

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

IN RE: INA Petroleum, Inc.

FILE No.: UST 2009-03176
AAD No. 10-004/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 INA Petroleum Inc. (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 the Respondent by the RIDEM on January 27, 2010.

B. *STIPULATED FACTS*

- (1) WHEREAS, the subject property is located at 2862 Hartford Avenue in the town Johnston, Rhode Island (the "Property"). The Property includes a gasoline service station and convenience store (the "Facility").
- (2) WHEREAS, the Respondent owns the Property and operates the Facility.
- (3) WHEREAS, the Facility includes three underground storage tanks ("USTs"), which tanks are used for storage of petroleum products and which are subject to the RIDEM's *Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the "UST Regulations").
- (4) WHEREAS, the Facility is registered with the RIDEM in accordance with Section 6.00 of the UST Regulations and is identified as UST Facility No. 03176.
- (5) WHEREAS, on January 27, 2010, the RIDEM issued a NOV to the Respondent alleging certain violations of the UST Regulations.
- (6) WHEREAS, the Respondent requested an administrative hearing to contest the NOV.
- (7) WHEREAS, the Respondent complied with the Order section of the NOV.
- (8) 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.

- (9) WHEREAS, RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the UST Regulations.

C. AGREEMENT

- (1) JURISDICTION – The 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 the 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) PENALTY – The Respondent shall pay to the RIDEM the sum of **Thirteen Thousand Six Hundred and Sixty-Six Dollars (\$13,666.00)** in administrative penalties assessed as follows:
- (a) Upon execution of the Agreement by the Respondent, the Respondent shall pay to the RIDEM the sum of **One Thousand Six Hundred and Sixty-Six Dollars (\$1,666.00)**.
 - (b) The remainder of the penalty, **Twelve Thousand Dollars (\$12,000.00)** shall be paid to the RIDEM in twelve (12) equal and consecutive monthly installments of One Thousand Dollars (\$1,000.00). The remaining payments shall be made starting on December 15, 2011 and continuing on the 15th of each and every consecutive month until the entire penalty is paid in full.
 - (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) In the event that the Respondent fails to remit to RIDEM a payment on or before its due date, that payment will be considered late and the Respondent will be in default. If the payment is not received within thirty (30) days of its due date, 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 with the day after the due date specified in this Agreement until such date all past due installment payment(s) and interest owed are remitted. Interest shall be calculated using the following generally established accounting principle:

Interest due=(number of days late/365) x (.12) x (entire amount of unpaid balance)

- (e) All penalty payments shall be in the form of a certified check, cashiers check, or money order, payable to the ***R.I. General Treasurer –Water and Air Protection Account***. All payments shall be delivered to: Chief, RIDEM Office of Compliance and Inspection, 235 Promenade Street, Providence, RI 02908-5767.

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) 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 the RIDEM or any other governmental entity.
- (3) 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, the 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 the RIDEM after the execution of this Agreement.
- (4) 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.
- (5) SCOPE OF THE AGREEMENT – The scope of the Agreement is only violations alleged in the NOV.
- (6) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

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

Joseph J. LoBianco, Esq.
RIDEM Office of Legal Services
235 Promenade Street, Providence, RI 02908-5767

(401) 222-6607

Paul V. Jabour, Esq.
343 Broadway, 2nd Floor
Providence, RI 02909
(401) 751-3300

All communications regarding compliance with this Agreement shall be forwarded to the above-referenced addressees by certified mail.

- (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 the 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 INA Petroleum, Inc.

By: _____ (Print Name)

Its: _____ (Title)

Dated: _____

In my capacity as _____ of INA Petroleum, Inc., I hereby aver that I am authorized to enter into this Agreement and thereby bind INA Petroleum, Inc. 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 _____, 2011, before me personally appeared _____, the _____ of INA Petroleum, Inc., a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of INA Petroleum, Inc., 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 INA Petroleum, Inc.

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: _____