

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 16TH JUDICIAL CIRCUIT
MACOMB COUNTY

SPENCER OIL COMPANY

Appellant,

Case No. 07-1198-AA

v

HON. DONALD G. MILLER (P35064)

STATE OF MICHIGAN
DEPARTMENT OF
ENVIRONMENTAL QUALITY,

Appellee.

Gordon S. Gold (P14087)
Seyburn, Kahn, Ginn,
Bess and Serlin, P.C.
Attorney for Appellant
2000 Town Center, Suite 1500
Southfield, MI 48075
Phone: (248) 353-7620
Fax: (248) 353-3727

Elaine Dierwa Fischhoff (P24520)
Assistant Attorney General
Attorney for Appellee
Department of Attorney General
Environment, Natural Resources,
and Agriculture Division
G. Mennen Williams Building, 6th Floor
525 West Ottawa Street
P. O. Box 30755
Lansing, MI 48909
Phone: (517) 373-7540

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Settlement Agreement") is made by and between SPENCER OIL COMPANY, a Michigan Corporation, ("Spencer Oil") and THE MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY, a State of Michigan administrative agency ("MDEQ").

RECITALS

WHEREAS, Spencer Oil owns the property located at 16410 Common Road, Roseville, Macomb County, Michigan 48066-5903 ("Site").

WHEREAS, Spencer Oil had two confirmed releases from previously removed underground storage tanks ("USTs") on December 15, 1998 and July 14, 1999 ("Releases"). The Releases were promptly reported to MDEQ as required under Part 213 of the Natural Resources and Environmental Protection Act ("NREPA"), MCL 324.21301 et seq., ("Part 213") and were assigned Confirmed Release Nos. C-1269-98 and C-682-99.

WHEREAS, on or about February 26, 2007, MDEQ issued a letter assessing a penalty for failing to timely submit a Final Assessment Report ("FAR") describing a Corrective Action Plan with a schedule for implementation that met the requirements of Section 21311a of Part 213 for the Releases.

WHEREAS, on March 20, 2007, Spencer Oil filed a Petition for Review of MDEQ's penalty assessment in Macomb County Circuit Court, File No. 07-1198-AA

WHEREAS, on or about May 1, 2007, Spencer Oil submitted a FAR for the Releases. MDEQ authorized the FAR in May 2007.

WHEREAS, on or about September 21, 2007, Spencer Oil submitted a revised FAR Schedule to amend and revise the timeline for implementing the Corrective Action Plan described in the FAR. On or about September 25, 2007, MDEQ authorized the revised FAR Schedule.

WHEREAS, on or about October 1, 2007, Spencer Oil began its corrective action of the Site pursuant to the FAR and removed all visually contaminated source area soils to the extent possible, and collected verification samples of the soil at the Site. Residual contamination does not meet the applicable Part 213 Cleanup Criteria. The residual contamination from the Releases is commingled with Part 201 contamination at the Site. Therefore, as per the AGREEMENT section of this document, the response activity required at this site is to be conducted under Part 201 of the NREPA, MCL 324.20101 et seq. ("Part 201").

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions herein, agreeing that settlement of the appeal is in the public interest and the most appropriate means of resolving disputed issues and claims, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Spencer Oil and MDEQ agree as follows:

AGREEMENT

1. Consent to Proceed under Part 201. Under Section 21304a(5) of Part 213, Spencer Oil consents to transition from completing closure requirements under Part 213 to diligently conducting response activities under Part 201.

2. Effective Date. Spencer Oil's obligations under this Settlement Agreement and Part 201 shall be effective upon the date set forth below, which date shall be the date upon which MDEQ executes this Settlement Agreement.

3. Spencer Oil's Remediation Obligations. Spencer Oil has performed adequate interim response activities under Part 213 and Section 20114 of Part 201 at the Site. Spencer Oil no longer has any obligations under Part 213 regarding the Releases, based on the information currently provided in the FAR.

4. Penalty Assessment. Spencer Oil agrees to deliver payments to MDEQ totaling \$40,040 by February 1, 2011 in satisfaction of Spencer Oil's failure to timely submit a FAR that met the requirements of Section 21311a of Part 213, for the Releases at the Site.

5. Penalty Payments. Spencer Oil shall pay \$10,010 via certified check to MDEQ at the time that MDEQ executes this Settlement Agreement. Spencer Oil shall pay an additional \$10,010 payment to MDEQ via certified check by the first of February of each of the next three years -- 2009, 2010, and 2011. Payments shall be delivered (1) by personal delivery; (2) by first class, registered or certified mail, postage prepaid; or (3) by a nationally recognized overnight delivery service. The check shall be made payable to: State of Michigan - Environmental Response Fund, and delivered to the following address:

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

To ensure proper credit, each certified check shall contain the following: Spencer Oil Company, Settlement ID No. RRD1014.

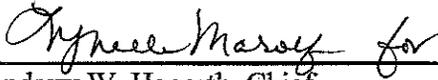
6. Interest. No interest on payments under Paragraph 5 shall accrue as long as payments are timely made. Failure to make the 2009, 2010 or 2011 payments in a timely manner shall result in the interest accruing on the outstanding payment at the rate specified in MCL 600.6013(8).

7. Dismissal of Action. Upon execution of this Settlement Agreement, Spencer Oil and the MDEQ shall file a stipulation and proposed order to dismiss Spencer Oil's Petition for Review.

8. Not an Admission of Liability. Spencer Oil's signature on this Settlement Agreement is not an admission of liability with respect to any factual allegations or legal conclusions stated or implied herein.

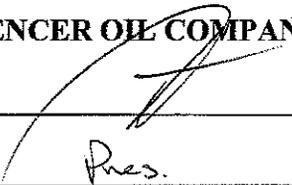
9. Governing Laws. This Settlement Agreement shall be governed by and construed according to the laws of the State of Michigan.
10. No Waivers. The failure of any party to enforce any right or remedy hereunder, or to promptly enforce any such right or remedy, shall not constitute a waiver thereof nor give rise to any estoppel against such party nor excuse any of the parties hereto from their respective obligations hereunder. Any waiver of such right or remedy must be in writing and signed by the party to be bound. This Settlement Agreement is subject to enforcement at law or in equity, including actions for damages or specific performance.
11. Severability. Should it be found that any part of the Settlement Agreement is invalid, illegal, or unenforceable by a court of competent jurisdiction, such part or parts of this Settlement Agreement shall be of no force or effect and this Settlement Agreement shall be treated as if such part or parts had not been inserted, provided the invalid clause does not substantially alter the Settlement Agreement and make execution impractical.
12. Interpretation. Each of the parties hereby waives any provisions of law to the effect that an ambiguity in a contract or agreement should be interpreted against the party that drafted the contract, agreement or instrument. Words of any gender in this Settlement Agreement shall be held to include any other gender and words in the singular number shall be held to include the plural when the sense so requires.
13. Captions. The captions of this Settlement Agreement are inserted only as a matter of convenience and for reference, and they do not define, limit or describe the scope or intent of this Settlement Agreement and shall not affect the interpretation hereof.
14. Scope. This Settlement Agreement resolves the pending Macomb Circuit Court appeal and matters addressed in its provisions. This Settlement Agreement in no way affects Spencer Oil's obligation to comply with applicable state, federal, or local laws or regulations or MDEQ's authority to exercise its enforcement rights as to any other matter that is not a matter addressed in the provisions of this Settlement Agreement.
15. Entire Agreement; Modifications in Writing. Except as otherwise provided in the Settlement Agreement, all previous negotiations had between the parties hereto and its agents with respect to this Settlement Agreement are merged herein and this Settlement Agreement shall not be modified in any manner except at the sole discretion of the MDEQ in writing and signed by the Chief of the Compliance and Enforcement Section of the Remediation and Redevelopment Division of the MDEQ.
16. Signatories. Each undersigned individual represents and warrants that he or she is fully authorized by the party they represent to enter into this Settlement Agreement and legally bind such party to its terms and conditions.

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

By: 
Andrew W. Hogarth, Chief
Remediation and Redevelopment Division

April 14, 2008

SPENCER OIL COMPANY

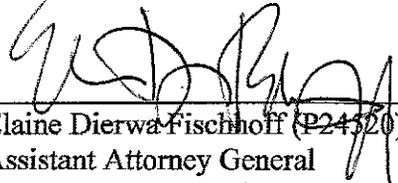
By: 
Title: Pres.

April 8th, 2008

APPROVED AS TO FORM:


Gordon S. Gold (P14087)
Seyburn, Kahn, Ginn,
Bess and Serlin, P.C.
Attorneys for Spencer Oil Company

April, 2008


Elaine Dierwa Fischhoff (P24520)
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division
Attorney for MDEQ

April 14, 2008