

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
OFFICE OF COMPLIANCE AND INSPECTION**

In Re: Robert G. Helger  
Jane V. Helger  
Petroleum Supply, Inc.  
d/b/a Bob's Filling Station and Bob's Fuel Supply

File No.: OC&I/LUST NO. 00-3321

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 Bridgeport Fields, LLC ("Bridgeport"). 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 the alleged violations set forth in a Notice of Violation ("NOV") issued to Robert G. Helger, Jane V. Helger, and Petroleum Supply, Inc. d/b/a Bob's Filling Station and Bob's Fuel Supply (collectively, the "Respondents") by the RIDEM on 16 November 2000. This Agreement does not affect any rights or causes of action that the RIDEM may possess against Respondents arising from or related to the NOV.

**B. STIPULATED FACTS**

- (1) WHEREAS, the property is located at 2388 Main Road in the town of Tiverton, Rhode Island, otherwise identified as Assessor's Map 1-9, Block 93, Parcel 3 (the "Property"). The Property included a facility used to sell petroleum products (the "Facility").
- (2) WHEREAS, at the time of the issuance of the NOV, Robert G. Helger and Jane V. Helger owned the Property.
- (3) WHEREAS, at the time of the issuance of the NOV, Petroleum Supply, Inc d/b/a Bob's Filling Station and Bob's Fuel Supply operated the Facility.
- (4) WHEREAS, on 16 November 2000, the RIDEM issued an NOV to Respondents alleging certain violations of the RIDEM's *Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the "UST Regulations").
- (5) WHEREAS, on 22 November 2000, the NOV was recorded in the land evidence records of the town of Tiverton.
- (6) WHEREAS, Respondents failed to request an administrative hearing to contest the NOV and failed to comply with the NOV.

- (7) WHEREAS, the RIDEM filed a complaint in the Superior Court to enforce the NOV (the “Complaint”).
- (8) WHEREAS, on 25 May 2016, Bridgeport acquired title to the Property.
- (9) WHEREAS, Richard P. D’Addario (“D’Addario”) is the authorized person for Bridgeport.
- (10) WHEREAS, in lieu of proceeding in Superior Court to enforce the NOV and to effect a timely and amicable resolution of the NOV, the RIDEM, Bridgeport and D’Addario 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.
- (11) WHEREAS, the RIDEM finds that this Agreement is a reasonable and fair settlement of all claims against Bridgeport and adequately protects the public interest in accordance with the RIDEM’s UST Regulations.
- (12) WHEREAS, this Agreement does not release or dismiss the NOV as it pertains to Respondents.

### **C. AGREEMENT**

- (1) JURISDICTION – The RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over Bridgeport and D’Addario.
- (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. and R.I. Gen. Laws Section 42-17.7-1 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)(vi).
- (3) APPLICATION – The provisions of this Agreement shall apply to and be binding upon the RIDEM, Bridgeport, D’Addario, and their agents, servants, employees, successors, assigns, and all persons, firms, and corporations acting under, through, and for Bridgeport and D’Addario in the performance of work relating to or impacting the requirements of this Agreement.
- (4) RECORDING OF AGREEMENT AND RELEASE OF NOV – Within 10 days of the receipt of the fully executed Agreement from the RIDEM, Bridgeport shall record this Agreement within the Land Evidence Records for the town of Tiverton, Rhode Island and shall provide a copy of the recorded Agreement to the RIDEM. Upon receipt of a copy of the recorded Agreement, the RIDEM shall issue a Release of the NOV to Bridgeport for recording. The recording shall be at the sole expense of Bridgeport. The Release of the NOV shall permit Bridgeport to apply, without objection from RIDEM, to the RI UST Review Board for reimbursement of all costs incurred (including those incurred prior to the Effective Date of this Agreement).

(5) CONDITIONS –

- (a) Bridgeport shall complete the following actions to comply with the Order section of the NOV:
- (i) Within 60 days of execution of the Consent Agreement, submit to the RIDEM a Site Investigation Report (“SIR”) and Corrective Action Plan (“CAP”) prepared by a qualified environmental consultant in accordance with the RIDEM’s UST Regulations. The SIR shall include the installation of monitoring wells and both on and offsite sampling of private drinking water wells. The CAP shall include excavation of contaminated soils to a 20 parts per million (“ppm”) goal and a contingency for excavation on land adjacent to the Property that is owned by the Rhode Island Department of Transportation. The CAP shall also include a contingency in the event private drinking wells are found to have contamination above non-detection levels.
  - (ii) Within 90 days of receipt of the RIDEM’s written approval of the CAP, complete the CAP and excavation in accordance with the approval and schedules and submit a corrective action report to the RIDEM.
  - (iii) Immediately upon receipt of RIDEM’s written approval of the completion of the CAP, conduct quarterly groundwater monitoring for a minimum of 3 years. This monitoring schedule may be extended to 5 years at the RIDEM’s discretion. The groundwater monitoring reports shall be submitted to the RIDEM within 15 days after the end of each quarter.
  - (iv) If it is determined by the RIDEM that the groundwater has not met the Class GA standards as specified in the RIDEM’s *Groundwater Quality Rules* after the 5<sup>th</sup> year of groundwater monitoring, within 60 days of receipt of written notification by the RIDEM of such, submit an amendment to the CAP and complete the additional requirements upon receipt of RIDEM’s written approval in accordance with the approval and schedules.
  - (v) The schedules, reports and other documents that Bridgeport is required to submit to the RIDEM in accordance with Paragraph C(5)(a) above are subject to the RIDEM’s review and approval. Upon review, the RIDEM shall provide written notification to Bridgeport either granting formal approval or stating the deficiencies therein. Within 14 days (unless a longer time is specified) of receiving a notification of deficiencies, Bridgeport shall submit to the RIDEM revised schedules, reports, documents or additional information necessary to correct the deficiencies.

(b) Penalty – Bridgeport shall pay to the RIDEM the sum of **\$2500** in administrative penalties assessed as follows:

(i) Upon execution of this Agreement by Bridgeport, Bridgeport shall pay to the RIDEM the sum of **\$2500**.

(ii) Payment of the administrative penalties is not an admission of liability by Bridgeport.

(iii) Penalties that Bridgeport 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) 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 – Bridgeport provides to the 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. Bridgeport 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. Bridgeport 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.

(7) PERSONAL GUARANTOR – D’Addario personally guarantees fulfillment of the items specified in Sections C(4) and C(5) up to and including the sum of \$50,000. Work done prior to this Agreement that fulfills these items may count towards this sum. Notwithstanding anything to the contrary contained in this Agreement, the obligations of D’Addario set forth in this Paragraph are the only obligations of D’Addario pursuant to this Agreement.

#### ***D. COMPLIANCE***

- (1) EFFECT OF COMPLIANCE – Compliance with and fulfillment of this Agreement shall be deemed to resolve all issues raised in the NOV. Upon Bridgeport’s successful completion of the requirements set forth in this Agreement, the RIDEM shall issue a Release and Discharge of the Agreement to Bridgeport for recording and dismiss with prejudice the Complaint. The recording shall be at the sole expense of Bridgeport.
- (2) FAILURE TO COMPLY – In the event that Bridgeport fails to comply with items specified in Section C(5)(a) of the Agreement, Bridgeport shall pay a stipulated penalty of \$500 per month for each and every month during which the noncompliance continues, except that the RIDEM may, for good cause shown, defer or reduce such penalty. The payment of a penalty in accordance with this section shall not preclude the 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 Bridgeport or D’Addario of any obligation to comply with any other applicable laws or regulations administered by, through or for the 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, the RIDEM reserves the right to take additional enforcement actions as provided by statute 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 Bridgeport or D’Addario may have regarding any new enforcement action commenced by the RIDEM after the execution of this Agreement.
- (5) FUTURE ACTIVITIES AND UNKNOWN CONDITIONS – This Agreement shall not operate to shield Bridgeport or D’Addario 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 limited to 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  
401-222-1360 ext. 7407

Susan B. Forcier, Esq.  
Deputy Chief Legal Counsel  
RIDEM Office of Legal Services  
235 Promenade Street  
Providence, RI 02908  
401-222-6607 ext. 2305

Sean Lyness  
Special Assistant Attorney General  
Rhode Island Office of the Attorney General  
150 South Main St.  
Providence, RI 02903  
401-274-4400 ext. 2481

Bridgeport Fields, LLC  
c/o Richard P. D'Addario  
One Courthouse Square  
Newport, RI 02840  
401 849 0880

Michael P. Donegan, Esq.  
Orson and Brusini Ltd.  
144 Wayland Avenue  
Providence, RI 02906  
401-331-2126 (direct)

- (a) At any time prior to full compliance with the terms of this Agreement, Bridgeport agrees to notify the 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 the RIDEM in writing at least 15 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 Bridgeport Fields, LLC

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

In my capacity as \_\_\_\_\_ of Bridgeport Fields, LLC, I hereby aver that I am authorized to enter into this Agreement and thereby bind Bridgeport Fields, LLC 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 \_\_\_\_\_, 2017, before me personally appeared \_\_\_\_\_, the \_\_\_\_\_ of Bridgeport Fields, LLC, a Rhode Island corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of Bridgeport Fields, LLC, 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 Bridgeport Fields, LLC.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

Richard P. D'Addario

\_\_\_\_\_

Dated: \_\_\_\_\_

**STATE OF RHODE ISLAND**  
**COUNTY OF \_\_\_\_\_**

In \_\_\_\_\_, in said County and State, on this \_\_\_\_\_ day of \_\_\_\_\_, 2017, before me personally appeared Richard P. D'Addario to me known and known by me to be the party executing the foregoing instrument and he acknowledged said instrument and the execution thereof, to be his free act and deed.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_



State of Rhode Island, Department of Environmental Management

\_\_\_\_\_  
David E. Chopy, Chief  
Office of Compliance and Inspection

Dated: \_\_\_\_\_

In my capacity as Chief of the Office of Compliance and Inspection for the RIDEM I hereby aver that I am authorized to enter into this Agreement and thereby bind the RIDEM 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 \_\_\_\_\_, 2017, before me personally appeared David E. Chopy, the Chief of the Office of Compliance and Inspection of the RIDEM, to me known and known by me to be the party executing the foregoing instrument on behalf of the RIDEM, and he acknowledged said instrument by him executed, to be his free act and deed in said capacity and the free act and deed of the RIDEM.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_