

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
ADMINISTRATIVE ADJUDICATION DIVISION

RE: S&H REALTY, INC. et al. : AAD No. 98-002/SRE  
(OC&I/LUST No. 98-0757)

CONSENT AGREEMENT

**A. INTENT & PURPOSE:**

This Consent Agreement is entered by and between the Department of Environmental Management, ("RIDEM"), S&H Realty, Inc., Frank J. Hindle, Arshag Simonian and Public Petroleum, Inc. (the "Respondents"). This Agreement is entered into in accordance with Chapters 46-12, 42-17.1 and 42-17.6 of the Rhode Island General Laws for the purpose of resolving an Immediate Compliance Order ("ICO") issued by RIDEM on February 2, 1998 and a Notice of Violation and Order ("NOV") issued by RIDEM on April 8, 1998.

**B. COVENANT RUNNING WITH THE LAND:**

The terms and conditions set forth herein shall be deemed to operate as COVENANTS and RESTRICTIONS upon the subject property, which shall run with the land and be irrevocable and binding upon all successors in title or interest, their agents, servants, employees, successors and assigns and all persons, firms and corporations acting under, by or for them, until such time as this Agreement is Released or Discharged by RIDEM.

**C. NARRATION:**

- (1) *WHEREAS*, Respondent S&H Realty, Inc. is the owner of that certain parcel of real property located at 905 Cranston Street, Cranston, Rhode Island, otherwise identified as Cranston Assessor's Plat 7, Lot 2943 (the "Facility").
- (2) *WHEREAS*, the Facility, identified by RIDEM as UST Facility ID #0701, formerly contained seven (7), registered underground storage tanks ("USTs" or "tanks").
- (3) *WHEREAS*, Respondents Frank J. Hindle and Arshag Simonian were the owners of the USTs and, prior to February 1, 1997, were also operators of the Facility.



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- (4) **WHEREAS**, Respondent Public Petroleum, Inc. has been the operator of the Facility since February 1, 1997 pursuant to a lease agreement dated November 14, 1996 as amended by an addendum dated January 1, 1997.
- (5) **WHEREAS**, on March 20, 1997 two 4,000 gallon USTs at the Facility were precision tested and determined to be leaking.
- (6) **WHEREAS**, in May 1997 RIDEM received a report from an environmental consulting firm documenting the presence of a significant quantity of free-phase gasoline product on the groundwater below the Facility.
- (7) **WHEREAS**, in August 1997 RIDEM issued a Notice of Intent to Enforce to the Respondents warning them of imminent enforcement action if steps were not taken immediately to remedy the gasoline release and assorted regulatory noncompliance issues at the Facility.
- (8) **WHEREAS**, in November, 1997 and in January, 1998, RIDEM received additional documentation confirming the presence of a significant quantity of free-phase gasoline product on the groundwater below the Facility.
- (9) **WHEREAS** on February 2, 1998 RIDEM issued a ICO to Respondents requiring the immediate institution of remedial activities with regard to the gasoline release.
- (10) **WHEREAS**, on or about February 10, 1998, the two leaking USTs were found to contain gasoline even though they had purportedly been emptied in March, 1997.
- (11) **WHEREAS**, on or about February 17, 1998, the Facility's seven USTs, including the two leaking USTs, were removed from the ground.
- (12) **WHEREAS**, on April 8, 1998 RIDEM issued a NOV to Respondents. OC&I/LUST No. 98-0757, alleging certain violations of The R.I. Water Pollution Act, the R.I. Oil Pollution Control Act, and RIDEM's Oil Pollution Control Regulations relating to a release of gasoline from UST #001 at Facility #01105. This NOV also alleged violations of RIDEM's Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials (the "UST Regulations") relating to regulatory non-compliance associated with six (6) of the USTs at the Facility.
- (13) **WHEREAS**, Respondents timely requested an administrative hearing in response to NOV OC&I/LUST No. 98-0757.
- (14) **WHEREAS**, Respondents have instituted certain limited on-site remedial activities and have designed and received RIDEM's approval of a Corrective Action Plan ("CAP").

- (15) **WHEREAS**, Respondents seek to resolve the within matter through the performance remedial activities to clean up the gasoline release and the payment of administrative penalties.

RIDEM and Respondents hereby enter into the following Consent Agreement in lieu of convening an Administrative Hearing in an effort to effect a timely resolution to this matter, such Agreement being deemed by all parties to be in the best interests of the public health and environment.

**D. AGREEMENT:**

- (1) **Jurisdiction** - RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over Respondents.
- (2) **Waiver of Hearing** - Respondents hereby waive any and all rights to further administrative proceedings before RIDEM's Administrative Adjudication Division ("AAD") and/or any rights to hearing or appeal that they might have with regard to the issues raised in the ICO, dated February 2, 1998 and the NOV, dated April 8, 1998.
- (3) **Force and Effect** - This Agreement shall have the full force and effect of a Final Administrative Decision for which the time for appeal has expired. Accordingly, this Agreement shall be fully enforceable in Superior Court.
- (4) **Application** - The provisions of this Agreement shall apply to and be binding upon RIDEM, Respondents and their agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for them in the performance of work relating to or impacting the requirements of this Agreement.
- (5) **Recording of Agreement and Release of NOV** - Respondents shall record a copy of this Agreement with the Office of Land Evidence Records for the City of Cranston, Rhode Island, and further agree to allow the recording of any future agreements and orders relating to the investigation or remediation of petroleum contamination located on or emanating from the facility. Respondents shall provide RIDEM with a copy the recorded Agreement showing the book and page numbers from the City's land records. Upon receipt of a copy of the recorded Agreement, RIDEM shall issue and record a Release of the ICO and the NOV.
- (6) **Access** - Respondents shall provide RIDEM, its agents, consultants, employees, and assigns free access to the Facility for the purpose of monitoring Respondents' compliance with this Agreement and their remedial/monitoring activities or for the purpose of commencing independent remedial/monitoring activities in the event Respondents fail to comply with this Agreement.

- (7) Penalty - Respondents shall pay to RIDEM the sum of Fifty-Five Thousand One Hundred Fifty Dollars (\$55,150.00) as an administrative penalty, which amount is comprised of the following amounts:
- (a) \$10,000.00 Representing a Type I/Major *Gravity* penalty for violation nos. 1-5 of the NOV relating to the discharge of gasoline at the Facility and Respondents' response thereto.
  - (b) \$18,500.00 Representing a Type II/Minor *Gravity* penalty for violation no. 6 of the NOV relating to Respondents' alleged failure to perform 37 required precision tests.
  - (c) \$10,000.00 Representing a Type I/Major *Gravity* penalty for violation no. 7 of the NOV relating to Respondents' delay in developing and implementing a CAP.
  - (d) \$16,650.00 Representing Respondents' *Economic Benefit from Noncompliance* associated with Respondents' alleged failure to perform 37 leak detection tests on the USTs located at the Facility.
- (8) Payment of Penalty - Respondents' penalty shall be paid as follows:
- (a) On or before April 1, 1999, Respondents shall pay to RIDEM the sum of Three Thousand Five Hundred Seventy-Five Dollars (\$3,575.00);
  - (b) On or before May 1, 1999, Respondents shall pay to RIDEM the sum of Three Thousand Five Hundred Seventy-Five Dollars (\$3,575.00);
  - (c) Respondents shall pay the remainder of the penalty, \$48,000.00, to RIDEM in twenty-four (24) equal and consecutive monthly installments of Two Thousand Dollars (\$2,000.00). The first monthly installment shall be due and payable on June 1, 1999, with subsequent payments being due and payable on the first day of each and every month thereafter until such time as the full amount has been paid. The entire penalty shall be paid in full on or before May 1, 2001. All payment(s) shall be delivered to RIDEM in accordance with Paragraph E(7), below.
  - (d) In the event that the Facility is sold or otherwise transferred to new ownership or in the event that Respondent S&H Realty, Inc. is acquired by new owners, all outstanding penalties shall immediately become due and payable.

- (9) Dismissal of Administrative Proceedings & Penalties Held in Abeyance - In return for Respondents' execution of this Agreement, a copy of this Agreement shall be filed with RIDEM's Administrative Adjudication Division ("AAD"), thereby dismissing the pending administrative proceeding. Except as otherwise agreed to herein, all remaining penalties assessed in the NOV shall be held in abeyance pending Respondents' compliance with the terms of this Agreement.
- (10) Request for Compliance Meeting - In the event that Respondents have not been awarded any reimbursement of funds by the *UNDERGROUND STORAGE TANK FINANCIAL RESPONSIBILITY REVIEW BOARD* on or before March 20, 1999, Respondents may make a written request for a meeting with representatives of the Office of Compliance & Inspection to discuss the status of Respondents' compliance with this Agreement, which request shall not be unreasonably denied. This Paragraph shall not be construed to compel RIDEM to modify or amend any provision of this Agreement based upon any issues discussed at such a meeting.
- (11) Remedial Action - Respondents shall immediately implement the March 1998 CAP, as revised by Respondents and approved by RIDEM in May, 1998. Respondents agree to make such reasonable modifications to the CAP as may be required by RIDEM as a result of the delay between RIDEM's approval of the CAP and its actual implementation.
- (12) Additional Investigation/Remedial Activities - With regard to any additional contamination discovered during the course of the remediation, Respondents shall expeditiously and thoroughly investigate and delineate (on-site and off-site) the full nature and extent of any additional contamination discovered during the course of the remediation of the Facility and shall design and implement appropriate corrective action in accordance with the requirements of §§14.08 through 14.12 of the UST Regulations and the recommendations of RIDEM and Respondents' environmental consultants.
- (13) Performance - All work to be performed at the Facility pursuant to the terms of this Agreement shall be performed in compliance with and meet the requirements of this Agreement, any Orders of Approval issued by RIDEM and all applicable federal, state and local statutes, rules, regulations and ordinances. Respondents' performance obligations shall include, but not be limited to the following:
- (a) Prompt, written notification of any change in Respondents' environmental consultant or other contractor(s) retained by Respondents' to perform work relating to this Agreement;
  - (b) Providing RIDEM with regular status reports on activities at the Facility;

- (c) Applying for and obtaining any and all permits, licenses or similar authorizations necessary to fulfill its obligations, including but not limited to any permits or approvals that may be required to be obtained from other programs within RIDEM (i.e. water or air discharge permits required for the operation of remedial equipment, the performance of pumping tests or the completion of site investigation work).
- (14) Modification or Termination of CAP - All site investigation, monitoring and remedial activities required under this Agreement, the CAP or Order of Approval shall continue until such time as the Office of Waste Management approves the modification or termination of those activities in writing. Proposals to modify or terminate ongoing remedial activities shall be submitted to the Office of Waste Management in writing accompanied by all supporting materials. The Office of Waste Management shall review any such requests for modification or termination in accordance with Section 14.13 of the UST Regulations. Any Order approving a proposed modification shall be enforceable as part of this Agreement. In the event that Respondents desire to terminate any remedial/monitoring activities required herein or under an outstanding Order of Approval, it shall be Respondents' burden to establish by clear and convincing evidence that:
- (a) Groundwater quality in the impacted area is in compliance with:
    - i. The appropriate groundwater classification;
    - ii. RIDEM Policy Memo 95-02 - Guidelines on the Management and Restoration of Groundwater in Urban Areas; and/or
    - iii. An approved Residual Zone established in accordance with Section 13.04 of the *RULES AND REGULATIONS FOR GROUNDWATER QUALITY*; and that
  - (b) Any remaining contamination does not originate from the Facility and is not related to releases resulting from the operation of UST systems located at the Facility.
- (15) Transfer of Ownership or Operation of Facility - In the event of a change in ownership, operation or control of the Facility, whether by sale, lease, sublease or other transfer, Respondents shall ensure continuing compliance with the remedial requirements of this Agreement by obtaining either:
- (a) Written agreements permitting Respondents, RIDEM and their agents sufficient access to the Facility so as to permit full and unimpeded compliance with the terms of this Agreement; or

- (b) A signed, written statement by the transferee(s), recorded in the land evidence records, wherein the transferee(s) acknowledge the condition of the Facility and agree to assume full responsibility for Respondents' remedial obligations under the law and the terms of this Agreement.
- (16) Coordination of Remedial Activities - Where possible, remedial activities may be coordinated with regular business activities in an effort to limit interference. However, such efforts at coordination shall not take priority over the timely performance of necessary remedial activities.
- (17) Prohibition Against Interference with Remedial Activities - Respondents shall not engage in, or permit any other party to engage in, any construction, demolition, excavation, grading or other activity at the Facility which may unreasonably interfere with the remedial activities required herein. Prior to the commencement of any such work at the Facility, Respondents shall consult with RIDEM to determine whether such work would interfere with any ongoing or proposed investigation or remediation work and receive its written approval of the project.
- (18) Third-Party Actions - The execution of this Agreement by Respondents shall not effect their rights against each other or any other parties that may be liable for the petroleum contamination originating from the Facility.

#### **E. COMPLIANCE:**

- (1) Effect of Compliance - Compliance with and fulfillment of this Agreement shall fully resolve all issues raised in the ICO, dated February 2, 1998 and the NOV, dated April 8, 1998. Upon Respondents' successful completion of the requirements set forth in this Agreement, RIDEM shall, upon written request by one or more of the Respondents, Release this Agreement from the Cranston Land Evidence Records.
- (2) Failure to Comply - In the event that Respondents' fail to comply with any provision of this Agreement it shall pay a penalty of One Thousand Dollars (\$1,000.00) per week for each week during which noncompliance continues. The payment of a penalty assessed in accordance with this paragraph shall not preclude RIDEM from seeking any other appropriate remedy (i.e. injunctive relief).
- (3) Compliance with Other Applicable Law - Compliance with the terms of this Agreement shall not relieve Respondents of their obligations 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 measures 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 42-17.2. This Agreement shall not operate to restrict any right to hearing or other right available by statute or regulation that Respondents may have in regard to any new enforcement action commenced by RIDEM after the execution of this Agreement.
- (5) Future Activities & Unknown Conditions - This Agreement shall not operate to shield Respondents from liability arising either from future activities conducted at the Facility or from any conditions existing at the Facility that, as of the date of the execution of this Agreement, are not known to the Office of Waste Management.
- (6) Deferral - The Director may, for good cause shown, defer any of the compliance dates prescribed herein.
- (7) Payment of Penalty - Any and all sums payable in accordance with the terms of this Agreement shall be made payable to the "R.I. Gen. Treasurer, Environmental Response Fund" and shall be delivered, along with a copy of the first page of this Agreement, to: *Chief, DEM Office of Management Services, 235 Promenade Street, Providence, RI 02908.*
- (8) Notice & Communication - Communications between the parties relating to this Agreement or to remedial/monitoring activities at the Facility shall be directed to:
- (a) Technical communications regarding remedial/monitoring activities:
- Kevin Gillen, RIDEM Office of Waste Management, UST Program  
235 Promenade Street, 3<sup>RD</sup> Floor, Providence, RI 02908  
Tel (401) 222-3872 x7116 / Fax (401) 222-3813
- Bruce Clark, PE, SAGE Environmental  
44 East Avenue  
Pawtucket, RI 02860  
Tel (401) 723-9900 / Fax (401) 723-9973
- (b) Other communications:
- Tracey D'Amadio Tyrrell, DEM - Office of Compliance & Inspection  
235 Promenade Street, 2<sup>ND</sup> Floor, Providence, RI 02908  
Tel (401) 222-1360 x7407 / Fax (401) 222-3811

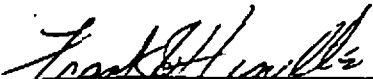
Arshag Simonian  
Registered Agent for S&H Realty, Inc.  
5 River Avenue North Providence, RI 02904  
Tel (401) 274-4756



Demetrios Haseotes  
c/o Public Petroleum, Inc.  
P.O. Box 440  
Chartley, MA 02712  
Tel (508) 222-2099

- (c) Notice of any change in address/telephone/fax shall be sent to all other parties by certified mail, return receipt requested.
- (d) Communications forwarded to the above-referenced addresses by certified mail, return receipt requested shall be deemed received.
- (9) Amendment - This Agreement may be amended by mutual agreement of the parties in writing.
- (10) Effective Date - This Agreement shall be deemed entered as of the date of the first party to execute the Agreement.

IN WITNESS WHEREOF, the undersigned have caused these presents to be executed.

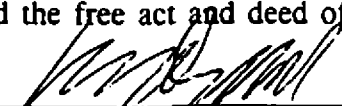
S&H REALTY, INC.

  
By: FRANK J. HINDLE  
Title: VP  
Date: 11-16-98

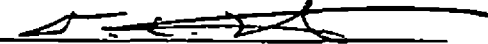
  
ARSHAG SIMONIAN  
Date: 11-16-98  
  
FRANK J. HINDLE  
Date: 11-16-98

STATE OF RHODE ISLAND  
COUNTY OF Providence

On the 16<sup>th</sup> day of November, 1998 before me personally appeared ARSHAG SIMONIAN and FRANK J. HINDLE, both in their personal capacities and in their capacities as duly authorized representatives of S&H REALTY, INC., to me known and known by me to be the persons executing the foregoing Consent Agreement, and they acknowledged said instrument executed by them to be their free act and deed and the free act and deed of S&H REALTY, INC.

  
NOTARY PUBLIC FRANK G. DODD  
My commission expires: 6/23/01

PUBLIC PETROLEUM, INC.


  
By: Demetrios Haseotes  
Title: President  
Date: 11-2-98

STATE OF RHODE ISLAND  
COUNTY OF Providence

On the 2 day of November, 1998 before me personally appeared DEMETRIOS HASEOTES, in his capacity as a duly authorized representative of PUBLIC PETROLEUM, INC., to me known and known by me to be the person executing the foregoing Consent Agreement, and he acknowledged said instrument executed by him to be his free act and deed and the free act and deed of PUBLIC PETROLEUM, INC.

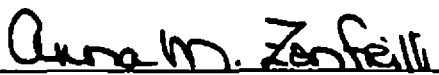
  
Jane LaBassiere  
NOTARY PUBLIC  
My commission expires: 6-28-01

STATE OF RHODE ISLAND  
DEPARTMENT OF ENVIRONMENTAL  
MANAGEMENT

By:   
DEAN H. ALBRO, Chief  
Office of Compliance & Inspection

STATE OF RHODE ISLAND  
COUNTY OF PROVIDENCE

In Providence, on the 17<sup>th</sup> day of November, 1998 before me personally appeared DEAN H. ALBRO, a duly authorized representative of the State of Rhode Island, Department of Environmental Management, to me known and known by me to be the person executing the foregoing Consent Agreement, and he acknowledged said instrument executed by him to be his free act and deed and the free act and deed of the State of Rhode Island, Department of Environmental Management.

  
Anna M. Zenfelli  
NOTARY PUBLIC  
My commission expires: 7-20-02