

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 3rd JUDICIAL CIRCUIT
WAYNE COUNTY

MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY,

Plaintiff,

v

JABER ENTERPRISES, INC.
a Michigan corporation, and
HAMAD JABER,

Defendants.

Michigan Department of Environmen
Hon. Michael F. Sapala 02/18/2009



09-003870-CE

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CONSENT JUDGMENT

The parties to this Consent Judgment are the Michigan Department of Environmental Quality (MDEQ) (n/k/a Michigan Department of Natural Resources and Environment (DNRE)), and Jaber Enterprises, Inc., and Hamad Jaber (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 the matter pursuant to Section 21323 of Part 213 "Leaking Underground Storage Tanks" of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended, MCL 324.21323 and Section 20137 of Part 201 "Environmental Remediation" of the NREPA, MCL 324.20137 and Section 605 of the Revised Judicature Act of 1961 (RJA), 1961 PA 236, as amended, MCL 600.605. Venue is proper in this Court pursuant to MCL 324.21323(2) and MCL 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 the Defendants' past failure to submit initial assessment reports (IARs) pursuant to Section 21308a of the NREPA, MCL 324.21308a, and final assessment reports (FARs) pursuant to Section 21311a of the NREPA, MCL 324.21311a, for the March 27, 1998 and May 2, 2006 releases of petroleum products from the underground storage tanks located at 20541 Plymouth Rd., Detroit, Michigan, 48228 (Site);
 - (b) Perform corrective actions for the petroleum contamination at and in the vicinity of the Site consistent with the requirements of Part 213 of the NREPA;

- (c) Resolve the administrative penalties that MDEQ assessed pursuant to Section 21313a of the NREPA, MCL 324.21313a, in the January 26, 2007 Late Report Penalty Assessment letter (LRPA) as provided herein;
- (d) Resolve any claims for civil penalties against the Defendants for alleged violations of Part 213, pursuant to Section 21323(1)(d) of the NREPA, MCL 324.21323(1)(d), that occurred prior to the Effective Date of the Consent Judgment; and
- (e) Resolve MDEQ's claims for past response activity and corrective action costs incurred by the State pursuant to Sections 20137(1)(b) and 21323(1)(b) of the NREPA, MCL 324.20137(1)(b) and 324.21323(1)(b), respectively.

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.

IV. CORRECTIVE ACTION COMPLIANCE PROGRAM

4.1 The Defendants shall: (a) within five-hundred forty-eight (548) days of the Effective Date of this Consent Judgment submit to MDEQ a statutorily complete FAR for the Site meeting the requirements of Section 21311a of the NREPA, MCL 324.21311a, that includes a corrective action plan (CAP) developed under Section 21309a of the NREPA, MCL 324.21309a; (b) implement the CAP by complying with the corrective action plan implementation schedule contained within the FAR and; (c) within five-hundred forty-eight (548) days of the Effective Date of the Consent Judgment submit documentation of the implementation of the CAP and compliance with the schedule; and (d) complete corrective

actions at the Site in accordance with the corrective action requirements of Part 213 of the NREPA; including the submission of a statutorily complete closure report for the Site in accordance with Section 21312a(1) of the NREPA, MCL 324.21312a(1).

4.2 The adequacy of the FAR is subject to MDEQ's review as set forth in Section 21315 of Part 213, MCL 324.21315. Failure to submit a FAR or implement a CAP that meets the requirements of Part 213 will require an additional payment of \$300,000.00 as set forth in Paragraph 6.1.

V. PENALTIES

5.1 The Defendants agree to pay the MDEQ the sum of forty-five thousand dollars (\$45,000.00) to resolve the LRPA. The Defendants shall pay the \$45,000.00 in six equal installment payments of seven-thousand five-hundred dollars (\$7,500.00). The Defendants shall make the first installment payment by February 1, 2011. The Defendants shall make the second installment payment by August 1, 2011. The Defendants shall make the third installment payment by February 1, 2012. The Defendants shall make the fourth installment payment by August 1, 2012. The Defendants shall make the fifth installment payment by February 1, 2013. The Defendants shall make the sixth and final installment payment by August 1, 2013. These payments shall be made pursuant to Paragraph 11.9.

VI. COMPLIANCE WITH THE CONSENT JUDGMENT

6.1 If the Defendants fail to comply with the requirements of Paragraph 4.1(a), (b) or (c), or Paragraph 5.1 then the Defendants shall also pay MDEQ three-hundred thousand dollars (\$300,000.00).

6.2 The Defendants agree to pay the \$300,000 within 30 days from the day that the Defendants receive a demand for payment from the MDEQ. This payment shall be made pursuant to Paragraph 11.9.

6.3 The MDEQ shall be awarded any response activity costs and attorneys fees incurred by the State in enforcing any provision of this Consent Judgment.

VII. REPORTING AND CORRESPONDENCE

7.1 All correspondence and submittals are to be made to:

Ms. Jeanne Schlaufman, Project Manager, or her successor
DNRE Remediation Division
Southeast Michigan District Office
27700 Donald Court
Warren, Michigan 48092
(586) 753-3823

Or for the Defendants:

Ms. Christine Jaber
10008 Essex
Dearborn, MI 48120

7.2 If any Party changes its designated contact person, the name, address, and telephone number of the successor shall be provided to the other Party, in writing, as soon as practicable. Failure to notify as soon as practicable constitutes a violation of this Consent Judgment.

7.3 The Defendants shall verbally report any violation(s) of the terms and conditions of this Consent Judgment and/or the CAP to the Project Manager 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 description of any action proposed or taken to correct the violation(s).

7.4 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.

VIII. MODIFICATIONS

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

8.2 The deadlines provided in Paragraph 5.1 and 6.2 of this Consent Judgment may be extended in writing at the sole discretion of the DEQ, RD, Storage Tank Enforcement Unit Chief, in consultation with the RD, Compliance and Enforcement, Section Chief.

8.3 The deadlines provided in Paragraph 4.1 of this Consent Judgment may be extended in writing at the sole discretion of the DEQ, RD, Southeast Michigan District Supervisor, or his successor in consultation with the RD, Compliance and Enforcement, Section Chief.

IX. ACCESS

9.1 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 thereunder, or any other applicable statutory provision.

X. THE COURT'S AUGUST 2, 2010 ORDER

10.1 The Parties agree that this Court's August 2, 2010 Order granting MDEQ's Motion for Partial Summary Disposition Pursuant to MCR 2.116(C)(10) shall be vacated.

XI. GENERAL PROVISIONS

11.1 Except as provided below, the Parties hereby resolve all claims for (a) administrative penalties assessed pursuant to the LRPA letter, (b) civil fines for violations that

occurred prior to the effective date of this Consent Judgment, (c) past response activity costs and corrective actions costs incurred prior to the effective date of this Consent Judgment, and (d) injunctive relief.

11.2 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 or any other liable party to comply with the requirements of Part 213 or 201.

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

11.4 The MDEQ reserves all of its enforcement rights, including but not limited to, pursuit of response activity costs incurred by the State, injunctive relief, additional late report penalties, and civil penalties for any continued failures to comply with the requirements of Part 201 or Part 213.

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

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

11.7 In addition to, and not as a limitation of any other provision of this Consent Judgment, 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.

11.8 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.

11.9 The Defendants agree to pay all funds due pursuant to this Consent Judgment by certified check made payable to the State of Michigan – Environmental Response Fund and delivered to:

Revenue Control Unit
Administration Division
Department of Natural Resources and Environment
525 West Allegan Street, 5th 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 Project No. 444443 and Settlement ID Number RRD3008 identified on the certified check.

11.10 Payment made pursuant to paragraph 6.1 does not obviate the Defendants' requirement to comply with any other obligations contained within this Consent Judgment. If the Defendant fails to make the payments as described in paragraph 5.1 or 6.1 then the outstanding amount shall be subject to interest at the rate set forth in MCL 324.20126a(3).

XII. PARTIES BOUND

12.1 This Consent Judgment shall apply to and be binding upon the Defendants and the MDEQ and their successors and assigns. Any change in ownership, corporate, or legal status of

Jaber Enterprises, 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.

XIII. TERMINATION

13.1 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 of this Consent Judgment are satisfied or by Order of the Court.

XIV. EFFECTIVE DATE

14.1 This Consent Judgment shall become effective on the date that it is entered by the Court. 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.

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 Consent Judgment and to legally bind such party to the terms and conditions of this Consent Judgment.

FOR PLAINTIFF

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

Andrew Prins
Andrew T. Prins (P70157)
Assistant Attorney General
Environment, Natural Resources and
Agriculture Division
Attorney for Plaintiff

Dated: 9/20/10

FOR DEFENDANTS

JABER ENTERPRISES, INC, and
HAMAD JABER

Sanford A. Schulman
Sanford A. Schulman (P43230)
Schulman & Associates, P.C.
Attorney for Defendants

Samuel P. ... POA.

Dated: 9-19-10

IT IS SO ORDERED, ADJUDGED AND DECREED THIS _____ day of

SEP 24 2010, 2010.

This Consent Judgment resolves the last pending claim and closes the case. Pursuant to Paragraph 1.2 this Court retains jurisdiction over the Parties and subject matter of this action to enforce this Consent Judgment.

MICHAEL F. SAPALA

Michael F. Sapala
Circuit Court Judge

Jaber/2007008232A/Consent Judgment

A TRUE COPY
CATHY M. GARRETT
WAYNE COUNTY CLERK
BY C. Patterson
DEPUTY CLERK