

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

**IN RE: Elio's Real Estate, LLC and  
Tony's Cumberland Market, Inc.**

**FILE NO.: UST 09-00764**

**CONSENT AGREEMENT**

**A. INTENT & PURPOSE:**

This Agreement is entered by and between the Rhode Island Department of Environmental Management's Office of Compliance & Inspection ("RIDEM") and Elio's Real Estate, LLC and Tony's Cumberland Market, Inc. (the "Respondents"). This Agreement is entered in accordance with Section 42-17.1-2 *et seq.* of the Rhode Island General Laws ("R.I.G.L.") for the purpose of resolving the administrative enforcement action set forth in a Notice of Violation ("NOV") issued to the Respondents by RIDEM on March 4, 2009.

**B. STIPULATED FACTS:**

- (1) WHEREAS, the subject property is located at 290 Broad Street in the Town of Cumberland, Rhode Island, otherwise identified as Cumberland Tax Assessor's Plat 3, Lot 106 (the "Property"). The Property includes a convenience store and a gasoline station (the "Facility").
- (2) WHEREAS, Elio's Real Estate, LLC is the owner of the Property.
- (3) WHEREAS, Tony's Cumberland Market, Inc is the operator of the Facility.
- (4) WHEREAS, Respondents are the owner and operator of underground storage tanks ("USTs" or "tanks") that are located on the Property, which tanks are used for storage of petroleum products and which are subject to the RIDEM Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials, as amended (the "UST Regulations").
- (5) WHEREAS, the Facility is registered with RIDEM in accordance with Section 6.00 of the UST Regulations and is identified as UST Facility No. 00764.
- (6) WHEREAS, on 27 January 2009, RIDEM issued a Letter of Non-Compliance ("LNC") to the Respondents alleging certain deficiencies with the UST Regulations.

- (7) WHEREAS, the Respondents did not fully comply with the LNC.
- (8) WHEREAS, on March 4, 2009, RIDEM issued a NOV to the Respondents alleging certain violations of the UST Regulations.
- (9) WHEREAS, the Respondents requested an administrative hearing to contest the NOV.
- (10) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and in order to affect a timely and amicable resolution of the NOV, RIDEM and the 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.
- (11) WHEREAS, RIDEM finds that this Consent Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the R.I.G.L. § 42-17.1 et seq. and the UST 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 administrative order of the Director issued after a full hearing on the merits pursuant to the Administrative Procedures Act, R.I.G.L. § 42-35-1 et seq. from which no timely appeal was taken, and which is enforceable in Superior Court in accordance with R.I.G.L. §42-17.1-2(21)(v).
- (3) APPLICATION – The provisions of this Agreement shall apply to and be binding upon RIDEM, the Respondents and their 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) CONDITIONS –
  - (a) **Within thirty (30) days of execution of this Agreement, Respondents shall submit to RIDEM:**
    - (i) Written verification that the inventory control records are being checked for discrepancies of one (1) % or more of the flow-through plus one hundred thirty (130) gallons on a monthly basis.
    - (ii) Written verification that Red Jacket ST 1801 continuous monitoring system is being tested at least once per month to ensure that it is operating effectively.
  - (b) **Penalty – Upon execution of the Agreement by the Respondents**, the Respondents shall pay to RIDEM the sum of Five Hundred Dollars (\$500.00) in administrative penalties.

- (c) Penalties that the Respondents agree to pay in this Consent Agreement are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (d) All penalty payments shall be in the form of a certified check, payable to the R.I. General Treasurer –Water and Air Protection Program Account. All payments shall be delivered, along with a copy of this Agreement to:

Chief, RIDEM Office of Compliance and Inspection  
235 Promenade Street  
Providence, RI 02908

**D. COMPLIANCE**

- (1) EFFECT OF COMPLIANCE – Compliance with and fulfillment of this Agreement shall be deemed to resolve all issues raised in the NOV dated March 4, 2009.
- (2) FAILURE TO COMPLY – In the event that the Respondents fail to comply with items specified in Section C (4)(a) of the Agreement, the Respondents shall pay an administrative penalty of Five Hundred Dollars (\$500.00) per month for each and every month during which the noncompliance continues, except that RIDEM may, for good cause shown, defer or reduce such penalty. The payment of a penalty in accordance with this paragraph shall not preclude RIDEM from seeking any other appropriate remedy (i.e., 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 § 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) NOTICE AND COMMUNICATION - Communications regarding this Agreement shall be directed to:

Tracey Tyrrell, Supervising Environmental Scientist  
RIDEM Office of Compliance and Inspection  
235 Promenade Street  
Providence, RI 02908-5767  
(401) 222-1360 ext. 7407

- (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 Facility, 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) Communications forwarded to the above-referenced address by certified mail shall be deemed received.
- (7) DEFERRAL – The Director may, for good cause shown, defer any of the compliance dates prescribed herein. Good cause for deferral of any compliance date shall be forwarded to RIDEM in writing at least fifteen (15) days prior to the prescribed deadline.
- (8) AMENDMENT – The Agreement may be amended by mutual agreement of the parties in writing.
- (9) EFFECTIVE DATE – This Agreement shall be deemed entered as of the date of execution by all parties.

**IN WITNESS WHEREOF, the undersigned consent to this Agreement in substance and in form.**

*For Elio's Real Estate, LLC*

\_\_\_\_\_  
name and title of signing party

Date: \_\_\_\_\_

The individual signing on behalf of the Respondent represents that he/she has the actual authority to enter into this Agreement and the authority to bind the Respondent to the requirements contained within.

In \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_ 2010 before me personally appeared \_\_\_\_\_ (*signing party's name*), to me known and known by me to be the party executing the foregoing Consent Agreement on behalf of the Elio's Real Estate LLC and he/she acknowledged said instrument executed by him/her to be his/her free act and deed.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

*For Tony's Cumberland Market, Inc.*

\_\_\_\_\_  
name and title of signing party  
Date: \_\_\_\_\_

The individual signing on behalf of the Respondent represents that he/she has the actual authority to enter into this Agreement and the authority to bind the Respondent to the requirements contained within.

In \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_ 2010 before me personally appeared \_\_\_\_\_ (*signing party's name*), to me known and known by me to be the party executing the foregoing Consent Agreement on behalf of the Tony's Cumberland Market Inc. and he/she acknowledged said instrument executed by him/her to be his/her free act and deed.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

*For the Department of Environmental Management*

\_\_\_\_\_  
David E. Chopy, Chief  
Office of Compliance and Inspection  
Date: \_\_\_\_\_