDEM on August 7, 2020 and that is attached to this Consent Judgment as Exhibit A.
- (r) “Proposed Metal Shredder” means a metal shredder that shreds end-of-life automobiles and end-of-life appliances, scrap metal, and other light gauge recyclable metal-bearing materials with a maximum throughput capacity at or below one hundred and seventy-five (175) gross tons per hour, and which is proposed by Defendant to replace the Shredder at the Facility.
- (s) “SEPs” means those supplemental environmental projects Defendant is committed to fund in lieu of Cash penalty to the State, in accordance with Subparagraph 12(b) below.
- (t) “Shredder” means the 7,000 Horse Power (“HP”) metal shredder and metal shredding equipment used to shred end-of-life automobiles and end-of-life appliances and other light gauge recyclable metal-bearing materials, and installed at the Facility as of the Effective Date, or any metal shredder with a maximum

throughput capacity greater than one hundred and seventy-five (175) gross tons per hour, installed in place of the 7,000 HP shredder at the Facility after the Effective Date, and any and all ancillary, control or monitoring equipment related to any metal shredding operations at the Facility (the “Shredder”).

- (u) “Subparagraph” means a portion of this Consent Judgment identified by a lowercase letter.
- (v) “Suspended Penalty” means that portion of the Total Penalty Amount that will not be collected and will be ultimately waived, if, and when Defendant achieves specific milestones outlined in this Consent Judgment or provides a Notice of Permanent Cessation , or as otherwise provided for in Paragraph 21 and 22 or in this Consent Judgment, and subject to the limitations in Paragraph 12(c)(vii).
- (w) “Total Penalty Amount” means the Cash penalty plus the value of the SEPs plus the value of the Suspended Penalty.

## **II. JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter of this action pursuant to R.I.G.L. §§ 8-2-13, 10-20-3, and 23-23-10.

3. Defendant consents to this Court’s continuing subject matter and personal jurisdiction solely for the purposes of effective enforcement, and modification, of this Consent Judgment and without waiving its right to contest this Court’s jurisdiction in any other matters. This Court retains jurisdiction of this action for the purposes of enforcing or modifying the terms of this Consent Judgment or granting such further relief as the Court deems just and proper.

4. Defendant consents to venue in this Court solely for the purposes of enforcement and modification of this Consent Judgment and does not waive its right to contest this Court’s venue in any other matters.

5. Defendant hereby accepts and expressly waives any defect in connection with service of process in this action and further consent to service upon the below-named counsel via e-mail of all process in this action.

### III. PARTIES BOUND

6. The provisions of this Consent Judgment shall apply to and bind the State, and any person or entity acting by, for, or through the State, and shall apply to and bind Defendant, and any of its successors or assigns, and any other entities or persons otherwise bound by law.

7. Defendant shall provide a true copy of this Consent Judgment to all its managers, directors, officers, supervisors, employees, and agents whose duties include compliance with any provision of this Consent Judgment. Defendant shall also provide a copy of this Consent Judgment to any general contractor or contractor retained to perform work required under this Consent Judgment.

8. This Consent Judgment does not prohibit the sale or transfer of Defendant's ownership of the Facility or Shredder or assignment of the Facility or the Shredder. If Defendant proposes to sell or transfer the ownership of, or assign the Facility or the Shredder, and the Shredder will remain at the Facility under new ownership following the sale, transfer or assignment, then at least thirty (30) Days prior to such sale or transfer of ownership or assignment, Defendant shall provide a copy of this Consent Judgment to the proposed transferee/assignee and shall simultaneously provide a written notice of the prospective sale or transfer in ownership or assignment, together with a copy of the proposed written purchase and sale or assignment agreement, to the Attorney General and RIDEM. The State agrees that it will not publicly disclose such proposed agreement, notice of prospective sale or transfer, other documents evidencing such prospective sale or transfer, or the commercial terms of a prospective sale, transfer, or assignment unless required to do so by a court of competent jurisdiction; by the requirements of the Access to Public Records Act, R.I.G.L. § 38-2-1, *et seq.*; or as necessary to enforce the terms of this Consent Judgment (in each case after reasonable advance notice to the Defendant). No such sale, transfer, or assignment of the Facility or the Shredder shall take place before the proposed buyer, transferee,

or assignee, or the company with which they are affiliated, and the State have executed, and the Court has approved, a modification of this Consent Judgment removing Defendant and making the proposed buyer, transferee, or assignee where appropriate a party to this Consent Judgment. Any attempt to sell, transfer ownership or assign the Facility or the Shredder without complying with this Paragraph shall constitute a violation of this Consent Judgment. Assignments of a security interest in the Facility or the Shredder in the context of lending or other financings will not constitute assignments that are subject to this Paragraph.

9. Defendant shall not violate this Consent Judgment and shall not allow its officers, directors, agents, attorneys-in-fact, employees, successors, assigns, or contractors to violate this Consent Judgment. In any action to enforce this Consent Judgment, Defendant shall not raise as a defense the failure by any of its officers, directors, agents, attorneys-in-fact, employees, successors, or assigns or contractors to take any actions necessary to comply with the provisions of this Consent Judgment.

10. In addition to any relief specifically provided in this Consent Judgment, Defendant understands and agrees that violations of this Consent Judgment may be punishable by contempt.

#### **IV. DEFENDANT'S PAYMENT OF CIVIL PENALTIES**

11. Without admitting to any liability to the State arising out of the allegations contained herein or in the Complaint and without admitting any of the factual or legal allegations in the Complaint or herein, Defendant agrees to a Total Penalty Amount of Two Million Dollars (\$2,000,000.00), except as otherwise provided for herein with respect to that portion of the Total Penalty Amount, which is subject to being suspended and waived as provided below. The Total Penalty Amount consists of Cash payments to the State, an amount dedicated to one or more SEPs as provided for herein, and suspended components as provided for herein. Of the Total Penalty Amount, Defendant will pay a Cash penalty of Five Hundred and Fifty Thousand Dollars

(\$550,000.00) as agreed to by all the parties and payment of Three Hundred and Twenty-Five Thousand Dollars (\$325,000.00) as provided below to one or more SEPs. The remainder of the Total Penalty Amount will be suspended and waived as provided below. Payment of the Cash penalty and payment for the SEPs will be made in parts using the following allocations: (a) Cash penalty payment to the State in the amount of Five Hundred and Fifty Thousand Dollars (\$550,000.00) as directed below and in accordance with an agreed upon payment schedule; and (b) SEPs valued at Three Hundred and Twenty-Five Thousand Dollars (\$325,000.00), funded in accordance with the schedule below.

12. Payment/implementation schedules and instructions for making payments are as follows:

(a) Cash Penalty Payment to the State: Payments of the Cash portion of the penalty to the State will run from the Effective Date.

i. Within thirty (30) Days of the Effective Date: Defendant shall pay to the Rhode Island Attorney General, the sum of One Hundred Thousand Dollars (\$100,000.00) in the form of certified check or cashier's check. The check shall be made payable to the Rhode Island Attorney General and shall be delivered to:

Rhode Island Office of the Attorney General  
Attn: Tricia K. Jedele, Special Assistant Attorney General  
Environmental Advocacy Unit  
150 South Main Street  
Providence, RI 02903

ii. Within thirty (30) Days of the Effective Date: Defendant shall pay to RIDEM the sum of One Hundred and Twenty-Five Thousand Dollars (\$125,000.00) in the form of certified check or cashier's check. The check shall be made payable to the R.I. General Treasurer -Water and Air Protection Program and shall be delivered to:

Administrator, Office of Compliance and Inspection  
Rhode Island Department of Environmental Management  
235 Promenade Street  
Providence, RI 02908-5767  
Reference: SMM New England Corporation (Johnston, RI)

- iii. Within one hundred and eighty (180) Days of the Effective Date: Defendant shall pay to RIDEM the sum of One Hundred and Twenty-Five Thousand Dollars (\$125,000.00) in the form of certified check or cashier's check. The check shall be made payable to the R.I. General Treasurer -Water and Air Protection Program and shall be delivered to:

Administrator, Office of Compliance and Inspection  
Rhode Island Department of Environmental Management  
235 Promenade Street  
Providence, RI 02908-5767  
Reference: SMM New England Corporation (Johnston, RI)

- iv. Within five hundred and forty (540) Days of the Effective Date: Defendant shall pay to RIDEM the sum of Two Hundred Thousand Dollars (\$200,000.00). Payment shall be in the form of certified check or cashier's check. The check shall be made payable to the R.I. General Treasurer - Water and Air Protection Program and shall be delivered to:

Administrator, Office of Compliance and Inspection  
Rhode Island Department of Environmental Management  
235 Promenade Street  
Providence, RI 02908-5767  
Reference: SMM New England Corporation (Johnston, RI)

(b) SEPs:

- i. Within ten (10) Months of the Effective Date: Defendant will fund through a payment to a third party project partner approved by RIDEM and the Attorney General, or otherwise as mutually agreed, for a purpose consistent with and as generally described below, a SEP in the amount of One Hundred and Twenty-Five Thousand Dollars (\$125,000.00) for the benefit of the neighborhoods in the Port of Providence to implement proven green and natural solutions to offset air pollution (especially black carbon, VOCs and particulate matter ("PM")). Solutions to be funded will be a combination of installing natural infrastructure, buffers and tree planting. Location and type of green infrastructure, natural solutions, including trees, and any other projects designed to offset air pollution shall be proposed by Defendant at least ninety (90) Days prior to the date project funding is required and approved by RIDEM and the Attorney General at least twenty-one (21) Days before project funding is required, such approval not being unreasonably withheld, conditioned or delayed. Any and all projects shall be consistent with the goal of reducing impacts associated with air pollution in the Port of Providence.

- ii. Within twenty-four (24) Months of the Effective Date: Defendant will fund through a payment to a third party project partner, approved by RIDEM and the Attorney General, or otherwise as mutually agreed, for a purpose consistent with and as generally described below, a SEP in the amount of Two Hundred Thousand Dollars (\$200,000.00) to address air pollution within the Town of Johnston, Rhode Island. Solutions to be funded will be a combination of diesel emissions reduction technology/programs, anti-idling initiatives/incentives, and/or installing natural infrastructure/buffers/tree planting in the industrial corridor, and/or at or around school bus parking areas and/or area schools. Location of infrastructure and plantings, and type of programs and/or initiatives, and any other project designed to offset air pollution shall be proposed by Defendant at least ninety (90) Days prior to project funding is required and approved by RIDEM and the Attorney General at least twenty-one (21) Days before project funding is required, such approval not being unreasonably withheld, conditioned or delayed. Any and all projects shall be consistent with the goal of reducing impacts associated with air pollution in the Town of Johnston.
  
- iii. If a SEP described in either Subparagraph (b)(i) or (ii) of Paragraph 12 has not been funded by the respective deadline set forth therein, and if the respective compliance deadline for project funding has not been extended by mutual agreement of the State and Defendant, the value of the SEP shall be paid to the State as a Cash penalty payment within thirty (30) Days. In this case, Defendant shall pay to RIDEM the value of the SEP in the form of certified check or cashier's check. The check shall be made payable to the R.I. General Treasurer -Water and Air Protection Program and shall be delivered to:

Administrator, Office of Compliance and Inspection  
Rhode Island Department of Environmental Management  
235 Promenade Street  
Providence, RI 02908-5767  
Reference: SMM New England Corporation (Johnston, RI)

- (c) The Suspended Penalty: The balance of the Total Penalty Amount, One Million One Hundred and Twenty-Five Thousand Dollars (\$1,125,000.00) shall be suspended in increments as follows:
  - i. Three Hundred and Twenty-Five Thousand Dollars (\$325,000.00) of the Suspended Penalty will be deemed waived when: Defendant shall in good faith file a Permit application with RIDEM and; the Permit application shall be signed by an authorized official, who certifies, based on information and belief formed after reasonable inquiry: the accuracy of the information submitted; that the official reasonably believes the application is substantially and materially complete and that the application is designed to satisfy the requirements of

Section VI (Compliance Requirements) of this Consent Judgment with respect to the Shredder at the Facility. RIDEM shall have twenty-one (21) Days to notify Defendant in writing of any substantial and material defects with respect to the application that need to be addressed. If RIDEM does not notify Defendant in writing of any substantial and material defects within twenty-one (21) Days after receipt of the certified Permit application, the Three Hundred and Twenty-Five Thousand Dollars (\$325,000.00) will be deemed waived. If RIDEM does notify Defendant in writing of a substantial and material defect and Defendant corrects the omission(s) or defect(s) within the timeframe reasonably agreed to by RIDEM and Defendant, the Three Hundred and Twenty-Five Thousand Dollars (\$325,000.00) will be deemed waived on the date any omission(s) or defect(s) are certified to be corrected by Defendant.

- ii. Fifty Thousand Dollars (\$50,000.00) of the Suspended Penalty will be deemed waived on the date Defendant completes payment of the Cash portion of the penalty as provided in Paragraph 12(a)(i) and (ii) above.
- iii. Fifty Thousand Dollars (\$50,000.00) of the Suspended Penalty will be deemed waived on the date Defendant completes payment of the Cash portion of the penalty as provided in Paragraph 12(a)(iii) and (iv) and 12(b) above.
- iv. Two Hundred Dollars (\$200,000.00) of the Suspended Penalty will be deemed waived on the date Defendant completes installation and begins operation of the air pollution capture and control systems, as described in Paragraph 15(a) and (b) below, consistent with the requirements of the Permit.
- v. Two Hundred and Fifty Thousand Dollars (\$250,000.00) of the Suspended Penalty will be deemed waived on the date Defendant completes installation and begin continuous operation of the air pollution capture and control systems described in Paragraph 15 below, consistent with the requirements of the Permit (in the event Defendant does not separate out the air pollution capture and control systems described in Paragraph 15(a) and (b) below as an initial operational step, the waiver of the Suspended Penalty amounts in Subparagraphs (iv) and (v) of Paragraph 12(c) will be combined upon completion of the activity described in this Subparagraph.
- vi. The balance of the Suspended Penalty, Two Hundred and Fifty Thousand Dollars (\$250,000.00), will be deemed waived on the date Defendant demonstrates through stack testing consistent with the requirements of the Permit that the air emissions from the Shredder satisfy the control requirements set forth in Paragraph 15 below.
- vii. In the event Defendant notifies the State in writing after the Effective Date and within twelve (12) months of the effective date of the Permit issued by RIDEM of its decision to permanently cease operations of the Shredder (“Notice of Permanent Cessation”), then the balance of any remaining Suspended Penalty

amounts as set forth in Paragraph 12(c) will be deemed waived, except that (1) the Suspended Penalty amount in Paragraph (c)(i) of \$325,000.00, will not be waived if Notice of Permanent Cessation is given prior to the Defendant satisfying its obligations in Paragraph 15 of this Consent Judgment; and (2) the Suspended Penalty amounts in Paragraphs (c)(ii) and (iii), respectively, will not be waived until the respective Cash payments referenced in Paragraphs 12 (a)(i-iv) and 12(b) have been made by Defendant. Furthermore, the balance of the Suspended Penalty amounts in Paragraph 12(c) will not be waived for a third party who becomes subject to this Consent Judgment pursuant to Paragraph 8 prior to Notice of Permanent Cessation, or where Defendant fails to satisfy the requirements in Paragraphs 21 and 22 as the requirements relate specifically to Shredder operations at the Facility, or if Defendant has provided Notice of Shredder Operation to the State pursuant to Paragraph 16 and thereafter subsequently ceases operations of the Shredder for a reason not excused by Force Majeure. In no event shall a Notice of Permanent Cessation or other cessation of Shredder operations at the Facility affect Defendant's obligation to pay the penalties in accordance with Paragraph 12 (a)(i-iv) of this Consent Judgment.

13. If the State alleges that Defendant has not complied with the requirements for a specific Suspended Penalty increment as set forth in Subparagraph 12(c), the State will promptly notify Defendant in writing, stating the facts necessary to support its allegation, and stating what portion of the Suspended Penalty it believes must be paid. The State will not allege that Defendant has not complied with the requirements for a specific Suspended Penalty increment if such alleged non-compliance is excused by Force Majeure. If Defendant disagrees with the State's allegation, Defendant may invoke the Dispute Resolution provisions in this Consent Judgment. If Defendant agrees with the State's allegation or does not invoke the Dispute Resolution provisions, Defendant shall pay the applicable Suspended Penalty amount(s) to the State, as set forth in this Consent Judgment, within thirty (30) Days of receipt of written notice from the State to do so. With respect to excuse by Force Majeure, Defendant will follow the procedures for invoking Force Majeure as set forth in Section IX (Force Majeure) of this Consent Judgment.

#### **V. THE STATE'S OBLIGATIONS WITH RESPECT TO CASH PAYMENTS**

14. The portion of the Total Payment Amount paid to the designated restricted fund identified in Subparagraphs (a)(ii-iv) of Paragraph 12 shall be used solely for air permitting,

enforcement, compliance and inspection, and/or legal services related to fulfilling the statutory and regulatory purposes of RIDEM. The portions of the Cash penalty paid by Defendant to RIDEM pursuant to this Consent Judgment may not be borrowed or used for any other purposes other than as specified in this Paragraph. The Rhode Island Attorney General has responsibility to oversee the distribution and use of the Cash payments described in Paragraph 12 of this Consent Judgment to ensure that distribution and use are consistent with the terms of the settlement.

## VI. COMPLIANCE REQUIREMENTS

15. Within ninety (90) Days of the Effective Date, Defendant shall in good faith file the Permit application with RIDEM for the minor source Permit in conformance with the RI CAA and APCR No. 9; and the Permit application shall be signed by an authorized official, who certifies based on information and belief formed after reasonable inquiry: the accuracy of the information submitted; that the official reasonably believes the application is substantially and materially complete and that the application is designed to satisfy the requirements of Section VI (Compliance Requirements) of this Consent Judgment for the Shredder at the Facility (the “Permit Application”). Defendant will seek approval for the installation and operation of an air pollution control train for the Shredder that addresses PM, VOCs, and any applicable listed TAC, as required and specified under ACPR No. 9.17, and Appendix A: *Minimum Quantities and List of Federal Hazardous Air Pollutants*. Defendant will request the Permit from RIDEM requiring Defendant to install and thereafter maintain and operate the following equipment and systems to come into compliance with the RI CAA:

- (a) An air pollutant control train consisting of a capture system, a cyclone, and larger and smaller sized particulate filters (or equivalent controls) (the “PM Control Train”) and an oxidizer (either recuperative or regenerative) and an acid gas scrubber (the “VOC Control Train”) (together referred to as the “Control Train”); and

- (b) The air pollutant capture system for the PM Control Train will be an enclosure consistent with the effectiveness of EPA Method 204 (as described in 40 C.F.R Part 51, Appendix M, Test Method 204). Specifically, the air pollutant capture system for the PM Control Train will be designed so that the aggregate area of the enclosure's natural draft openings (“NDOs”) will be less than or equal to five percent (5%) of the total surface area of the enclosure. The maintenance of negative pressure within the enclosure will be demonstrated by continuous measurement of differential pressure in accordance with appropriate monitoring parameters established during the permitting process and incorporated into the Permit and maintaining a minimum inward face velocity through all NDOs into the enclosure by means of determination reasonably agreed to by Defendants and RIDEM, and specified in the Permit. Means specified in the Permit may include monitoring pertinent parameters and appropriate averaging periods for monitoring such parameters, which may be deemed to represent a minimum of ninety-five percent (95%) capture efficiency of air pollutants from the Shredder, to be reasonably agreed to by Defendant and RIDEM. The effectiveness of the air pollutant capture system will be evaluated, after the enclosure is installed and the PM controls are operational, in accordance with the “Capture Efficiency Criteria,” specified in the Permit; and
- (c) The enclosure operating parameters to be monitored, and appropriate averaging periods for that monitoring, will be specified in the Permit for the PM Control Train, in accordance with Subparagraph (b) above; and
- (d) An oxidizer (either recuperative or regenerative) to control the Shredder’s emissions of VOCs, which shall be designed to achieve an emission level of ninety-eight percent (98%) destruction efficiency for the Shredder; and
- (e) An acid gas control system for the control of acid gases, which shall be designed to achieve an emission level of ninety-eight percent (98%) removal efficiency for acid gases for the Shredder; and
- (f) Appropriate test methods and measures for monitoring the capture efficiency criteria in Subparagraph (b) above, as agreed to in accordance with Subparagraph (b) above, and for determining destruction and removal efficiencies in Subparagraphs (d) and (e) above, respectively, will be specified in the Permit; and
- (g) The Control Train will include systems to continuously monitor pertinent operating parameters of the Control Train while the Shredder is in operation, in accordance with Subparagraph (f) above. Those operating parameters to be monitored, and appropriate averaging periods for that monitoring, will be specified in the Permit (the “Operating Parameters”);
- (h) RIDEM may consider alternate concentration-based limits during the air permitting process to address low PM, VOC and/or acid gas concentrations at the inlet of the applicable control system; and

- (i) Defendant will install a reasonable means to alert the Shredder operator (“Signal”) if the value of designated Operating Parameters within the Control Train deviates for a duration, determined in permitting, from a level indicating compliance with the applicable Control Train standard. When a Signal is triggered, Shredder operators will cease placing material onto the infeed conveyor and will initiate appropriate procedures to safely and properly shut down Shredder operations until the cause of the Signal is corrected. Once corrected, Shredder operations may recommence.

16. As of the Effective Date, the Shredder is not in operation at the Facility as a result of economic conditions caused by the COVID-19 pandemic. In consideration of these unusual circumstances, between the Effective Date of this Consent Judgment and any date within twelve (12) Months of the effective date of the Permit issued by RIDEM, Defendant may opt to resume operations of the Shredder without further penalty or violation of this Consent Judgment. Defendant, however, must provide a written notice to the State of its intent to resume operations of the Shredder (“Notice of Shredder Operation”). The Notice of Shredder Operation must be provided to the State at least thirty (30) Days prior to the date Defendant intends to resume operations of the Shredder. All Shredder operations that occur at the Facility after a Notice of Shredder Operation but prior to the installation of the Control Train referenced in Section VI (Compliance Requirements) are subject to the PMIC and the interim operating conditions set forth in Section VII (Compliance Requirements for the Interim Control of Particulate Matter). The date specified in Defendant’s Notice of Shredder Operation will be the start date for the compliance timeframes for the installation and completion of the Control Train set forth in Paragraphs 17 and 18.

17. Within fourteen (14) Months after either the effective date of the Permit issued by RIDEM, following resolution of any disputes invoked pursuant to Section X (Dispute Resolution), or the date specified in the the Notice of Shredder Operation, whichever date is later,

Defendant shall complete installation of the PM Control Train and begin operation of the PM Control Train in accordance with the Permit.

18. Within thirty (30) Months after either the effective date of the Permit issued by RIDEM, following resolution of any disputes invoked pursuant to Section X (Dispute Resolution), or the date specified in the the Notice of Shredder Operation, whichever date is later, Defendant shall complete installation of the VOC Control Train.

19. Upon completion of installation of the Control Train and an appropriate shakedown and startup period for the Control Train, but no later than one hundred and eighty (180) Days after the initial startup of the VOC Control Train, Defendant will demonstrate through performance/stack testing (in accordance with a RIDEM-approved testing protocol) ninety-eight percent (98% ) destruction efficiency for VOCs, ninety-eight percent (98% ) removal for acid gases, and ninety-nine percent (99%) removal of PM (the “Stack Testing”). If initial test results do not demonstrate compliance with these standards as set out in the Permit, RIDEM, considering the specific circumstances, may afford Defendant a reasonable period of time to conduct additional testing after adjusting or modifying the equipment, configuration and/or design.

20. Following successful completion of the Stack Testing, Defendant will operate the Control Train during Shredder operations so as to maintain (subject to the Permit):

- (a) Ninety-five percent (95%) or greater capture efficiency by means of satisfying the applicable capture efficiency criteria in the Permit;
- (b) Ninety-eight percent (98%) destruction efficiency for VOCs;
- (c) Ninety-eight percent (98%) removal for acid gases; and
- (d) Ninety-nine percent (99%) removal of PM (each a “Control Train Standard”, and collectively standards (a) through (d) described herein are the “Control Train Standards”), as provided for in the Permit.

21. In the event Defendant provides the State a Notice of Permanent Cessation, then the balance of any remaining compliance requirements in Section VI (Compliance Requirements) and the corresponding Suspended Penalty payments in Paragraph 12 (c)(iv-vi) will be deemed waived, except as further provided below in this Paragraph and in Paragraph 22, but will not be waived for a third party who becomes subject to this Consent Judgment pursuant to Paragraph 8 prior to Notice of Permanent Cessation,. In no event shall Notice of Permanent Cessation or cessation of Shredder operations at the Facility affect Defendant's obligation to pay the penalties in accordance within Paragraph 12 (a)(i-iv). Upon Notice of Permanent Cessation , Defendant shall not resume Shredder operations at the Facility. In the event some Facility operations continue and are ongoing despite Notice of Permanent Cessation, the Facility will still be required to comply with the best management practices for dust suppression and any applicable APCR. In the event Defendant disables the Shredder, and/or removes the Shredder from the Facility, and seeks to install a metal shredder with a maximum throughput capacity at or below one hundred and seventy-five (175) gross tons per hour ("Proposed Metal Shredder"), it will be considered a new source subject to the permitting and pollution control requirements in the RI CAA, R.I.G.L§ 23-23-1, *et seq.*, and its implementing APCR codified at 250-RICR-120-05 *et seq.*, and not be subject to the Control Train requirements of Section VI (Compliance Requirements) in this Consent Judgment. In the circumstance, where Defendant seeks to install a Proposed Metal Shredder, in addition to the requirement to pay the penalties in accordance with Paragraph 12(a)(i-iv), fifty percent (50%) the Suspended Penalty payment in Paragraph 12(c)(v) will become due within thirty (30) Days of the date Defendant files the permit application for the Proposed Metal Shredder. The balance of the Suspended Penalty payments in Paragraph 12(c)((iv-vi) will be deemed waived once the permit has been obtained and the pollution control requirements in the corresponding permit have been

satisfied in accordance with the timeframes established therein. If Defendant intends to install a Shredder with a maximum throughput capacity greater than one hundred and seventy-five (175) gross tons per hour then the Shredder will remain subject to all of the requirements of this Consent Judgment. Defendant shall not commence construction or operation of a Proposed Metal Shredder at the Facility until all necessary permits are obtained from RIDEM and all required emission control equipment is installed and operational.

22. If construction required by the Permit has not been “commenced”, as that term is defined by APCR No. 9.5(A)(7), within twelve (12) Months of the effective date of the Permit issued by RIDEM the Permit will lapse. In the event that the Permit lapses, and Defendant has not provided a Notice of Permanent Cessation within the required timeframe, a new permit containing compliance requirements not less stringent than the compliance requirements of Section VI (Compliance Requirements) shall be obtained by Defendant, and the required emissions control equipment installed and operational prior to commencing Shredder operation at the Facility. In this circumstance, the interim operating allowances in Paragraph 24 will not be applicable. In addition to the requirement to pay the penalties in accordance with Paragraph 12(a)(i-iv), fifty percent (50%) of the Suspended Penalty in Paragraph 12(c)(v) will be due within thirty (30) Days of the date the Permit lapses. The balance of the Suspended Penalty payments in Paragraph 12(c)(iv-vi) will be deemed waived once the new permit for the Shredder has been obtained and the pollution control requirements in the corresponding permit have been satisfied in accordance with the timeframes established therein. In no event shall a Permit lapse affect Defendant’s obligation to pay the penalties in accordance with Paragraph 12 (a)(i-iv).

## **VII. COMPLIANCE REQUIREMENTS FOR THE INTERIM CONTROL OF PARTICULATE MATTER**

23. After Notice of Shredder Operation, but prior to full compliance with the Permit, Defendant may operate the Shredder subject to the controls and limitations set forth herein and in Paragraph 24. Defendant shall, at all times, operate the Facility and Shredder in compliance with APCR Nos. 1, 5, and 7 and in accordance with the Particulate Matter Interim Control Plan (“PMIC”) reviewed and approved by RIDEM on August 7, 2020 (Attached hereto as Exhibit A). The PMIC will be modified as needed to reflect changes to operations, personnel, practices, and equipment. The State will be notified in writing any time changes to operations, personnel, practices and equipment at the Facility or Shredder addressed in the PMIC are changed. The State acknowledges that installation and operation of the PM Control Train will constitute a change to operations, practices, and equipment and that the Permit and the PM Control Train, not the interim PM controls for the Shredder, will control the Shredder, notwithstanding the continued responsibility of Defendant to employ the relevant best management practices as may be required by applicable regulations for the Facility.

24. Until such time as Defendant demonstrates that the Control Train achieves the Control Train Standards in the Permit, Defendant agrees to limit the Shredder production time to no more than nine hundred (900) running hours on a rolling twelve (12) Month total (“Annual Hours Limit”), and with a throughput not to exceed three hundred and twenty (320) gross tons in any hour (“Hourly Limit”). At any time, after Defendant demonstrates that the PM Control Train achieves the PM Control Train Standards in the Permit, RIDEM, upon written request from Defendant, may authorize an increase in the Annual Hours Limit and/or the Hourly Limit, even though the Hourly Limit increase may result in exceedance of the Annual Hours Limit.

### **VIII. INTEREST AND COLLECTIONS**

25. If Defendant fails to pay any Cash penalty by its respective due date in this Consent Judgment that payment will be considered late and Defendant will be in default. Interest shall

begin to accrue on the entire respective unpaid balance for that due date 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 Consent Judgment until such date the payment and interest owed are remitted. Interest shall be calculated using the following generally established accounting principle: Interest due equals the (number of Days late/365) x (0.12) x (amount of unpaid balance). Interest collected under the provisions of this section shall be deposited into the same account as the penalty on which the interest accrues.

#### **IX. FORCE MAJEURE**

26. A “Force Majeure” event for purposes of this Consent Judgment, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant’s consultants or contractors, that delays or prevents the performance of any obligation or action under this Consent Judgment, other than obligations pursuant to Paragraph 12 (a)(i-iv), despite Defendant’s due diligence in efforts to fulfill the obligation. The requirement that Defendant exercise “due diligence to fulfill the obligation” includes using best efforts to anticipate any potential Force Majeure event and best efforts to address the effects of any potential Force Majeure event (a) as it is occurring and (b) following the potential Force Majeure event, such that the delay and any adverse effects of the delay are avoided or minimized. A Force Majeure event includes, but is not limited to, epidemics or pandemics as defined in Paragraph 27, and does not include, among other things, Defendant’s financial inability to perform any obligation under this Consent Judgment, unanticipated or increased costs of performance, or changed economic circumstances.

27. If as a result of an event of Force Majeure caused by an epidemic or pandemic identified by the U.S. Centers for Disease Control and Prevention, or the Rhode Island Department of Health, Defendant is unable to conduct normal Shredder operations at the Facility without

substantial impairment and, as a result thereof, discontinue Shredder operations at the Facility for a period of time or do so in response to directives imposed by the state or the federal government, then during such period of discontinuance (the “Deferral Period”), the performance of any such act in Section VI (Compliance Requirements) shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, that in no event shall any delay apply to the schedule for penalty payments set forth in Paragraph 12 (a)(i-iv) as a result of such Force Majeure event. Defendant will provide the State with thirty (30) Days written notice before resuming Shredder operations at the Facility after the Deferral Period.

28. Any request to extend a deadline established in Paragraphs 12(b) and (c) and Section VI, pursuant to Section IX (Force Majeure) shall be made in writing to RIDEM’s Office of Compliance and Inspection, with a copy to the Attorney General, at least seven (7) Days prior to the expiration of the deadline, or as soon as reasonably possible if seven (7) Days’ notice is not otherwise achievable. In its written notice to RIDEM, Defendant shall provide an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or mitigate the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the rationale for attributing such delay to a Force Majeure event, if it intends to assert such a claim. Defendant shall include with its request all available documentation supporting the claim that the delay was attributable to a Force Majeure event. A failure to comply with the above requirements may preclude Defendant from asserting any claim of Force Majeure for that event for the period of such failure to comply, and for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant’s contractors

designated with implementation of this Consent Judgment compliance requirements at issue knew or reasonably should have known.

29. Upon receipt of a timely request for consideration of an extension under Section IX (Force Majeure), Paragraph 28, RIDEM will, if it is persuaded that a Force Majeure event has occurred, extend the time for performance of the obligations under this Consent Judgment that are affected by the Force Majeure event for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the Force Majeure event shall not, of itself, extend the time for performance of any other obligation. RIDEM will timely notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event. Defendant shall have the ability to update its notice if it becomes aware that additional obligations are affected by the Force Majeure event and RIDEM will timely notify Defendant in writing of any further extension that it agrees to implement.

30. If RIDEM does not agree that the delay or anticipated delay is appropriate or does not agree to the length of the extension sought by Defendant, RIDEM will notify Defendant in writing of its decision, which shall be binding unless the Defendant invokes the Dispute Resolution procedures set forth in Section X (Dispute Resolution). Defendant must invoke those procedures within twenty-one (21) Days after receipt of RIDEM's written position.

31. Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that due diligence was exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraph 28. If Defendant satisfies this burden, the delay at issue shall be deemed not to be a violation by Defendant of the corresponding

obligation of this Consent Judgment identified to RIDEM and the Court. Neither the State nor RIDEM will seek to collect, nor may they collect, any portion of the Suspended Penalty that arise from requirements of this Consent Judgment where the time deadlines for those requirements have been exceeded due to Force Majeure events or the pendency of a final determination that an event is an event of Force Majeure.

32. Where any compliance obligation under this Section requires Defendant to obtain a federal, state, or local permit or approval, Defendant shall submit timely and substantially complete applications and may seek relief under the provisions of Section IX (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, provided that Defendant has submitted such timely and substantially complete applications.

#### **X. DISPUTE RESOLUTION**

33. Unless otherwise expressly provided for in this Consent Judgment, the Dispute Resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Judgment. These procedures, however, shall not apply to actions by the State to enforce obligations of Defendant that have not been disputed in accordance with this Section or pursuant to APCR Nos. 1, 5, or 7.

34. Only the informal dispute resolutions procedures set forth in Paragraph 35 in this Section shall be available to Defendant for actions taken by RIDEM during the permitting process, including with respect to those actions in Subparagraphs (b) and (f) in Paragraph 15 that pertain to the issues to be reasonably agreed to by Defendant and RIDEM, and then, only if such actions contravene this Consent Judgment. With respect to actions taken by RIDEM during the permitting process, Defendant may invoke the Formal Dispute Resolution procedures set forth in Paragraph

36 of this Section only upon final issuance of the Permit by RIDEM in accordance with the method and within the time prescribed therein.

35. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Judgment shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant invokes the process in writing to the Office of Compliance and Inspection at RIDEM with a copy to the Office of the Legal Services at RIDEM and a copy to the Attorney General (“Notice of Dispute”). Such Notice of Dispute shall state clearly the matter in dispute. The Parties shall seek to reach an agreement that reflects an appropriate balancing of the relevant and equitable considerations. The period of informal negotiations shall not exceed twenty-one (21) Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties are unable to reach a mutually acceptable understanding and cannot resolve a dispute by informal negotiations, then RIDEM shall provide Defendant with a written summary of its position regarding the dispute. That position shall be considered binding unless within fifteen (15) Days of the postmarked date of the written summary, Defendant invokes formal Dispute Resolution procedures as set forth below. Unless otherwise provided in this Consent Judgment, Defendant’s failure to submit a request for formal Dispute Resolution within the period specified in this Paragraph shall constitute a waiver of Defendant’s ability to seek reconsideration and, in that case, RIDEM’s determination shall be final and unreviewable.

36. Formal Dispute Resolution. Defendant shall invoke formal Dispute Resolution procedures, within the time period provided in Paragraph 35 by serving written notice of invocation on RIDEM’s Office of Compliance and Inspection, with copies to the Office of the Legal Services at RIDEM and the Attorney General, followed within fourteen (14) Days by a

written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant. The Parties will then meet and confer within twenty-one (21) Days of the postmarked date of the Defendant's written Statement of Position to discuss their respective positions. All Parties will provide access to senior level decision makers in an attempt to resolve identified disputes. RIDEM shall serve its decision to Defendant's Statement of Position within twenty-one (21) Days of receipt, unless that period is modified by written agreement. RIDEM's decision shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by RIDEM. RIDEM's decision shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with Paragraph 37.

37. Defendant may seek judicial review of the dispute by filing with the Court and serving on the State a motion requesting judicial resolution of the dispute. The motion must be filed within twenty-one (21) Days of receipt of RIDEM's decision issued pursuant to Paragraph 36. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of this Consent Judgment.

38. The State shall respond to Defendant's motion within twenty-one (21) Days of the date Defendant's motion is filed. The response shall contain a written statement of the State's position on the matter in dispute and its response to Defendant's position, including any supporting factual data, analysis, opinion, or documentation, and shall set forth its response regarding any

schedule within which the dispute must be resolved for orderly implementation of this Consent Judgment.

39. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Judgment, in any dispute brought pursuant to Paragraphs 35-37 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by RIDEM under this Consent Judgment; the adequacy of the performance of work undertaken pursuant to this Consent Judgment as determined by RIDEM and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of proof to demonstrate, that the position of the State is arbitrary and capricious or otherwise not in accordance with this Consent Judgment excepting that an appeal of the final Permit or legal challenge of any other final order within the meaning of the Rhode Island Administrative Procedures Act, shall be reviewed under the review standard set forth in R.I. Gen. Laws § 42-35-15(g).

40. Other Disputes. Except as otherwise provided in this Consent Judgment, in any other dispute brought under Paragraphs 35-37, Defendant shall bear the burden of demonstrating that its position complies with this Consent Judgment and furthers the objectives of this Consent Judgment.

41. The invocation of Dispute Resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Judgment, unless and until final resolution of the dispute so provides,

42. The Court shall not draw any inferences nor establish any presumptions adverse to any Party as a result of invocation of this Section or the Parties' inability to reach agreement. As part of the resolution of any dispute under this Section, in appropriate circumstances the Parties

may agree, or this Court may order, an extension or modification of the schedule for completion of the activities required under this Consent Judgment to account for the delay that occurred as a result of Dispute Resolution.

## XI. REPORTING AND NOTICES

43. Every three (3) Months from the Effective Date, Defendant agrees to provide a written report documenting the progress of installation and/or operation of the Control Train, except when such progress is suspended or terminated in accordance with this Consent Judgment.

44. Unless otherwise specified in this Consent Judgment, notices and submissions required by this Consent Judgment shall be sent electronically and date and time stamped accordingly, or by certified mail or overnight delivery. Submissions via electronic mail or US mail or overnight delivery shall be sent to the following addresses:

### For the Rhode Island Attorney General:

Tricia K. Jedele, Esq.  
Special Assistant Attorney General  
Office of the Attorney General  
150 South Main Street  
Providence, RI 02903  
[tjedele@riag.ri.gov](mailto:tjedele@riag.ri.gov)

Alison B. Hoffman, Esq.  
Special Assistant Attorney General  
Office of the Attorney General  
150 South Main Street  
Providence, RI 02903  
[ahoffman@riag.ri.gov](mailto:ahoffman@riag.ri.gov)

### For RIDEM:

Mary E. Kay, Esq.  
Assistant Director and Chief Legal Counsel  
Office of Legal Services  
RI Department of Environmental Management  
235 Promenade St  
Providence, RI 02908  
[mary.kay@dem.ri.gov](mailto:mary.kay@dem.ri.gov)

Ruth Gold  
Supervising Air Quality Specialist, Permitting  
Office of Air Resources  
RI Department of Environmental Management  
235 Promenade St  
Providence, RI 02908  
[ruth.gold@dem.ri.gov](mailto:ruth.gold@dem.ri.gov)

David Chopy, Administrator  
Office of Compliance and Inspection  
RI Department of Environmental Management  
235 Promenade St

Providence, RI 02908  
[david.chopy@dem.ri.gov](mailto:david.chopy@dem.ri.gov)

For Defendant:

Scott Miller  
General Counsel, NAM  
Sims Metal Management  
1 Linden Avenue East  
Jersey City NJ 07305  
[Scott.Miller@simsmm.com](mailto:Scott.Miller@simsmm.com)

Craig Cunningham  
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Sims Metal Management  
1 Linden Avenue East  
Jersey City, NJ 07305  
[Craig.Cunningham@simsmm.com](mailto:Craig.Cunningham@simsmm.com)

Jennifer Cervenka, Esq.  
Cervenka Green & Ducharme LLC  
235 Promenade Street, Suite 475  
Providence, RI 02908  
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Stephen Richmond, Esq.  
Beveridge & Diamond, P.C.  
155 Federal Street, Suite 1600  
Boston, MA 02110  
[srichmond@bdlaw.com](mailto:srichmond@bdlaw.com)

**XII. RELEASE**

45. This Consent Judgment resolves, and the State releases Defendant from, all Environmental Claims arising from or related to the Covered Conduct, or to any conduct alleged in the Complaint including, without limitation, facts alleged in RIDEM's NOI, File No: OCI-AIR-19-64, dated August 9, 2019, and the 60-Day Notice, dated August 9, 2019, and all penalties, fines or other monetary payments related to the facts alleged and the claims made therein.

46. Nothing in this Consent Judgment:

- (a) Shall bar any action by the State on any legal claim or factual assertion that is not (i) pled in the Complaint, (ii) addressed in the 60-Day Notice or in the RIDEM NOI, or (iii) otherwise released by this Consent Judgment;

- (b) Shall bar any action by the State on any violations arising after the Effective Date;
- (c) Shall be deemed to excuse compliance by Defendant or any of the persons or entities otherwise bound by this Consent Judgment with any law or regulation, unless so excused, agreed to, authorized or approved by this Consent Judgment;
- (d) Shall preclude an action for injunctive relief concerning violations of APCR Nos. 1, 5, or 7 that occur after the Effective Date;
- (e) Shall preclude a separate action by the State to enforce the terms of this Consent Judgment, or any permit or other approval issued by RIDEM related hereto or as required by law or regulation not addressed in this Consent Judgment.
- (f) Notwithstanding the above, RIDEM acknowledges and agrees to follow the complaint investigation protocol (the "Protocol") in the PMIC, which, when applicable pursuant to Section VII (Compliance Requirements for the Interim Control of Particulate Matter) of this Consent Judgment, requires Defendant to investigate complaints received by RIDEM regarding alleged particulate emissions from Defendant's operations, and to implement corrective action, if necessary to address those complaints. The Protocol, however, does not limit the State's ability to initiate actions pursuant to Subparagraphs (b) and (d) above.

47. This Consent Judgment does not limit or affect the rights of Defendant or of the State against any third parties who are not party to this Consent Judgment. This Consent Judgment shall not be construed to create rights in, or grant any cause of action to, any third party who is not a Party and no such third party shall be deemed a third party beneficiary of this Consent Judgment.

### **XIII. SITE ACCESS AND PRESERVATION OF RECORDS**

48. RIDEM shall have the right to enter the Facility at all reasonable times, without securing any judicial or administrative warrants or other process, for the purpose of conducting any activity related to the enforcement of the terms of this Consent Judgment. Defendant shall ensure that assignees, successors in interest, lessees, sublessees, tenants in possession and/or occupants of the Facility shall provide the same access and cooperation if they control the Property. Defendant expressly consents to such right of entry by RIDEM.

49. In addition to complying with any other applicable State, local, or federal records preservation requirements, Defendant shall preserve and maintain at least one legible copy of all documents and other records in their possession, custody, or control that are specifically required to be maintained for performance of any obligation under this Consent Judgment. This requirement includes electronic documents and records. Defendant shall provide to RIDEM a copy of any document or other record requested by the State related to this Consent Judgment within ten (10) Days of a written or oral request.

50. Defendant shall provide a copy of this Consent Judgment to any current lessee, sublessee, tenant in possession and/or occupant of the Facility as of the Effective Date. Any subsequent leases, subleases, assignments or transfers of the Facility or an interest in the Facility shall include this right of access provision and shall otherwise be consistent with the terms of this Consent Judgment.

#### **XIV. MISCELLANEOUS**

51. The provisions of this Consent Judgment shall be construed in accordance with the laws of Rhode Island.

52. This Consent Judgment is made without trial or adjudication of any issue of fact or law.

53. Nothing in this Consent Judgment shall limit or expand the State's right to obtain information, documents or testimony from Defendant pursuant to any state or federal law, regulation or rule concerning the claims not released by this Consent Judgment, concerning potential claims against any person or entity other than Defendant, or to evaluate the Defendant's compliance with the obligations set forth in this Consent Judgment.

54. Nothing in this Consent Judgment constitutes an agreement by the State concerning the characterization of the amounts paid hereunder for purposes of any proceeding under the

Internal Revenue Code or any U.S. State tax laws. This Consent Judgment takes no position as to the tax consequences of this Consent Judgment with regard to U.S. Federal, State, Local and foreign taxes.

55. Nothing in this Consent Judgment constitutes or shall be construed as an agreement or concession that knowledge or any other state of mind is a required element of any claim brought by the State against Defendant or any other person or entity.

56. Nothing in this Consent Judgment releases any private rights of action asserted by entities or persons not releasing claims under this Consent Judgment unless such release is determined to occur by operation of law, nor does this Consent Judgment limit any defense available to Defendant or the State in any such action.

57. This Consent Judgment shall be enforceable by the Attorney General.

58. Any failure by any party to this Consent Judgment to insist upon the strict performance by any other party of any of the provisions of this Consent Judgment shall not be deemed a waiver of any of the provisions of this Consent Judgment.

59. Nothing in this Consent Judgment shall constitute an admission or finding of fact or an admission or finding that Defendant has engaged in or are engaged in a violation of law or an admission or finding that Defendant is liable for any alleged violation of law or other act or omission, all of which Defendant expressly denies.

60. This Consent Judgment, which constitutes a continuing obligation, is binding upon the State, Defendant and any of Defendant's respective successors, assigns, or other entities or persons otherwise bound by law.

61. The parties agree not to challenge this Consent Judgment and waive all rights of appeal upon the entry of final judgment as set forth in Paragraph 76.

62. Consent to this Consent Judgment does not constitute an approval by the State of Defendant's business acts and practices, and Defendant shall not represent this Consent Judgment as such an approval.

63. Defendant shall not take any action or make any statement denying, directly or indirectly, the propriety of this Consent Judgment by expressing the view that this Consent Judgment or its substance is without factual basis. Nonetheless, Defendant's agreement to the terms of this Consent Judgment is not an admission of liability or of any facts alleged in this Consent Judgment or in the Complaint. Defendant is entering into this Consent Judgment solely for the purpose of settlement, and nothing contained herein may be taken as or construed to be an admission, concession, finding, or conclusion of any violation of law, rule, or regulation, or of any other matter of fact or law, or of any liability or wrongdoing, all of which Defendant expressly denies. Further, nothing in this Consent Judgment affects Defendant's right to take or adopt any legal or factual position or defense in any other litigation or proceeding, or to cite or enforce the terms of the release in Section XII (Release).

64. Nothing in this Consent Judgment shall create, support, justify or give rise to a private right of action of any kind or create any right in a non-party to enforce any aspect of this Consent Judgment or claim any legal or equitable injury for a violation of this Consent Judgment. The exclusive right to enforce any violation or breach of this Consent Judgment shall be with the parties to this Consent Judgment and the court.

65. Nothing in this Consent Judgment shall relieve Defendant of its obligations to comply with all U.S. Federal, State, and Local laws and regulations, except as specifically stated herein.

66. Nothing in this Consent Judgment shall be construed to waive any claims of sovereign immunity any party may have in any action or proceeding.

67. If any portion of this Consent Judgment is held illegal, invalid, or unenforceable, the remaining terms of this Consent Judgment shall not be affected and shall remain in full force and effect.

68. Defendant shall not participate, directly or indirectly, in any activity or form a separate entity or corporation for the purpose of engaging in acts or practices in whole or in part in the state of Rhode Island that are prohibited by this Consent Judgment or for any other purpose that would otherwise circumvent any term of this Consent Judgment.

69. If the State determines that Defendant made any material misrepresentation or omission relevant to the resolution of the claims addressed herein, the State retains the right to seek to either modify or set aside this Consent Judgment.

70. The Parties shall bear their own costs with respect to any filing fees or other court costs, including attorneys' fees, in connection with entry or enforcement of this Consent Judgment.

71. Each of the persons who signs his/her name below affirms that he/she has the authority to execute this Consent Judgment on behalf of the party whose name appears next to her/his signature and that this Consent Judgment is a binding obligation enforceable against said party under Rhode Island law.

#### **XV. FINANCIAL ASSURANCE**

72. Within fifteen (15) Days of the Effective Date, Defendant shall deliver a Letter of Credit acceptable to the State securing payment of the Total Penalty Amount required by this Consent Judgment. The Letter of Credit shall be re-issued by Defendant on an annual basis

securing the balance of the Total Penalty Amount owed to the State until all penalty payments required by this Consent Judgment have been paid.

## **XVI. TERMINATION**

73. After Defendant has completed the compliance requirements of Section VI (Compliance Requirements) of this Consent Judgment, maintained satisfactory compliance with the terms of the Permit and this Consent Judgment for a period of two (2) years from the date compliance with the requirements of Section VI (Compliance Requirements) is achieved, complied with all other requirements of this Consent Judgment, and paid the penalties and any Suspended Penalty and interest as required by Section IV (Defendant's Payment of Civil Penalties) of this Consent Judgment, Defendant may serve upon the State a Request for Termination, stating that the applicable above-listed requirements have been satisfied, together with all necessary supporting documentation. In the event that Defendant provides Notice of Permanent Cessation, or transfers, sells, or assigns the Facility or the Shredder in accordance with Paragraph 8, or otherwise complies with the requirements in Paragraph 21 as they relate to the operation of a Proposed Metal Shredder, or Paragraph 22 as it relates to a lapsed Permit, and has paid the penalties and any Suspended Penalty payments or any portion of Suspended Penalty payments as required by Section IV (Defendant's Payment of Civil Penalties) of this Consent Judgment and Paragraph 21 and 22, Defendant may serve immediately upon the State a Request for Termination, stating that the applicable above-listed requirements have been satisfied, together with all necessary supporting documentation.

74. Following receipt by the State of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this

Consent Judgment. If the State agrees that this Consent Judgment may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating this Consent Judgment.

75. If the State does not agree that this Consent Judgment may be terminated, Defendant may invoke Dispute Resolution under Section X (Dispute Resolution) of this Consent Judgment.

#### **XVII. FINAL JUDGMENT**

76. Upon approval and entry of this Consent Judgment by the Court, this Consent Judgment shall constitute a final judgment of the Court as to the State and Defendant. The Court finds that there is no just reason for delay and therefore enters this Consent Judgment pursuant to Rhode Island Rules of Civil Procedure, Rule 54(b).

**IT IS SO ORDERED. JUDGMENT** is hereby entered in accordance with the foregoing.

By the Court:

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JUSTICE, SUPERIOR COURT

Dated:

The Undersigned Parties enter into this Consent Judgment in the matter of *State of Rhode Island v. SMM New England Corporation, d/b/a SIMS Metal Management*, C.A. No.: PC 20- .

Respectfully submitted,

THE STATE OF RHODE ISLAND

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