



RHODE ISLAND

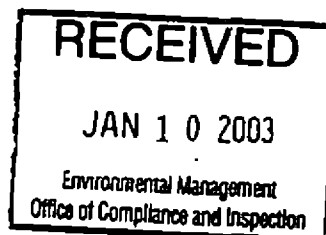
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

235 Promenade Street, Providence, RI 02908-5767

TDD 401-222-4462

IN RE: JOHN J. PATERRA II et al. : AAD No. 99-020/WME
(OC&I/UST No. 99-0653) :

Food 'n Fuel
873 Cranston Street
Cranston, Rhode Island



CONSENT AGREEMENT

A. INTENT & PURPOSE:

This Agreement is entered by and between the Rhode Island Department of Environmental Management ("RIDEM" or "Department"), Office of Compliance & Inspection, John J. Paterra, II and Food 'N Fuel, Inc. ("Respondents"). This Agreement is entered into in accordance with the *RHODE ISLAND GENERAL LAWS* and the *ADMINISTRATIVE RULES OF PRACTICE AND PROCEDURE FOR THE ADMINISTRATIVE ADJUDICATION DIVISION FOR ENVIRONMENTAL MATTERS* (the "AAD Rules") for the purpose of resolving the administrative enforcement action set forth in the Amended Notice of Violation ("NOV") issued by the Office of Compliance and Inspection on March 21, 2001.

B. STIPULATED FACTS:

- (1) *WHEREAS*, Respondent John J. Paterra II ("Paterra") is the owner of a certain parcel of real property located at 873 Cranston Street, Cranston, Rhode Island, otherwise identified as Cranston Assessor's Plat 7, Lot 121 (the "Facility" or "Site").
- (2) *WHEREAS*, Respondent Paterra is the owner of certain underground storage tanks ("UST's") located at the Facility.
- (3) *WHEREAS*, Respondent Food 'N Fuel, Inc., a former Rhode Island business corporation, was the operator of the Facility and the USTs located thereon before its certificate of incorporation was revoked by the Rhode Island Secretary of State on September 3, 1997.
- (4) *WHEREAS*, Paterra, as the last President of Food 'N Fuel, Inc., has been the operator of the Facility and the USTs located thereon since September 3, 1997.

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- (5) *WHEREAS*, on July 8, 1999 the Office of Compliance and Inspection issued a NOV to Respondents alleging certain violations of the *REGULATIONS FOR UNDERGROUND STORAGE FACILITIES USED FOR PETROLEUM PRODUCTS AND HAZARDOUS MATERIALS* (the "*UST Regulations*").
- (6) *WHEREAS*, on or about September 21, 1999 Respondents removed four (4) UST's from the ground at the facility, at which time a penny-sized hole was observed in one UST and the presence of gasoline contamination was noted.
- (7) *WHEREAS*, a UST Closure Assessment Report dated December 1999, a Site Investigation Report ("SIR") dated December 2000 and an expanded SIR dated December 2001 all confirm the presence of gasoline contamination on and emanating from the Facility.
- (8) *WHEREAS*, Respondents have been unable to produce some required documentation regarding precision testing during 1989, 1990, 1995, 1996, 1997 and 1998.
- (9) *WHEREAS*, Respondents did not submit records regarding the installation of overfill protection devices and inventory monitoring to DEM in a timely fashion.
- (10) *WHEREAS*, Respondents did not initiate a proper investigation into a suspected release of petroleum following failed tank tightness testing.
- (11) *WHEREAS*, an amended NOV was issued on March 21, 2001.
- (12) *WHEREAS*, in order 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 disputed issues by the terms of the Agreement set forth herein.
- (13) *WHEREAS*, RIDEM finds that this Consent 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 Respondents.
- (2) Waiver of Hearing - Respondents hereby waive any and all rights to further administrative proceedings before RIDEM's Administrative Adjudication Division and/or any rights to appeal that Respondents might have with regard to

the issues raised in the NOV dated July 8, 1999, or the Amended NOV dated March 21, 2001.

- (3) Force and Effect – This Agreement shall have the full force and effect of a final administrative order pursuant to the Administrative Procedures Act, R.I.G.L. § 42-35-1 et seq. from which no timely appeal was taken, and which is enforceable in Superior Court in accordance with R.I.G.L. §42-17.1-2(u)(5).
- (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 & 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 shall provide a copy of the recorded Agreement to the Office of Compliance & Inspection. Upon receipt of a copy of the recorded Agreement, the Office of Compliance & Inspection shall issue a Release of the subject NOV to Respondent for recording.
- (6) Assessment of Penalty – Respondents shall pay to the Office of Compliance & Inspection the sum of **Thirty-one Thousand Three Hundred Seventy-five Dollars (\$31, 375.00)** in penalties assessed as follows:
 - (a) **\$27,825.00** -Representing Respondents' "Gravity" portion of the administrative penalty as specified in the NOV;
 - (b) **\$3,550.00** -Representing Respondents' "Economic Benefit" portion of the administrative penalty as specified in the NOV.
- (7) Penalty Payment Schedule– Respondents shall pay the above-referenced penalty to RIDEM in accordance with the following schedule:
 - (a) Respondents shall pay to RIDEM the amount of Eight Thousand Dollars (\$8,000.00) in three (3) installments as follows:
 - i. Two Thousand Seven Hundred Dollars (\$2,700.00) to be paid upon execution of this Agreement;
 - ii. Two Thousand Six Hundred Fifty Dollars (\$2,650.00) to be paid on or before January 15, 2003, and

- iii. Two Thousand Six Hundred Fifty Dollars (\$2,650.00) to be paid on or before February 15, 2003.
- (b) The balance of the penalty, Twenty-three Thousand Three Hundred Seventy-five Dollars shall be paid to RIDEM in consecutive monthly installments as follows:
 - i. Commencing January 15, 2003, Respondents shall pay to RIDEM twelve (12) equal and consecutive monthly installments of not less than Five Hundred Dollars (\$500.00). The first installment shall be due on January 15, 2003, with each subsequent payment coming due on the fifteenth day of each month thereafter through and including December 15, 2003.
 - ii. Commencing January 15, 2004, Respondents shall pay to RIDEM twenty-one (21) equal and consecutive monthly installments of not less than Eight Hundred Twenty-seven and $\frac{38}{100}$ Dollars (\$827.38). The first installment shall be due on January 15, 2004, with each subsequent payment coming due on the fifteenth day of each month thereafter through and including October 15, 2005, or until the entire penalty assessed in Paragraph C(6), above, is paid in full, whichever comes first.
- (8) Terms of Payment – Respondents' penalty payments shall be subject to the following terms:
 - (a) All payments 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
 - (b) The first Eighteen Thousand Seven Hundred Fifty Dollars (\$18,750.00) in payments shall be made payable to the "*R.I. Gen. Treasurer, Environmental Response Fund*;" the remaining Twelve Thousand Six Hundred Twenty-five Dollars (\$12,625.00) shall be made payable to the "*R.I. Gen. Treasurer, Water & Air Protection Program Account*."
 - (c) Prepayments may be made at any time; however no prepayment shall defer or reduce the amount of any required installment until the entire balance is paid in full.
 - (d) In the event that the Respondents fail to remit to RIDEM any payment on or before its due date, the 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 of the entire penalty 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 payment(s) and interest owed are remitted. Interest shall be calculated using the following generally established accounting principal:

$$(\text{No. days late} / 365) \times (0.12) \times \text{entire amount of unpaid balance} = \text{interest due.}$$

- (e) Nothing in this Agreement shall preclude RIDEM from seeking additional penalties according to Paragraph E(2), below, for failure to comply with the provisions of this Consent Agreement.
- (f) The Penalties that Respondents agree to pay pursuant to this Consent Agreement are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (9) Corrective Action – By agreement of the parties the interim approval letter issued by RIDEM for Respondents' Enhanced Fluid Recovery ("EFR") system, dated February 6, 2002, is hereby rescinded and Respondents shall immediately take the necessary actions to design and implement a long-term remedy for the contamination on and emanating from the Facility.
 - (a) On or before January 1, 2003, Respondents shall submit to RIDEM a report detailing all new data relating to the contamination on and emanating from the Facility that has been gathered since the data that is reported in Respondents' December 2001 expanded SIR. The report shall contain conclusions regarding current on and off-site conditions and the effectiveness of Respondents' interim remedial efforts and shall propose conceptual recommendations for permanent, long-term remedial efforts designed to protect human health, safety and the environment and to restrict the impacts of the contamination to the Facility property.
 - (b) Upon review of the above-referenced report, RIDEM shall issue an order requiring Respondents to submit a new CAP. The order may require that the new CAP include specific provisions addressing issues such as: active recovery of free-phase petroleum product, treatment of groundwater for dissolved-phase petroleum contamination, hydraulic containment of the contaminant plume, and regular monitoring in or adjacent to buildings or underground utilities for petroleum related vapors.
 - (c) Respondents' shall submit their revised CAP to RIDEM's Office of Waste Management ("OWM") within thirty (30) days of receipt of DEM's order. The CAP shall meet all requirements of §§ 12.12 and 12.13 of DEM's new, 2002 UST Regulations and shall include a detailed, written timetable for the performance of all activities specified in the CAP, which timetable shall become enforceable as part of this Agreement.

- (10) Review of the CAP – Following receipt of the CAP, RIDEM may request additional supporting information to justify the basis for the proposed CAP. Once the CAP is complete, RIDEM may approve, conditionally approve, or reject the CAP in accordance with § 12.14 of the 2002 UST Regulations as follows:
- (a) Approval of a proposed CAP will result in the issuance of an Order of Approval containing such terms and conditions as RIDEM deems necessary to the safe, prompt and successful completion of the CAP. The Order of Approval shall be enforceable as part of this Agreement.
 - (b) Rejection of the proposed CAP will include a written basis for the rejection and provide Respondents at least fifteen (15) calendar days from receipt of the rejection to submit a revised CAP addressing the problems noted in the rejection.
- (11) Modification or Termination of CAP - All remedial and/or monitoring activities required under the CAP and/or Order of Approval shall continue until such time as the Respondents request and the OWM approves the modification or termination of those activities in writing. Proposals to modify or terminate activities shall be submitted to the OWM in writing along with all supporting materials and shall be reviewed in accordance with Section 12.14 of the 2002 UST Regulations. Any Order approving a modification shall be enforceable as part of this Agreement. Approval to terminate the CAP will be granted only where Respondents present clear and convincing evidence that:
- (a) Groundwater quality in the impacted area is in compliance with:
 - i. The standards for the appropriate groundwater classification;
 - ii. The rules and Regulations for Groundwater Quality ("Groundwater Regulations");
 - iii. RIDEM Policy Memo 95-02 - Guidelines on the Management and Restoration of Groundwater in Urban Areas; and/or
 - iv. An approved Residual Zone established in accordance with Section 13.04 of the Groundwater Regulations; or that
 - (b) Any remaining contamination does not originate from the facility.
- (12) Performance - All work to be performed pursuant to the terms of this Agreement shall be performed in compliance with all applicable federal, state and local statutes, regulations and ordinances and any Orders of Approval issued by RIDEM. In addition, Respondents agree to:

- (16) Third-Party Actions - The execution of this Agreement by Respondents shall not effect its rights against any third parties that may be liable for the petroleum contamination originating from the facility.
- (17) 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.

E. COMPLIANCE:

- (1) Effect of Compliance - Compliance with and fulfillment of this Agreement shall be deemed to resolve all issues raised in the NOV dated July 8, 1999, and the Amended NOV dated March 21, 2001. Upon Respondents' successful completion of the requirements set forth in this Agreement, RIDEM shall, upon written request by Respondent, issue a Release and Discharge of this Agreement to Respondent for recording in the Cranston Land Evidence Records, at which time any and all remaining penalties assessed in the NOV shall be deemed waived.
- (2) Failure to Comply - In the event that Respondents fail to comply with any remedial provision of this Agreement (i.e. Paragraphs C(9) – C(15)), Respondents shall have a period of fourteen (14) days from the date of written notice of noncompliance by RIDEM within which to cure the noncompliance. If the noncompliance continues for fifteen (15) days or more, then Respondents shall pay a penalty of One Hundred Dollars (\$100.00) per week for each week during which the noncompliance continues. If the noncompliance continues for forty-five (45) days or more, then Respondents shall pay a penalty of Two Hundred Dollars (\$200.00) per week for each week during which the noncompliance continues *and* the entire penalty assessed in this Agreement shall immediately become due and payable, less any principal amounts paid in accordance with Paragraph C(7) of this Agreement. If Respondents' non-compliance continues for ninety (90) days or more, then Respondents shall pay a penalty of Three Hundred Dollars (\$300.00) per week for each week during which the noncompliance continues *and* the entire penalty assessed in this Agreement shall immediately become due and payable, less any principal amounts paid in accordance with Paragraph C(7). 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).

- (a) Promptly notify RIDEM's OWM of any change in their environmental consultant or other contractor(s) performing work pursuant to this Agreement.
 - (b) Respond to any request by RIDEM's OWM for additional information (*i.e. to expand or interpret SIR data or to support a CAP proposal*) within a reasonable time as be directed by RIDEM.
 - (c) Provide RIDEM's OWM with quarterly status reports on remedial activities, unless a different interval has been agreed to in writing by RIDEM.
 - (d) Obtain all governmental permits or approvals necessary to fulfill its obligations, including but not limited to approvals required by 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*).
 - (e) Notify RIDEM's OWM at least forty-eight (48) hours prior to any soil excavation, installation of wells or borings, or the repair, replacement or installation of remedial or monitoring equipment at the Facility so that a representative of RIDEM may be present.
 - (f) Continue operation of all remediation procedures specified in the CAP until such time as the Director determines that the soils and/or groundwater located on and around the Facility have been adequately treated.
- (13) Transfer of Ownership or Operation of Facility - In the event that ownership, operation or control of the facility is transferred, Respondents shall ensure continuing compliance with this Agreement by obtaining a written agreement securing access to the facility for the Respondents, RIDEM and/or their agents to permit full compliance with the terms of this Agreement.
- (14) Coordination of Remedial Activities - Where possible, remedial activities relating to the facility may be coordinated with regular business activities in an effort to limit interference with such activities. Provided, however, that such efforts at coordination shall not take priority over the timely performance of appropriate remedial activities.
- (15) 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 remedial activities at the facility. Prior to the commencement of any such work at the facility, the 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.

- (4) Compliance with Other Applicable Laws - Compliance with the terms of this Agreement shall not relieve Respondents of any obligation to comply with any other applicable laws or regulations administered by, through or for RIDEM or any other governmental entity. All activities to be performed at the Facility pursuant to the terms of this Agreement shall be performed in compliance with and meet the requirements of all applicable federal, state and local statutes, rules, regulations and ordinances.
- (5) 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 §42-17.1-2(u)*. This Agreement shall not operate to restrict any right to hearing or other right available by statute or regulation that Respondent might have in regard to any new enforcement action commenced by RIDEM after the execution of this Agreement.
- (6) Future Activities & Unknown Conditions - This Agreement shall not operate to shield Respondent 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 UST Program.
- (7) Supplemental Environmental Project - Respondent may propose a Supplemental Environmental Project ("SEP"). Any proposed SEP must be received by the RIDEM within ninety (90) days of the execution of this Agreement. RIDEM, at its discretion, may choose to accept the SEP in lieu of a portion of the penalty as set forth in Paragraph C(6), above. The SEP will only be considered if RIDEM finds it to be acceptable in accordance with the April 5, 1996 "Policy on Supplemental Environmental Projects". The amount of the penalty, if any, to be offset by the SEP will be determined by RIDEM. If the SEP is not acceptable, no reduction in penalty will be granted and Respondent will be notified within (30) days of review of the SEP.
- (8) Notice & Communication - Communications regarding this Agreement shall be directed to:
 - (a) Tracey Tyrrell, RIDEM - Office of Compliance and Inspection, 235 Promenade St., Rm 220, Providence, RI 02908. Tel. (401) 222-1360, ext. 7407.
 - (b) John J. Paterra, II, 104 Brettonwoods Drive, Cranston, RI 02920.

(c) Legal inquiries shall be directed to:

Brian Wagner, Esq., RIDEM – Office of Legal Services, 235 Promenade St.,
4th Floor, Providence, RI 02908. Tel. (401) 222-6607. Fax (401) 274-7737.

Thomas C. Plunkett, Esq., Kiernan, Plunkett & Redihan, 91 Friendship St.,
Providence, RI 02903. Tel (401) 831-2900. Fax (401) 831-7123.

(d) Notice of any change in address/telephone/fax shall be sent to all other parties by
regular mail, postage pre-paid.

(e) Communications forwarded to the above-referenced addresses by regular mail,
postage prepaid shall be deemed received.

(9) Deferral - The Director may, for good cause shown, defer any of the compliance
dates prescribed herein.

(10) Amendment - This Agreement may be amended by mutual agreement of the
parties in writing.

(11) Effective Date - This Agreement shall be deemed to be entered as of the date of
the last Respondent to execute the Agreement.

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

By:


JOHN J. PATERRA II

Individually and in his capacity as
President of the former
Food 'N Fuel, Inc.

Date: January 10, 2003

STATE OF RHODE ISLAND

COUNTY OF Providence

In Providence, on the 10th day of January, 2003, before
me personally appeared the aforesaid John J. Paterra II to me known and
known to 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.


Notary Public

My Commission expires: 12-1-2006

IN RE: JOHN J. PATERRA et al., AAD No. 99-020/WME
Consent Agreement

STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT

By: Dean H. Albrow
DEAN H. ALBRO, Chief
Office of Compliance & Inspection
Date: January 13, 2003

FOOD 'N FUEL, INC.
GASOLINE ACCOUNT (HARTFORD AVE.)

Vendor No: 000260/Name: RHODE ISLAND GENERAL TREASURER

375

Invoice	Reference	Inv Date	Inv Amt	Amt Paid	Discount	Adj Amt	Net Amt
011003		01/10/03	2700.00	2700.00	0.00	0.00	2700.00

(Acct: 11010-010)

Check Date = 01/10/03

Total = ***2,700.00

FOOD 'N FUEL, INC.
GASOLINE ACCOUNT
(HARTFORD AVE.)
414 BROADWAY
PROVIDENCE, RI 02909

BANKRI
BANK RHODE ISLAND

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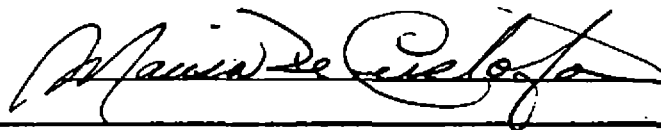
***Two Thousand Seven Hundred & No/100 Dollars

DATE
01/10/03

AMOUNT
***2,700.00

PAY
TO THE
ORDER
OF

RHODE ISLAND GENERAL TREASURER
ENVIRONMENTAL RESPONSE FUND



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