

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

MDEQ Reference No. AOC-RRD-13-004

Michael K. and Catherine A. Bumstead and
Bumstead's Rapids Oil Change, Inc.
South End Mobil Facility
816 South Main Street
Eaton Rapids, Michigan 48827

Agreement and Consent for Access

This agreement is entered into voluntarily by and between the Michigan Department of Environmental Quality (MDEQ), Mr. Michael K. and Mrs. Catherine A. Bumstead (Bumsteads), and Bumstead's Rapids Oil Change, Incorporated (BROC) to address a release of regulated substances at or from an underground storage tank system at or in the proximity of real property located at 816 South Main Street, Eaton Rapids, Michigan, 48827, MDEQ Facility ID No. 0-0004236, MDEQ Site ID No. 23000189 (South End Mobil), pursuant to Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.21301 *et seq.* All terms used in this Agreement that are defined in Part 213 shall have the same meaning herein.

Background

1. The Bumsteads are the current fee title holders of the South End Mobil and have been since November, 2006. The Bumsteads failed to conduct and provide a Baseline Environmental Assessment (BEA) to the MDEQ within the statutory timeframe provided in MCL 324.21323a(1)(b) and are therefore liable as owners under Part 213.
2. The Bumsteads are also the current fee title holders of the following properties:
 - 802 South Main Street, Eaton Rapids, Michigan 48827;
 - 806 South Main Street, Eaton Rapids, Michigan 48827;
 - 808 South Main Street, Eaton Rapids, Michigan 48827;
 - 812 South Main Street, Eaton Rapids, Michigan 48827; and
 - 803 Hall Street, Eaton Rapids, Michigan 48827.

Collectively, the South End Mobil and the above-listed real properties are referred to herein as the "Properties."

3. BROC has operated an instant oil change business at the South End Mobil since November, 2006. BROC failed to conduct and provide a BEA to the MDEQ within the statutory timeframe provided in MCL 324.21323a(1)(b) and is therefore liable as an operator under Part 213.
4. In May, 2000, a release of regulated substances from an underground storage tank system was confirmed at or in the proximity of the South End Mobil (Release No. C-434-00).
5. Analytical data for soil and groundwater identified benzene, ethylbenzene, toluene, xylenes, 1,2,4-trimethylbenzene (TMB), 1,3,5-TMB, 1,2-dichloroethane, naphthalene, and 2-methylnaphthalene at levels exceeding the risk-based screening levels under Part 213. The full extent (vertical and horizontal) of soil and groundwater contamination has not been defined.
6. The South End Mobil is a "Site" as defined in Part 213.
7. The MDEQ has and will be spending public funds performing corrective actions at the Properties and will need access for this purpose.

Agreement

8. The Bumsteads and BROC consent to the MDEQ, its officers, employees, agents, authorized representatives, contractors, and/or subcontractors entering and having continued access to the Properties for the purpose of performing corrective actions.
9. The Bumsteads and BROC consent to the MDEQ, its officers, employees, agents, authorized representatives, contractors, and/or subcontractors entering and having continued access to any other property(ies) owned or controlled by the Bumsteads or BROC where the MDEQ determines corrective actions are necessary to address Release No. C-434-00.
10. The MDEQ will use reasonable efforts to minimize any interference with the Bumsteads' or BROC's use of the Properties. For the purposes of this paragraph, "reasonable efforts" does not mean taking actions that will result in material cost increases in the corrective actions being conducted by the MDEQ.

11. The Bumsteads and BROC shall not remove, damage, or interfere with monitoring wells or other equipment and supplies being used for the purpose of performing corrective actions by the MDEQ.
12. Upon completion of corrective actions, the MDEQ will remove all equipment installed for the corrective actions, and undertake reasonable efforts to restore to original condition any property, vegetation, and structures damaged by the MDEQ.
13. This Agreement does not constitute a warranty of any kind by the MDEQ that the corrective actions performed will achieve remedial criteria established by law; assure protection of public health, safety or welfare, or the environment; or result in closure or cleanup of the Site.
14. Any lease, deed, contract, or other agreement entered into by the Bumsteads or BROC that transfers to another person an ownership interest or any right of control over the Properties or a portion of the Properties shall contain a provision preserving full rights of the MDEQ under this Agreement and obligating the transferee to comply with this Agreement. Any change in ownership of the Properties, or any change in corporate or legal status of BROC, shall not in any way alter the Bumsteads' or BROC's obligations under this Agreement. The Bumsteads will notify the MDEQ of any change in ownership or ownership interest in the Properties thirty (30) days prior to the change occurring.
15. The Bumsteads agree to pay the MDEQ a total of \$25,000 as follows:
 - \$5,000 on or before December 31, 2013;
 - \$5,000 on or before December 31, 2014;
 - \$5,000 on or before December 31, 2015;
 - \$5,000 on or before December 31, 2016; and
 - \$5,000 on or before December 31, 2017.

Payment will be made by certified check made payable to the "State of Michigan – Environmental Response Fund" and sent by first class mail to:

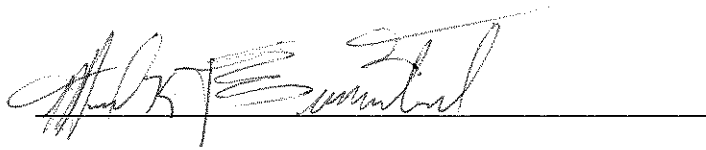
Accounting Services Division
Cashier's Office for the MDEQ
P.O. Box 30657
Lansing, Michigan 48909-8157

To ensure proper credit, the check should reference Settlement ID No. RD50053.

16. In consideration for the payments that will be made by the Bumsteads, and the agreement to provide access by the Bumsteads and BROCC, the State of Michigan hereby covenants not to sue or take administrative action against the Bumsteads or BROCC to compel performance of corrective actions or to recover costs incurred by the State for taking corrective actions as it relates to the Bumsteads' and BROCC's liability for not conducting and providing a BEA to the MDEQ within the statutory timeframe provided in MCL 324.21323a(1)(b) for the South End Mobil. The MDEQ reserves all rights with respect to any matter not covered by this covenant.
17. The covenant not to sue shall take effect upon MDEQ's receipt of full payment by the Bumsteads in accordance with paragraph 15 of this Agreement. The covenant not to sue extends only to the Bumsteads and BROCC and not to any other person or entity.
18. The Bumsteads and BROCC hereby covenant not to sue or take any civil, judicial, or administrative action against the State of Michigan, its agencies, or its authorized representatives, for any claims or causes of action against the State that arise from this Agreement.
19. The State of Michigan reserves the right to take action against the Bumsteads and BROCC if it is discovered at any time that any material information provided to or after entry of this Agreement was false or misleading.
20. The State of Michigan reserves all of its rights and defenses to enforce this Agreement.
21. Nothing in this Agreement shall limit the power and authority of the MDEQ to direct or order all appropriate action to protect the public health, safety, or welfare, or the environment.
22. The Bumsteads' and BROCC's consent to enter and conduct corrective actions as described in paragraphs 8 and 9 of this Agreement shall terminate upon the MDEQ providing written notice to the Bumsteads and BROCC that it is ceasing performance of corrective actions at the Properties.
23. This Agreement in no way affects the Bumsteads' or BROCC's responsibility to comply with all applicable state, federal, or local laws and regulations.
24. This Agreement may only be modified by written agreement of the parties.

25. This Agreement may be enforced by filing an action in a court of competent jurisdiction.

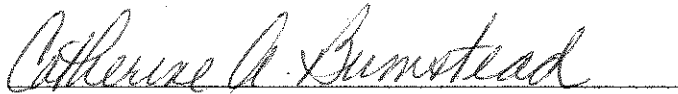
The signature of the representatives of the MDEQ, BROCC, and the Bumsteads indicates their agreement with the terms of this Agreement. By signing this Agreement, the signatories certify that they are authorized to execute this Agreement on behalf of their respective entity. This Agreement is binding upon any successors and assigns of the aforementioned persons and entities and becomes effective on the date of the signature of the MDEQ's representative.



Michael K. Bumstead

12/26/13

Date



Catherine A. Bumstead

12/26/13

Date

For Bumstead's Rapids Oil Change, Inc.:


OWNER

12/26/13

Date

For MDEQ:

Karen Klegman
for

Susan Erickson
Assistant Division Chief
Remediation and Redevelopment Division
Michigan Department of Environmental Quality

12/26/13

Date

Bill Schuette
Attorney General

Margaret Bettenhausen by ATP
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Margaret Bettenhausen
Assistant Attorney General
Environment, Natural Resources, and
Agriculture Division
Department of Attorney General
P.O. Box 30755
Lansing, Michigan 48933

12/26/13

Date