



RHODE ISLAND

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

235 Promenade Street, Providence, RI 02908-5767

TDD 401-222-4462

July 25, 2005

Alexandra K. Callam, Esquire
Hinckley, Allen, & Snyder LLP
1500 Fleet Center
Providence, RI 02903

In re: Executed Consent Agreement
Charbert, Division of NFA Corp

Dear Ms. Callam:

Enclosed is the executed Consent Agreement to resolve Notice of Violation and Order that was issued on August 13, 2004. DEM is in receipt of the check for \$9,500 for the administrative penalty.

Sincerely,


David E. Chopy, P.E.
Supervising Sanitary Engineer

Enclosure

cc. Timothy Pavilonis, DEM Legal Counsel
Terrence Gray, Assistant Director, DEM
Alicia Good, Assistant Director, DEM
Dean Albro, Chief, Office of Compliance and Inspection, DEM
Leo Hellested, Chief, Office of Waste Management, DEM
Steve Majkut, Chief, Office of Air Resources, DEM
Angelo Liberti, Chief, Office of Water Resources, DEM
Russell Chateaufneuf, Chief, Office of Water Resources, DEM
Kathleen Lanphear, Chief, AAD
Denny Dart, EPA

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF COMPLIANCE AND INSPECTION

In Re: Charbert, Division of NFA Corp.

File No.: OC&I/FW/C99-0088; OC&I/WP/04-11; OC&I/SW/04-026; OC&I/ISDS/CI04-36;
OWM/SR/99-037; and OC&I/AIR/04-06

AAD No.: 04-007/MM

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 Charbert, Division of NFA Corp. (the "Respondent"). This Agreement is entered in accordance with Section 42-17.1-2 et seq. of the Rhode Island General Laws ("R.I.G.L.") for the purpose of resolving the administrative enforcement action set forth in a Notice of Violation ("NOV") issued to the Respondent by RIDEM on August 13, 2004.

B. STIPULATED FACTS

- (1) WHEREAS, the subject property is located at the confluence of the Wood and Pawcatuck Rivers, at 299 Church Street, in the Town of Richmond, Assessor's Plat 11A, Lots 6 and 42 (the "Property").
- (2) WHEREAS, the Property is owned by NFA Corp. and includes a textile manufacturing facility (the "Manufacturing Facility").
- (3) WHEREAS, the Manufacturing Facility is currently operated by Charbert, Division of NFA Corp.
- (4) WHEREAS, Alton Realty Corp was a prior owner of the Property.
- (5) WHEREAS, the Respondent has been authorized by RIDEM to discharge process wastewater from the Manufacturing Facility into three wastewater lagoons (the "Wastewater Lagoons"). The Wastewater Lagoons are designed to allow process wastewater to infiltrate into the underlying soil. RIDEM approved the discharge of process wastewater to the Wastewater Lagoons on December 3, 1992 (UIC Order of Approval #1108).
- (6) WHEREAS, the Respondent is in compliance with UIC Order of Approval #1108 at this time.
- (7) WHEREAS, the Respondent has been intermittently ^{*§ 4}discharging process wastewater from the Manufacturing Facility to an unauthorized wastewater lagoon (the "Holding Pond"). The Respondent was authorized ~~to~~ discharge process wastewater to the Holding Pond in April 2004 on an emergency basis, with notice to and approval from RIDEM.

- (8) WHEREAS, on August 13, 2004, RIDEM issued a NOV to the Respondent alleging certain violations of the State of Rhode Island *Freshwater Wetland Regulations, the Water Quality Regulations, the Air Pollution Control Regulations, the Groundwater Quality Regulations, the Underground Injection Control Regulations, the ISDS Regulations, the Solid Waste Regulations, and the Remediation Regulations.*
- (9) WHEREAS, the Respondent 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 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 disputed issues by the terms of the Agreement set forth herein.
- (11) WHEREAS, RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the Freshwater Wetland Act, the Water Pollution Act, the Clean Air Act, the Refuse Disposal Act, the Hazardous Waste Act, the ISDS Regulations, and other applicable RIDEM regulations cited in the NOV.
- (12) WHEREAS, the Respondent submitted a Septic System Functional Inspection Report prepared by GZA GeoEnvironmental, Inc. ("GZA") dated August 12, 2004 to RIDEM. The report identified several deficiencies in the ISDS that required repair. The Respondent submitted an application (#9229-1183) to RIDEM on September 20, 2004 to repair the ISDS at the Property (the "ISDS Repair Application"). The ISDS Repair Application was approved by RIDEM on October 21, 2004.
- (13) WHEREAS, the Respondent submitted a report prepared by GZA dated September 24, 2004 to RIDEM concerning the status of the environmental investigation at the Property. The report concluded that groundwater contamination was present in the aquifer at deeper levels than originally anticipated based on prior data and that it was not prudent to drill bedrock and conduct aquifer tests at the residence at 18 River Street, Richmond, Rhode Island at that time. The report further stated that to address Charbert's prior commitments to provide a potable water source to the residences at 14, 16, and 18 River Street, Richmond, Rhode Island, GZA recommended the installation of individual point-of-use treatment systems on the existing wells at these residences. RIDEM reviewed the report and concurred with this finding. This finding shall have no effect on the requirements in paragraphs C (4)(s) and C (4)(t) of this Agreement.
- (14) WHEREAS, the Respondent submitted design plans to RIDEM entitled "Residential Drinking Water Treatment Systems, Residence Nos. 14, 16, 18 River Street, Alton, Rhode Island" dated December 20, 2004 prepared by GZA (the "Drinking Water Well Treatment System"). The Drinking Water Well Treatment System is designed to provide potable water so that the occupants of these dwellings can have a reliable source of clean water for drinking, bathing, and other uses. The Drinking Water Well Treatment System was approved by RIDEM on or about February 14, 2005.
- (15) WHEREAS, the Respondent obtained written agreement (the "Authorization Agreement") with the property owner at 14 River Street, Richmond, RI to allow the installation of the Drinking Water Well Treatment System. The Authorization Agreement was submitted and approved by RIDEM and executed on or about January 31, 2005. The Respondent received verbal approval from the property owner for 16 and 18 River Street for the installation of

the Drinking Water Well Treatment System. The Authorization Agreement was submitted and approved by RIDEM and mailed to the property owner, but has not yet been executed.

- (16) WHEREAS, the Respondent completed the installation of the Drinking Water Well Treatment System for 14, 16, and 18 River Street on or about January 2005.
- (17) WHEREAS, RIDEM performed an inspection of the Manufacturing Facility on October 27, 2004. The inspection revealed that the air opacity monitors and alarms associated with the Eclipse boiler and Konus oil heater were repaired and were functioning properly.
- (18) WHEREAS, the Respondent has taken steps to control and prevent objectionable odors beyond the Property line. No new objectionable odors have been documented by RIDEM since the issuance of the NOV on August 13, 2004.
- (19) WHEREAS, the Respondent has agreed to evaluate feasible alternatives for treatment of wastewater generated from the Manufacturing Facility (the "Wastewater Treatment System") (as described in paragraphs C (4)(d) through C (4)(g) of this Agreement); however, the Respondent reserves the right to continue with the current system that uses the Wastewater Lagoons in accordance with the UIC Order of Approval #1108 in lieu of constructing the Wastewater Treatment System.
- (20) WHEREAS, the Respondent has deposited soils scraped from the bottom of the Wastewater Lagoons on the Property. Soil scrapings were deposited on the Property prior to January 1, 2004 (the "Old Lagoon Scrapings") and after January 1, 2004 (the "New Lagoon Scrapings").
- (21) WHEREAS, the Respondent submitted a report to RIDEM on April 15, 2005 prepared by GZA entitled "Stockpiled Soils Reuse Plan, Charbert Facility, Alton, Rhode Island, April 2005" and submitted a letter on May 2, 2005 prepared by GZA dated April 29, 2005 (collectively, the "Soils Reuse Plan"). The Soils Reuse Plan characterized the human health and aquatic impacts associated with reuse/management of the Old Lagoon Scrapings and New Lagoon Scrapings for the specific purpose of closing the Holding Pond and/or Wastewater Lagoons on the Property. The Soils Reuse Plan concluded that the Old Lagoon Scrapings and New Lagoon Scrapings meet RIDEM Residential Direct Exposure Criteria and GA Leachability Criteria and proposed reuse of the approximately 7,600 cubic yards of Old Lagoon Scrapings and New Lagoon Scrapings as backfill in the Holding Pond and Wastewater Lagoons.
- (22) WHEREAS, RIDEM reviewed the Soils Reuse Plan and concurred with the findings.

C. AGREEMENT

- (1) JURISDICTION – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over the Respondent.
- (2) FORCE and EFFECT – This Agreement shall have the full force and effect of a final compliance order of the Director issued after a full hearing on the merits pursuant to the Administrative Procedures Act, R.I.G.L. § 42-35-1 et seq. from which no timely appeal was taken, and which is enforceable in Superior Court in accordance with R.I.G.L. § 42-17.1-2(u)(5).

(3) APPLICATION – The provisions of this Agreement shall apply to and be binding upon RIDEM, the Respondent and their 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) Within thirty (30) days of execution of this Agreement, the Respondent shall submit to RIDEM a report summarizing the actions Respondent took to achieve compliance with Rhode Island Air Pollution Control Regulation 17, "Odors".

(b) Within ten (10) days of execution of this Agreement, the Respondent shall submit a completed revised Site Plan of the Property (originally prepared by Clayton Environmental Consultants and dated February 17, 2004), to RIDEM, that must be stamped and signed by a Rhode Island Registered Professional Engineer, which must show the following:

- (1) Property lines.
- (2) Existing dimensions and depths of the Wastewater Lagoons and Holding Pond, including cross sections.
- (3) Existing Old Lagoon Scraping stockpiles and New Lagoon Scrapings stockpiles, including cross sections that specify the location of the Old Lagoon Scrapings and New Lagoon Scrapings that are stockpiled on the Property.
- (4) Existing structures, buildings, process wells, drinking wells, and monitoring wells.
- (5) The extent and location of all regulated freshwater wetlands on the Property.

(c) The Respondent shall maintain the Old Lagoon Scrapings and New Lagoon Scrapings on the Property at or proximate to their location as of the effective date of this Agreement for reuse in the Holding Pond and/or Wastewater Lagoons closures. Any soils excavated from the Wastewater Lagoons after the date of execution of this Agreement, and prior to the date that a Wastewater Treatment System is operational, shall be managed in accordance with RIDEM Regulations.

(d) Within sixty (60) days of execution of this Agreement, the Respondent shall submit to RIDEM a report that evaluates the feasibility of alternatives for the treatment of wastewater generated at the Property, including the management and/or disposal of any sludge and/or solid waste generated in the treatment process (the "Wastewater Alternatives Report"). The Wastewater Alternatives Report shall identify the alternatives evaluated and propose one or more wastewater treatment system alternatives (the "Wastewater Treatment System"). The Wastewater Alternatives Report shall evaluate the alternatives against, at a minimum, the following criteria: nature, volume, and toxicity of wastewater; short and long term performance; short and long term decreased potential of off-site impacts; technical implementability, and cost. The Wastewater Alternatives Report shall include a proposed schedule for completion of the planning, design, permitting and construction of the Wastewater Treatment System.

- (e) Within thirty (30) days of submission to RIDEM of the Wastewater Alternatives Report, the Respondent shall publish a notice of availability and a brief description of the Wastewater Alternatives Report and the Wastewater Treatment System in a major local newspaper of general circulation and provide the opportunity for a public meeting to be held at the Richmond Town Hall regarding the Wastewater Alternatives Report and Wastewater Treatment System and the supporting analysis and information. The Respondent shall prepare a written summary of significant comments, criticisms, and new relevant information submitted during the public meeting. This responsiveness summary shall be made available to RIDEM within thirty (30) days after the public meeting.
- (f) Within ninety (90) days of receiving approval from RIDEM, in concept, of the Wastewater Treatment System as set forth in the Wastewater Alternatives Report, the Respondent shall submit to RIDEM the necessary permit application(s) and information, including the designs and plans to a level of detail required by the application process for the construction and operation of the Wastewater Treatment System.
- (g) Within ninety (90) days of receipt from RIDEM of all necessary permits and approvals for the Wastewater Treatment System, the Respondent shall initiate construction of the Wastewater Treatment System. The Respondent shall complete the construction of the Wastewater Treatment System in accordance with the approved schedule, and, shall submit a letter to RIDEM from a Rhode Island Registered Professional Engineer certifying that the Wastewater Treatment System was installed in accordance with the plans approved by RIDEM and, that the Wastewater Treatment System is fully operational.
- (h) The Respondent is allowed to maintain the Holding Pond on the Property until one of the following conditions is met:
 - (1) All work associated with the Wastewater Treatment System is completed and the Wastewater Treatment System is operational; or
 - (2) The Respondent advises RIDEM in writing that it is not going to proceed with the Wastewater Treatment System; or
 - (3) RIDEM advises the Respondent in writing that the Respondent has not met the deadlines in paragraph C (4)(d), C (4)(e), C (4)(f), or C (4)(g) of the Agreement.

The Respondent agrees that the Holding Pond shall be used only during emergency situations or during construction of the Wastewater Treatment System (if necessary). The Respondent shall notify the RIDEM Office of Compliance and Inspection before implementing use of the Holding Pond to explain the circumstances for necessitating its use and the anticipated time for its use. The Respondent shall cease the use of the Holding Pond if RIDEM determines that the circumstances necessitating its use do not constitute an emergency situation.

- (i) Paragraphs C (4)(j) through C (4)(n) below apply ^{to § 4} only to the Holding Pond (if the Wastewater Treatment System is not constructed) or to the Holding Pond and those Wastewater Lagoons ~~that~~ are not included as part of the constructed Wastewater Treatment System.

- (j) Within thirty (30) days of the occurrence of any of the following events the Respondent shall submit to RIDEM a proposed sampling plan (the "Sediment Sampling Plan") to characterize the sediment in the Wastewater Lagoons and the Holding Pond:
- (1) Submission of certification from the Respondent to RIDEM that the Wastewater Treatment System is operational pursuant to paragraph C (4)(g) above; or
 - (2) Submission of certification from the Respondent that construction of the Wastewater Treatment System is not going to proceed pursuant to paragraph C (4)(h)(2) above; or
 - (3) Notification to the Respondent by RIDEM that the Respondent has not met the deadlines for the Wastewater Treatment System planning, design, permitting or construction pursuant to paragraph C (4)(h)(3) above.

The Sediment Sampling Plan must provide for the collection of three (3) discrete samples from representative locations along the bottom of each of the Wastewater Lagoons and the Holding Pond. These proposed sampling locations must be shown on a site plan of the Wastewater Lagoons and the Holding Pond. The Respondent must provide notification to RIDEM, in writing, at least three working days prior to the collection of the samples, of the intended date and time of collection of the samples. These samples must be analytically tested for volatile organic compounds (EPA Method 8260), total petroleum hydrocarbons (EPA Method 8100M), and Toxicity Characteristic Leaching Procedure (TCLP) metals. The analysis must further characterize any total petroleum hydrocarbon present and determine what fraction is silicone-based and what fraction is petroleum-based.

- (k) Within forty-five (45) days of the Respondent's receipt of written approval from RIDEM of the Sediment Sampling Plan, the Respondent shall complete the sampling.
- (l) Within seventy-five (75) days of the Respondent's receipt of written approval from RIDEM of the Sediment Sampling Plan, the Respondent shall submit a UIC Closure Application to RIDEM for the complete closure of the Wastewater Lagoons and the Holding Pond. The UIC Closure Application must include:
- (1) A written report characterizing the findings of the sampling, including copies of all analytical results;
 - (2) A narrative plan describing the proper method and disposal location of the sediment, if necessary, based on the characterization of the sediment;
 - (3) A narrative closure plan describing the type of fill material and volume, grading, vegetative cover, best management practices to prevent erosion and sediment transport to the Pawcatuck River and undisturbed vegetated riverbank wetland;
 - (4) A schedule for completion of their closure; and
 - (5) A proposed final Site Plan stamped and signed by a Rhode Island Registered Professional Engineer showing final grading and vegetative cover.

- (m) Within thirty (30) days of submission of the UIC Closure Application, the Respondent shall publish a notice of availability and brief description of the UIC Closure Application in a major local newspaper of general circulation and provide the opportunity for public comments to be submitted to RIDEM during a thirty day public comment period regarding the UIC Closure Application and the supporting analysis and information. The Respondent shall prepare a written summary of significant comments, criticisms, and new relevant information submitted during the public comment period. This responsiveness summary shall be made available to RIDEM within thirty (30) days after the public comment period closes.
- (n) Within fourteen (14) days of the Respondent's receipt of RIDEM's written approval of the UIC Closure Application, the Respondent shall initiate the closure of the Wastewater Lagoons and the Holding Pond. The Respondent shall complete the closure of the Wastewater Lagoons and the Holding Pond in accordance with the approved schedule referenced in C (4)(l) above. The Respondent must proceed with reasonable diligence and in good faith to implement the closure of the Wastewater Lagoons and the Holding Pond in accordance with the approved schedule.
- (o) Within one hundred eighty (180) days of the Respondent's receipt of written approval of the UIC Closure Application from RIDEM, the Respondent shall restore all altered freshwater wetlands in accordance with the restoration requirements set forth below:
- (1) The Respondent shall contact Mr. Bruce Ahern of this Office at (401) 222-4700, extension 7703, prior to the commencement of any restoration required by C (4)(m) of this Agreement, to ensure proper supervision and to obtain the required restoration details. No work shall commence until such time that you have met in the field with a representative of this Office.
 - (2) The Respondent shall complete requirements (i) through (ix) below.
 - (i) Prior to the commencement of restoration, install a continuous uninterrupted line of staked haybales between the undisturbed wetlands and all areas of unauthorized alterations.
 - (ii) Remove all unauthorized fill material from the 200-foot Riverbank Wetland. All removed fill material must be deposited outside any and all wetlands.
 - (iii) Backfill all excavated areas within the 200-foot Riverbank Wetland to match the surrounding undisturbed grade. All fill placed into the excavated holes must be the same or similar to the material that was excavated from the wetland.
 - (iv) Regrade all slopes resulting from fill removal to match the surrounding undisturbed grade. All regraded areas must be stabilized by covering with at least six (6) inches of loam, seeding with a wildlife conservation grass seed mixture and by mulching all disturbed areas with a mat of loose hay.
 - (v) Plant all unauthorized clear areas within the 200-foot Riverbank Wetland with trees and shrubs in accordance with the following:

Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, ten feet (10') on center, four feet (4') tall after planting, throughout the area defined above. Tree species must include an equal distribution of at least three (3) of the following selections:

White pine, *Pinus strobus*;
Pitch pine, *Pinus rigida*;
Northern red oak, *Quercus rubra*;
White oak, *Quercus alba*;
Sassafras, *Sassafras albidum*;
Black oak, *Quercus velutina*;
Black cherry, *Prunus serotina*;
Gray birch, *Betula populifolia*; and
American beech, *Fagus grandifolia*.

Balled and burlapped or transplanted shrub species must be planted in an interspersed fashion, ten feet (10') on center, three feet (3') tall after planting throughout the area defined above. Shrub species must include an equal distribution of at least four (4) of the following selections:

Mountain laurel, *Kalmia latifolia*;
Highbush blueberry, *Vaccinium corymbosum*
Arrowwood, *Viburnum dentatum*
Sheepshead laurel, *Kalmia angustifolia*;
Bayberry, *Myrica pensylvanica*;
Shadbush, *Amelanchier canadensis*;
Witchhazel, *Hamamelis virginiana*; and
Great rhododendron, *Rhododendron maximum*

- (vi) If any or all of the required plantings fail to survive at least two (2) full growing seasons from the time they have been planted, the Respondent shall be responsible for replanting and maintaining the same plant species until such time that survival is maintained over two (2) full growing seasons.
 - (vii) All restored disturbed areas, including replanted areas, must be allowed to revegetate to a natural wild state.
 - (viii) All disturbed soil shall be loamed if necessary, and seeded with a wildlife conservation grass seed mixture and mulched with a mat of loose hay and, if necessary, covered with excelsior matting or jute mesh.
 - (ix) Upon stabilization of all disturbed areas all erosion and sedimentation controls must be removed from the freshwater wetland. Prior to this removal of the sedimentation controls, all accumulated sediment must be removed to a suitable upland area.
- (p) By July 15, 2005, the Respondent shall complete all work associated with the ISDS Repair Application (No. 9229-1183) as evidenced by the submission of as-built plans, Statement of Supervision, and Certificate of Construction to RIDEM.

- (q) The Respondent shall bear any and all costs associated with the operation and maintenance of the Drinking Water Well Treatment System, subject to any explicit exclusions contained within the Authorization Agreement itself. The Respondent shall use all reasonable efforts, as determined by RIDEM, to obtain the Authorization Agreement from the property owner of 16 and 18 River Street. The Respondent must provide a copy of any duly executed Authorization Agreement to RIDEM within seven (7) days of its execution.
- (r) Within thirty (30) days of execution of this Agreement, the Respondent shall submit a letter to RIDEM by a Rhode Island Registered Professional Engineer certifying that the Drinking Water Well Treatment System was installed in accordance with the plans approved by RIDEM, referred to in paragraph B (14) above, and is fully operational. Subject to the Authorization Agreements referenced in paragraphs B (15) and C (4)(q) above, the Respondent shall ensure the continued operation and maintenance of the Drinking Water Well Treatment System until RIDEM issues a Letter of Compliance pursuant to the Remediation Regulations.
- (s) On or before June 1, 2005, the Respondent shall submit to RIDEM a Site Investigation Report ("SIR") that addresses the applicable requirements of Rule 7.08 of the Remediation Regulations, except that the Respondent and RIDEM acknowledge that the SIR will not include a bedrock aquifer investigation.
- (t) Within thirty (30) days of Respondent's receipt of the RIDEM's Program Letter on the SIR, the Respondent shall publish a notice of availability and brief description of the SIR in a major local newspaper of general circulation and provide the opportunity for public comments to be submitted to RIDEM during a thirty day public comment period regarding the SIR and the supporting analysis and information. The Respondent shall prepare a written summary of significant comments, criticisms, and new relevant information submitted during the public comment period. This responsiveness summary shall be made available to RIDEM within thirty (30) days after the public comment period closes.
- (u) Within thirty (30) days following RIDEM approval of the SIR, the Respondent shall submit a proposal to RIDEM that includes a bedrock aquifer investigation that characterizes any contaminants present in the bedrock aquifer that are related to the site that is based on the findings and results of the SIR. The proposal must include a schedule for completion of the work. Interim steps, including potential remedial actions proposed in the SIR, may be conducted prior to completion of the bedrock aquifer investigation; however, these steps must be consistent with the likely final site remedy and not preclude or impede future actions that may be required pursuant to the bedrock aquifer investigation. DEM shall only issue a final remedial action approval for the entire site after satisfactory completion of the bedrock aquifer investigation.
- (v) Within thirty (30) days of submission of the findings of the bedrock aquifer investigation, the Respondent shall publish a notice of availability and brief description of the bedrock aquifer investigation findings in a major local newspaper of general circulation and provide the opportunity for a public comment period on the bedrock aquifer investigation and the supporting analysis and information. The Respondent shall prepare a written summary of significant comments, criticisms, and new relevant information submitted during the public comment period. This responsiveness

summary shall be made available to RIDEM within thirty (30) days after the public comment period closes.

- (w) Any and all assessments, documents, plans, reports, and/or studies required in paragraphs C (4) (b), (d), (f), (j), (l), (s), and (u) above shall be subject to RIDEM review and approval. Upon review, RIDEM shall provide written notification to the Respondent either granting approval or stating the deficiencies therein. Within fourteen (14) days (unless a longer time is specified by the RIDEM) of Respondent's receipt of a notification of deficiencies from RIDEM, the Respondent shall submit to RIDEM a modified plan or additional information necessary to correct the deficiencies.
- (x) The Respondent shall send a copy of any and all assessments, documents, plans, reports, and/or studies required in the Consent Agreement to the Richmond Town Clerk and to the Richmond Town Library at the same time the assessments, documents, plans, reports, and/or studies are submitted to RIDEM.
- (y) Penalty – Respondent shall pay to RIDEM the sum of Nine Thousand Five Hundred Dollars (\$ 9,500.00) in administrative penalties.
- (z) Payment Schedule- Respondent's total penalty, Nine Thousand Five Hundred Dollars (\$ 9,500.00) shall be paid as follows:
 - (1) Upon execution of this Agreement by the Respondent, the Respondent shall pay to RIDEM the sum of Nine Thousand Five Hundred Dollars (\$ 9,500.00).
 - (2) Penalties that the Respondent agrees to pay in this Consent Agreement are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss. This provision does not preclude RIDEM from seeking additional penalties according to Section D for failure to comply with the remaining provisions of this Agreement.
 - (3) All penalty payments shall be in the form of a certified check, payable to the *R.I. General Treasurer – Water and Air Protection Account*. All payments shall be delivered, along with a copy of this Agreement, to:

Chief, DEM Office of Management Services
235 Promenade Street
Providence, RI 02908-5767

- (5) RIGHT OF ACCESS – The Respondent provides to RIDEM, its authorized officers, employees and representatives an irrevocable right of access to the Property at all reasonable times for the purpose of monitoring compliance with this Agreement. While this Agreement is in effect the Respondent shall ensure that assignees, successors in interest, lessees, sublessees, tenants in possession and/or occupants of the Property shall provide the same access and cooperation as long as they control the Property. While this Agreement is in effect any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property shall include this right of access provision and shall otherwise be consistent with the terms of this Agreement.

D. COMPLIANCE

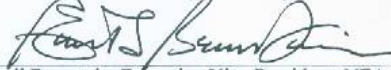
- (1) EFFECT OF COMPLIANCE – Compliance with and fulfillment of this Agreement shall be deemed to resolve all issues raised in the NOV dated August 13, 2004. Upon the Respondents' successful completion of the requirements set forth in this Agreement, RIDEM shall issue a Release and Discharge of the NOV to the Respondent.
- (2) FAILURE TO COMPLY – In the event that the Respondent fails to comply with items specified in Section C (4)(a)-(c) and C (4)(h)-(x) of the Agreement, the Respondent shall pay an administrative penalty of One Hundred Dollars (\$ 100.00) per day for each and every day during which the noncompliance continues, except that RIDEM may, for good cause shown, defer or reduce such penalty. The payment of a penalty in accordance with this 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 Respondent of any obligation to comply with any other applicable laws or regulations administered by, through or for RIDEM or any other governmental entity.
- (4) ADDITIONAL ENFORCEMENT ACTIONS – Upon a determination by the Director that there is a threat to the public health or the environment, or upon discovery of any new information, RIDEM reserves the right to take additional enforcement actions as provided by law or regulation, including, but not limited to, the issuance of "Immediate Compliance Orders" as authorized by R.I.G.L. § 42-17.1-2(u). This Agreement shall not restrict any right to hearing or other right available by statute or regulation that the Respondent may have regarding any new enforcement action commenced by RIDEM after the execution of this Agreement.
- (5) FUTURE ACTIVITIES AND UNKNOWN CONDITIONS – This Agreement shall not operate to shield the Respondent from liability arising from future activities, as of the date of execution of this Agreement.
- (6) NOTICE AND COMMUNICATION - Communications regarding this Agreement shall be directed to:

David Chopy, Supervising Sanitary Engineer
DEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767
(401) 222-1360 ext. 7257

Communications forwarded to the above-referenced address by certified mail, return receipt requested, 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 Charbert, Division of NFA Corp.

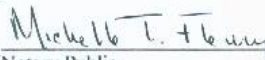


Emil Bernstein, Executive Vice President, NFA Corp.

Date: 6/29/05

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

In Providence, on the 29th day of June 2005, before me personally appeared Emil Bernstein, to me known and known by me to be the party executing the foregoing Consent Agreement on behalf of Charbert, Division of NFA Corp., and he acknowledged said instrument executed by him to be his free act and deed and the free act and deed of Charbert, Division of NFA Corp.



Notary Public

My Commission expires: 1-19-2009

For the State of Rhode Island Department of Environmental Management



Dean H. Albro, Chief
Office of Compliance and Inspection

Date: July 5, 2005