The State of New Hampshire
Department of Environmental Services

Michael P. Nolin
Commissioner

October 12, 2005

SAU 29
Attn: Timothy Ruehr
34 West Street
Keene, NH 03431

Re: Docket No. AF 04-103 Motion to Accept Settlement Agreement

Dear Mr. Ruehr:

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**

SAU 29
Attn: Timothy L. Ruehr
34 West Street
Keene, NH 03431

Re: Westmoreland School, 40 Glebe Road,
Westmoreland, NH 03467
UST ID#0-113218

ADMINISTRATIVE FINE
No. AF 04-103

MOTION TO ACCEPT SETTLEMENT AGREEMENT

NOW COME the Department of Environmental Services, Waste Management Division ("the Division") and SAU 29, 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. SAU 29 is the registered facility owner of one underground storage tank ("UST") at the Westmoreland School facility ("the Facility"), further identified as UST # 0-113218, located on real property at 40 Glebe Road, Keene, NH ("the Property"). William Gurney as the representative for SAU 29 signed the Registration for Underground Storage Tank Systems for the Facility, dated December 16, 2004, as the representative on behalf of Westmoreland School.

3. On December 22, 2004, the Division issued Notice of Proposed Administrative Fine No. AF 04-103 ("the Notice") to SAU 29 seeking fines totaling $2,500 for violations of New Hampshire Administrative Rule Part Env-Wm 1401.

4. The Notice cited SAU 29 for violating Env-Wm 1401.20 by installing new piping for a UST system in the fall of 2003 without obtaining an approval of engineering plans for the system from DES. Pursuant to Env-C 607.03(a) the Division sought a fine of $1,000.

5. The Notice further cited SAU 29 for violating Env-Wm 1401.28(s) by backfilling the newly installed piping and placing the UST system into service on or about the fall of 2003 before an inspection was performed by DES. Pursuant to Env-C 607.03(d) the Division sought a fine of $500.

6. The Notice further cited SAU 29 for violating Env-Wm 1401.04(d) by failing to file an amended registration for the newly installed piping at the Facility at the time of final inspection. Pursuant to Env-C 607.02(a) the Division sought a fine of $1,000.

7. In order to settle this matter, the Division and SAU 29 have agreed to the terms of this Settlement Agreement ("Agreement"), as set forth herein.

8. Of the proposed fine, in the amount of $2,500, 20% or $500 shall be suspended due to this being a one-time unintentional violation. An additional 20% or $500 shall be suspended due to SAU 29's good faith effort to return this facility to compliance. An additional 20% or $500 shall be suspended due to SAU 29's history of compliance at this facility. An additional 20% or $500 shall be suspended due to the Facility's cooperation in returning the facility into compliance.

9. The suspended portion of the proposed fine, in the amount of $2,000 is contingent upon SAU 29 maintaining the subject UST facility in compliance with Env-Wm 1401 for a period of two years from the date of the execution of this Agreement. If SAU 29 fails to maintain compliance during the two-year period, the suspended portion of the fine, in the amount of $2,000 shall become due and payable immediately. If SAU 29 maintains compliance for the prescribed two-year period, the suspended portion of the fine shall be waived.

10. SAU 29 agrees to pay the remaining $500 upon execution of this Agreement by an authorized representative of SAU 29.

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

12. 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.

13. By executing this Agreement, SAU 29 waives its 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.

14. The effective date of this Agreement will be the date on which it is signed by an authorized representative of SAU 29, 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.

15. 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,
SAU 29

COPY

9-8-2005
Date

Timothy L. Ruehr, Business Administrator
Duly Authorized

DES Waste Management Division

COPY

10/5/05
Date

Anthony P. Giunta, P.G., Director

This Motion to Accept Settlement agreement is granted this 10th day of October 2005.

COPY

Michael P. Nolin, Commissioner
Department of Environmental Services