

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

**OFFICE OF COMPLIANCE AND INSPECTION**

In Re: New England Motor Freight, Inc.  
Myron P. Shevell

FILE NO.: UST 2010-01948  
AAD No.: 11-004/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 name New England Motor Freight, Inc. and Myron P. Shevell (the "Respondents"). 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 Respondents by RIDEM on February 9, 2011.

**B. STIPULATED FACTS**

- (1) WHEREAS, the subject property is located at 400 Division Street in the city of Pawtucket, Rhode Island, Assessor's Plat 25, Lot 337 (the "Property").
- (2) WHEREAS, the Property includes a trucking terminal and warehouse and underground storage tanks ("USTs" or "tanks") used for storage of petroleum product (the "Facility").
- (3) WHEREAS, Myron P. Shevell owns the Property.
- (4) WHEREAS, New England Motor Freight, Inc. ("NEMF") operates the Facility.
- (5) WHEREAS, the Facility is subject to DEM's Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials, as amended (the "UST Regulations").
- (6) WHEREAS, the Facility is registered with DEM in accordance with Section 6.00 of the UST Regulations and is identified as UST Facility No. 01948.
- (7) WHEREAS, February 9, 2011, RIDEM issued a NOV to the Respondents alleging certain violations of the UST Regulations.

- (8) WHEREAS, the Respondents requested an administrative hearing to contest the NOV.
- (9) WHEREAS, the Respondents complied with the Order section of the NOV.
- (10) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV or Superior Court to enforce the NOV and to effect 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 Agreement is a reasonable and fair settlement of all claims against Respondents and adequately protects the public interest in accordance with 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 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 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 –
  - (i) Penalty – Respondents total penalty, Four Thousand Five Hundred Six and Fifty One Hundreds Dollars (\$4,506.50) shall be paid to RIDEM as follows:
  - (ii) Upon Respondents execution of the Consent Agreement, Respondents shall pay to RIDEM the sum of One Thousand Five Hundred Six and Fifty One Hundreds Dollars (\$1,506.50) in administrative penalties.
  - (iii) The remainder of the penalty, Three Thousand Dollars (\$3000.00) shall be paid to RIDEM in (3) equal and consecutive monthly installments of One Thousand Dollars (\$1,000.00). The remaining payments shall be made starting on September 15, 2011 and continuing on the 15<sup>th</sup> of each and every consecutive month until the entire penalty is paid in full.
  - (iv) In the event that the Respondents fail to remit to RIDEM a payment on or before its due date, that payment will be considered late and the Respondents 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 12 percent 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 (0.12) x (entire amount of unpaid balance)

- (v) Penalties that the Respondents agree 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.
- (vi) 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.
- (vii) 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 in the NOV.
- (2) 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.
- (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, 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 Respondents may have regarding any new enforcement action commenced by RIDEM after the execution of this Agreement.
- (4) 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.
- (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:
- (a) 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.
  - (b) Joseph LoBianco, Esq., Office of Legal Services, RIDEM Office of Compliance and Inspection, 235 Promenade Street, Providence, RI 02908-5767. (401) 222-6607.
  - (c) Robert M. Walker, Environmental Compliance Engineer, New England Motor Freight, 141 East 26<sup>th</sup> St., Erie, PA. 16504. Tel (814) 456-9609.
  - (d) 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/Property, 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.
  - (e) 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 RIDEM in writing at least fifteen 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 New England Motor Freight:

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

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

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

**STATE OF RHODE ISLAND**  
**COUNTY OF \_\_\_\_\_**

In \_\_\_\_\_, in said County and State, on this \_\_\_\_\_ day of \_\_\_\_\_, 2011, before me personally appeared \_\_\_\_\_ to me known and known by me to be the party executing the foregoing instrument and he/she acknowledged said instrument and the execution thereof, to be his/her free act and deed.

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

For Myron P. Shevell:

\_\_\_\_\_  
By: \_\_\_\_\_ (Print Name)  
Its: \_\_\_\_\_ (Title)  
Dated: \_\_\_\_\_

**STATE OF RHODE ISLAND**  
**COUNTY OF \_\_\_\_\_**

In \_\_\_\_\_, in said County and State, on this \_\_\_\_\_ day of \_\_\_\_\_, 2011, before me personally appeared \_\_\_\_\_, the President of \_\_\_\_\_, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of \_\_\_\_\_, 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 \_\_\_\_\_.

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

For the State of Rhode Island Department of  
Environmental Management

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David E. Chopy, Chief  
Office of Compliance and Inspection

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