The State of New Hampshire
Department of Environmental Services

Michael P. Nolin
Commissioner

October 25, 2005

Ziad Elkhoury
83 Milton Road
Rochester, NH 03867

Re: Docket No. AF 04-066 Motion to Accept Settlement Agreement

Dear Mr. Elkhoury:

Enclosed for your records is a copy of the fully executed and accepted Motion to Accept Settlement Agreement in the above-captioned matter.

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

Sincerely,

COPY

Michael P. Sclafani,
Legal Assistant

cc: Anthony P. Giunta, P.G., 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
Tom Beaulieu, DES WMD
Susan Hanamoto, DES WMD

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095
Telephone: (603) 271-3503 • Fax: (603) 271-2867 • TDD Access: Relay NH 1-800-735-2964
DES Web site: **www.des.nh.gov**

Ziad Elkhoury
83 Milton Road
Rochester, NH 03867

Re: Charlie's, 83 Milton Road
Rochester, NH – UST ID # 0-112475

ADMINISTRATIVE FINE
No. AF 04-066

MOTION TO ACCEPT SETTLEMENT AGREEMENT

NOW COME the Department of Environmental Services, Waste Management Division ("the Division") and Ziad Elkoury, parties to the above-captioned matter, and stipulate to the following:

1. The Commissioner of the Department of Environmental Services ("DES"), is authorized under RSA 146-C:10-a to impose administrative fines of up to $2,000 per offense for violations of RSA 146-C and Env-Wm 1401 relating to installation, maintenance, operation, and closure of underground storage facilities. Pursuant to RSA 146-C:10-a, the Commissioner has adopted Env-C 607 to establish the schedule of fines for such violations.

2. Ziad Elkhoury is the registered facility owner of three underground storage tank ("UST") systems at the Charlie's facility ("the Facility"), further identified as UST #0-112475, located on real property at 83 Milton Road, Rochester, NH ("the Property").

3. On September 7, 2004, the Division issued Notice of Proposed Administrative Fine No. AF 04-066 ("the Notice") to Ziad Elkhoury, seeking fines totaling $1,700 for violations of New Hampshire Administrative Rule Part Env-Wm 1401.

4. Specifically, the Notice cited Ziad Elkhoury for violating Env-Wm 1401.11(a) by failing to maintain accurate stock inventory records for all three UST's. Pursuant to RSA 146-C: 5 and Env-Wm 1401.11 the Division sought a fine of $1,500.

5. The Notice further cited Ziad Elkhoury for violating Env-Wm 1401.32(c) by failing to maintain a record of the impressed current cathodic protection system readings. Pursuant to Env-C 607.04(b) the Division sought a fine of $200.

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

7. Of the proposed fine, in the amount of $1,700, for failing to maintain accurate stock inventory records, and for failing to maintain a record of the impressed current cathodic protection system readings, 20% or $340 shall be suspended due to the respondent's small business status.

8. The suspended portion of the proposed fine, in the amount of $340, is contingent on Ziad Elkhoury returning the subject facility to compliance and maintaining compliance with New Hampshire Administrative Rules Env-Wm 1401 for a period of two years from the date of the

execution of this document. If Ziad Elkhoury fails to return the facility to compliance and maintain compliance during the two-year period, the suspended portion of the proposed fine in the amount of $340, shall become due and payable immediately. If Ziad Elkhoury maintains compliance for the prescribed two-year period, the suspended portion of the fines shall be waived.

9. Ziad Elkhoury agrees to pay the remaining $1,360 upon execution of this Agreement by Ziad Elkhoury.

10. Payment under Paragraph #9 and any payment that becomes due pursuant to Paragraph #8 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

11. 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.

12. By executing this Agreement, Ziad Elkhoury waives his right to a hearing 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.

13. The effective date of this Agreement will be the date on which it is signed by Ziad Elkhoury, owner of Charlie's, 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.

14. 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.

Respectfully submitted,

10-17-05
Date

COPY

Ziad Elkhoury, Owner

DES Waste Management Division

COPY

10/18/05
Date

Anthony Guinta, P.G., Director

This Motion to Accept Settlement agreement is granted this 24th day of October, 2005.

COPY

Michael P. Nolin, Commissioner
Department of Environmental Services