

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

OFFICE OF COMPLIANCE AND INSPECTION

IN RE: John J. Paterra, II
Food 'N Fuel, Inc.

File Nos.: UST 07-00653 & 03026

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 John J. Paterra, II, and Food 'N Fuel, Inc. ("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 15, 2007.

B. STIPULATED FACTS

- (1) WHEREAS, the subject properties are located at 873 Cranston Street in city of Cranston, Rhode Island, otherwise identified as Assessor's Plat 7/2, Lot 121 and at 2701 Hartford Avenue in the town of Johnston, Rhode Island, otherwise identified as Assessor's Plat 57/2, Lot 147 (the "Properties").
- (2) WHEREAS, the Properties include gasoline service stations and four underground storage tanks ("USTs" or "tanks") that are used for storage of petroleum products (the "Facilities").
- (3) WHEREAS, John J. Paterra, II owns the Properties.
- (4) WHEREAS, Food 'N Fuel, Inc. operates the Facilities.
- (5) WHEREAS, the Facilities were subject to RIDEM's Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials, December 1993 (the "1993 UST Regulations"), October 2002 (the "2002 UST Regulations") and June 2005 (the "2005 UST Regulations") (collectively, the "UST Regulations").
- (6) WHEREAS, the Facilities are registered with DEM and are identified as UST Facility Nos. 00653 and 03026.

- (7) WHEREAS, on February 15, 2007, RIDEM issued a NOV to the Respondents alleging certain violations of the UST Regulations.
- (8) WHEREAS, the Respondents failed to request 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 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 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 –
 - (a) **Penalty – Upon Respondents execution of the Consent Agreement,** Respondents shall pay to RIDEM the sum of Eleven Thousand Six Hundred and Eighty-One Dollars (\$11,681.00) in administrative penalties.
 - (1) Payment Schedule Respondents total penalty, Eleven Thousand Six Hundred and Eighty-One Dollars (\$11,681.00) shall be paid as follows:
 - (2) Upon execution of this Agreement by the Respondents, Respondents shall pay to RIDEM the sum of One Thousand Dollars (\$1,000.00).
 - (3) The remainder of the penalty, Ten Thousand, Six Hundred and Eighty One Dollars (\$10,681.00) shall be paid to RIDEM in equal and consecutive monthly installments of One Thousand Dollars (\$1,000.00). The remaining payments shall be made starting on July 15, 2011 and continuing on the

15th of each and every consecutive month until the entire penalty is paid in full.

- (b) 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 (.12) x (entire amount of unpaid balance)

- (c) 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.
- (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 – 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:

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

Susan B. Forcier, Esq.
RIDEM Office of Legal Services
235 Promenade Street, Providence, RI 02908-5767
Tel. (401) 222-6607

Thomas C. Plunkett, Esq.
91 Friendship Street
The Remington Building
Providence, RI 02909
Tel (401) 831-2900

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

- (7) 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 John J. Paterra, II:

By: _____ (Print Name)

Dated: _____

For Food ‘N Fuel, Inc.:

By: _____ (Print Name)

Dated: _____

For the State of Rhode Island Department of
Environmental Management:

David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____