

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

IN RE: W. R. Cobb Company

FILE No.: 2011-3-HW

AAD No.: 11-012/WME

**CONSENT AGREEMENT**

**A. INTENT & PURPOSE**

This Agreement is entered by and between the Rhode Island Department of Environmental Management's Office of Compliance & Inspection ("RIDEM") and W. R. Cobb Company (the "Respondent"). This Agreement is entered in accordance with Section 42-17.1-2 et seq. of the Rhode Island General Laws ("R.I. Gen. Laws") for the purpose of resolving the administrative enforcement action set forth in a Notice of Violation ("NOV") issued to Respondent by RIDEM on May 11, 2011.

**B. STIPULATED FACTS**

- (1) WHEREAS, the subject facility is located at 800 Waterman Avenue in the city of East Providence, Rhode (the "Facility").
- (2) WHEREAS, the Respondent operates the Facility.
- (3) WHEREAS, on May 11, 2011, RIDEM issued a NOV to the Respondent alleging certain violations of Rhode Island's Hazardous Waste Management Act, Title 40 of the Code of Federal Regulations ("40 CFR") and the RIDEM's *Rules and Regulations for Hazardous Waste Management* (the "Hazardous Waste Regulations").
- (4) WHEREAS, the Respondent requested an administrative hearing to contest the NOV.
- (5) WHEREAS, the Respondent complied with sections D(1), D(2) D(3)(a) through (e), and D(h) through (k) of the Order section of the NOV.
- (6) WHEREAS, the signing of this Agreement is for settlement purposes only and does not constitute an admission by the Respondent that the law or regulations have been violated as alleged in the NOV.
- (7) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to effect a timely and amicable resolution of the NOV, RIDEM and the Respondent hereby agree that it is in the best interest of the parties and in the public interest to resolve the issues raised in the NOV.

- (8) WHEREAS, RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with 40 CFR, Rhode Island's Hazardous Waste Management Act and the RIDEM's Hazardous Waste Regulations.

**C. AGREEMENT**

- (1) JURISDICTION – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over the Respondent.
- (2) FORCE and EFFECT – This Agreement shall have the full force and effect of a final compliance order issued after a full hearing on the merits pursuant to the Administrative Procedures Act, R.I. Gen. Laws Section 42-35-1 et seq. from which no timely appeal was taken, and which is enforceable in Superior Court in accordance with R.I. Gen. Laws Section 42-17.1-2(21)(v).
- (3) APPLICATION – The provisions of this Agreement shall apply to and be binding upon RIDEM, the Respondent and its agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for the Respondent in the performance of work relating to or impacting the requirements of this Agreement.
- (4) CONDITIONS –
- (a) The Respondent shall complete the following actions to comply with the remaining items in the Order section of the NOV:
- (i) **Within thirty (30) days of the execution of this Agreement**, submit to RIDEM documentation of weekly inspections of the Facility hazardous waste storage area.
  - (ii) **Within thirty (30) days of the execution of this Agreement**, submit to RIDEM a completed and updated hazardous waste contingency plan for the Facility that includes all of the applicable information contained within the 40 CFR 265 Subpart D.
  - (iii) **Within sixty (60) days of the execution of this Agreement**, submit to RIDEM copies of the training program provided to Facility personnel that manage hazardous waste, which is relevant to the positions in which they are employed.
- (b) Penalty – Respondent shall pay to RIDEM the sum of Forty Thousand Three Hundred and Thirty-Eight Dollars (\$40,338.00) in administrative penalties assessed as follows:
- (i) **Upon execution of this Agreement by the Respondent**, the Respondent shall pay to RIDEM the sum of Ten Thousand Dollars (\$ 10,000.00).

- (ii) The remainder of the penalty, Thirty Thousand Three Hundred and Thirty-Eight Dollars (\$30,338.00), shall be paid to RIDEM in the form of a Supplemental Environmental Project (“SEP”). The SEP involves the completion of an Environmental Management System (“EMS”) audit of the Facility (the “EMS Audit”) by RIMES and the implementation of the recommendations from the EMS Audit (the “EMS Audit Recommendations”). The EMS Audit is further described in Attachment A (attached hereto and incorporated herein).
  - (iii) **Within one hundred and eighty (180) days of the execution of this Agreement**, submit a report to RIDEM that includes the following:
    - (1) A copy of the completed Environmental Manual prepared as part of the EMS Audit that must include at a minimum the items described in Attachment A;
    - (2) A summary of all EMS Audit Recommendations;
    - (3) A letter from RIMES certifying that the EMS Audit was completed and the EMS Audit Recommendations were implemented; and
    - (4) Documentation of the costs associated with completing the EMS Audit and the EMS Audit Recommendations, which must be at least the amount of the credits described in C(4)(b)(iv) below.
  - (iv) The Respondent shall receive a credit of Twelve Thousand Six Hundred Dollars (\$12,600.00) for the completion of the EMS Audit (the “EMS Audit Credit”) and shall receive a credit of Seventeen Thousand Seven Hundred and Thirty-Eight Dollars (\$17,738.00) for the completion of the EMS Audit Recommendations (the “EMS Audit Recommendations Credit”).
  - (v) If the Respondent fails to timely complete the EMS Audit or implement the EMS Audit Recommendations, RIDEM shall notify the Respondent that it intends to rescind that credit. Within fourteen (14) days of Respondent’s receipt of written notification by RIDEM that RIDEM intends to rescind that credit, the Respondent shall either complete the EMS Audit or implement the EMS Audit Recommendations or demonstrate that good cause exists for delay. If the Respondent fails to complete the EMS Audit or implement the EMS Audit Recommendations within the fourteen (14) day period or does not demonstrate good cause for delay, the Respondent shall, within ten (10) days of the Respondent’s receipt of written notification from RIDEM, submit to RIDEM a check in the amount of the EMS Audit Credit or the EMS Audit Recommendations Credit, and the Respondent shall be under no further obligation to complete the EMS Audit or the EMS Audit Recommendations.
- (c) Penalties that the Respondent agrees to pay in this Agreement are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

- (d) All penalty payments shall be in the form of a certified check, cashiers check, or money order, payable to the ***R.I. General Treasurer – Environmental Response Fund Account***. All payments shall be delivered to:

Chief, RIDEM Office of Compliance and Inspection  
235 Promenade Street  
Providence, RI 02908-5767

#### ***D. COMPLIANCE***

- (1) EFFECT OF COMPLIANCE – Compliance with and fulfillment of this Agreement shall be deemed to resolve all issues raised in the NOV.
- (2) FAILURE TO COMPLY – In the event that the Respondent fails to comply with the items specified in Section C (4)(a) of the Agreement, the Respondent shall pay a stipulated penalty of Five Hundred Dollars (\$500.00) per month for each and every month during which the noncompliance continues, except that RIDEM may, for good cause shown, defer or reduce such penalty. The payment of a penalty in accordance with this section shall not preclude RIDEM from seeking any other appropriate remedy (e.g., injunctive relief in Superior Court). In the event that the Respondent fails to remit to the RIDEM a check within fourteen (14) days of the Respondent’s receipt of written notification from the RIDEM that the credit for the SEP has been rescinded as specified in the requirements set forth in Section C(4)(b)(v) of the Agreement, the payment shall be considered late and the Respondent will be in default. If the payment is not received within thirty (30) days of the Respondent’s receipt of written notification from the RIDEM that the credit for the SEP has been rescinded, interest shall begin to accrue on the unpaid balance at the rate of twelve percent (12%) per annum. Interest will accrue at this rate beginning on the thirty-first (31<sup>st</sup>) day after the date specified by the RIDEM’s notification that the credit has been rescinded until such date all past due payments and interest owed are remitted. Interest shall be calculated using the following generally established accounting principle:

$$\text{Balance due} = (\text{number of days late}/365) \times (0.12) \times (\text{payment amount})$$

- (3) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve the Respondent of any obligation to comply with any other applicable laws or regulations administered by, through or for RIDEM or any other governmental entity.
- (4) ADDITIONAL ENFORCEMENT ACTIONS – Upon a determination by the Director that there is a threat to the public health or the environment, or upon discovery of any new information, RIDEM reserves the right to take additional enforcement actions as provided by law or regulation, including, but not limited to, the issuance of “Immediate Compliance Orders” as authorized by R.I. Gen. Laws Section 42-17.1-2(21). This Agreement shall not restrict any right to hearing or other right available

by statute or regulation that the Respondent may have regarding any new enforcement action commenced by RIDEM after the execution of this Agreement.

- (5) FUTURE ACTIVITIES AND UNKNOWN CONDITIONS – This Agreement shall not operate to shield the Respondent from liability arising from future activities, as of the date of execution of this Agreement.
- (6) SCOPE OF THE AGREEMENT – The scope of the Agreement is only violations alleged in the NOV.
- (7) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

**Tracey D’Amadio Tyrrell**  
RIDEM Office of Compliance and Inspection  
235 Promenade Street, Room 220  
Providence, RI 02908-5767  
(401) 222-1360 ext. 7407

**Joseph LoBianco, Esquire**  
RIDEM Office of Legal Services  
235 Promenade Street, 4<sup>th</sup> Floor  
Providence, RI 02908-5767  
(401) 222-6607

**Bret Jedele, Esquire**  
Chace Ruttenberg & Freedman, LLP  
One Park Row, Suite 300  
Providence, RI 02903  
(401) 453-6400

- (a) At any time prior to full compliance with the terms of this Agreement, the Respondent agrees to notify RIDEM in writing of any change in ownership of the 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) 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 W.R Cobb Company:

By: \_\_\_\_\_ (Print Name)

Its: \_\_\_\_\_ (Title)

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

In my capacity as \_\_\_\_\_ of W.R. Cobb Company, I hereby aver that I am authorized to enter into this Agreement and thereby bind W.R. Cobb Company 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 W.R. Cobb Company, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of W.R. Cobb Company, 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 W.R. Cobb Company.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

For the State of Rhode Island Department of  
Environmental Management

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

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