

ADMINISTRATIVE ORDER BY CONSENT
FOR PAYMENT OF PAST RESPONSE ACTIVITY COSTS AND CIVIL FINES

MICHAEL A. COX, Attorney General
of the State of Michigan, and the MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY,
Plaintiffs,

v

Case No. 02-971-CE

IMLAY CITY GAS & OIL, INC., a Michigan corporation,
and TPI PETROLEUM, INC., a Michigan corporation,
Defendants,

Hon. Joyce A. Draganchuk

and

TPI PETROLEUM, INC.,
Cross Plaintiff/Third-Party Plaintiff

v

IMLAY CITY GAS & OIL, INC.,
Cross Defendant,

v

KENNETH H. MATTIS, a Michigan resident,
Third-Party Defendant.

ADMINISTRATIVE ORDER BY CONSENT
FOR PAYMENT OF PAST RESPONSE ACTIVITY COSTS AND CIVIL FINES

I. BACKGROUND

This Administrative Order by Consent, AOC-09-004, (AOC) is entered into voluntarily by and between the Michigan Department of Environmental Quality (MDEQ) and the Attorney General for the State of Michigan (collectively, "the State") and Imlay City Gas and Oil, Inc. (ICGO), collectively, the "Parties." This Order is entered pursuant to the authority vested in the Attorney General and the MDEQ by Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20101 *et seq.*

All terms used in this Order which are defined in Part 201 or the Part 201 Administrative Rules, 2002 AACRS R 299.5101 *et seq.* (Part 201 Rules), shall have the same meaning in this Order as in Part 201 and the Part 201 Rules.

The Parties agree that settlement of pending Case No. 02-971-CE in the Ingham County Circuit Court is in the public interest and entry of this AOC is the most appropriate means of resolving the disputed issues and claims raised in the above-named litigation. The Parties agree to and shall be bound by the requirements of this AOC.

The Parties further agree to stipulate to the dismissal of Case No. 02-971-CE in the Ingham County Circuit Court, with prejudice and without costs, after the completion of the requirements of this AOC.

II. STATEMENT OF PURPOSE

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

(a) Resolve the MDEQ's claims against ICGO for past and future civil fines and penalties for violations of state and federal laws, and of Administrative Order No. AO STD-98-01, issued on November 20, 1998, as specified in this AOC;

(b) Resolve the MDEQ's claims against ICGO for Past and Future Response Activity Costs as specified in this AOC;

(c) Provide for the release of the MDEQ's lien on the Property located at 524 North State Street in Caro, Michigan (the "Property") (property description attached as Exhibit A) as specified in this AOC; and

(d) Minimize litigation.

III. COMPLIANCE WITH STATE AND FEDERAL LAWS

3.1 All actions required to be taken pursuant to this AOC 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 the NREPA, MCL 324.21301 *et seq.* (Part 213).

IV. PAYMENT OF COSTS

4.1 ICGO agrees to pay the MDEQ the proceeds of the sale of the Property, or \$75,000.00, whichever is greater ("Settlement Funds"), to resolve all Past and Future Response Activity Costs and Civil Fines within ten (10) days of the date on which the Property is sold and transferred from ICGO to the new purchaser of the Property ("Closing Date").

4.2 The Settlement Funds shall be transferred to the State of Michigan and deposited into the "Environmental Response Fund – State of Michigan, Settlement ID No. RRD-1017 (Payable to: State of Michigan)" as set forth in the Letter Agreement for Lien Release (Exhibit B) attached to this AOC.

4.3 Past Response Activity Costs include all response activity costs related to the Property incurred by the State prior to the date that the AOC is entered by the Parties ("Effective Date") of this AOC. Civil Fines means all fines which accrued prior to the Effective Date of this AOC. Future Response Activity Costs include all response activity costs for the Property incurred by the State after the Effective Date.

4.4 In its sole discretion, the MDEQ may allocate the Settlement Funds to future response activities associated with the Facility, as defined in Part 201. MDEQ is under no obligation to implement any response activities at the Facility.

4.5 The settlement of Future and Past Response Activity Costs and Civil Fines was substantially based on ICGO's representation that it lacked the necessary financial resources to conduct all the required response activities.

V. RELEASE OF MDEQ LIEN ON PROPERTY

5.1 Prior to the MDEQ providing the Release of Lien document, ICGO shall submit to the MDEQ for its approval: a) a signed completed Declaration of Restrictive Covenant substantially in the form shown in Exhibit C to this AOC; and b) a signed Letter Agreement for Lien Release substantially in the form shown in Exhibit B. Upon receipt and MDEQ approval of these documents and satisfaction of the conditions in the Letter Agreement for Release of Lien, the MDEQ will sign the Letter Agreement for Lien Release and provide it and the Release of Lien document to the Closing Agent designated in the Letter Agreement for Lien Release for processing in accordance with the terms specified therein.

VI. COMMUNICATION

6.1 Unless otherwise specified in this AOC, all correspondence required by this AOC is to be made in writing to:

Rick Parson, Project Manager
MDEQ Remediation and Redevelopment Division
Saginaw Bay District Office
401 Ketchum Street
Bay City, Michigan 48708
Phone: 989-894-6252
Fax: 989-891-9237
Email: PARSONR@michigan.gov

6.2 Matters specified in this AOC to be directed to ICGO are to be sent to:

Dennis Mattis, Secretary-Treasurer
Imlay City Gas and Oil, Inc.
P.O. Box 130
Flushing, Michigan 48433

with a copy to:

Clark Hill PLC
212 E. Grand River Avenue
Lansing, MI 48906

VII. GENERAL PROVISIONS

7.1 Subject to Paragraph 10.2, the entry of this AOC, except as reserved herein, settles all issues set forth in the Complaint in Case No. 02-971-CE.

7.2 MDEQ stipulates that Administrative Order for Response Activity, MDEQ Docket No. AO-STD-98-01 is terminated and superseded by this AOC and its attachments after this AOC is entered and Case No. 02-971-CE is dismissed, with prejudice and without costs, by stipulation of the parties.

7.3 With respect to any violations not specifically resolved by this AOC, the State of Michigan expressly reserves, and this AOC 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 ICGO to comply with the requirements of either Part 213 or Part 201.

7.4 This AOC in no way affects ICGO's responsibility to comply with all applicable state, federal, or local laws or regulations.

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

7.6 ICGO waives any rights it may have to bring an action under Section 20119(5) of the NREPA, MCL 324.20119(5) and Section 21319a(5) of the NREPA, MCL 324.21319a(5).

VIII. COVENANTS NOT TO SUE BY THE STATE

8.1 In consideration of the payment that will be made by ICGO under the terms of this AOC, and except as specifically provided for in this section and Section IX (Reservation of Rights by the State), the State of Michigan hereby covenants not to sue or to take further administrative action under Parts 201 or 213 of the NREPA, or under the Administrative Order for Response Activity, MDEQ Docket No. AO-STD-98-01, against ICGO to compel the performance of response activities at the Facility, or to recover Past or Future Response Activity Costs or Civil Fines related to releases of hazardous substances known at the Facility prior to the effective date of this AOC.

8.2 The covenants not to sue shall take effect upon MDEQ's receipt of full payment from ICGO in accordance with Section IV (Payment of Costs) of this AOC and the Letter for Lien Release (Exhibit B to this AOC).

8.3 The covenants not to sue extend only to ICGO and do not extend to any other person.

IX. RESERVATION OF RIGHTS BY THE STATE

9.1 The covenants not to sue apply only to those matters specified in Paragraph 8.1 of Section VIII (Covenants Not to Sue by the State). The State expressly reserves, and this AOC is without prejudice to, all rights to take administrative action or to file a new action pursuant to any applicable authority against the Defendant with respect to any other matter including, but not limited to, the following:

(a) Response activity costs other than Past or Future Response Activity Costs as defined in Paragraph 4.3 of this AOC.

(b) The past, present, or future treatment, handling, disposal, release, or threat of release of hazardous substances that occur outside of the Facility and that are not attributable to the Facility.

(c) The past, present, or future treatment, handling, disposal, release, or threat of release of hazardous substances taken from the Facility.

(d) Criminal acts.

(e) Any violations of state or federal law for which Defendant has not received a covenant not to sue.

9.2 The State reserves the right to take action against the Defendant if it discovers at any time that any material information provided by the Defendant prior to or after entry of this AOC was false or misleading.

9.3 The MDEQ and the Michigan Department of Attorney General (MDAG) expressly reserve all of their rights and defenses pursuant to any available legal authority to enforce this AOC.

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

9.5 In addition to, and not as a limitation of any provision of this AOC, the MDEQ and the MDAG retain all of their information-gathering, inspection, access and enforcement authorities and rights under Part 201 and any other applicable statute or regulation, except as otherwise stated herein, as to the Facility.

9.6 Failure by the MDEQ or the MDAG to enforce any term, condition, or requirement of this AOC in a timely manner shall not:

(a) Provide, or be construed to provide, a defense for the Defendant's noncompliance with any such term, condition, or requirement of this AOC.

(b) Estop or limit the authority of the MDEQ or the MDAG to enforce any such term, condition, or requirement of the AOC, or to seek any other remedy provided by law.

9.7 Except as provided in Paragraph 8.1 of Section VIII (Covenants Not to Sue by the State), nothing in this AOC shall limit the power and authority of the MDEQ or the State of Michigan, pursuant to Section 20132(8) of the NREPA, to direct or order all appropriate action to protect the public health, safety, or welfare, or the environment; or to prevent, abate, or minimize a release or threatened release of hazardous substances, pollutants, or contaminants on, at, or from the Facility.

X. COVENANT NOT TO SUE BY THE DEFENDANT

10.1 The Defendant hereby covenants not to sue or to take any civil, judicial, or administrative action against the State, its agencies, or their authorized representatives, for any claims or causes of action against the State that arise from this AOC, including, but not limited to, any direct or indirect claim for reimbursement from the Cleanup and Redevelopment Fund pursuant to Section 20119(5) of the NREPA or any other provision of law.

10.2 After the Effective Date of this AOC, if the MDAG initiates any administrative or judicial proceeding for injunctive relief, recovery of past or future response activity costs, or other appropriate relief relating to the Facility, the Defendant agrees 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 the MDEQ or the MDAG in such a proceeding were or should have been brought in this case; provided, however, that nothing in this paragraph affects the enforceability of the covenants not to sue set forth in Section VIII (Covenants Not to Sue by the State).

XI. CONTRIBUTION

11.1 Under NREPA Section 20129(5), MCL 324.20129(5), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Section 113(f)(2), 42 USC 9613(f)(2), and to the extent provided in Section VIII (Covenants Not to Sue by the State), ICGO shall not be liable for contribution claims for the matters addressed in Section VIII (Covenants Not to Sue by the State). Entering this Order does not discharge any other person's liability under NREPA Section 20126, MCL 324.20126, or the CERCLA, Sections 107 and 113, 42 USC 9607 and 9613, to the extent allowed by law. Under NREPA Section 20129(9), MCL 324.20129(9), any action by ICGO for contribution from any person not a party to this Order shall be subordinated to the State's rights if the State files an action under Part 201 or other applicable state or federal law.

XII. PARTIES BOUND

12.1 This AOC shall apply to and be binding upon ICGO and the State and their successors and assigns. Any change in ownership, corporate, or legal status of the ICGO, including, but not limited to, any transfer of assets, or of real or personal property, shall not in any way alter ICGO's responsibilities under this AOC.

12.2 The Parties acknowledge that Total Petroleum, Inc. (TPI) is not a party bound by this AOC and that a Stipulated Order of Dismissal was entered on June 16, 2003, by the Ingham County Circuit Court, dismissing without prejudice the claims brought by the State against TPI.

XIII. EFFECTIVE DATE

13.1 This AOC shall become effective on the date that it is entered by the Parties. All dates for performing obligations under this AOC shall be calculated either from the Effective

Date or from the Closing Date, as stated in this AOC. For this AOC, "day" means a calendar day unless otherwise noted.

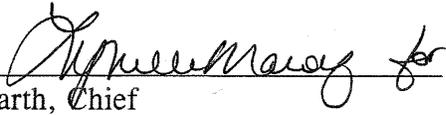
XIV. SEPARATE DOCUMENTS

14.1 The Parties may execute this AOC in duplicate original form for the primary purpose of obtaining multiple signatures, each of which shall be deemed an original, but all of which together shall constitute the same instrument.

XV. SIGNATORIES

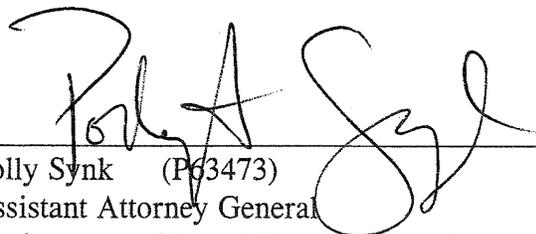
15.1 Each undersigned individual represents and warrants that he or she is fully authorized by the party they represent to enter into this AOC and to legally bind such party to the terms and conditions of this AOC.

IT IS SO AGREED TO AND ORDERED BY:



Andrew W. Hogarth, Chief
Remediation and Redevelopment Division
Michigan Department of Environmental Quality

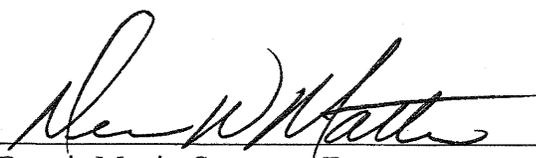
5/01/09
Date



Polly Synk (P63473)
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division
Michigan Department of Attorney General

4-19-09
Date

IT IS SO AGREED BY:



Dennis Mattis, Secretary-Treasurer
Imlay City Gas and Oil, Inc.
P. O. Box 130
Flushing, Michigan 48433

4-15-09
Date