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February 14, 2007

Brian Wagner, Esq.
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Rhode Island Department of Environmental Management
235 Promenade Street
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**Re: In Re: NFA Corp. (Charbert, Division of) AAD No. 04-007/MM;
Town of Richmond v. Rhode Island Department of Environmental Management
and Charbert, Division of NFA Corp., No 2005-343-Appeal**

Dear Brian:

This is in response to DEM's December 15, 2006 letter from David Chopy to Michael Healey, Director of Environmental Affairs, of Charbert, regarding the above-referenced case. Mr. Chopy wrote that the "purpose of [his] letter is to summarize the status of the issue concerning the continued use of the Holding Pond" at Charbert's property. However, the letter also offers a characterization of the Superior Court and Supreme Court's rulings in this case, which does not accurately describe the status of the Consent Agreement between Charbert and DEM. Accordingly, we felt compelled to respond to set the record straight.

On November 18, 2005, the Superior Court issued an Order stating that: (1) the Consent Agreement was "null and void and without effect," (2) the Consent Agreement was "vacated," and (3) the matter was "remanded to the AAD for further proceedings. . . ." Both Charbert and DEM filed motions to stay this Order in the Supreme Court. On January 6, 2006, the Supreme Court granted these motions, and issued a stay of the Superior Court's Order. Because the Order was stayed, the Consent Agreement is still in effect and binding on both DEM and Charbert.

The Supreme Court's stay means the Superior Court's Order is suspended --- that is, the Order to vacate this Consent Agreement and to send the matter back to proceed before the AAD is "on hold" until the Supreme Court decides the appeal. The Supreme Court may overturn the Superior Court's ruling, and uphold the Consent Agreement; in fact, Charbert and DEM are both working together to achieve this result.

DEM's December 15 letter appears to misconstrue the meaning of Supreme Court's Stay Order, which stayed the decision vacating the Consent Agreement. In doing so, DEM has applied only

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one part of the Superior Court's Order, to assert violations for actions that the Department agreed were allowed under the Consent Agreement, and not the other part, which would remand DEM's alleged violations in the Notice of Violation ("NOV") action back to the AAD.

It appears that DEM wrote this letter because Charbert had not yet responded to a May 12, 2006, comment letter from Ms. Terry Simpson of the Office of Water Resources. But this comment letter is not part of any Consent Agreement requirement, and DEM has apparently confused Charbert's delay in responding to this issue with Consent Agreement requirements and deadlines.

Ms. Simpson had issued this comment letter on a proposal Charbert had made in April 2006, for the installation of two rapid infiltration beds ("RIBs") at its facility on an interim basis. This proposal to construct these RIBs was not required by DEM or by the Consent Agreement, and Charbert's delay in responding to DEM's comment letter has nothing to do with Charbert's continuing work and progress pursuant to the Consent Agreement to determine the feasibility of implementing a wastewater treatment system. Charbert has expended over \$30,000 to evaluate and test pilot plants to determine the feasibility of treatment options it proposed to DEM, and is committed to complete this work so that it might ultimately implement a treatment system at its facility. As explained in detail below, Charbert disagrees with DEM's contention that it has not met the requirements of the Consent Agreement, which seem to be based on incorrect statements about the courts' rulings and the NOV proceeding in this case.

Charbert began evaluating the feasibility of implementing a wastewater treatment system prior to DEM issuing the NOV in August 2004. Charbert is not required by any regulation to evaluate or implement this system, but agreed to do this work as part of its settlement of DEM's NOV. DEM, in turn, agreed that Charbert could maintain the Holding Pond on its property until this wastewater system was completed (or until DEM advised Charbert that it was not meeting the identified milestones in the Consent Agreement).

On September 6, 2005, Charbert timely submitted its Wastewater Alternatives Report, which evaluated in great detail options for treating the wastewater, and alternatives for discharge of the wastewater. Specifically, Charbert proposed discharging the wastewater into RIBs, and described its pilot plant scale evaluations of several treatment options, to determine their feasibility and viability. The report described the laboratory scale evaluation of the physical/chemical precipitation technology that Charbert conducted in the spring of 2005, and explained why this option was not feasible. It also described Charbert's operation of the large scale biological activated sludge pilot plant, and the aerated treatment ponds pilot plant, along with the proposed schedule for operation and evaluation of these pilot plants. And, as required by the Consent Agreement, the report proposed a sludge management and disposal plan for the wastewater treatment process. Under Paragraph C. (4)(w) of the Consent Agreement, DEM was to review this Report, and provide written notification to Charbert either granting approval or stating the deficiencies of the Report. To date, Charbert has not received any written comments from DEM on this Report.

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On September 29, 2005, Charbert timely requested an extension of the public notice requirement for the Wastewater Alternatives Report, pursuant to Paragraph C. (4)(e) of the Consent Agreement, in a four page letter detailing a list of the specific tasks, with proposed schedules, that Charbert needed to complete to adequately evaluate the feasibility of its proposed treatment technologies. To date, Charbert has not received a response from DEM to this request.

Charbert has continued to keep DEM apprised of its progress on the pilot plants and its evaluation of these treatment options. At Ms. Simpson's request, in March 2005, Charbert also submitted a seven page Supplemental Report to its Wastewater Alternatives Report that set forth the sampling and analysis of Charbert's evaluation of the RIPDES discharge option. Also, in March 2005, Charbert met with Ms. Simpson and her staff from the Office of Water Resources, along with Mr. Chopy, to discuss the status of several Consent Agreement items, including the status of the ISDS repair, the UTC monitoring reports, the chromium sampling, and the wastewater treatment evaluation. As indicated in its Report and at this meeting, Charbert needed to construct the pilot plants because they would allow Charbert to iteratively modify variables within the treatment process to determine whether the wastewater is treatable, to determine what the design criteria would be for a full-scale system, and to identify the physical and chemical characteristics of the treated wastewater. Pilot plants allow evaluation to be done with smaller capital investment, prior to investing millions on the actual full-scale system. Charbert specifically explained to DEM at this meeting why it expected operation and evaluation of the pilot plants to take approximately a year to 18 months more to complete.

At this March meeting, Charbert also raised for the first time a proposal it had formulated that would allow it to more readily manage its on-site disposal of the treated process wastewater from Lagoon #3. This proposal, to install two RIBs at its site, would also allow Charbert to close the Holding Pond. This proposal was not required by the Consent Agreement, and it was not required or suggested by DEM. After Charbert and DEM discussed various aspects of this proposal, DEM told Charbert to submit the proposal in writing for the Department's review. Mr. Chopy did not indicate at this meeting that the Department considered the Consent Agreement to be vacated and no longer in effect as of November 2005, and that any future use of the Holding Pond could be considered a violation of DEM regulations.

On April 14, 2006, Charbert submitted this written proposal to construct the two interim RIBs and to close the Holding Pond after these RIBs were approved by DEM and operational. Ms. Simpson sent back comments to Charbert on this proposal on May 12, 2006. Charbert acknowledges that it was delayed in responding to these comments, which it has now done. However, this delay did not relate to, or affect, Charbert's continued work and progress to evaluate the wastewater treatment pilot plants pursuant to the terms of the Consent Agreement. During this time period, Charbert continued in good faith to operate its pilot plants and evaluate the feasibility of the treatment options as it had described to DEM at its March 2006 meeting.

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As Charbert informed DEM's UIC staff, the delay stemmed from Charbert's difficulty in responding to DEM's request for a description of examples of case studies of RIB use in New England. Charbert engaged two different consultants to obtain this information, but neither found any case examples. Charbert asked Craig Roy at DEM for information, but he was also not aware of any examples. Ed Summerly of GZA again spoke to Mr. Roy in December and asked whether Charbert should send in the completed comment responses without these examples. Mr. Roy told Mr. Summerly that he was not in a hurry, and that he would prefer to receive the full comment response package. Mr. Summerly also told Mr. Roy that Charbert had only been able to find a case study for the disposal of treated sanitary waste, and Mr. Roy indicated that this example would suffice as a response to its request.

Charbert's delay in responding to Ms. Simpson's comments is not tied to Charbert's progress to determine the feasibility of the wastewater treatment pilot plants, or to the specific Consent Agreement provisions under which DEM agreed to allow Charbert to maintain the Holding Pond and use it in emergency situations. DEM's letter mistakenly equates this as a delay by Charbert in evaluating the wastewater treatment system, and confuses these issues in claiming that DEM now considers Charbert's use of the Holding Pond, which is allowed under this Consent Agreement, to be a violation of DEM regulations. At the same time, DEM states it may take enforcement action for these violations, and require Charbert to close the Holding Pond pursuant to Consent Agreement requirements if Charbert does not respond to DEM's comments on its RIBs proposal in thirty (30) days. These statements are inconsistent with the terms of the Consent Agreement and the courts' rulings in this case, as well as DEM's prior statements and direction to Charbert.

Charbert has only used the Holding Pond for a few days, because of emergency circumstances, in strict accordance with the terms of the Consent Agreement. Such use was contemplated in framing the Consent Agreement as both Charbert and DEM agreed that the Holding Pond would provide assurance of adequate capacity until the feasibility of a wastewater treatment system was determined. This was memorialized in Paragraph C. (4)(h) of the Consent Agreement, which states:

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 of 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.

Charbert duly notified DEM under this provision of the circumstances requiring use the Holding Pond. Mike Healey of Charbert spoke directly to Mr. Chopy about the nature of these circumstances, and Mr. Chopy acknowledged the information and asked follow up questions. He

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did not inform Charbert that DEM had determined pursuant to Paragraph C. (4)(b) that the circumstances did not constitute an emergency situation. He did not inform Charbert that he considered the Consent Agreement to be vacated or the Holding Pond use contingent upon his view of Charbert's progress in responding to Ms. Simpson's comment letter. DEM's Site Remediation Program has consistently referenced the Consent Agreement requirements in writing when requiring Charbert to complete its ongoing site investigation work. In fact, the Site Remediation Program recently required DEM to offer a 30 day public comment period of its SIR, because it is an additional requirement DEM and Charbert agreed to as part of the settlement of the NOV.

Charbert has proceeded in good faith to complete its numerous obligations under the Consent Agreement, despite the Town of Richmond's legal actions to void this settlement. Specifically, Charbert has:

- Paid the full \$9,500 penalty DEM assessed in the NOV per Paragraph C. (4)(z);
- Submitted its report on compliance with Regulation 17 "Odors" per Paragraph C. (4)(a);
- Submitted a revised Site Plan by a Registered Professional Engineer, showing all items listed in Paragraph C. (4)(b)(1)-(5);
- Maintained the Lagoon Scrapings pursuant to the requirements of Paragraph C. (4)(c);
- Submitted a report that evaluated the feasibility of alternatives for wastewater treatment that proposed one or more wastewater treatment system alternatives pursuant to Paragraph C. (4)(d);
- Submitted a request for an extension of the public notice requirement for the report under Paragraph C. (4)(e) in a four page letter outlining the specific pilot plants work;
- Completed all work associated with the ISDS Repair per Paragraph C. (4)(p);
- Installed the Drinking Water Well Treatment Systems at abutter residences per Paragraph C. (4)(r);
- Completed the Site Investigation, and submitted the SIR per Paragraph C. (4)(s);
- Completed 90% of the solid waste removal identified in the SIR;
- Published a public notice of the SIR per Paragraph C. (4)(t);
- Submitted a Bedrock Aquifer Investigation Plan (and began investigation) per Paragraph C. (4)(u); and
- Sent a copy of all assessments, documents, plans, and reports required in the Consent Agreement to the Richmond Town Clerk and to the Richmond Town Library per Paragraph C. (4)(x).

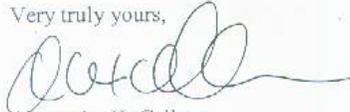
Charbert completed many of the above items well in advance of the deadlines in the Agreement and has already begun to implement the remedial measures approved by DEM in its January 17, 2007, Interim Remedial Decision Letter. Charbert has expended in excess of \$1.3 million to address all of DEM's requirements at its facility, and has expended considerable effort and

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resources to be cooperative and responsive to DEM. Charbert remains committed to being responsive to DEM, and to completing all of its obligations under the Consent Agreement.

Very truly yours,



Alexandra K. Callam

AKC:jlm

cc: David Chopy
Terrence Gray
Dean Albro
Angelo Liberti
Russell Chateaufneuf
Terry Simpson

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