

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF COMPLIANCE AND INSPECTION

In Re: Campton Industries, L.L.C.,
Quick Stop Petroleum, Inc, and
Smithco Oil Service, Inc.

File No.: UST 06-02778
AAD No.: 06-022/WME

CONSENT AGREEMENT

A. INTENT & PURPOSE

This Agreement is entered by and between the Rhode Island Department of Environmental Management's Office of Compliance & Inspection ("RIDEM") and Campton Industries, L.L.C. (the "Respondent"). This Agreement is entered in accordance with Section 42-17.1-2 *et seq.* of the Rhode Island General Laws ("R.I. Gen. Laws") for the purpose of resolving, **with regard only to RIDEM and Respondent**, the administrative enforcement action set forth in a Notice of Violation ("NOV") issued to Respondent, Quick Stop Petroleum, Inc. and Smithco Oil Service, Inc. by RIDEM on September 14, 2006. Quick Stop Petroleum, Inc. entered into a Consent Agreement with RIDEM on August 29, 2007. This Agreement does not affect any rights or causes of action that RIDEM may possess against Smithco Oil Service, Inc., arising from or related to the NOV.

B. STIPULATED FACTS

- (1) WHEREAS, the subject property is located at 2949 Tower Hill Road in the town of South Kingstown, Rhode Island, otherwise identified as Assessor's Plat 18-2, Lot 7 (the "Property").
- (2) WHEREAS, Respondent owns the Property.
- (3) WHEREAS, Respondent is the owner of five underground storage tanks ("USTs" or "tanks") that are located on the Property, which tanks are used for storage of petroleum products and which are/were subject to RIDEM's Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials (the "UST Regulations").
- (4) WHEREAS, the Facility is registered with RIDEM in accordance with Section 6.00 of the UST Regulations and is identified as UST Facility No. 02778.

- (5) WHEREAS, on September 14, 2006, RIDEM issued a NOV to the Respondent, Quick Stop Petroleum, Inc. and Smithco Oil Service, Inc. alleging certain violations of the UST Regulations and Rhode Island's Water Pollution Act.
- (6) WHEREAS, the Respondent requested an administrative hearing to contest the NOV.
- (7) WHEREAS, on March 14, 2011 DEM received a letter dated February 15, 2011 from the Respondent's consultant, Jewel Environmental Corporation, to the Respondent's attorney (the "February 15th letter"). The February 15th letter is attached hereto and incorporated herein as Attachment A.
- (8) WHEREAS, this Agreement was negotiated and executed by the parties in good faith, and represents a settlement of all claims which were denied and disputed as to validity and amount by the Respondent. RIDEM and the Respondent agree that neither this Agreement, nor any performance under this Agreement by the Respondent, shall constitute an admission by the Respondent of the factual or legal allegations contained in the NOV. Nor shall this Agreement by the Respondent constitute a waiver of, or act as a limitation to, any claims the Respondent may have against any third party.
- (9) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to effect a timely and amicable resolution of the NOV, RIDEM and the Respondent hereby agree that it is in the best interest of the parties and in the public interest to resolve the issues raised in the NOV.
- (10) WHEREAS, RIDEM finds that this Agreement is a reasonable and fair settlement of all claims against Respondent and adequately protects the public interest in accordance with the UST Regulations and Rhode Island's Water Pollution Act.
- (11) WHEREAS, this Agreement does not release or dismiss the NOV as it pertains to Smithco Oil Service, Inc.

C. AGREEMENT

- (1) JURISDICTION – RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over the Respondent.
- (2) FORCE and EFFECT – This Agreement shall have the full force and effect of a final compliance order issued after a full hearing on the merits pursuant to the Administrative Procedures Act, R.I. Gen. Laws Section 42-35-1 et seq. from which no timely appeal was taken, and which is enforceable in Superior Court in accordance with R.I. Gen. Laws Section 42-17.1-2(21)(v).
- (3) APPLICATION – The provisions of this Agreement shall apply to and be binding upon RIDEM, the Respondent and its agents, servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for the Respondent in the performance of work relating to or impacting the requirements of this Agreement.

(4) RECORDING OF AGREEMENT AND RELEASE OF NOV – Within ten (10) days of the receipt of the fully executed Agreement from RIDEM, the Respondent shall record this Agreement with the town of South Kingstown, Rhode Island and shall provide a copy of the recorded Agreement to RIDEM. Upon receipt of a copy of the recorded Agreement, RIDEM shall issue a Release of the NOV to the Respondent for recording. The recording shall be at the sole expense of the Respondent.

(5) CONDITIONS –

(a) The Respondent shall complete the following actions to comply with the Order section of the NOV:

(i) **SITE INVESTIGATION REPORT (“SIR”)** -**Within sixty (60) days of Respondent’s execution of this Consent Agreement**, Respondent shall submit a SIR, as defined in the UST Regulations and the below requirements. The SIR must include, but is not limited to, site history, historic environmental issues and data, on and off-site receptors and recommendations for future work (including active remediation). The SIR shall be subject to RIDEM review and approval. **Within thirty (30) days of receiving a notification of deficiencies** (unless a longer time is specified), the Respondent shall submit to RIDEM a modified SIR or take other necessary actions to correct the deficiencies.

(ii) **INVESTIGATION ACTION** –

(1) **FUEL OIL USTs**- The two proposed locations in the February 15th letter are sufficient. Locations are to have overburden and bedrock wells with soil and groundwater sampling. Soil and groundwater analysis shall be performed in accordance with Environmental Protection Agency (“EPA”) analytical methods, specifically EPA method 8260 and 8270 (PAHs only).

(2) **DIESEL UST**- Installation of overburden and bedrock wells in the immediate area of the diesel UST area. Soil and groundwater analysis shall be performed in accordance with Environmental Protection Agency (“EPA”) analytical methods, specifically EPA method 8260 and 8270 (PAHs only).

(3) **EXISTING WELLS**- All existing groundwater monitoring wells found onsite are to be sampled and analyzed utilizing EPA method 8260 and 8270 (PAHs only). A monitoring well south of the gasoline pump island has been noted and should be included. The onsite drinking well is to be analyzed utilizing EPA analytical method 502.

(iii) **SITE MONITORING** – Respondent agrees to undertake the following quarterly sampling upon RIDEM’s approval of the SIR and in accordance with the SIR or other date set by RIDEM and as required below:

(1) **QUARTERLY SAMPLING** - All wells (newly installed and existing) are to be sampled on a quarterly basis (four sampling events per year) and analyzed

utilizing EPA analytical method 8260. The onsite drinking well is to be analyzed utilizing EPA analytical method 502.

- (2) Semi-volatile groundwater analysis using EPA analytical method 8270 (PAHs only) will be required if positive semi-volatile results are noted in any soil or groundwater analysis performed during the initial site investigation.
 - (3) The afore-mentioned site monitoring requirements are for a minimum of one year. Sampling requirements cannot be changed unless specifically requested by the Respondent in writing and approved by RIDEM.
- (iv) SAMPLING REPORTS – All reports must be submitted to RIDEM within forty five (45) days of the sampling event.
- (v) CORRECTIVE ACTION PLAN (“CAP”) – Depending upon the information contained within the SIR, RIDEM may require the submission of a CAP in accordance with Sections 12.12 through 12.15 of the UST Regulations. **Within forty five (45) days of written notification by RIDEM to the Respondent that a CAP is required**, Respondent hereby agrees to submit a CAP to RIDEM. In addition to meeting the requirements of Sections 12.12 through 12.15 of the UST Regulations, the CAP shall include:
- (1) A detailed, written and enforceable timetable for the performance of all activities specified therein.
 - (2) Data from all site investigation work supporting the suggested corrective action, including but not limited to data generated subsequent to the SIR and any pilot testing essential to the design of the recommended remedial system.
 - (3) Conclusions and recommendations for the remedial strategies/technologies that the consultant believes are appropriate to the site and a detailed remedial system design addressing the requirements of Sections 14.11 and 14.12 of the UST Regulations.
 - (4) The CAP shall be subject to RIDEM review and approval. **Within thirty (30) days of receiving a notification of deficiencies** (unless a longer time is specified), the Respondent shall submit to RIDEM a modified CAP or take other necessary actions to correct the deficiencies.
 - (5) Respondent agrees to undertake the requirements of the CAP upon RIDEM’s approval of the CAP and in accordance with the CAP or other date set by RIDEM.
- (b) Penalty – Respondent shall pay to RIDEM the sum of Eight Thousand Dollars (\$8,000.00) in administrative penalties assessed as follows:

- (i) **Upon execution of this Agreement by the Respondent**, the Respondent shall pay to RIDEM the sum of One Thousand Dollars (\$1,000.00).
- (ii) The remainder of the penalty, Seven Thousand Dollars (\$ 7,000.00), shall be paid to RIDEM in seven equal and consecutive monthly installments of One Thousand Dollars (\$ 1,000.00). The remaining payments shall be made starting on the 15th of August, 2011, and shall continue on the 15th of each and every consecutive month until the entire penalty is paid in full.
- (iii) Penalties that the respondent agrees to pay in this Agreement are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (iv) In the event that the Respondent fails to remit to RIDEM a payment on or before its due date, that payment will be considered late and the Respondent will be in default. If the payment is not received within thirty (30) days of its due date, interest shall begin to accrue on the entire unpaid balance at the rate of twelve percent (12%) per annum. Interest will accrue at this rate beginning with the day after the due date specified in this Agreement until such date all past due installment payments and interest owed are remitted. Interest shall be calculated using the following generally established accounting principle:

$$\text{Interest due} = (\text{number of days late}/365) \times (0.12) \times (\text{amount of unpaid balance})$$

This provision does not preclude RIDEM from seeking additional penalties according to Section D for failure to comply with the remaining provisions of this Agreement.

- (v) All penalty payments shall be in the form of a certified check, cashiers check, or money order, payable to the ***R.I. General Treasurer –Water and Air Protection Account***. All payments shall be delivered to:

Chief, RIDEM Office of Compliance and Inspection
235 Promenade Street
Providence, RI 02908-5767

- (6) **RIGHT OF ACCESS** – The Respondent provides to RIDEM, its authorized officers, employees and representatives an irrevocable right of access to the Property at all reasonable times for the purpose of monitoring compliance with this Agreement. The Respondent shall ensure that assignees, successors in interest, lessees, sublessees, tenants in possession and/or occupants of the Property shall provide the same access and cooperation as long as they control the Property. The Respondent shall provide a copy of this Agreement to any current lessee, sublessee, tenant in possession and/or occupant of the Property as of the effective date of this Agreement. Any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property shall include this right of access provision and shall otherwise be consistent with the terms of this Agreement.

D. COMPLIANCE

- (1) EFFECT OF COMPLIANCE – Compliance with and fulfillment of this Agreement shall be deemed to resolve all issues, with regard to RIDEM and Respondent, raised in the NOV. Upon the Respondent successful completion of the requirements set forth in this Agreement, RIDEM shall issue a Release and Discharge of the Agreement to the Respondent for recording. The recording shall be at the sole expense of the Respondent.
- (2) FAILURE TO COMPLY – In the event that the Respondent fails to comply with the items specified in Section (C)(5)(a) of the Agreement, the Respondent shall pay a stipulated penalty of Five Hundred Dollars (\$500.00) per month for each and every month during which the noncompliance continues, except that RIDEM may, for good cause shown, defer or reduce such penalty. The payment of a penalty in accordance with this section shall not preclude RIDEM from seeking any other appropriate remedy (e.g., injunctive relief in Superior Court).
- (3) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve the Respondent of any obligation to comply with any other applicable laws or regulations administered by, through or for RIDEM or any other governmental entity.
- (4) ADDITIONAL ENFORCEMENT ACTIONS – Upon a determination by the Director that there is a threat to the public health or the environment, or upon discovery of any new information, RIDEM reserves the right to take additional enforcement actions as provided by law or regulation, including, but not limited to, the issuance of “Immediate Compliance Orders” as authorized by R.I. Gen. Laws Section 42-17.1-2(21). This Agreement shall not restrict any right to hearing or other right available by statute or regulation that the Respondent may have regarding any new enforcement action commenced by RIDEM after the execution of this Agreement.
- (5) FUTURE ACTIVITIES AND UNKNOWN CONDITIONS – This Agreement shall not operate to shield the Respondent from liability arising from future activities, as of the date of execution of this Agreement.
- (6) SCOPE OF THE AGREEMENT – The scope of the Agreement is only violations alleged in the NOV.

- (7) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

Tracey D'Amadio Tyrrell, Supervising Environmental Scientist
RIDEM Office of Compliance and Inspection
235 Promenade Street, Providence, RI 02908-5767.
Tel. (401) 222-1360, ext. 7407

Joseph J. LoBianco, Esq.
RIDEM Office of Legal Services
235 Promenade Street, Providence, RI 02908-5767
Tel. (401) 222-6607

Christian Potter, Esq.
38 Azalea Circle
Kingston, RI 02881

- (a) At any time prior to full compliance with the terms of this Agreement, the Respondent agrees to notify RIDEM in writing of any change in ownership of the Property, and provide the name and address of the new owner(s). Notice of any change in address/telephone/fax of either party shall be sent to all other parties by certified mail.
- (b) All communications regarding compliance with this Agreement shall be forwarded to the above-referenced addressees by certified mail.
- (8) DEFERRAL – The Director may, for good cause shown, defer any of the compliance dates prescribed herein. Good cause for deferral of any compliance date shall be forwarded to RIDEM in writing at least fifteen days prior to the prescribed deadline.
- (9) AMENDMENT – The Agreement may be amended by mutual agreement of the parties in writing.
- (10) EFFECTIVE DATE – This Agreement shall be deemed entered as of the date of execution by all parties.

IN WITNESS WHEREOF, the undersigned consent to this Agreement in substance and in form.

For Campton Industries, L.L.C.

By: _____ (Print Name)

Its: _____ (Title)

Dated: _____

In my capacity as _____ of Campton Industries, L.L.C., I hereby aver that I am authorized to enter into this Agreement and thereby bind Campton Industries, L.L.C. to satisfy any obligation imposed upon it pursuant to said Agreement.

STATE OF RHODE ISLAND
COUNTY OF _____

In _____, in said County and State, on this _____ day of _____, 2011, before me personally appeared _____, the _____ of Campton Industries, L.L.C., a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of Campton Industries, L.L.C., and he/she acknowledged said instrument by him/her executed, to be his/her/ free act and deed in said capacity and the free act and deed of Campton Industries, L.L.C.

Notary Public
My Commission Expires: _____

For the State of Rhode Island Department of Environmental
Management

David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____