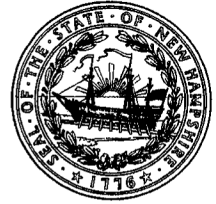




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

June 15, 2005

Cumberland Farms, Inc.
Attn: Richard Etzold
777 Dedham Street
Canton, MA 02021

Re: Docket No. AF 04-010 thru AF 04-023 Motion to Accept Settlement Agreement

Dear Ms. Plourde:

Enclosed for your records is a copy of the Motion to Accept Settlement Agreement in the above-captioned matter executed by Anthony P. Giunta, P.G., Director of the Waste Management Division, and accepted by Commissioner Michael P. Nolin on June 15, 2005.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

COPY
Michael P. Sciafani,
Legal Assistant

cc: Anthony P. Giunta, PG., Director, Waste Management Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
DES Public Information Officer
Lynn Woodard, DES WMD
Thomas Beaulieu, DES WMD
Susan Hanamoto, DES WMD

Cumberland Farms, Inc.
Attn: Richard Etzold
777 Dedham Street
Canton, MA 02021

ADMINISTRATIVE FINE(S)
Nos. AF 04-10 thru AF 04-23

MOTION TO ACCEPT SETTLEMENT AGREEMENT

NOW COME the Department of Environmental Services, Waste Management Division and Cumberland Farms, Inc., parties to the above-captioned matters, and stipulate to the following:

1. The Department of Environmental Services, Waste Management Division ("the Division"), is an administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03302.
2. Cumberland Farms, Inc., ("CFI") is a Corporation registered to do business in New Hampshire having a mailing address of 777 Dedham Street, Canton, MA 02021.
3. RSA 146-C authorizes DES to regulate the installation, maintenance, operation, and closure of underground storage facilities. Pursuant to RSA 146-C:9, the Commissioner of DES has adopted New Hampshire Administrative Rules Env-Wm 1401 to set forth the requirements for underground storage facilities by "establishing criteria for registration and permitting, and standards for design, installation, operation, maintenance, and monitoring of such facilities."
4. RSA 146-C:10-a authorizes the Commissioner of the Department of Environmental Services ("DES") to impose administrative fines of up to \$2,000 per offense upon any person who violates any provision of RSA 146-C or any rule adopted under the provisions of this chapter. Pursuant to RSA 146-C:10-a, the Commissioner has adopted Env-C 607 to establish the schedule of fines for such violations.
5. CFI is the registered facility owner of three underground storage tanks ("USTs") at the Sam's Food Store facility, further identified as UST #0-110747, located on real property at 358 Washington Street in Claremont, NH ("the Claremont Property").
6. On August 16th, 2004, the Division issued Notice of Proposed Administrative Fine No. AF 04-10 to CFI, seeking fines pursuant to Env-C 607 totaling \$6,000 for violations of Env-Wm 1401.30(a) and Env-Wm 1401.33(b) on the Claremont Property.
7. CFI is the registered facility owner of four USTs at the Exxon CFI 70102 facility, further identified as UST #0-111460, located on real property at 2 South Mast Road in Goffstown, NH ("the Goffstown Property").

8. On August 16, 2004, the Division issued Notice of Proposed Administrative Fine No. AF 04-11 to CFI, seeking fines pursuant to Env-C 607 totaling \$2,500 for violations of Env-Wm 1401.11(a) and Env-Wm 1401.31(a) on the Goffstown property.

9. CFI is the registered facility owner of three USTs at the Exxon CFI 70119 facility, further identified as UST #0-111479, located on real property at 1475 Lafayette Road in Portsmouth, NH ("the Portsmouth Property").

10. On August 16, 2004, the Division issued Notice of Proposed Administrative Fine No. AF 04-12 to CFI, seeking fines pursuant to Env-C 607 totaling \$4,700 for violations of Env-Wm 1401.04(a), Env-Wm 1401.07(c), Env-Wm 1401.25(d), and Env-Wm 1401.31(a) on the Portsmouth Property.

11. CFI is the registered facility owner of three USTs at the Exxon CFI 70113, further identified as UST #0-111485, located on real property at 337 Main Street in Nashua, NH ("the Nashua Property").

12. On August 16, 2004, the Division issued Notice of Proposed Administrative Fine No. AF 04-13 to CFI, seeking fines pursuant to Env-C 607 totaling \$1,500 for violations of Env-Wm 1401.11(a) and Env-Wm 1401.31(a) on the Nashua property.

13. CFI is the registered facility owner of three USTs at the Cumberland Farms 2843 facility, further identified as UST #0-111493, located on real property at 60 Henniker Street in Hillsborough, NH ("the Hillsborough Property").

14. On August 16, 2004, the Division issued Notice of Proposed Administrative Fine No. AF 04-14 to CFI, seeking fines pursuant to Env-C 607 totaling \$1,100 for violations of Env-Wm 1401.07(c) and Env-Wm 1401.31(a) on the Hillsborough property.

15. CFI is the registered facility owner of three USTs at the Cumberland Farms 2818 facility, further identified as UST #0-111494, located on real property at 102 Manchester Street in Concord, NH ("the Manchester Street Property").

16. On August 16, 2004, the Division issued Notice of Proposed Administrative Fine No. AF 04-15 to CFI, seeking fines pursuant to Env-C 607 totaling \$3,400 for violations of Env-Wm 1401.07(c), Env-Wm 1401.21(l), Env-Wm 1401.25(c) and Env-Wm 1401.31(a) on the Manchester Street Property.

17. CFI is the registered facility owner of three USTs at the Cumberland Farms 2825, further identified as UST #0-111495 located on real property at 202 Highland Avenue in Rochester, NH ("the Rochester Property").

18. On August 16, 2004, the Division issued Notice of Proposed Administrative Fine No. AF 04-16 to CFI, seeking fines pursuant to Env-C 607 totaling \$1,000 for violations of N.H. Administrative Rule Env-Wm 1401.31(a) on the Rochester Property.

19. CFI is the registered facility owner of three USTs at the Cumberland Farms 2803 facility, further identified as UST #0-111498, located on real property at 384 South Broadway in Salem, NH ("the Salem Property").

20. On August 16, 2004, the Division issued Notice of Proposed Administrative Fine No. AF 04-17 to CFI, seeking fines pursuant to Env-C 607 totaling \$5,500 for violations of Env-Wm 1401.21(l), Env-Wm 1401.25(c), Env-Wm 1401.25(d), Env-Wm 1401.30(b) and Env-Wm 1401.31(a) on the Salem Property.

21. CFI is the registered facility owner of three USTs at the Cumberland Farms 2834 facility, further identified as UST #0-111499, located on real property at 1 Main Street in Whitefield, NH ("the Whitefield Property").

22. On August 16, 2004, the Division issued Notice of Proposed Administrative Fine No. AF 04-19 to CFI, seeking fines pursuant to Env-C 607 totaling \$1,000 for violations of N.H. Administrative Rule Env-Wm 1401.11(a) on the Whitefield Property.

23. CFI is the registered facility owner of three USTs at the Cumberland Farms 2801 facility, further identified as UST #0-111506, located on real property at 235 East Main Street in Tilton, NH ("the Tilton Property").

24. On August 16, 2004, the Division issued Notice of Proposed Administrative Fine No. AF 04-19 to CFI, seeking fines pursuant to Env-C 607 totaling \$5,000 for violations of Env-Wm 1401.30(b) and Env-Wm 1401.31(a) on the Tilton Property.

25. CFI is the registered facility owner of three USTs at the Exxon CFI 70101 facility, further identified as UST #0-111457, located on real property at 196 North Main Street in Concord, NH ("the North Main Street Property").

26. On August 16, 2004, the Division issued Notice of Proposed Administrative Fine No. AF 04-20 to CFI, seeking fines pursuant to Env-C 607 totaling \$5,100 for violations of Env-Wm 1401.11(a), Env-Wm 1401.25(d) and Env-Wm 1401.31(a) on the North Main Street Property.

27. CFI is the registered facility owner of three USTs at the Exxon CFI 70103 facility, further identified as UST #0-112055 located on real property at 36 West River Road in Hooksett, NH ("the West River Road Property").

28. On August 16, 2004, the Division issued Notice of Proposed Administrative Fine No. AF 04-21 to CFI, seeking fines pursuant to Env-C 607 totaling \$1,600 for violations of Env-Wm 1401.25(d) and Env-Wm 1401.31(a) on the West River Road Property.

29. CFI is the registered facility owner of three USTs at the Exxon CFI 70104 facility, further identified as UST #0-112902, located on real property at 1093 Hooksett Road in Hooksett, NH ("the Hooksett Road Property").

30. On August 16, 2004, the Division issued Notice of Proposed Administrative Fine No. AF 04-22 to CFI, seeking fines pursuant to Env-C 607 totaling \$1,800 for violations of Env-Wm 1401.25(c), Env-Wm 1401.25(d) and Env-Wm 1401.31(a) on the Hooksett Road Property.

31. CFI is the registered facility owner of three USTs at the Cumberland Farms 2827 facility, further identified as UST #0-113135, located on real property at 27 Epping Street in Raymond, NH ("the Raymond Property").

32. On August 16, 2004, the Division issued Notice of Proposed Administrative Fine No. AF 04-23 to CFI, seeking fines pursuant to Env-C 607 totaling \$8,700 for violations of Env-Wm 1401.11(a), Env-Wm 1401.25(d), Env-Wm 1401.30(a), Env-Wm 1401.31(a) and Env-Wm 1401.33 on the Raymond Property.

33. The total fines sought by the Division in all fourteen (14) cases noted herein are \$48,900.

34. In order to settle this matter, the Division and CFI have agreed to the terms of this Settlement Agreement ("Agreement"), as set forth herein.

35. CFI will complete compliance inspections at all 65 of their New Hampshire UST facilities that have not already been inspected, in a timeframe agreed upon by DES as part of the ongoing Supplemental Environmental Project (SEP). Any discrepancies found will be corrected within a 30 day period from the signing of this agreement, or as agreed to by DES, UNH, and CFI to accommodate the SEP.

36. Of the proposed fines, in the amount of \$48,900, \$36,400 will be suspended due to CFI's agreement to participate in a pilot project to evaluate potential solutions to UST system vapor releases. As part of this project, CFI will provide active gas station sites for the evaluation of release prevention technologies and inspection protocols. CFI will also pay for the installation of release prevention technologies at a minimum of one of the sites. CFI's total cost associated with installation of the release prevention technologies shall be at least \$20,000 but shall not exceed \$25,000. CFI will provide utilities necessary to operate the equipment and grant reasonable site access to the properties with 24-hour notice from DES. CFI may submit for reimbursement from the Oil Discharge and Disposal Cleanup Fund ("the Fund") for utilities or other costs that meet the Fund criteria.

37. The suspended portion of the proposed fine, in the amount of \$36,400 is contingent upon CFI maintaining the subject facilities in compliance with Env-Wm 1401 for a period of one-year from the date of execution of this document, and fulfilling their commitment pursuant to Paragraphs #35, #36, and #38. If CFI fails to maintain compliance during the one-year period, or fails to fulfill their agreement commitment, the suspended portion of the proposed fines, in the amount of \$36,400 shall become due and payable immediately. If CFI maintains compliance for the prescribed one-year period, and fulfills their agreement commitment, the suspended portion of the fine shall be waived.

38. CFI agrees to pay the remaining \$12,500 upon execution of this Agreement by CFI.
39. Payment under Paragraph #38, and any payment that becomes due pursuant to Paragraph #37 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit
Attention: Michael Sclafani, Legal Assistant
P.O. Box 95
Concord, NH 03302-0095

40. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.
41. By executing this Agreement, CFI waives its right to hearings on or any appeal of the administrative fines identified in the Notice, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.
42. The effective date of this Agreement will be the date on which it is signed by an authorized representative of CFI, the Director of the Waste Management Division, and the Commissioner of DES. After that date, this Agreement may be amended only by written agreement signed by both parties and the Commissioner. Any such amendment will become effective on the date on which it has been accepted by the Commissioner.
43. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

WHEREFORE, the parties respectfully request the Commissioner to accept the terms of this Agreement by granting this Motion.

6/3/05
Date

Respectfully submitted,
Cumberland Farms, Inc.

[Signature]
By: Emile C. Tayeh
Duly Authorized

6/14/05
Date

DES Waste Management Division

[Signature]
Anthony P. Giunta, P.G., Director

This Motion to Accept Settlement agreement is granted this 15th day of June, 2005.

[Signature]
for Michael P. Nolin, Commissioner
Department of Environmental Services