

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DIVISION OF PUBLIC UTILITIES AND CARRIERS

IN RE: Joint Petition for Purchase and Sale of Assets  
by The Narragansett Electric Company and the  
Southern Union Company

Docket No. D-06-13

**Petition for Intervention**  
**Rule 17**

Pursuant to Rule 17 of the Division of Public Utilities and Carriers' Rules of Practice and Procedure, the following residents of Tiverton, Rhode Island, request to intervene in the above-captioned matter as landowners, residents, and plaintiffs in litigation against Southern Union:

- a. Plaintiffs Gail, John F. and John D. Corvello own and reside at the property located at 188-190 Bay Street;
- b. Plaintiffs Linda M. and Robert M. Ferreira own and reside at the property located at 37 A. Connell Street;
- c. Plaintiffs Gary P. Rose and Victor Rose III own and reside at the property located at 34 Chace Avenue;
- d. Plaintiffs Lorraine A. and Frank J. Aguiar, Jr. own and reside at the property located at 62 Canonicus Street;
- e. Plaintiffs Cathleen and Michael A. Alvarnas own and reside at the property located at 39 Chace Avenue and own the property located at 31 Chace Avenue;

- f. Plaintiffs Mary Lou and Carlos Amaral own and reside at the property located at 17 Foote Street;
- g. Plaintiffs Fatima Amaral, Liria Amaral, Debra Beausoleil, and Susan Correia own and reside at the property located at 38 Hilton Street;
- h. Plaintiffs Maria I. and Pedro M. Amaral own and reside at the property located at 49 Hilton Street;
- i. Plaintiff Henry M. Beirola, Jr. owns the property located at 79 Canonicus Street;
- j. Plaintiff Stephen Bigos owns and resides at the property located at 36 Canonicus Street;
- k. Plaintiffs Nancy Ann and Robert Borden own the properties located at 58 Bay Street and 15 Chace Avenue;
- l. Plaintiffs Jane and Richard Borges own and reside at the property located at 60 Chace Avenue;
- m. Plaintiff Mark Bouchard owns the property located at Block 160, Lot 72;
- n. Plaintiff Sara Cabral owns and resides at the property located at 58 Canonicus Street;
- o. Plaintiff William G. Camara owns the properties located at Block 3, Lot 1C and Block 3, Lot 1D;
- p. Plaintiffs Junya and John Cambra own and reside at the property located at 91 State Street and own the properties located at Block 17, Lot 1; Block 17, Lot 3; Block 17, Lot 4A; Block 17, Lot 5A and Block 17, Lot 6;

- q. Plaintiffs Janice M. and Barry C. Carroll own and reside at the property located at 145 Judson Street;
- r. Plaintiffs Karen A. and Claywell M. Chafon, III own and reside at the property located at 16 Chace Avenue;
- s. Plaintiffs Kathleen and John Christo own and reside at the property located at 48 Canonicus Street;
- t. Plaintiff Carolyn Collins owns and resides at the property located at 61 Hilton Street;
- u. Plaintiffs Normenia and Jose P. Cordeiro own and reside at the property located at 51 Canonicus Street;
- v. Plaintiffs Shirley M. Cordeiro and Patricia Aguiar own and reside at the property located at 130 Bay Street and own the property located at 110 Bay Street;
- w. Plaintiffs Isabel M. and Francis R. Correia own and reside at the property located at 8 Bay Street;
- x. Plaintiffs Colleen Fernandes and Manuel Christo own and reside at the property located at 39 Hilton Street;
- y. Plaintiff the Estate of Christina Farias owns the property located at 61 Canonicus Street;
- z. Plaintiffs Linda and Barry Hair own and reside at the property located at 52 Hilton Street;
- aa. Plaintiffs Mary and Larry A. Held own and reside at the property located at 28 Hilton Street;

- bb. Plaintiffs Pamela A. and Edward J. Klus own and reside at the property located at 36 Hooper Street;
- cc. Plaintiffs Victoria and Michael Macomber own and reside at the property located at 103 Canonicus Street;
- dd. Plaintiffs Hilda R., Myron J. and Richard M. Martin own and reside at the property located at 44 Hilton Street;
- ee. Plaintiff Jean and Thomas J. Medeiros own and reside at the property located at 111 State Avenue;
- ff. Plaintiff Linda Mello-Fournier owns and resides at the property located at 114 Canonicus Street;
- gg. Plaintiffs Eleanor and Michael Monast own and reside at the property located at 40 Judson Street;
- hh. Plaintiffs Evelyn Morris and Antone Custodio own and reside at the property located at 126 Hilton Street;
- ii. Plaintiffs Lucia and Dimas A. Pavao own and reside at the property located at 88 Bay Street;
- jj. Plaintiffs Lois and Stephen J. Scanlon own and reside at the property located at 129 Bottom Street;
- kk. Plaintiffs Michelle and David Silva own and reside at the property located at 29 Canonicus Street;
- ll. Plaintiff Angelina Silvia owns and resides at the property located at 42 Chace Avenue;

- mm. Plaintiffs Loree A. and Dana Silvia own and reside at the property located at 30 Judson Street;
- nn. Plaintiffs Dana and John Silvia own the property located at 96 Bay Street;
- oo. Plaintiffs Barbara A. and Tobias Silvia, Jr. own and reside at the property located at 50 Hooper Street;
- pp. Plaintiffs Georgianna and Alvin B. Simpson own the property located at 123 Judson Street;
- qq. Plaintiffs Alvin B. Simpson Revocable Trust and Georgianna Simpson Revocable Trust own the properties located at Lot 41, Block 34 and Lot 41, Block 35;
- rr. Plaintiffs Marsha and Clinton Skarka own and reside at the property located at 114 Lepas Road;
- ss. Plaintiffs Daniel J. Terceiro, Theresa Farias and Margaret Medeiros own the properties located at Block 22, Lot 3; Block 22, Lot 4 and Block 22, Lot 6;
- tt. Plaintiff Paul E. Terceiro owns and resides at the property located at 33 Bay Street;
- uu. Plaintiff Bruce Thompson owns and resides at the property located at 126 Chace Avenue;
- vv. Plaintiffs Carolyn and Dennis Valois own and reside at the property located at 42 Bay Street and own the property located at Block 16, Lot 6A;
- ww. Plaintiffs Heather and Antonio Vieira own and reside at the property located at 55 Canonicus Street;

- xx. Plaintiff Betsey D. Warren owns and resides at the property located at 17 Canonicus Street and owns the property located at 12 Canonicus Street;
- yy. Plaintiffs Lynne V. and Timothy Waters own and reside at the property located at 54 Judson Street;
- zz. Plaintiffs Lisa and Robert Lee Wilt, Jr. own and reside at the property located at 218 Lepes Road.
- aaa. Plaintiffs Ellen G. and John Cabral own and reside at the property located at 85 Canonicus Street.
- bbb. Plaintiffs Bay View Holy Ghost Citizens Club own and reside at the property located at 66 Bottom Street.
- ccc. Plaintiffs Doris and Dennis Duarte own and reside at the property located at 58 Hilton Street.
- ddd. Plaintiff John F. Duarte as Trustee own and reside at the property located at 9 Hilton Street.
- eee. Plaintiffs Raymond and Judith Lepage own and reside at the property located at 23 Methuen Street.
- fff. Plaintiffs Manuel and Odelia Pavao own and reside at the property located at 80 Bay Street.
- ggg. Plaintiffs Cynthia A. Reagan, Debra A. Depaola, and the Estate of George Oliveira own and reside at the property located at 35 Hilton Street.
- hhh. Plaintiffs Mary Souza, Mary P. Faria, Virginia Borges, Hilda Martin and Delores Boyle own the property located at 43 Hilton Street.

- iii. Plaintiffs Jose A. and Gina Adorno own the property located at 15 Bay Street.
- jjj. Plaintiffs Stephen and Rochelle Ferry own the property located at 47 A Connell Street.
- kkk. Plaintiffs Donna Braga, Jennifer Braga and Adam Braga own the property at 40 Bottom Street.
- lll. Plaintiffs Donna Braga, Jennifer Braga and Adam Braga own the property at 8 Bottom Street.
- mmm. Pauline Carvalho owns the property at 11A Connell Street.
- nnn. Plaintiffs Georgianna Simpson Revocable Trust, Alvin B. Simpson Revocable Trust, Norma and Ernest Simpson AND the Marion Bradshaw Trust own the property at Parcel 181-18-2 (Borden Tuell Farm).
- ooo. Plaintiffs Georgianna Simpson Revocable Trust, Alvin B. Simpson Revocable Trust, Norma and Ernest Simpson AND the Marion Bradshaw Trust own the properties located at Parcel 24-25-1/24-26-1 Waterfront.
- ppp. Plaintiffs Evelyn Rogers and David A. Tavares rent the property at 51 Hooper Street, but would have built a house on family-owned land on Bottom Street but for the contamination moratorium which has prevented construction.
- qqq. Plaintiff Lisa M. Mendoza owns the property at 28 Hooper St.

1. On March 17, 2003, RIDEM issued a Letter of Responsibility (Exhibit "A.") to New England Gas Company/Southern Union Company stating in part:

RE: Historical Manufactured Gas Plant Contaminated Soils in Tiverton, Rhode Island (former Fall River Gas Co.) along Bay Street, Judson Street, Canonicus Street, Hooper Street, Hilton Street, Chase Street and Foote Street, and adjoining properties (i.e. "the site").

The contaminated soil appears to contain historical manufactured coal gasification materials.

Based upon the information identified to date, Southern Union Company, as the owner of the former Fall River Gas Company (d.b.a. New England Gas Co.), is identified as a Responsible Party as defined by Rule 3.44 for the improper disposal of contaminated soils.

2. On or about November 23, 2005, RIDEM issued a Notice of Intent to Enforce ("NOIE") to Southern Union Company d/b/a New England Gas Company as the Responsible Party because of its continued failure to comply with the terms of the Letter of Responsibility ("LOR") issued in March 2003, and its overall inadequate response to the release of hazardous materials at the site. A copy of the NOIE is attached hereto as Exhibit "B."). The NOIE required NEGC to:

1. Submit a minimum of three (3) Remedial Alternatives for remediating all soil contamination in the Bay Street Neighborhood study Area to meet RIDEM's Method 1 Residential Direct Exposure Criteria as outlined in the Remediation Regulations on or before January 4, 2006;
2. Submit any outstanding site investigation sampling results and laboratory analysis, completed after the August 15, 2005 SIR submittal, for the remaining properties by January 4, 2006;
3. Conduct Public Notice to all residents of the Bay Street Neighborhood Study Area within 14 days of receipt of the RIDEM's Program Letter.

3. To date, Southern Union's Division, NEGC has refused to comply with the NOIE. Instead, by letter dated December 13, 2005, NEGC alleged that the NOI was improper because: (1) "there is no evidence to support RIDEM's suggestion that all or most of the lots in the study area are impacted by Manufactured Gas Plan residuals"; (2) the Remediation Regulations "permit a Performing Party to perform a risk assessment before selecting and screening remedial alternatives"; and (3) "RIDEM has not provided NEGC with either the time or the approvals necessary to develop remedial alternatives." (Exhibit "C.")

4. As a result of Southern Union's refusals to comply with RIDEM directives the Tiverton residents have remained unable to make even the most basic uses of and repairs to their properties for almost three years. Additionally, because local unions have forbidden their laborers from working in the neighborhood, utilities such as water mains and telephone service have not been maintained or repaired.

5. In response to Southern Union's repeated failure to clean up the contaminated areas, these Tiverton residents have filed a lawsuit against Southern Union for the activities of its New England Gas Company division.

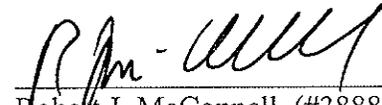
6. These Tiverton residents have an interest in ensuring that the party primarily responsible for their injuries does not cut its ties with the State of Rhode Island, removing any urgency on the part of Southern Union to quickly and properly clean the contamination. This interest which is directly affected is not adequately represented by existing parties.

7. These Tiverton residents have an interest which is directly affected and which is not adequately represented by existing parties in ensuring that Southern Union's sale of

the New England Gas Company division, the assets from which its liability to the Tiverton residents stems, does not negatively affect the ability of these residents to collect a judgment relating to this lawsuit.

Respectfully submitted,

By and through their attorneys,



Robert J. McConnell (#3888)

Jonathan D. Orent

**MOTLEY RICE LLC**

321 South Main Street

Providence, RI 02940

(401) 521-9400

David C. Strouss

Neil T. Leifer

Brad J. Mitchell

**THORNTON & NAUMES LLP**

100 Summer Street, 30<sup>th</sup> Floor

Boston, MA 02110

(617) 720-1333

Mark W. Roberts

Jennifer Bernazani-Ludlum

**MCRROBERTS, ROBERTS &  
RAINER**

53 State Street

Boston, MA 02109

(617) 722-8222

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the within was mailed to the following on this 7<sup>th</sup> day of April, 2006.

David A. Wollin  
Adler Pollock & Sheehan PC  
One Citizens Plaza, 8th Floor  
Providence, Rhode Island 02903  
(401) 274-7200  
(401) 351-4607 (fax)

Steven Frias, Esq.  
Executive Counsel  
Rhode Island Public Utilities Commission  
89 Jefferson Boulevard  
Warwick, RI 02888

W. Mark Russo  
Ferrucci Russo P.C.  
49 Weybosset Street, 2<sup>nd</sup> Floor  
Providence, RI 02903

Paul J. Roberti, Assistant Attorney General  
Office of the Attorney General  
150 South Main Street  
Providence, RI 02903

Ms. Luly Massaro  
Clerk  
Division of Public Utilities and Carriers  
89 Jefferson Boulevard  
Warwick, RI 02888

Ronald T. Gerwatowsky, Esq.

A handwritten signature in cursive script, appearing to read "Paul J. Roberti", is written over a horizontal line.





RHODE ISLAND  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

235 Promenade Street, Providence, RI 02908-5767

TDD 401-222-4462

**LETTER OF RESPONSIBILITY  
CASE # 2002-065(a)**

March 17, 2003

Mr. Alan F. Fish  
Director of Environmental Service  
Southern Union Company  
221 West 6<sup>th</sup> Street  
Suite 1900  
Austin, Texas 78701

Robert A. Young  
Director of Engineering  
Southern Union Company  
New England Division  
100 Weybossett Street  
Providence, Rhode Island 02903

**CERTIFIED MAIL**

RE: Historical Manufactured Gas Plant Contaminated Soils in Tiverton, Rhode Island (former Fall River Gas Co.) along Bay Street, Judson Street, Canonicus Street, Hooper Street, Hilton Street, Chase Street and Foote Street, and adjoining properties (i.e. "the site").

Dear Messrs Fish and Young:

On 4 September 1996 the Department enacted the amended Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases, (the Remediation Regulations). The purpose of these regulations is to create an integrated program requiring reporting, investigation and remediation of petroleum and hazardous material contaminated sites in order to eliminate and/or control threats to human health and the environment in an efficient manner. A Letter of Responsibility (LOR) is a preliminary document used by the Department to codify and define the relationship between the Department and a responsible party.

Please be advised of the following facts:

1. The Department has been in receipt of a Notification of Release submitted on behalf of Starwood Tiverton LLC since September 30, 2002 concerning the discovery and stockpiling of contaminated soils, on August 16, 2002, along Bay Street at the intersection of Judson Street and Last Street as part of the construction and installation of the Mount Hope Bay Sewer Interceptor Project in Tiverton R.I.
2. The analytical results submitted concerning the subsurface material along Bay Street by EA Engineering, Inc. identified concentrations of hazardous substances (specifically Total

Southern Union Company  
New England Gas-Tiverton LOR  
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Petroleum Hydrocarbons (TPH), Semi-Volatile Organic Compounds (SVOC's), and cyanide) in the site soils, some of which exceed the Method 1 Residential Direct Exposure Criteria and as referenced in the Remediation Regulations. Based upon these results, the Department concurred that a release of hazardous materials occurred as defined by Rule 3.28 and 3.54 of the Remediation Regulations and required that the Town of Tiverton and Starwood, LLC arrange for the proper disposal of the stockpiled soils at a licensed disposal facility. The Town of Tiverton was identified as the current owner of portions of the Site (i.e. public roads) and as such was a **Responsible Party** as defined by Rule 3.60 of the Remediation Regulations, and Starwood Tiverton, LLC was identified as the **Operator** of the construction project at the Site and as such was a **Responsible Party** as defined by Rule 3.44.

3. As a result of a Department requested Site Investigation (SI), the contractor for the Town of Tiverton conducted further subsurface investigation of the surrounding residential roads in November 2002 and discovered that the contaminated soils extended beyond the sewer pipeline right of way and beneath areas of the public roads in the adjacent community.
4. Additional analytical testing has determined that some of the contaminated soils contain Poly Aromatic Hydrocarbons (PAHs), Cyanide and Naphthalene which exceed the Residential and Industrial/Commercial Direct Exposure Criteria. Observations made by Department employees and town consultants indicate that this material may also extend onto adjacent private residential property lots.
5. The contaminated soil appears to contain historical manufactured coal gasification materials.
6. On March 13, 2003, the Department met with Town representatives who presented historical information concerning this area of the Town of Tiverton to the Department. Documentation citing a former employee of Fall River Gas Co. dated February 10, 1987 states that "blue soil" was observed in the fill material (1-3 feet in depth) along State and Bay Street and that the disposal occurred over a ten-year period during the 1960's. Additional information presented from 1995 Individual Septic Design System records for a residential dwelling at the intersection of Hooper and Bay Street identifies that there is approximately two (2) feet of fill in the area. This information supports the Department's belief that contaminated soils were filled in this residential area prior to the homes construction and may also exist on undeveloped property to the south of the residential development.
7. Based upon the information identified to date, **Southern Union Company**, as the owner of the former Fall River Gas Company (d.b.a. New England Gas Co.), is identified as a **Responsible Party** as defined by Rule 3.44 for the improper disposal of contaminated soils.

As a result of the information known and the conditions observed at the Site, the Department requests that you comply with the following:

1. Submit a draft Site Investigation Work Plan (SIWP) by April 10, 2003 for review and approval outlining Southern Union's plans to further investigate the historical MGP soils and groundwater conditions which appear to be located on or beneath the ground surface

throughout a portion of this residential neighborhood and the vacant undeveloped property located to the south of Judson Street.

2. Upon approval of the SIWP by the Department and prior to initiating investigation work, conduct Public Notification (Rule 7.07) to all property abutters and Town of Tiverton officials and the town public works department. Obtain written access to the private properties where Site Investigation activities will be taking place. Notify concerned parties that the information will be available for review at the Department and at a public repository designated by the Town of Tiverton.
3. Upon completion of the Site Investigation, submit a Site Investigation Report (SIR) including the SIR checklist and a proposed remedial alternatives section and be prepared to bring the Site into compliance with the Remediation Regulations.

Please be advised that the **Southern Union Company**, as the new owner of the former Fall River Gas Company, is responsible for the proper investigation and, if necessary, remediation of hazardous materials at this site.

Within seven (7) days of the receipt of this letter, please notify this Office regarding your plans to address this matter.

If you have any questions regarding this letter or would like the opportunity to meet with Department personnel, please contact me by telephone at (401) 222-2797-extension 7102 or by e-mail at [jrcrawford@dem.state.nh.us](mailto:jrcrawford@dem.state.nh.us).

Sincerely,



Jeffrey Crawford  
Principal Environmental Scientist  
Office of Waste Management

cc: Terrence Gray, Associate Director  
Leo Helgested, P.E.-Chief OWM  
Kelly Owens, Supervising Engineer OWM  
John Langlois, Esq.- DEM Legal Services  
J. William W. Harsch, Esq.- Town of Tiverton  
James F. Towers, Administrator-Town of Tiverton





RHODE ISLAND  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

235 Promenade Street, Providence, RI 02908-5767

TDD 401-222-4462

Mr. David Black  
Vice President  
Southern Union Company  
d.b.a. New England Gas Company  
100 Weybossett Street  
Providence, Rhode Island 02903

November 23, 2005

Gerald Petros, Esq.  
Hinckley, Allen & Snyder, LLP  
1500 Fleet Center  
Providence, RI 02903

RE: **Notice of Intent to Enforce**  
Bay Street Neighborhood Study Area  
Tiverton, Rhode Island  
**Case #2002-065(a)**  
**OWM SR 2005-09**

Dear Messrs. Black and Petros:

Enclosed please find a Notice of Intent to Enforce ("NOIE") issued to Southern Union Company d.b.a New England Gas Company ("NEGAS") as the Responsible Party in connection with the hazardous materials release within the Bay Street Neighborhood Study Area. The Bay Street Neighborhood Study Area, which is located in the Northwestern corner of the Town of Tiverton ("Tiverton"), encompasses approximately 100 residential properties and a few commercial private properties along with the abutting public roads and rights of way; otherwise identified as Tiverton Assessors Plats 8-6 Blocks 3, 5 (portion), 7(Lot 3 and 4) and 8; Plat 8-7, Blocks 13 (Lot 3) and 14 (Lots 4 and 5), Blocks 15, 16, 17, 21 and 22, and Block 41 (Lot 35)(i.e. "the Site"). Said NOIE outlines NEGAS's failure to comply with the Letter of Responsibility issued on March 17, 2003.

In accordance with the Letter of Responsibility (LOR) issued by the Rhode Island Department of Environmental Management (the Department) a complete Site Investigation Report (SIR) including remedial alternatives was required to be submitted for the Site.

As a result of NEGAS's failure to comply with the requirements of the LOR, in addition to the July 6, 2005 correspondence which requested an SIR with remedial alternatives by no later than August 15, 2005, the Site is considered to be **out-of-compliance** with the LOR

issued by the Department under the Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases (the Remediation Regulations).

Also, please find attached a copy of the Department's comments and comments from Fuss & O'Neil on behalf of ENACT concerning the Supplemental/Phase II Site Investigation Report. The Department requests a written response to these comments on or before February 1, 2006.

Should further investigation work be necessary, the Department will require that this work be performed as part of a Limited Design Investigation within the draft Remedial Action Work Plan to be submitted for review and approval that shall address remediating the soil contamination within the Bay Street Neighborhood Study Area.

As stated in the NOIE, a written response is required by January 4, 2006 stating NEGAS's intent to complete the required actions in accordance with the LOR and the Remediation Regulations. Failure to complete the shall result in an issuance of a formal enforcement action, including an administrative penalty.

If you have any questions regarding this matter please contact me by telephone at (401) 222-2797 extension 7102 or by e-mail at jeff.Crawford@dem.ri.gov.

Sincerely,



Jeffrey Crawford  
Principal Environmental Scientist  
Office of Waste Management

Enclosure

Cc: Terrence Gray, Assistant Director  
Leo Hellested, Chief -Office of Waste Management  
Dean Albro, Chief- Office of Compliance & Inspection  
Kelly Owens, Supervising Engineer OWM  
Tracey Tyrrell, Supervisor-Office of Compliance & Inspection  
Robert Vanderslice, Chief RIDOH Risk Assessment  
Louise Durfee, Town Council President, Tiverton  
Town Manager, Town of Tiverton  
Gail Corvello, E.N.A.C.T.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
OFFICE OF WASTE MANAGEMENT  
Site Remediation and Restoration Program

Mr. David Black  
Vice President  
Southern Union Company  
d.b.a. New England Gas Company  
100 Weybossett Street  
Providence, Rhode Island 02903

Gerald Petros, Esq.  
Hinckley, Allen & Snyder, LLP  
1500 Fleet Center  
Providence, RI 02903

RE: Bay Street Neighborhood Study Area  
Tiverton, Rhode Island  
Case #2002-065(a)  
OWM SR 2005-09

Subject: Failure to Comply with the Letter of Responsibility issued to Southern Union Company/New England Gas Company dated March 17, 2003.

**NOTICE OF INTENT TO ENFORCE**

**A. Introduction**

You are hereby notified that, as a result of the release of hazardous materials and/or petroleum products as identified herein, the Director of the Department of Environmental Management (the "Director") has reasonable grounds to believe that the following Parties have violated certain provisions of the R.I. Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases (the "Remediation Regulations").

Prompt, complete and continuing compliance with this Notice of Intent to Enforce ("NOIE") is required if you wish to stay the commencement of administrative-legal action and/or the assessment of administrative penalties. If you have any questions regarding this NOIE, please contact Jeffrey Crawford at (401) 222-2797 extension 7102.

**B. Facts**

1. The Bay Street Neighborhood Study Area is located in the Northwestern corner of the Town of Tiverton ("Tiverton") encompassing approximately 100 residential and a few commercial private properties along with the abutting public roads and rights of way; otherwise identified as Tiverton Assessors Plats 8-6 Blocks 3, 5 (portion), 7(Lot 3,4) and 8; Plat 8-7; Blocks 13 (Lot 3), 14 (Lot 4,5), Blocks 15, 16,17,21,22 and Block 41 (Lot 35)(i.e. "the Site").

2. The following Parties are responsible, in whole or in part, for the violations identified in this Notice:
  - (a) Southern Union Company -d.b.a. New England Gas Company (NEGAS)
3. The property became listed with the Department of Environmental Management ("RIDEM") on or about August 2002 as a result of receiving complaints from residents in the neighborhood community off of Bay Street in Tiverton. The complaints stated that soil material that was possibly contaminated was being stockpiled along Bay Street as part of a sewer main installation, the Mount Hope Bay Sewer Interceptor Project for North Tiverton, Rhode Island. Complaints filed at RIDEM initiated an investigation by a member of the RIDEM hazardous materials response team at the corner of Judson and Bay Street and at the bottom of Last Street in Tiverton. The RIDEM field investigator observed stockpiled soils at both locations that the sewer contractor had placed there and that the stockpiled soil had a "blue" color associated with it, indicative of historic coal gasification waste material (i.e. cyanide).
4. On September 6, 2002, RIDEM's Office of Compliance & Inspection (John Leo) received laboratory analyses from ESS Laboratory of the soil material. The analysis revealed the presence of cyanide and other hazardous substances including Semi-Volatile Organic Compounds (SVOC's) and more specifically Polycyclic Aromatic Hydrocarbon's (PAHs) and Total Petroleum Hydrocarbons (TPH) in the stockpiled soils were found which are jurisdictional under the RIDEM's Remediation Regulations.
5. In November 2002, EA Engineering on behalf of Tiverton and Starwood Tiverton, LLC ("Starwood") conducted a subsurface investigation beneath the portions of the public roads/streets inclusive of Bay, Judson, Hooper, Hilton, Canonicus, Chase, Foote as far north as State Avenue. Subsequent results reported by EA Engineering confirmed that soil contamination was more wide spread beneath the road/street areas of the neighborhood. The EA investigation also revealed the presence of Total Petroleum Hydrocarbons (TPH), Semi-Volatile Organic Compounds (SVOCs), total metals including Lead and Arsenic as well as total Cyanide.
6. On March 13, 2003, a public meeting was held at the Tiverton Town Hall at which approximately 125 residents expressed their concerns about the situation and provided information to RIDEM concerning historical activities in the Bay Street community.
7. At that meeting, documentation from a Town of Tiverton Planning Meeting (dated February 10, 1987) was presented and indicates that a former employee of Fall River Gas Company observed that "blue soil" was in the fill material (1-3 feet in depth) along State and Bay Street and that the disposal of this fill may have occurred over a ten-year period during the 1960's and early 1970's.
8. The suspected source of the contaminated fill material was stated to be the former Fall River Gas Company.

9. The former Fall River Gas Company is now owned by the Southern Union Company d.b.a New England Gas Company.
10. Additional information found in Individual Septic Design System (ISDS) records at RIDEM for a residential dwelling at the intersection of Hooper and Bay Street also identifies that there is approximately two (2) feet of fill material in the area.
11. On March 17, 2003, RIDEM issued a Letter of Responsibility ("LOR") to Southern Union Company (Alan Fish) and New England Gas Company (Robert Young).
12. On March 19, 2003, New England Gas Company responded to the RIDEM's LOR and contracted Vanesse Hagen and Brustlin Inc. ("VHB") to prepare a Site Investigation Work Plan ("SIWP"), pursuant to the Remediation Regulations, for investigating 68 private properties thought to be abutting contamination discovered in the public road areas as part of the Tiverton's investigation.
13. VHB, on behalf of NEGAS, began their investigation in June 2003 and the number of properties being investigated increased to 75 properties.
14. Also on or about March 19, 2003, the Town of Tiverton initiated a second round of field investigation, at the request of RIDEM, on the remaining public road/street areas not previously tested, to attempt to determine the extent of soil contamination beneath the public roads/streets and right of ways.
15. On or about October 31, 2003, NEGAS submitted the first Site Investigation Report ("SIR") with attachments for sixty-seven 67 properties. VHB indicated to the Department that seven (7) property owners of the original 75 properties did not provide access.
16. On December 5, 2003, NEGAS submitted four individual Site Investigation Reports ("SIR") with attachments for nine (9) properties (of the 67 properties investigated as part of the Site Investigation) that NEGAS segregated due to their belief that past owners and operators had caused the identified contamination.
17. On January 27, 2004, RIDEM issued formal comments to NEGAS, including copies of the public comments received on the first phase of the Site Investigation.
18. On February 17, 2004, NEGAS responded to RIDEM with an outline of their plan and a schedule for responding to RIDEM's comments and conducting additional fieldwork.
19. As of the mailing of this NOIE, no formal response to RIDEM or public comments has been submitted by NEGAS.
20. On or about July 19, 2004, NEGAS submitted a proposed Supplemental and Phase II SIWP to further investigate the original properties investigated in 2003 and to investigate for the first time approximately 17 additional properties. These 17 additional properties to be investigated for the first time increased to approximately 25 between July 2004 and August 2005.
21. RIDEM concurred with the Supplemental and Phase II SIWP on or about August 25,

2004. VHB initiated obtaining access agreements with residents shortly thereafter.
22. Supplemental and Phase II Site Investigation activities commenced in early September 2004.
  23. On July 6, 2005, RIDEM corresponded to D. Tomka, Project Manager for NEGAS concerning NEGAS's request for an extension (dated June 21, 2005) for the SIR submission until September 30, 2005. In the correspondence, NEGAS was informed that the complete SIR with remedial alternatives must be submitted by August 15, 2005.
  24. On July 19, 2005, RIDEM corresponded to NEGAS concerning analytical data that had been provided to the Department by legal counsel to the owners that indicated that soil contamination existed on a specific private property on Judson Street. RIDEM further requested that the information and property be included in the Site investigation submission and proposed remedial alternatives for remediating the neighborhood contamination.
  25. On August 15, 2005, RIDEM received the Supplemental and Phase II SIR with attachments for review and approval. In the submission and cover letter from NEGAS, the company claims that the SIR is incomplete due to lack of time to complete listed items and that submission of remedial alternatives for remediating the Site is premature.
  26. At this time, Respondent NEGAS has failed to respond to the requirements in the RIDEM LOR issued to them on March 17, 2003, and the Site remains out of compliance with the Remediation Regulations

C. Potential Violations

Based on the circumstances set forth above, the release of hazardous materials at the site and your inadequate response thereto potentially constitute violations of the following statutes and/or regulations:

- (1) R.I. Gen. Laws Sections 46-12-5(a) and (b) and 46-12-28, prohibiting the discharge of pollutants to surface waters and groundwater's of the State;
- (2) R.I. Gen. Laws Sections 23-19.1, from which the Remediation Regulations were promulgated prohibiting the unpermitted release of hazardous materials.

D. Required Actions

The following actions are required in order for you to comply with the above- mentioned statutes and/or regulations:

1. Submit a minimum of three (3) Remedial Alternatives for remediating all soil contamination in the Bay Street Neighborhood Study Area to meet RIDEM's Method 1 Residential Direct Exposure Criteria as outlined in the

Remediation Regulations on or before January 4, 2006;

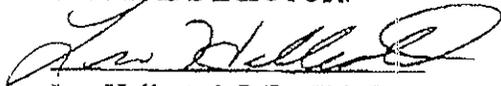
2. Submit any outstanding site investigation sampling results and laboratory analysis, completed after the August 15, 2005 SIR submittal, for the remaining properties by January 4, 2006;
3. Conduct Public Notice to all residents of the Bay Street Neighborhood Study Area within 14 days of receipt of the RIDEM's Program Letter.

E. Assessment of Penalty

This NOIE constitutes a notice of intent to assess an administrative penalty pursuant to R.I. Gen. Laws Chapter 42-17.6, in the event that you fail to comply with this NOIE in a timely and satisfactory manner. If the Parties promptly and satisfactorily comply with the requirements of this NOIE, RIDEM may not assess an administrative penalty. However, continued noncompliance will result in the issuance of a Notice of Violation and Order, which will include the assessment of an administrative penalty that may be as high as \$25,000 per violation for each and every day that violation continues to exist.

Within seven (7) days of receipt of this NOIE, you must notify this office in writing of your intent to comply with the above-required actions in the time frame indicated.

FOR THE DIRECTOR:



Leo Hellested, P.E., Chief  
Office of Waste Management

Date: <sup>rd</sup>23 day of November 2005.



RHODE ISLAND  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
235 Promenade Street, Providence, RI 02908-5767 TDD 401-222-4462

Derek J. Tomka, Manager  
Environmental Projects  
Southern Union Company  
New England Division  
100 Weybossett Street  
Providence, Rhode Island 02903

November 23, 2005

RE: Comments-Supplemental and Phase II Site Investigation Report  
Bay Street Tiverton Study Area  
Received August 15, 2005  
Case #2002-065(a)

Dear Mr. Tomka:

The Rhode Island Department of Environmental Management has received and reviewed the Southern Union Company-New England Gas Division's (NEGAS) submission of the Supplemental and Phase II Site Investigation Report (SSI) that was received on August 15, 2005. Please respond in writing to the following comments on or before February 1, 2006.

1. Southern Union Company-New England Gas Company (NEGAS) has proposed to conduct a Human Health Risk Assessment (HHRA) as part of the Bay Street Neighborhood Study Area Site Investigation Report submittal that was received on August 15, 2005. The Department indicated at that time, that it had strong reservations about allowing NEGAS to proceed with the proposed HHRA given that NEGAS did not own or control any of the properties being investigated. Rule 8.08 and more specifically, A.ii (3) Points of Compliance for Soils of the Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases (the Remediation Regulations) requires that the Performing Party (NEGAS in this case) provide the following in writing to the Department:

The Rule states under number #3 that the Performing Party shall provide formal written documentation to the Department demonstrating the performing party's control over the full aerial extent of the Method 1 Residential Direct Exposure Criterion exceedance including, but not limited to the following, as appropriate:

- a. Documented acceptance of any residential direct exposure criterion developed pursuant to Rule 8.04 (Method 3 Remedial Objectives) and all supporting documentation used in their (NEGAS) derivation from all landowners whose property is impacted by the release; and

b. An environmental land usage agreement entered into by all impacted land owners pursuant to Rule 8.09 (Institutional Controls), if the exposure assumptions made in the development of the Method 3 Remedial Objective are such that they need to be institutionally maintained in order to guarantee long-term protection of human health and the environment.

The Department will therefore require that securing institutional controls from the property owners (in the form of Department approved Environmental Land Usage Restrictions (ELUR's)) will be required to proceed with any review of the proposed HHRA work plan to address these issues and ensure the long-term permanency of the remedy.

2. As previously stated in the comments issued by RIDEM concerning the Phase I SIR, the Supplemental and Phase II SIR does not historically document anything about the nature and type of MGP facility, which was operated by Fall River Gas Co., and its location in relation to the Bay Street Neighborhood. ENSER International states in their Immediate Response Action Plan developed for New England Gas Company dated July 2004 and received July 30, 2004 that "As directed by MADEP, NEGC has reviewed the historical records of the former Fall River Gas Company to determine what information is available with respect to offsite disposal of Coal Gasification Related Materials (CGRM) in Massachusetts. Those records indicate that some of the material was sold as product, while other material was hauled offsite for disposal. However, the historical records do not identify any waste disposal locations in Massachusetts or elsewhere". Although NEGAS states their records do not identify any disposal in Massachusetts or elsewhere, the Department cannot rule out that these suspect Former Manufactured Gas Plant (FMGP) waste materials from the former Charles Street facility may have wound up in the Bay Street neighborhood in Tiverton. The Department therefore renews its previous request during the Phase I comments for NEGAS to provide documentation concerning historical information concerning the neighborhood, the surrounding area along with historical information as it relates to the former Fall River Gas Company and its past operations and waste material disposal practices.
3. The Management of Manufactured Gas Plant Sites reference document cited by Environ in Phase I site investigation on behalf of NEGAS clearly identify contaminants of potential concern (COPCs), and ranges of COPCs that may be found in waste from a former MGP. The list includes Volatile Organic Compounds (VOCs), Semi-Volatile Organic Compounds (SVOCs), Cyanide(s), Sulfides, Phenolics, and approximately 16 Inorganics + Metals including Arsenic, spent Oxides and Inorganic Nitrogen. The reference document also states that herbicides, pesticides and solvents must be considered when investigating and evaluating a MGP site. The reference document further includes the EPA Contract Laboratory Program (CLP) list with additional compounds from the RCRA perspective that may be COPCs.

4. It appears from a review of the 2005 SSI Report that there has been a terminology change since the Phase I SIR concerning Contaminants of Potential Concern (COPC's) associated with Former Manufactured Gas Plant (FMGP) waste materials. VHB now uses the term "non-native fill material" which has been identified by VHB as being associated with typical urban fill.

Please explain how NEGAS drew the clear distinction between "non-native" and "native" fill. It is highly likely that suspected FMGP waste materials identified by ENSER has being sold and disposed of offsite meet minimal characteristics identified by VHB's definition "non-native material" in the report and wound up being disposed of in the Bay Street Neighborhood.

So as not to confuse any readers, prior reports, or these comments and to keep consistency for purposes of the Departments review, the Department will continue to refer to non-native fill material with COPC's as "suspect FMGP waste materials".

5. The Department does not concur with NEGAS's interpretation of the laboratory data results as mentioned in the Executive Summary and in the text of the document. For example:
  - a. NEGAS states that of the 1910 samples obtained, approximately 53% or 1012 soil samples do not show suspect FMGP waste materials or Residential Direct Exposure (RDECs) Exceedances. Based upon this interpretation by NEGAS, the Department may then conclude that balance of samples, 46% or 897 samples, do identify suspect FMGP waste materials and RDEC exceedances which are jurisdictional under the Remediation Regulations.
6. Even though VHB, on behalf of NEGAS, has stated that they do not find a "strong relationship" between the suspect FMGP waste materials and the RDEC exceedances, however, VHB has not ruled out that there is a correlation between the suspect FMGP waste materials what has been identified disposed of within the Bay Street Neighborhood Study Area.
7. Table 12 is in error, Five properties in Category 2 belong in Category 1. They are 1505,0817,0301D, 0301B and 0301.
8. Executive Summary Page ES-2 -The report identifies Block 17, portions of Block 16 and the corner of Bay and Judson Street (a suspected former dump) as source areas. The Department disagrees that these are source areas. These three areas, along with other areas within the Bay Street Neighborhood Study Area have been found to contain high concentrations of hazardous substances that appear to be

attributable to the suspect FMGP waste materials that are believed to have originated from the former MGP facility on Charles Street in Fall River. The identification of these particular areas as source areas by NEGAS seems to conflict with ENVIRON's conclusions as part of the Phase I Report discussions when they selected 25 properties in the approximate middle of the Bay Street Neighborhood Study Area for further evaluation and further investigation due to the Method I RDEC exceedances observed. Please explain.

9. Executive Summary ES-#3, paragraph 4- NEGAS states "Therefore, NEGC does not, by the submission of this SSIR or by discussion of remedial alternatives, accept responsibility for or commit to implement any of the remedial alternatives that might ultimately be determined to be appropriate following the conclusion of the risk assessment."
  - a. Is NEGC stating they have no intentions of conducting any remedial work on these properties now or after performance of a risk assessment if it were allowed?
  - b. Please explain then why the Department and the property owners would even consider the HHRA work plan?
10. Executive Summary Page ES-4: The Department does not concur with NEGAS's tabulation of the sites into the categories. As more specifically identified in Table 12 on Page 37 of the report and after review of the validated data for 2003 and 2005, the Department believes that there are 81 properties in Category 1; 8 properties in Category 2; and 6 properties in Category 3.
11. Executive Summary Page ES-4: The report does not indicate that NEGAS has been provided with other data and information collected from the study area. The information that NEGAS has been given includes, but is not limited to the history of the area and including some of history of the former Charles Street MGP facility.
12. Executive Summary Pages #4-#5: There are several things listed in the report, Item#1-8 for example, which are being used as NEGAS's basis for concluding that the investigation is not complete. The Department does not concur with NEGAS opinion that the SI is not complete. It is the Department's understanding that some of the outstanding items listed as not being complete were not tasked to VHB to do under the SI. In addition, NEGAS's claims that there has not been enough time to complete the work. The investigation began in 2003 and most of the items here could have been easily collected or obtained by NEGAS.

There has been plenty of data collected to propose Remedial Alternatives for evaluation for this entire study area, regardless of the few properties that did not provide access and the recently approved Supplemental SI's for three lots. Also, the Department never requested a background Arsenic Study to be performed by VHB.

Arsenic concentrations throughout the Study Area are not considered background, because the Study Area does not meet the requirements for Rule 12.03 of the Remediation Regulations. Arsenic is one Potential Contaminant of Concern and included along with other hazardous materials as part of the suspected FMGP waste materials. VHB was provided with a copy of the Ransom Environmental report concerning the history of the area that has been very useful in understanding the Bay Street Neighborhood Study Area and the former Charles Street MGP facility.

On June 21, 2005, VHB requested an extension for the SSIR submittal to until 30 September 2005, and the reasons given were that all the data would not be finalized until July 18, 2005 and that VHB needed the time to write the report. On Page ES #5 of the SIR, NEGAS lists other reasons that were not mentioned by VHB.

13. The Department has yet to receive a copy of the Final Road Survey that was performed. The copy previously provided to RIDEM was considered to be a draft according to NEGAS representatives at the time.
14. Introduction-paragraph 1- Although NEGAS states that "RIDEM alleges that portions of the fill may have come from a former MGP facility", as stated in Comment 1, it is NEGAS's consultant ENSER which states that based upon their client, NEGAS review records of the historical MGP operations that, "those records indicate that some of the material was sold as product, while other material was hauled offsite for disposal". Given that NEGAS has yet to produce any historical records concerning disposal of the waste material generated by this MGP facility, one can draw the conclusion that the waste materials were disposed of within this neighborhood and other areas of Tiverton and Fall River.
15. NEGC reports on Page 2 of the introduction that the SIR report is necessarily limited in a variety of ways (8 identified) and that NEGAS's investigation of the site history is ongoing and may reveal different or contrary information than that reported by VHB to date.
  - a. Is NEGC conducting a separate investigation that does not involve VHB?
  - b. Has any information previously reported by VHB to date been found to be different or contrary?
16. Study Area Description, Page 4: There has been a large amount of information provided to VHB concerning the area and the history of the area in the Ransom Environmental report. Also, to claim that NEGAS has not had enough time to research the history is hard to believe since the investigation began over three years ago. Again as stated in Comment 11, some of the claims concerning delays appear to be items that VHB, to the Department's knowledge was never tasked to do on behalf of NEGAS.

17. Page 5 Previous Technical Reports: Although VHB has declined to list these reports; Investigation Reports and conclusions prior to 2003 are part of the public record. In addition, per 7.03 of the Remediation Regulations, all previous existing environmental information is within the scope of a Site Investigation.
18. Page 7- The ENVIRON draft Human Health Risk Assessment (HHRA) provided during Phase I was never approved or reviewed by the regulatory agencies. During the review of the Phase I SIR report, reviewers raised questions concerning the contents of the SIR and HHRA report where Environ apparently erred in initial calculations, defaults and conclusions. These initial findings were provided to Environ at a meeting with DEM, NEGAS, SU, ENVIRON, VHB, RIDOH and EPA (telecom).
19. Page 8: In the SIR, NEGAS states that the Simpson family formally owned Lots 1605 and 1606B. There is no property ownership presented in this Phase II or the Phase I SIR that indicates that anyone by the name of Simpson owned these properties. Even if this were found to be true, it does not dismiss the Department's belief that the source of some of the suspected FMGP waste materials came from the former NEGAS MGP facility. Even after the EPA removal action for the high Mercury contaminated soils, there is still contamination on the Carvalho property that is suspected to have come from the former MGP facility.
20. Page 8-ATSDR: The conclusions drawn by ATSDR are ATSDR's opinion based upon only the first sampling in 2003. They did not include soil sampling data obtained in 2004/2005 by VHB or EPA in their assessment and the Department and RIDOH raised concerns with ATSDR about finalizing the document.
21. Page 9 and 10: Arsenic, Lead and PAH's - The report fails to clearly state that there are numerous soil sample concentrations of Arsenic, Lead and PAH's, along with other COC throughout the Bay Street Neighborhood Study which are in exceedance of the Department's Residential and Industrial Direct Exposure Criteria set forth in the Remediation Regulations. These exceedances need to be appropriately addressed.
22. Page 11 Other ATSDR Findings: ATSDR has no idea where the mercury concentrations in soil came from in the neighborhood soils that were tested other than the high concentrations found in the soils and associated felt material in the rear portion of Carvalho property. Mercury, a COC of former MGP waste material, was found in varying concentrations throughout the Bay Street Neighborhood Study Area.
23. Page 12 -State Avenue Study Area (ENSER Report)- This section of the report fails to acknowledge what ENSER states in Comment #1 above that they reviewed historic records of the gas company which identify that the gas company sold materials off from its facility and also disposed of materials offsite but they

apparently do not know where the materials went for disposal. Also, to date, the Department has not heard from MADEP as to whether they concur with the ENSER report or findings. However, regardless of what ENSER concluded in their report for MADEP, the soil contamination within the Bay Street Neighborhood Study Area is in Rhode Island and jurisdictional under Federal and State of R.I. regulations.

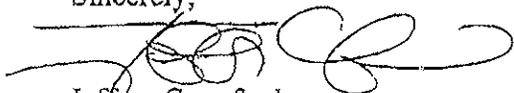
24. Page 17: Bottom of the Page- The report specifically identifies that the RIDEM RDEC were used to evaluate the data for most of the properties within the study area. However, it further states that the RIDEM I/C were used to evaluate Lots 0815A and 0817. Regardless of whether a commercial business is currently operating on these properties, the RIDEM RDEC are the applicable criteria for determining if a property is jurisdictional under the Remediation Regulations.
25. Page 18-: The Report again repeats the same information previously stated in the beginning of the report and commented on by RIDEM in Comment #4. Environ's calculated soil-screening criteria for lead and benzo (a) pyrene have never been approved by RIDEM, RIDOH or EPA.
26. Page 19: As stated in Comment #3 above, reference documents identified by Environ during the 2003 round of investigation identify numerous other PCOC's from historical MGP facilities. Vanadium, mentioned on this page was selected as an indicator compound by RIDEM through consultation with USEPA, which historically can be associated with MGP waste materials. Based upon the soil sampling results results of the 2004/2005, vanadium was found in measurable concentrations throughout the Bay Street Neighborhood Study Area.
27. Page 19 and 20, Arsenic - The report fails to mention that Arsenic is a PCOC of MGP waste materials and that capping provisions under Section 12 of the Remediation Regulations are not applicable for the Bay Street Neighborhood Study Area because there were several soils samples above the 15 part per million maximum concentration allowed and other jurisdictional COC's have been identified thorough out the area.
28. Page 21: Beryllium- For the record and to clarify this report, the Department has never approved a background study for Beryllium, and the Compliance Sampling section of the Remediation Regulations is only applicable after a soil removal action has been approved and implemented. Exceedances of the RDEC for Beryllium are present throughout the Bay Street Neighborhood Study Area and Beryllium is a hazardous substance in suspected FMGP waste materials.
29. Page 22, Lead: The Department does not concur with NEGAS's interpretation of the laboratory data results as mentioned in the Executive Summary and in the text of the document concerning Lead. The NEGAS report claims that 59% of the 1910 total soil samples obtained found Lead greater than RDEC but not in association

with what the report identifies as non-native material. This is strictly NEGAS's opinion as to the source of the Lead contamination detected. One could also conclude that the Lead contamination was from FMGP waste materials and in association with this non-native material when it was deposited, also spread by wind and therefore jurisdictional under the Remediation Regulations.

30. Page 22, Lead: The report claims that there are "no strong correlations" with the non-native materials and Lead discovered in the soil samples obtained. The Department does not concur with that assumption given Comment 28 above and also that NEGAS has not ruled out their there was some correlation between the waste materials and the Lead concentrations discovered.
31. Page 22 and 23, Lead: The report states that seven (7) properties were tested for lead in soil along the drip edges of the houses and only on three (3) of these 7 properties had paint chips observed. Also, the report indicates that 28% of the seven properties tested saw non-native materials, which is approximately 2 properties. Given this information, it would seem to conclude that only five properties had Lead exceedances possibly associated with Lead paint.
32. Page 23: Other metals that exceed RIDEM RDEC- All of the metals listed in the Report which were also found to be in exceedance of the RIDEM criteria are inorganic metals associated with former MGP waste materials according to the ENVIRON reference documents.

If you have any questions please contact me by telephone at (401) 222-2797 ext 7102.

Sincerely,



Jeffrey Crawford  
Principal Environmental Scientist  
Office of Waste Management

Co: Terrence Gray, Assistant Director  
Leo Hellested, Chief Office of Waste Management  
Kelly Owens, Supervising Engineer OWM  
Richard Enander, RIDEM Customer & Technical Assistance  
Robert Vanderslice, Chief RIDOH Risk Assessment  
Louise Durfee, Town Council President, Tiverton  
Town Manager, Town of Tiverton  
Gail Corvello, E.N.A.C.T.



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2005 NOV 14 A 11:25

November 14, 2005

Mr. Jeffrey Crawford  
Principal Environmental Scientist  
Rhode Island Department of Environmental Management  
Office of Waste Management  
235 Promenade Street  
Providence, RI 02908

RE: Evaluation of Supplemental Phase 2 Site Investigation Report  
Bay Street Suspected Fill Areas  
Tiverton, Rhode Island

Dear Mr. Crawford:

The purpose of this letter is to provide you with comments on the Supplemental Phase 2 Site Investigation Report (SSIR) for the Bay Street Suspected Fill Area prepared by Vanasse Hangen Brustlin, Inc. (VHB) on behalf of New England Gas Company (NEGC). Fuss & O'Neill, Inc. (Fuss & O'Neill) conducted a review of the SSIR and prepared this letter on behalf of the Environmental Neighborhood Awareness Committee of Tiverton (ENACT), which represents the interests of neighborhood residents and property owners. The key issues faced by the community are as follows:

- **Possession/Occupancy of Contaminated Property:** In 2002, contaminated soil was identified beneath roadways in the Bay Street neighborhood. Environmental investigations conducted between 2002 and 2005 identified widespread manufactured gas plant (MGP) waste across the Bay Street neighborhood (the "site").
- **Threats to Health:** Concentrations of compounds found in MGP waste have been detected in shallow soil at concentrations that exceed Rhode Island Department of Environmental Management (RIDEM) Method 1 criteria, which are designed to be protective of human health. Isolated areas have exhibited concentrations great enough to be considered an imminent health risk by RIDEM and require immediate soil removal.
- **Standard of Living:** The Town of Tiverton has placed a moratorium on building and excavation within the Bay Street neighborhood restricting home improvements and halting much needed utility repairs/updates.

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Suite 350  
Providence, RI 02908

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- **Financial Hardship:** Property owner's financial assets have been frozen based on actual and perceived risks.

The August 2005 SSIR prepared by VHB documents the latest of a series of on-going investigations focused on characterizing the environmental impacts to the Bay Street neighborhood from MGP waste. Although the quantity of data gathered at the site is substantial, it is our opinion, and ENACT's, that the investigations completed to date have not adequately characterized the site or presented a clearly defined conceptual model with which to focus additional investigations or develop a remedial strategy. Comments on the SSIR, as well as response items which should be incorporated into future efforts, are outlined below and discussed in the following sections:

- a) The assessments completed to date have not met the standard of a Site Investigation Report (SIR), as defined by Section 7 of the RIDEM Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases (Remediation Regulations).
- b) The investigation has not been adequately focused to meet remedial and community goals.
- c) Conducting a Method 3 Risk Assessment to evaluate compliance with RIDEM Remediation Regulations is not appropriate.
- d) Documentation of compliance with the Remediation Regulations, in the form of a "Letter of Compliance" for all portions of the site is required; a letter of "no further action required" is not sufficient.
- e) Compliance and remedial efforts should be approached on a site-wide basis and not a property-by-property basis

The following paragraphs summarize several key points regarding each of the overriding issues outlined above.

## 1.0 THE SITE INVESTIGATION REPORT IS NOT COMPLETE

### 1.1 Deficiencies in the Site Investigation Report

The following deficiencies were noted in the SSIR:

- a) The objectives of the investigation were not clearly defined.
- b) The SIR checklist, specified in Section 7.08 of the Remediation Regulations, was not included in the SSIR.



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- c) The data was not presented in a manner that aids in understanding site conditions and selection of a remedy for the contaminated site. For example:
- i. Inconsistencies were noted in the mapping of soil exceedances (e.g. Figure 10 identifies exceedances of the RIDEM Residential Direct Exposure Criteria (RDEC) on Block 3 Lot 2; however, these exceedances do not appear on any of the compound-specific exceedance maps).
  - ii. Soil exceedances are plotted on maps but no attempt is made to delineate the extent of the exceedances with adjacent borings that do not exceed criteria. In many instances, this gives the appearance that additional delineation of exceedances is required.
  - iii. Exceedances of the RDEC have been plotted on a map and are presented as a statistical subset of native and non-native samples, but no presentation of the vertical extent of RDEC exceedances has been offered. VHB stated that the statistics indicate that there is no strong relationship between observed non-native material and exceedances of the RDEC; however, vertical profiling may indicate that elevated concentrations in native material are related to leaching from heavily impacted fill materials.
  - iv. Mapping and data tables do not appear to take into consideration relevant historical soil data, including data collected from borings in the roadways. In addition, although investigations conducted by others are summarized in the SSIR, the information does not appear to be incorporated into a conceptual model of the site.
  - v. Mapping of the known extent of MGP waste (and perhaps other "non-native" materials) would aid in understanding site conditions.
- d) A minimum of two remedial alternatives in addition to the no action/natural attenuation alternative were not evaluated as required by Section 7.04 of the Remediation Regulations.

## 1.2 Deficiencies in the Site Investigation

VHB has acknowledged eight specific deficiencies in the Supplemental Phase 2 Site Investigation. These deficiencies, as outlined in the SSIR included:

- the investigation of the study area has not been completed,
- all desired data has not been obtained or evaluated,
- data from July 19, 2005 was not included in the SSIR due to time constraints,
- not all properties have been investigated – some due to denial of access,
- background concentrations of arsenic in soil have not been evaluated,
- other sources contributing to contamination at the site have not been fully researched,
- site history research, including identification of other responsible parties, is on-going, and
- because of the above, VHB indicated that no final conclusions could be made.



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Fuss & O'Neill concurs that these are significant deficiencies in the Site Investigation that prevent an adequate evaluation of the site with respect to the degree and extent of contamination. They also hinder assessment of potential risks to human health and appropriate remedial alternatives. In addition to the above limitations, we have also identified the following deficiencies in the investigation:

- a) The vertical and horizontal extent of MGP waste has not been documented. Observations of "non-native" material have been documented and exceedances of RIDEM Method 1 criteria have been mapped to a limited extent; however, this information has not been related to a conceptual model that actually characterizes and defines the extent of MGP waste in the Bay Street neighborhood. Consequently, the limits of the site have not yet been confirmed.

As an example, "non-native" material has been observed on Block 3 Lot 1A and Block 7 Lot 4, indicating that fill is present at the limits of the investigations conducted to date. In addition, mapping provided in the SSIR indicates that soil exceedances of RIDEM Method 1 criteria are present at the northern, eastern, and southern extents of the investigated area. Block 5, west of Church Street, has not yet been investigated. Exceedances to the north, west, southwest, and southeast suggest that MGP waste may also be present in this uninvestigated area. This data indicates that the full extent of the site has not been investigated and that the extent of MGP waste has not been delineated.

As stated in Section 7.01 of the Remediation Regulations, determining the nature and extent of the contaminated site is a key component of a Site Investigation and is necessary to evaluate risks to potential receptors and appropriate remedial alternatives. The extent of MGP waste at the site should be determined independent of RDEC exceedances in order to define the release area.

- b) NEGC cites the potential for other sources contributing to contamination at the site; however, it is not apparent that background, MGP waste, or urban fill materials have been adequately characterized to allow for a determination of what impacts, if any, may be related to other sources or what background conditions may be. If the materials cannot be distinguished in the field by visual observation because of similarities in appearance, then a chemical baseline should be established against which to assess the potential for a given area to be impacted specifically by MGP waste.
- c) Investigation activities appear to focus on portions of properties not located within Town rights-of-way. Not only does this create potential data gaps in delineating the extent of impacts, but the potential exists for significant threats to human health to go undetected.



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- d) To date, the portion of the site that has been investigated covers approximately 60 acres of land. Only seven groundwater monitoring wells have been installed over this large area. The limited groundwater sampling conducted to date has revealed that cyanide and mercury have been detected in groundwater at concentrations approaching or exceeding the RIDEM GA Groundwater Objectives. The full extent, distribution, and magnitude of groundwater contamination has not been characterized. Since groundwater beneath the site is identified as "GA" by RIDEM, groundwater at the site may be used as a private or public drinking water source without treatment. Consequently, the extent and magnitude of any groundwater contamination must be thoroughly investigated in order to protect human health and long term groundwater quality at the site. Any detection of contaminants in groundwater, even if they do not exceed GA Groundwater Objectives, must be evaluated to determine if seasonal or precipitation based fluctuations in groundwater level or flow may affect the concentrations of contaminants in groundwater. As documented in the SSIR groundwater quality has been observed to fluctuate in several of the existing monitoring wells, even over a relatively short period of several days. Compliance with the GA Groundwater Objectives has not been demonstrated.

## 2.0 INVESTIGATION FOCUS

An effective Site Investigation must be designed and implemented to address and support the release scenario, the applicable regulatory requirements, and the preferred remedial alternative. It is our opinion that the SSIR has not adequately addressed these items, as discussed further below:

- a) The release scenario has not been adequately defined: The SSIR indicates that parties other than NEGC may have contributed to impacts in the Bay Street neighborhood but that those sources have not yet been researched. Likewise, the SSIR indicated that a review of current and past uses of the site is on-going and has not been completed. In addition, information on background conditions (including urban fill), which aids in understanding the release scenario, is lacking. If other sources are to be identified as contributing to contamination at the site, knowledge of essential elements of those sources (i.e. historical site activities, sources of contamination, chemical nature of the various sources, background conditions, etc.) needs to be compiled to adequately focus the site investigation.

It is also important to understand and define the release mechanism – in this case random distribution vs. wide-spread dumping – in order to properly design and implement an investigation. In assessing releases associated with wide-spread dumping, it might be sufficient to broadly characterize the nature and extent of the release area as a whole. In the case of a more random distribution, a more intensive investigation may be necessary in order to identify numerous, smaller, release areas that have the potential to impact human health (and property value). From the presentation



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of data, it appears that although dumping occurred over a wide area, the distribution of MGP waste is not uniform and does not lend itself to generalized characterization.

- b) Applicable regulatory requirements have not been met: As discussed previously, the release area has not been adequately characterized, in nature or extent – a key component of Site Investigation implemented in accordance with the Remediation Regulations. Exceedances of Method 1 criteria have been documented and a Method 3 Risk Assessment proposed; however, until characterization of the site is complete, a compliance evaluation or calculation of alternative site-specific criteria is not appropriate. Moreover, it is the opinion of ENACT and Fuss & O'Neill that compliance with the RIDEM Method 1 criteria is the best approach to adequately protect the interests, including financial and health priorities, of the Bay Street area community.
- c) Appropriate consideration has not been given to the preferred remedial alternative: Section 7.04 of the Remediation Regulations requires that, in addition to outlining at least two remedial alternatives (other than no further action), each alternative must be supported by relevant data, and the preferred alternative must be identified. Sufficient data has been collected such that an evaluation of remedial alternatives could have been developed in the SSIR. The presentation of such alternatives would also help focus the investigation activities that still need to be completed. For instance, simply delineating the extent of fill and impacted soil would facilitate excavation of MGP waste over a wide area. Alternatively, if only small pockets of contaminated soil will be removed from the site, much more data will be needed to ensure that all contaminated soil requiring excavation is identified.

The Remediation Regulations also state that remedial alternatives must be supported by documentation of compliance with State and local laws and regulations or "other public concerns...". Proper consideration has not been given to the impacts on human health, property values, and standard of living that result from not presenting remedial alternatives that address the concerns of the community and further understanding of the direction of investigations and clean-up.

### 3.0 METHOD 3 RISK ASSESSMENT APPROACH IS NOT APPROPRIATE

Fuss & O'Neill has reviewed the "Risk Assessment Work Plan for Conducting a Human Health Risk Assessment for the Bay Street Suspected Fill Area" prepared by ENVIRON. It is our opinion that a Method 3 Risk Assessment is not appropriate for this site, due in large part to NEGC's lack of control over the properties, which results in a wide array of unknowns associated with exposure pathways and management of risk. Some of the many factors that would have to be considered to implement a Method 3 Risk Assessment capable of evaluating compliance with RIDEM regulations are discussed below, along with specific comments that relate to the work plan:



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- a) Because NECG does not have control over the impacted properties and cannot restrict exposure to contaminated soil, a risk assessment at the site must assume that property owners, residents (including children), workers, and pets could be exposed to any soil across the site during any time of the year, for unlimited durations and unrestricted activities. Utility work, property improvements, and excavation activities all have the potential to expose residents and workers to contaminated soil below the surface, or bring deeper soil to the surface.
- b) Inhalation of particulates should be considered as an exposure pathway, particularly in association with exposure of impacted soil at depth during construction activities.
- c) Cumulative risk must be considered. All potential contaminants of concern (COC) need to be included in the risk assessment to effectively evaluate cumulative risk even if individual compounds do not exceed screening level concentrations. Furthermore, the work plan proposes that the assessment focus on the ten compounds presenting the greatest risk. Conversely, all potential carcinogenic or non-carcinogenic COCs identified should be included in cumulative risk calculations.
- d) Because of the inability to limit exposure and the many exposure pathways, potential chemicals of concern that are not commonly found on MGP sites should be evaluated in the risk assessment if the origin of the COC is unknown. In addition, background concentrations of COCs should be considered in the COC selection process and not eliminated and simply discussed in an "Uncertainty Section."
- e) Total petroleum hydrocarbons (TPH) should not be dismissed as COCs even if individual compounds that are considered petroleum hydrocarbons are evaluated individually. TPH should be considered in the cumulative risk calculations.
- f) Organic carbon content should only be considered if there are an appropriate number of samples collected in all soil horizons.

Although a Method 3 Risk Assessment is presented by RIDEM as an optional method (subject to approval) for evaluating compliance with the Remediation Regulations, the variable and complex distribution of contaminants and NEGC's inability to restrict exposure to remaining contaminants render a Method 3 Risk Assessment inappropriate at this site. In addition, completion of a Method 3 Risk Assessment will not adequately address all the issues facing the community -- such as declining property values resulting from the presence of contaminated soil.

#### 4.0 DOCUMENTATION OF COMPLIANCE

The final outcome of the investigation and remediation of the site must be a "Letter(s) of Compliance" covering all properties within the site thus demonstrating compliance with the Remediation Regulations. Documentation of such compliance is necessary to:



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D.E.M. / O.W.M.

2005 DEC 13 P 3:40

New England Gas Company 

December 13, 2005

Leo Hellested, P.E. Chief  
Office of Waste Management  
Department of Environmental Management  
235 Promenade Street  
Providence, RI 02908

Re: Bay Street Neighborhood Study Area  
Tiverton, Rhode Island  
NOTICE OF INTENT TO ENFORCE

Dear Mr. Hellested:

New England Gas Company ("NEGC") writes in response to your Notice of Intent to Enforce ("NOI") dated November 23, 2005.

For more than two years, NEGC has acted responsibly to help the State investigate the "Bay Street Suspected Fill Area" located in Tiverton, Rhode Island (the "Study Area"). Contrary to your contentions in the NOI, NEGC has not violated "certain provisions" of the Remediation Regulations. Indeed, NEGC has complied and remains in compliance with the Remediation Regulations and has acted in a manner consistent with those regulations. NEGC will continue to work with RIDE M on Study Area issues as long as we both work cooperatively and reasonably. NEGC will not, however, yield to unreasonable demands or accept responsibility that clearly lies elsewhere. RIDE M has no authority (1) to impose liability on NEGC for residuals from other sources or (2) to disregard the Remediation Regulations and dictate a site investigation approach that is inconsistent with those regulations and with virtually every current regulatory approach for cleaning up contaminated sites.

Your NOI is improper because it fails to deal with at least three critical facts:

- (1) There is no evidence to support RIDE M's suggestion that all or most of the lots in the Study Area are impacted by Manufactured Gas Plant residuals ("MGP residuals");
- (2) RIDE M cannot disregard the provisions of the Remediation Regulations which plainly permit a Performing Party to perform a risk assessment before selecting and screening remedial alternatives; and
- (3) RIDE M has not provided NEGC with either the time or the approvals necessary to develop remedial alternatives.

100 Weybosset Street  
Providence, RI 02903

1595 Mendon Road  
PO Box 7900  
Cumberland, RI 02864

155 North Main Street  
PO Box 911  
Fall River, MA 02722

Leo Hellested, P.E. Chief

December 13, 2005

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1. There is no evidence to support RIDEM's suggestion that all or most of the lots in the Study Area are impacted by MGP residuals.

The NOI, the Letter of Responsibility ("LOR") issued to NEGC on March 17, 2003, and the "Potential Violations" referred to in Section C of the NOI are all premised on the assumption that NEGC is in some way "responsible" for the contamination discovered in the Study Area. RIDEM suggests that the source of this contamination is MGP residuals generated by the Fall River Gas Company ("FRGC"). The significant data generated from the site investigation demonstrates that this assumption is wrong. That data indicates instead that:

- The Study Area is surrounded by a variety of industrial uses. Over the past 100 years, the Study Area has hosted many industrial activities, including chemical companies, manufacturing plants, hat companies, auto repair shops, junkyards, landfills, town dump sites, fuel storage terminals and sewer plants.
- There are multiple sources of the contamination found within the Study Area, including manufacturing operations, petroleum operations, agricultural uses and landfill activities. There are also many domestic uses of materials that have potentially contributed hazardous substances to the Study Area, including coal, fuel oil, lead paint, gasoline, pesticides, herbicides, and treated wood materials used for decks and fencing.
- Much of the contamination identified in the Study Area is similar to urban background concentrations found in this region of the country, and has nothing to do with MGP residuals or with NEGC. Many of the arsenic and PAH incidences are prime examples.
- Many lots do not have any Method 1 exceedances.
- The lots in the Study Area do not contain the typical markers associated with MGP residuals, and there is very little evidence of MGP residuals within the Study Area.
- The "anecdotal" evidence does not establish any clear or definite connection between FRGC and the contamination in the Study Area.

A detailed review of the data is beyond the scope of this response, but even RIDEM's past activities within the Study Area support many of these conclusions. In 1988, RIDEM sent Jeff Crawford, the Project Manager for the Study Area, to the Study Area to investigate a specific complaint about the possible presence of MGP residuals from FRGC on a group of empty lots slated for development. The complaint described the lots as "an old dump site with Solid Waste and Old Fall River Gas Company" and referred to "coke deposits." Mr. Crawford went on to describe the site as "Allegedly Town Dump 1928 - 1930." After walking the site and completing his investigation, Mr. Crawford found no reason to stop or delay the impending development due to concerns about MGP residuals. Mr. Crawford concluded that "The land appears to be wetland and that material has been filled to construct new homes on. There was no visual sign of any old coal slag however a slight odor similar to sulfur was detected when walking on the vacant lot." Mr. Crawford walked the entire 12-acre site. Mr. Crawford did not detect any evidence

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of MGP residuals on these lots. The Town allowed the development of the lots in that part of the Study Area. Eleven homes were eventually constructed there.

As Mr. Crawford's 1988 report states, and as minutes of town council meetings support, this area was a notorious old dumpsite that was developed after it was filled with material. Even in an undeveloped state, RIDEM did not find any indication of MGP residuals and found no reason to delay development. RIDEM therefore did not interfere with the green light from the Town allowing development of this land.

In short, the data generated by the Site Investigation does not support RIDEM's assumption that all, or even many, of the lots in the Study Area are impacted with MGP residuals.

2. RIDEM does not have the right to disregard the provisions of the Remediation Regulations which plainly permit a PRP to perform a risk assessment before evaluating remedial alternatives.

The Remediation Regulations relied upon by RIDEM in the NOI plainly permit a Performing Party to perform a risk assessment before evaluating remedial alternatives. This principle is embedded throughout the Remediation Regulations.

Rule 7.04 directs Performing Parties to develop two remedial alternatives other than a "no action/natural attenuation" alternative as part of the site investigation process. Rule 7.04 directs the Performing Party to select remedial alternatives that are consistent with Section 8 of the Remediation Regulations (Risk Management).

Section 8 provides Performing Parties with three methods for developing remedial objectives for a contaminated site. These methods include:

- \* Method 1 --not site specific and simply employs general Soil Objectives set forth in several tables in the Remediation Regulations.
- \* Method 2 --utilizes the Method 1 algorithms but modifies some of the Soil Objectives using site-specific data.
- \* Method 3 --utilizes US EPA guidance to develop site specific Remedial Objectives.

Performing Parties who utilize Method 3 require significant RIDEM input and must perform several additional tasks before they can derive and screen the appropriate remedial objectives. For example, a Performing Party developing Soil Objectives pursuant to Method 3 must complete a site-specific risk assessment. The Performing Party must first submit a Risk Assessment Work Plan to RIDEM that details the methods and assumptions proposed for use by the risk assessor for use at the specific site. After RIDEM approves the work plan, the Performing Party must perform the risk assessment and submit an appropriate report to RIDEM for review and approval.

The Remediation Regulations plainly provide Performing Parties with the option to follow a Method 2 and/or a Method 3 approach in establishing remedial objectives. For example, Rule 2.02 states that "the Division has facilitated the remedial process by establishing three methods for determining remedial

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objectives for the hazardous substances found to exist in soil and/or groundwater at any given contaminated site." Similarly, Rule 8.02A(iii) provides:

If a Method 1 soil objective has been promulgated for one or more hazardous substances in soil at a contaminated site, then the following options are available:

1. The performing party may only propose Method 2 to develop leachability criteria as described in Rule 8.02.C; or
2. Method 3 may be used to develop soil objectives for the contaminated site as described in Rule 8.04 (Method 3 remedial objectives).

Finally, Rule 8.04 provides that "Method 3 Remedial Objectives allow for a site specific risk assessment to be conducted by the performing party on either a voluntary basis or as required by the Director. . . ."

In short, the Remediation Regulations unmistakably provide a Performing Party with the right to develop Method 3 remedial objectives to aid in the screening and selection of remedial alternatives.

This is the process being followed by NEGC. Indeed, in August, 2005, NEGC submitted a Risk Assessment Work Plan to RIDEEM for review. RIDEEM has neither reviewed nor commented on that work plan. Completion of the risk assessment is critical in establishing Method 3 remedial objectives. RIDEEM's failure to review that work plan has prevented NEGC from moving forward with the process established under the Remediation Regulations that leads to the screening and presentation of remedial alternatives.

NEGC has selected this option, and RIDEEM has inappropriately attempted to override the specific rights provided under the Remediation Regulations.

RIDEEM's decision to oppose the preparation of a Risk Assessment for the Study Area is puzzling. Risk Assessments are a typical step in investigating impacted sites similar to the Study Area. Not only are Risk Assessments permitted under the Remediation Regulations, but they are a common and often mandated feature of cleanups conducted under various federal programs, including CERCLA, and most State regulatory programs, including Massachusetts. For more than a decade, considerations of "risk" have determined the necessity and parameters for cleanups in the United States.

RIDEEM's opposition to a Risk Assessment is also troubling because there is evidence that many of the lots in the Study Area are safe for ordinary, residential use without the need for any cleanup or remedial measures. RIDEEM's delay in permitting NEGC to complete this Risk Assessment work could impact the owners of many of the properties in the Study Area.

Further, the Method 3 approach proposed by NEGC will ensure that specific and up-to-date objectives based on the best available science are used to select appropriate remedial measures. The Method 1 Remedial Objectives are now 10 years old and are based largely on science that is even older. RIDEEM recognizes that many of the Soil Objectives set forth in the Method 1 table are "outdated" and modifies these objectives on a site-specific basis.

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Finally, RIDEM's objection to a Risk Assessment because many of the property owners - perhaps with the Department's encouragement - would not want such a remedy is flawed and inconsistent with the Remediation Regulations. RIDEM has an obligation to manage site investigations pursuant to the Remediation Regulations to ensure that an appropriate remedy is selected and implemented. RIDEM does not have the authority to disregard the Remediation Regulations and select and implement the remedy preferred or chosen by the property owner. Indeed, over the years there have been many sites where an owner "preferred" more remediation than RIDEM selected or mandated. The Risk Assessment is a critical tool in evaluating, selecting and implementing an appropriate remedy. It is improper for RIDEM to predict, in advance, that the residents will not be in favor of the selection of a remedy that might flow from that Risk Assessment.

3. RIDEM has not provided NEGC with either the time or the approvals necessary to develop remedial alternatives.

RIDEM, NEGC, and the other parties involved with the Study Area must investigate and resolve a number of outstanding issues prior to screening remedial alternatives. On behalf of NEGC, Vanesse Hangen Brustlin, Inc. ("VHB") has conveyed this conclusion to RIDEM in several letters. Indeed, most recently, Fuss & O'Neil, the engineering firm representing ENACT, reached the same conclusion in their comments on the SIR submitted to Jeff Crawford by letter dated November 14, 2005. Here are some of the outstanding issues that could have a direct impact on the remedy selected for the site:

- For the reasons described above, a risk assessment must be completed.
- A background study concerning soil conditions must be completed, particularly with respect to arsenic, beryllium, polycyclic aromatic hydrocarbons, pesticides, and herbicides. Potential sources of contamination in the Study Area must be fully investigated.
- Nine properties in the Study Area still have not been investigated.
- Several properties within the Study Area require further investigation to gather additional data regarding the extent of contamination.
- Data collected from the Simpson property south of Judson Street should be analyzed relative to the NEGC data set.
- Due to the ubiquitous nature of the impacts, identifying and mapping Method 1 exceedances is insufficient to determine sources.

In addition to exploring these items, NEGC is still waiting for RIDEM to comment on and approve the Risk Assessment Work Plan. As confirmed by Fuss & O'Neil in their November 14, 2005 letter, these issues and other issues must be resolved before remedial objectives and remedial measures can be determined, screened, and selected.

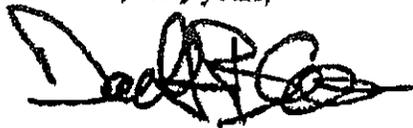
For all of these reasons, it would be inappropriate and premature for NEGC to submit three Remedial Alternatives for the Study Area on or before January 4, 2006. Important work remains to be done before remedial alternatives can be screened, developed and selected. As evidenced by the SIR, NEGC has

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already completed a significant amount of work in the Study Area that contains a heterogeneous mix of conditions. With RIDEM's help, cooperation and approvals, NEGC is prepared to move forward and complete the necessary risk assessment and additional site investigation work. In the meantime, NEGC has already addressed several properties that required more immediate attention, and is currently addressing several other properties in the same category. NEGC is prepared to meet with RIDEM to discuss methods to expedite work at the Study Area and accelerate the preparation of remedial alternatives. NEGC will not, however, improvidently forego preparation of a Risk Assessment, particularly at this complex site when the information captured by the Risk Assessment is so critically important.

Please call me if you want to meet to discuss these issues.

Very truly yours,



David L. Black  
Vice President - Legal

DLB:mfl