

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 49TH JUDICIAL CIRCUIT
OSCEOLA COUNTY

KENNETH D. SCHUMACHER,

Plaintiff

v

ROLAND A. HARMES, Director, MICHIGAN
DEPARTMENT OF NATURAL RESOURCES,
EUGENE SCHUPPI, MICHAEL LYON and
KYLE CRUSE,

Defendants,

KENNETH D. SCHUMACHER d/b/a
SCHUMACHER SALVAGE,

Plaintiff,

v

STATE OF MICHIGAN, RUSSELL HARDING,
DIRECTOR, DEPARTMENT OF
ENVIRONMENTAL QUALITY, FORMERLY
DEPARTMENT OF NATURAL RESOURCES,

Defendant,

MICHAEL A. COX, ATTORNEY GENERAL FOR
THE STATE OF MICHIGAN, and the MICHIGAN
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Plaintiff,

v

KENNETH DOUGLAS SCHUMACHER
d/b/a SCHUMACHER SALVAGE

Defendant.

Hon. Scott Hill Kennedy
Circuit Court Judge

Osceola County Circuit Court
File No. 94-6565-AA

Joined with
Court of Claims
File No. 95-15926-CM

Consolidated with
Ingham County Circuit Court
File No. 96-82640-CE

CONSENT JUDGMENT

FILED
OSCEOLA COUNTY

FEB 19 2010

CIRCUIT COURT
CLERK

Webb A. Smith (P20718)
Foster, Swift, Collins & Smith, PC
Attorney for Mr. Schumacher
313 S. Washington Square
Lansing, MI 48933-2172
517/371-8157

John Fordell Leone (P38938)
Attorney for State Parties
Environment, Natural Resources,
And Agriculture Division
P.O. Box 30217
Lansing, MI 48909
517/373-7540

ATTEST: A TRUE COPY
[Signature]
CLERK of OSCEOLA COUNTY

This Consent Judgment is to accomplish the full and final disposition of all three matters listed above: Osceola County Circuit Court File No. 94-6565-AA, Court of Claims File No. 95-15926-CM, and Ingham County Circuit Court File No. 96-82640-CE.

The Parties are Michael A. Cox, Attorney General of the State of Michigan, and the Department of Natural Resources and Environment (DNRE), successor agency to the Michigan Department of Environmental Quality (MDEQ) (*See*, Executive Order No. 2009-45 and Delegation Letter DNRE-01); and Kenneth D. Schumacher, d/b/a Schumacher Salvage, (referred to as Mr. Schumacher). The parties agree not to contest (a) the authority or jurisdiction of the Court to enter this Consent Judgment, or (b) any terms or conditions set forth herein.

The Parties agree that this Court's opinion and ruling dated February 7, 2005, dismissed all claims contained in Osceola County Circuit Court File No. 94-6565-AA and Court of Claims File No. 95-15926-CM, in which Mr. Schumacher is the Plaintiff (*See*, **Exhibit 1**, *Opinion*, p 9).

The Parties further agree that this Court's opinion and ruling dated February 7, 2005, relating to the claims contained in Ingham County Circuit Court File No. 98-82640-CE, in which Mr. Schumacher is the Defendant, contains findings that Mr. Schumacher was in violation of Part 169, Scrap Tires, MCL 324.16901 *et seq.* (Part 169), of the Natural Resources And Environmental Protection Act, MCL 324.101 *et seq.* (NREPA) (*See* **Exhibit 1**, *Opinion*, p 3).

The Parties further agree that at the time of the entry of this Consent Judgment, Defendant Mr. Schumacher is no longer in violation of Part 169 with respect to the both Parcel A and Parcel B as identified in the aerial photo depicting the subject property (*See* **Exhibit 2**).

The Parties further agree that this final disposition of all three matters is in the public interest and entry of this Consent Judgment is the most appropriate means of resolving all the

disputed issues raised in all or any of the three matters. The Parties agree to and shall be bound by the requirements of this Consent Judgment.

NOW, THEREFORE, upon the consent of the Parties, by their attorneys, it is hereby ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION AND VENUE

1.1 This Court has jurisdiction over the subject matter of this action and over the Parties pursuant to Section 6419(1) of the Revised Judicature Act (RJA), MCL 600.6419(1), regarding the Court of Claims matters, and Section 605 of the RJA, MCL 600.605, which provides that circuit courts have original jurisdiction to hear and determine all civil claims and remedies except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state.

1.2 Venue is appropriate pursuant to Section 1615 of the RJA, MCL 600.1615, and Section 1631 of the RJA, MCL 600.1631. The Parties waive all objections and defenses that they may have to the jurisdiction of this Court or to venue in this Court.

1.3 This Court has determined that the terms and conditions of this Consent Judgment are reasonable, adequately resolve the environmental issues raised, and properly protect the interests of the people of the State of Michigan.

II. PARTIES

2.1 The provisions of this Consent Judgment shall be binding on the Parties to this action and their successors and assigns.

2.2 This Section in no way affects the responsibility of any successor or assign to comply with the provisions of Parts 169 of the NREPA, or any other state or federal law.

III. STATEMENT OF PURPOSE

3.1 In entering into this Consent Judgment, the mutual objectives of all Parties are to resolve all issues related to the claims contained in Osceola County Circuit Court File No. 94-6565-AA and Court of Claims File No. 95-15926-CM, in which Mr. Schumacher is the Plaintiff; and Ingham County Circuit Court File No. 96-82640-CE, in which Mr. Schumacher is the Defendant; including assessment of all civil liabilities, applicable civil penalties, stipulated penalties and surveillance/enforcement costs resulting collectively from these three matters; and to vacate the injunctive order entered by this Court on December 28, 1998.

IV. DEFINITIONS

4.1 "Consent Judgment" means this Consent Judgment and any attachment hereto, including any future modifications, and any reports, plans, specifications, and schedules required by the Consent Judgment that, upon approval of the parties shall be incorporated into and are enforceable under this Consent Judgment.

4.2 "Parcel A" as depicted in attached **Exhibit 2** located at 2074 South 30th Avenue, Sears, Michigan in Osceola County was and is owned by Environmental Products, Inc. and was part of the operating area of Schumacher Salvage, a business owned by Mr. Schumacher. The legal description of Parcel A is:

Section 21 T17N, R7W 5850 ft. of the E 513 ft. of the SE ¼
of the SE ¼ 10.01 Acres M/L

4.3 "Parcel B" as depicted in attached **Exhibit 2** located immediately west of Parcel A was owned by Mr. Schumacher and is now owned by Osceola County and was formerly a part of the operating area of Schumacher Salvage. The legal description of Parcel B is:

Section 21 T17N, R7W, SE ¼ of the SE ¼ except the North 470 ft.
and except the South 850 ft. of the East 513 ft thereof.

4.4 "Parties" means Mr. Schumacher and all the state parties.

4.5 Unless otherwise stated, all terms used in this Consent Judgment shall have the same meaning as used in the NREPA and any rules or regulations promulgated pursuant to that Act, existing as of the date of this Consent Judgment.

V. CIVIL PENALTY, COSTS, STIPULATED PENALTIES, AND VACATING OF INJUNCTIVE ORDER DATED DECEMBER 28, 1998

5.1 Mr. Schumacher is found to be liable to pay to the General Fund of the State of Michigan a civil fine in the sum of fifty thousand dollars (\$50,000) to resolve and settle the claims pertaining to Ingham County Circuit Court File No. 98-82640-CE, in which Mr. Schumacher is the Defendant. Mr. Schumacher is also found to have fully satisfied his duty to pay this \$50,000 civil fine for the reason that it is found that Mr. Schumacher has completed the lawful removal of all regulated tires and tire shred from within Parcel A of the Schumacher Salvage Site and, by agreement between the parties and acting beyond his legal duties, also removed tires located within Parcel B of the Schumacher Salvage Site near the property line between Parcels A and B. Mr. Schumacher is hereby found to have fully satisfied all obligations required to satisfy this Consent Judgment.

5.2 Mr. Schumacher is found to be liable to the General Fund of the State of Michigan in the sum of ten thousand dollars (\$10,000) in settlement of claims for the costs of surveillance and enforcement incurred by the MDEQ arising from the violations pertaining to Ingham County Circuit Court File No. 98-82640-CE, in which Mr. Schumacher is the Defendant. Mr. Schumacher is also found to have fully satisfied his duty to pay this \$10,000 for the costs of surveillance and enforcement incurred by the MDEQ for the reason that it is found that Mr. Schumacher has completed the lawful removal of all regulated tires and tire shred from within Parcel A of the Schumacher Salvage Site and, by agreement between the parties and acting

beyond his legal duties, also removed tires located within Parcel B of the Schumacher Salvage Site near the property line between Parcels A and B. Mr. Schumacher is hereby found to have fully satisfied all obligations required to satisfy this Consent Judgment.

5.3 The injunctive order entitled Order Joining Party Defendant, Allowing State to Erect Signs, and Enjoining Conduct, and dated December 28, 1998, is hereby vacated in its entirety. The State shall remove the signs erected under authority of the December 28, 1998 injunctive order within 90 days after entry of this Consent Judgment.

5.4 Within 90 days after entry of this Consent Judgment, Mr. Schumacher shall pay to the state \$9,018.75, the Court having found this amount to be reasonable attorneys fees pursuant to this Court's Opinion and Order dated November 13, 2009. Mr. Schumacher shall make this payment by certified check or money order, payable to the "State of Michigan," and must include **Payment Identification Number 3004** on the face of the payment. This payment is separate and distinct from, and shall be paid notwithstanding, any and all other terms of this Consent Judgment. When the \$9,018.75 is paid in full it shall be deemed to fully satisfy this Court's Opinion and Order dated November 13, 2009.

VI. GENERAL PROVISIONS

6.1 Other Laws. This Consent Judgment in no way affects or modifies Mr. Schumacher's legal duties to comply with other applicable federal, state or local laws or regulations, or with any Court Order, in other than these three cases (File No. 94-6565-AA File No. 95-15926-CM, and File No. 96-82640-CE).

VII. RESOLUTION OF LAST PENDING CLAIM

7.1 This Consent Judgment resolves the last pending claim and closes this case,

pursuant to MCR 2.602(A)(3).

IT IS ORDERED:

Honorable Scott P. Hill-Kennedy
Circuit Court Judge

Date

VIII. SIGNATORIES

8.1. Each undersigned individual represents and warrants that he or she is fully authorized by the Party they represent to enter into this Consent Judgment and to legally bind such Party to the terms and conditions of this Consent Judgment.

The undersigned hereby stipulate to the form and entry of this Consent Judgment:

For Kenneth D. Schumacher,
d/b/a Schumacher Salvage:


Kenneth D. Schumacher
Dated: 2-9-, 2010

For Michigan Department of Natural
Resources & Environment (DNRE)
(successor agency to MDEQ):

By: _____
Rebecca A. Humphries, Director
Dated: _____, 2010

Webb A. Smith (P20718)
Foster, Swift, Collins & Smith, PC
313 S. Washington Square
Lansing, MI 48933-2172
Dated: _____, 2010

MICHAEL A. COX
Attorney General

By: _____
John Fordell Leone (P 38938)
Assistant Attorney General
Department of Attorney General
Environment, Natural Resources, and
Agriculture Division
Dated: _____, 2010

pursuant to MCR 2.602(A)(3).

IT IS ORDERED:

JUDGE SCOTT HILL-KENNEDY
Circuit Court Judge (P41542)

S | _____ | 2 | 19 | 10
Honorable Scott P. Hill-Kennedy | Date
Circuit Court Judge

VIII. SIGNATORIES

8.1. Each undersigned individual represents and warrants that he or she is fully authorized by the Party they represent to enter into this Consent Judgment and to legally bind such Party to the terms and conditions of this Consent Judgment.

The undersigned hereby stipulate to the form and entry of this Consent Judgment:

For Kenneth D. Schumacher,
d/b/a Schumacher Salvage:

Kenneth D. Schumacher
Dated: _____, 2010

Webb A. Smith
Webb A. Smith (P20718)
Foster, Swift, Collins & Smith, PC
313 S. Washington Square
Lansing, MI 48933-2172
Dated: Feb 5, 2010

For Michigan Department of Natural
Resources & Environment (DNRE)
(successor agency to MDEQ):

By: Rebecca A. Humphries
Rebecca A. Humphries, Director
Dated: 02/12/2010, 2010

MICHAEL A. COX
Attorney General

By: John Fordell Leone
John Fordell Leone (P 38938)
Assistant Attorney General
Department of Attorney General
Environment, Natural Resources, and
Agriculture Division
Dated: Feb 12, 2010

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 49TH JUDICIAL CIRCUIT
OSCEOLA COUNTY

KENNETH D. SCHUMACHER,

Plaintiff

v

ROLAND A. HARMES, Director, MICHIGAN
DEPARTMENT OF NATURAL RESOURCES,
EUGENE SCHUPPI, MICHAEL LYON and
KYLE CRUSE,

Defendants,

KENNETH D. SCHUMACHER d/b/a
SCHUMACHER SALVAGE,

Plaintiff,

v

STATE OF MICHIGAN, RUSSELL HARDING,
DIRECTOR, DEPARTMENT OF
ENVIRONMENTAL QUALITY, FORMERLY
DEPARTMENT OF NATURAL RESOURCES,

Defendant,

MICHAEL A. COX, ATTORNEY GENERAL FOR
THE STATE OF MICHIGAN, and the MICHIGAN
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Plaintiff,

v

KENNETH DOUGLAS SCHUMACHER
d/b/a SCHUMACHER SALVAGE

Defendant.

Hon. Scott Hill Kennedy
Circuit Court Judge

Osceola County Circuit Court
File No. 94-6565-AA

Joined with
Court of Claims
File No. 95-15926-CM

Consolidated with
Ingham County Circuit Court
File No. 96-82640-CE

**ORDER REGARDING
BOND MONIES**

FILED
OSCEOLA COUNTY

DEC 10 2009

CIRCUIT COURT
CLERK

Webb A. Smith (P20718)
Foster, Swift, Collins & Smith, PC
Attorney for Mr. Schumacher
313 S. Washington Square
Lansing, MI 48933-2172
517/371-8157

John Fordell Leone (P38938)
Attorney for State Parties
Environment, Natural Resources,
And Agriculture Division
P.O. Box 30217
Lansing, MI 48909
517/373-7540

ORDER REGARDING BOND MONIES

At a session of said Court held on the 10th day of December, 2009

Present: Honorable Scott P. Hill-Kennedy
Circuit Court Judge

The Parties having filed briefs on this matter and having presented oral argument in Big Rapids, Michigan on November 6, 2009; and the Court being otherwise fully apprised of the premises:

IT IS THE FINDING OF THIS COURT that the Michigan Department of Environmental Quality presently possesses bond monies (with an estimated value, including accumulated interest, to be in excess of \$22,000) supplied by Kenneth D. Schumacher and associated with the subject scrap tire collection site property located in Sears, Michigan.

IT IS THE FINDING OF THIS COURT that, for the reasons stated on the record, Kenneth D. Schumacher did not cause the removal of tires accumulated on the subject scrap tire collection site property located in Sears, Michigan, despite having been ordered to do so by a Court of competent jurisdiction; and therefore, for the reasons stated on the record, this one corresponding requirement under the Scrap Tire Act, presently MCL 324.16901 *et seq.*, for the Michigan Department of Environmental Quality to utilize said bond monies has been satisfied.

IT IS THE FINDING OF THIS COURT that, for the reasons stated on the record, all other requirements under the Scrap Tire Act, presently MCL 324.16901 *et seq.*, must be satisfied for the Michigan Department of Environmental Quality to utilize said bond monies.

IT IS HEREBY ORDERED that Plaintiff Kenneth D. Schumacher's Motion for Return of Bond is denied.

IT IS ORDERED:

JUDGE SCOTT HILL-KENNEDY

S/
Circuit Court Judge (P41542)
Honorable Scott P. Hill-Kennedy
Circuit Court Judge

Approved as to form:

Webb A. Smith 12-4-09

Webb A. Smith (P20718) Date
Attorney for Mr. Schumacher
Foster, Swift, Collins & Smith, PC
313 S. Washington Square
Lansing, MI 48933-2172
517/371-8157

[Signature] 12-7-09

John Fordell Leone (P38938) Date
Attorney for State Parties
Environment, Natural Resources,
And Agriculture Division
P.O. Box 30217
Lansing, MI 48909
517/335-0694