

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE COUNTY OF INGHAM

MICHIGAN DEPARTMENT OF  
ENVIRONMENTAL QUALITY,

Plaintiff,

v

File No. 07-221-CE

MICHIGAN GAS AND  
CONVENIENCE, INC.,  
a Michigan corporation,

Hon. Joyce A. Draganchuk

Defendant,

And

INDERJIT SOHI,

Defendant.

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**CONSENT JUDGMENT**

The parties to this Consent Judgment are the Michigan Department of Environmental Quality (MDEQ) and Michigan Gas and Convenience, Inc. and Inderjit Sohi (Defendants),

collectively, the "Parties." 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 settlement of this action is in the public interest and entry of this Consent Judgment is the most appropriate means of resolving the disputed issues and claims raised in the above-captioned matter. The Parties agree to and shall be bound by the requirements of this Consent Judgment.

NOW, THEREFORE, before the taking of any testimony, it is hereby ORDERED, ADJUDGED, and DECREED:

### **I. JURISDICTION**

1.1 This Court has jurisdiction in this matter pursuant to Section 21323 of Part 213 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, (NREPA), MCL 324.21323 and Section 20137 of the NREPA, MCL 324.20137. Venue is proper in this Court pursuant to MCL 324.21323(2) and 324.20137(3). This Court also has personal jurisdiction over the Parties and the Parties waive any and all objections and defenses that they may have to jurisdiction and venue of this Court.

1.2 This Court retains jurisdiction over the Parties and subject matter of this action to enforce this Consent Judgment.

### **II. STATEMENT OF PURPOSE**

2.1 In entering into this Consent Judgment, the mutual objective of the Parties is to:

(a) Resolve Defendants' past failure to submit a statutorily complete final assessment report (FAR) pursuant to Section 21311a of Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA);

(b) Perform corrective actions for the petroleum contamination at and in the vicinity of the former Super Duper Gas Station (facility ID 00012241), located at 3307 Stadium Drive in Kalamazoo, Michigan, (Site) consistent with requirements of Part 213 of the NREPA;

(c) Resolve the administrative penalties that MDEQ assessed pursuant to Section 21313a of the NREPA in the May 31, 2006 late report penalty assessment (LRPA) as provided herein;

(d) Resolve any civil fines that may have accrued against the Defendants' under Section 21323(1)(d) and Section 20137(f) of the NREPA prior to the applicable deadline provided in Subparagraphs 5.2(a) or (b) of this Consent Judgment; and

(e) Resolve the State of Michigan's claim for cost incurred under Section 21323(1)(b) and Section 20137(1)(b) of the NREPA through the effective date of this Consent Judgment.

### **III. COMPLIANCE WITH STATE AND FEDERAL LAWS**

3.1 All actions required to be taken pursuant to this Consent Judgment must be undertaken in accordance with the requirements of all applicable or relevant and appropriate environmental state and federal laws, and rules and regulations, including, but not limited to Part 213, Leaking Underground Storage Tanks, of NREPA, MCL 324.21301 et seq. ("Part 213").

### **IV. COMPLIANCE PROGRAM**

4.1 The Defendants shall submit a statutorily complete Final Assessment Report (FAR) for the Site meeting the requirements of Section 21311a of the NREPA, MCL 324.21311a, to MDEQ within three hundred and sixty-five (365) days of the effective date of this Consent Judgment. The Defendants shall begin implementing the Corrective Action Plan (CAP), as defined in Part 213 of the NREPA and contained within the FAR; shall follow the implementation schedule contained in the FAR; and shall submit documentation of the

implementation of the CAP to the MDEQ within seven hundred and thirty (730) days of the effective date of the Consent Judgment.

## V. FINES, COSTS, AND PENALTIES

5.1 Defendants agree to pay the MDEQ the sum of fifteen thousand dollars (\$15,000) to resolve the one-hundred and twenty-seven thousand six-hundred and fifty dollar (\$127,650.00) administrative penalties assessed by the letter dated May, 31, 2006 (LRPA). The Defendants shall pay the \$15,000.00 in \$2,000.00 monthly installments for seven months, beginning on August, 1, 2008 and continuing on the 1st of each subsequent month. The eighth and final payment of \$1,000.00 shall be made by March 1, 2009. Defendants' failure to make any installment payments by its due date shall result in that installment payment being subject to interest at the rate specified in Section 20126a(3) of the NREPA, MCL 324.20126a(3) until that payment is made in full including any accumulated interest. Payments shall be made in accordance with subparagraph 5.4. Sixty thousand dollars (\$60,000) of the remaining administrative penalty assessed in the LRPA, shall be held in abeyance and no new penalties shall accrue for the LRPA except as provided in Paragraph 5.2.

5.2 If the Defendants fail to:

- a.) submit a statutorily complete FAR within 365 days of the effective date of this Consent Judgment; or
  - b.) begin implementing the CAP and submit documentation of the implementation of the CAP within 730 days of the effective date of this Consent Judgment,
- as required in Paragraph 4.1 above, the penalty held in abeyance as provided in Paragraph 5.1 shall become due and payable, and administrative penalties will begin to accrue again for the LRPA. Failure to pay the penalty held in abeyance within 45 days of written notification from

the MDEQ, which references this Consent Judgment, Subparagraphs 5.2.a or 5.2.b, and the Defendants' failure to comply with Paragraph 4.1, will result in the amount being subject to interest at the rate specified in Section 20126a(3) of the NREPA, MCL 324.20126a(3). This payment shall be made pursuant to Paragraph 5.4.

5.3 The Defendants agree not to contest the:

- a.) Defendants' liability; or
- b.) legality of the administrative penalties assessed by the LRPA letter, including any amount held in abeyance.

Defendants may dispute the factual basis for MDEQ's assertion that they have failed to comply with Paragraph 4.1 if the MDEQ petitions the Court for enforcement of Paragraph 5.2 of this Consent Judgment. Resolution of any disputes shall be limited to the administrative record compiled by the MDEQ and shall be subject to the arbitrary and capricious standard of review. The administrative record shall include the information the Defendants provide to the MDEQ pursuant to this Consent Judgment and any other documents the MDEQ relies on to make the decision that the Defendants have not complied with Paragraph 4.1.

5.4 The Defendants agree to pay all funds due pursuant to this agreement by certified check made payable to the State of Michigan - Environmental Response Fund and delivered to:

Revenue Control Unit  
Financial and Business Services Division  
Department of Environmental Quality  
525 West Allegan Street, 5<sup>th</sup> Floor, South Tower  
P.O. Box 30657  
Lansing, Michigan 48909-8157

To ensure proper credit, all payments made pursuant to this Consent Judgment must include the Michigan Gas and Convenience, Project No. U00259 and Settlement ID Number RRD1016 identified on the certified check.

## **VI. REPORTING**

6.1 All correspondence and submittals are to be made to:

Mr. David O'Donnell, District Supervisor, or his successor  
MDEQ Remediation and Redevelopment Division  
Kalamazoo District Office  
7953 Adobe Road  
Kalamazoo, Michigan 49009  
(269) 567-3525

6.2 The Defendants shall verbally report any violation(s) of the terms and conditions of this Consent Judgment to the District Supervisor no later than the close of the next business day following identification of such violation(s) and shall follow such verbal notification with a written report within five (5) business days following identification of such violation(s). The written report shall include a detailed description of the violation(s), as well as a description of any actions proposed or taken to correct the violation(s).

6.3 No informal advice, guidance, suggestions, or comments by the MDEQ will be construed as relieving the Defendants of their obligation to obtain written approval, if and when required, by this Consent Judgment.

## **VII. MODIFICATIONS**

7.1 The deadlines contained in this Consent Judgment may only be modified according to the terms of this Section.

7.2 The deadlines provided in Paragraph 5.1 of this Consent Judgment may be extended in writing at the sole discretion of the DEQ, RRD, Part 213/215 Enforcement Unit Chief, in consultation with the RRD, Compliance and Enforcement, Section Chief.

7.3 The deadlines provided in Paragraph 5.2 of this Consent Judgment may be extended in writing at the sole discretion of the DEQ, RRD, Kalamazoo District Supervisor, or his successor in consultation with the RRD, Compliance and Enforcement, Section Chief.

#### **VIII. ACCESS**

8.1 The Defendants shall allow any MDEQ employee, agent, authorized representative or contractor, upon presentation of proper credentials, to enter upon the premises of the facility and any associated properties at all reasonable times for the purpose of monitoring compliance with the provisions of this Consent Judgment to the extent access to the facility and any associated properties is owned, controlled by, or available to the Defendants. This paragraph in no way limits the authority of the MDEQ to conduct tests and inspections pursuant to the NREPA, and the rules promulgated there under, or any other applicable statutory provision.

#### **IX. DISMISSAL OF COMPLAINT**

9.1 The MDEQ stipulates to the dismissal with prejudice of its claims for administrative penalties under Section 21313a of the NREPA, MCL 324.21313a, and civil fines under Section 21323(1)(d), MCL 324.21323(1)(d) and Section 20137(1)(f), MCL 20137(1)(f), that have accrued or may accrue through the applicable deadline provided in Paragraph 5.2 of this Consent Judgment; and response activity costs and corrective action costs incurred by MDEQ through the effective date of this Consent Judgment.

9.2 Dismissal of the Complaint shall be without prejudice for all other claims asserted by MDEQ and not addressed in Paragraph 9.1.

#### **X. GENERAL PROVISIONS**

10.1 With respect to any violations not specifically resolved by this Consent Judgment, the State of Michigan expressly reserves, and this Consent Judgment is without prejudice to, all

rights to take administrative action or pursue any other remedies to which it is entitled pursuant to any applicable authority for any failure on the part of the Defendants to comply with the requirements of Part 213 or 201.

10.2 This Consent Judgment in no way affects Defendants' responsibility to comply with any other applicable state, federal, or local laws or regulations.

10.3 The MDEQ reserves all of its enforcement rights, including but not limited to, pursuit of response activity costs, additional late report penalties, and civil penalties for any continued failures to submit the reports and documentation specified in Paragraphs 4.1 and 5.2, regardless of whether payment under Paragraph 5.4 is made.

10.4 The State of Michigan does not assume any liability by entering into this Decree. This Decree shall not be construed as an indemnity by the State for the benefit of the Defendants or any other person.

10.5 The State expressly reserves all of its rights and defenses pursuant to any available legal authority to enforce this Consent Judgment.

10.6 In addition to, and not as a limitation of any other provision of this Decree, the MDEQ retains all of its authority and reserves all of its rights to perform, or contract to have performed, any response activities or corrective actions that the MDEQ determines are necessary.

10.7 After the Effective Date of this Consent Judgment, if the State initiates any administrative or judicial proceeding for injunctive relief, recovery of response activity costs, or other appropriate relief relating to the facility, the Defendants agree not to assert and shall not maintain any defenses or claims that are based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, or claim splitting, or that are based upon a defense that

contends any claims raised by MDEQ or the Michigan Department of Attorney General in such a proceeding were or should have been brought in this case.

#### **XI. PARTIES BOUND**

11.1 This Consent Judgment shall apply to and be binding upon the Defendants and the State and their successors and assigns. Any change in ownership, corporate, or legal status of the Michigan Gas and Convenience, Inc., including, but not limited to, any transfer of assets, or of real or personal property, shall not in any way alter the Defendants' responsibilities under this Consent Judgment.

#### **XII. TERMINATION**

12.1 This Consent Judgment shall remain in full force and effect until terminated by a written Notice of Termination issued by the MDEQ once the obligations in Sections 4.1 and 5.1 are satisfied or by Order of the Court.

#### **XIII. EFFECTIVE DATE**

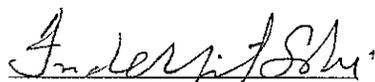
13.1 This Consent Judgment shall become effective on the date that the MDEQ signs it. All dates for performing obligations under this Consent Judgment shall be calculated from the effective date. For this Consent Judgment, "day" means a calendar day unless otherwise noted.

**XIV. SIGNATORIES**

14.1 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.

FOR DEFENDANTS

MICHIGAN GAS AND  
CONVENIENCE, INC., and  
INDERJIT SOHI

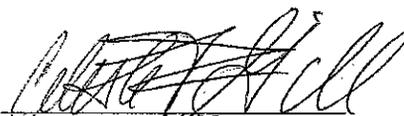


~~Kenneth Vermeulen (P43241)~~  
Warner Norcross and Judd  
Attorney for Defendants

Dated: 6/17/08

FOR PLAINTIFF

MICHIGAN DEPARTMENT OF  
ENVIRONMENTAL QUALITY



Celeste R. Gill (P52484)  
Assistant Attorney General  
Environment, Natural Resources and  
Agriculture Division  
Attorney for Plaintiff

Dated: 7/1/08

IT IS SO ORDERED, ADJUDGED AND DECREED THIS 3rd day of July, 2008.

**JOYCE DRAGANCHUK**

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Honorable Joyce A. Draganchuk  
Ingham County Circuit Court

ATTEST: A TRUE COPY

**SANDRA L. RUSSELL**

Deputy Court Clerk