

STATE OF MICHIGAN
SIXTH CIRCUIT COURT
THE COUNTY OF OAKLAND

JENNIFER M. GRANHOLM, Attorney General
of the State of Michigan, ex rel. MICHIGAN DEPARTMENT
OF ENVIRONMENTAL QUALITY,

Plaintiffs,

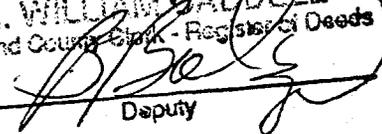
00 JUN 21 1993

File No.94-479189-CE
Hon. Fred M. Mester

v

MYRTLE PASCHKE, MOBIL OIL
CORPORATION, DAN OGLE, AMOCO OIL,
TOP VALUE MUFFLER, and BUCKEYE
PIPELINE

Defendants,

A TRUE COPY
G. WILLIAM BADDEL
Oakland County Clerk - Register of Deeds
By  Deputy

CONSENT DECREE

The Plaintiff is Jennifer M. Granholm, Attorney General of the State of Michigan, ex rel. Michigan Department of Environmental Quality ("MDEQ" and collectively the "State").

The Defendants are Mobil Oil Corporation ("Mobil") and Dan Ogle. This Consent Decree concerns settlement of all claims by the State against the Defendants for response activity costs incurred prior to entry of the Consent Decree by the State in undertaking activities at the Residential Wells, Sable Road Site, Oakland County, Michigan (hereafter "Facility"). This Consent Decree also concerns the dismissal, with prejudice, of all other claims identified by the State in the complaint regarding the release of petroleum products from an underground storage tank system at the Mobil station located at 8000 Cooley Lake Road. The entry into this Consent Decree does not relieve the Defendants from their obligations under Part 213 of the Natural Resources and Environmental Protection Act

(NREPA), 1994 PA 451, as amended, MCL 324.21301 *et seq.* to complete their response to the release of petroleum products from 8000 Cooley Lake Road.

Pursuant to Part 201 of the NREPA, MCL 324.20101 *et seq.*, the State has incurred costs in responding to a release of hazardous substances at the Facility. The Defendants agree not to contest (a) the authority or jurisdiction of the Court to enter this Consent Decree or, (b) any terms or conditions set forth herein.

On June 29, 1994, the State filed a Complaint in the Circuit Court for the County of Oakland against Mobil, Dan Ogle and other parties for the reimbursement of response activity costs incurred by the State in responding to the release or threat of release of hazardous substances at the Facility.

On January 29, 1998, the Court granted Mobil's Motion For Partial Summary Disposition and held that Mobil and Dan Ogle were not liable for any response costs for the portion of the Facility in Commerce Township. On January 14, 1998, the State, Mobil and Dan Ogle entered into a stipulation to the same effect. Additionally, Mobil stipulated it is responsible for the release of petroleum products from an underground storage tank system at the Mobil station located at 8000 Cooley Lake Road.

The Parties agree, and the Court by entering this Consent Decree finds, that the terms and conditions of the Consent Decree are fair, reasonable, and consistent with the public interest and the doctrines of applicable law.

NOW, THEREFORE, before the taking of any testimony, and without this Consent Decree constituting an admission of any of the allegations in the Complaint or as evidence of the same, and upon the consent of the Parties, by their attorneys, it is hereby ORDERED, ADJUDGED AND DECREED:

I. JURISDICTION

1.1 This Court has jurisdiction over the subject matter of this action pursuant to MCL 324.20137. This Court also has personal jurisdiction over the

Defendants. The Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District.

II. PARTIES BOUND

2.1 This Consent Decree shall apply to and be binding upon Plaintiffs and Defendants and their successors and assigns. No change or changes in the ownership or corporate status of Mobil shall in any way alter the Defendants' responsibilities under this Consent Decree.

2.2 The signatories to this Consent Decree certify that they are authorized to execute and legally bind the parties they represent.

III. STATEMENT OF PURPOSE

3.1 In entering into the Consent Decree, the mutual objective of Plaintiffs and Defendants is to resolve, without further litigation, Plaintiffs' claims against the Defendants for recovery of environmental response activity costs incurred by the State prior to the effective date of this Decree.

IV. DEFINITIONS

4.1 "Consent Decree" or "Decree" means this Consent Decree and any appendix hereto.

4.2 "Defendants" means Mobil Oil Corporation and Dan Ogle.

4.3 "Plaintiffs" means Jennifer M. Granholm, Attorney General, of the State of Michigan, ex rel. the Michigan Department of Environmental Quality.

4.4 "Parties" means the Plaintiffs and Defendants.

4.5 "State" means the Michigan Department of Environmental Quality and the Michigan Department of Attorney General.

4.6 "Response Activity Costs Incurred" shall mean costs that have been disbursed or paid out by the State in taking or conducting response activity at the Residential Well, Sable Road Site, including enforcement costs.

4.7 All other terms used in this Consent Decree which are defined in Part 201 of NREPA, MCL 324.20101 *et seq.*, and/or the Part 201 rules, 1990 AAC

299.5101 *et seq.*, shall have the same meaning in the Consent Decree as in Part 201 and its rules.

V. PAYMENT OF COSTS

5.1 Within 30 days of this Consent Decree's entry, Mobil shall pay to the MDEQ the sum of \$500,000 to resolve all claims for response activity costs incurred prior to the entry of this Decree. Payment is to be made by check payable to the "State of Michigan - Environmental Response Fund" and sent by U.S. Mail, return receipt requested, to:

Revenue Control Unit
Michigan Department of Environmental Quality
300 South Washington Square, Suite 457
P.O. Box 30657
Lansing, Michigan 48909-8157

The check shall reference Residential Wells, Sable Road - Mobil and Account Number ERD2053. For purposes of compliance with this section, payment should be deemed made when mailed as indicated herein.

5.2 In the event that Mobil fails to pay the full amount indicated in Paragraph 5.1 within 30 days of this Consent Decree's entry, Mobil shall pay the MDEQ interest on those unreimbursed costs at the rate provided in Section 20126a(3) of NREPA. In the event that Mobil fails to pay the full amount indicated in Paragraph 5.1 within 60 days of this Consent Decree's entry, Mobil shall also pay the MDEQ stipulated penalties of \$500.00 per day for each day thereafter until payment is made in full.

5.3 Costs recovered pursuant to this Consent Decree shall be deposited in the Environmental Response Fund in accordance with the provisions of Section 20108(3) of NREPA, MCL 324.20108(3).

VI. COVENANT NOT TO SUE BY PLAINTIFFS AND RESERVATION OF RIGHTS

6.1 In consideration for the payment that will be made by the Defendants under the terms of the Consent Decree, and except as specifically provided in this Section, Plaintiffs covenant not to sue or to take administrative action against the Defendants for Covered Matters.

6.2 "Covered Matters" shall include any and all liability to the State of Michigan under applicable state and federal law relating to the Facility for reimbursement of response activity costs incurred by the State prior to the entry of this Decree in responding to the release or threat of release of hazardous substances at the Facility.

6.3 The covenant not to sue set forth in this Section does not pertain to any matters other than those expressly specified in "Covered Matters" in Paragraph 6.2. Plaintiffs reserve, and this Consent Decree is without prejudice to, all rights against the Defendants with respect to all other matters, including but not limited to, the following:

- (a) Liability under Part 213 of the NREPA for failing to complete response activities at 8000 Cooley Lake Road;
- (b) Liability for Response Activity Costs Incurred after entry of this Consent Decree;
- (c) Liability under NREPA for the release, or threat of release of hazardous substance(s) at facilities, as defined by NREPA, other than the Facility and not attributable to Facility;
- (d) Liability arising from the treatment, handling, or disposal of hazardous substance(s) taken from the Facility by Mobil;
- (e) Liability for damages for injury to, destruction of, or loss of natural resources;
- (f) Liability for criminal acts;

6.4 This covenant not to sue shall take effect upon receipt by the MDEQ of the payment required by Paragraph 5.1. The covenant not to sue extends only to the Defendants and does not extend to any other person.

6.5 Notwithstanding any other provision of this Consent Decree, MDEQ retains all authority and reserves all rights to take any and all response activity(ies) authorized by law.

6.6 In any subsequent administrative or judicial proceeding initiated by the Attorney General for injunctive relief, recovery of response activity costs incurred after entry of this Consent Decree, or other appropriate relief relating to the Facility brought under Plaintiffs' reserved rights in this section, the Defendants agree not to assert, and may not and shall not maintain any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the MDEQ or the Attorney General in the subsequent proceeding were or should have been brought in this case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue set forth in this section.

VII. COVENANT NOT TO SUE BY DEFENDANTS

7.1 The Defendants hereby covenant not to sue and agree not to assert any claim or cause of action against the State of Michigan with respect to the Facility or response activities relating to the Facility arising from this Consent Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Environmental Response Fund pursuant to Section 20119(5) of NREPA, MCL 324.20119(5).

VIII. CONTRIBUTION PROTECTION

8.1 Pursuant to Section 20129(5) of NREPA, MCL 324.20129(5), the Defendants shall not be liable for claims for contribution regarding matters addressed in this Consent Decree. Entry of the Consent Decree does not discharge the liability of any other person(s) liable under Section 20126 of NREPA, MCL

324.20126. In any action by the Defendants for contribution from any person not a party to this Consent Decree, the Defendants' cause of action shall be subordinate to the rights of the State of Michigan if the State files an action pursuant to Part 201 of NREPA or other applicable federal or state law, in accordance with Section 20129(9) of NREPA, MCL 324.20129(9).

IX. SEPARATE DOCUMENTS

9.1 This Consent Decree may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

X. DISMISSAL OF COMPLAINT

10.1 Upon receipt by the MDEQ of the payment required by Paragraph 5.1, the State will dismiss, with prejudice, the Complaint against Mobil and Dan Ogle, subject to the reservations of rights contained in Section VI.

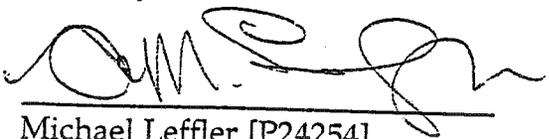
XI. EFFECTIVE DATE

11.1 This Consent Decree shall be effective upon the date that the Court enters this Consent Decree. All times for performance of activities under this Consent Decree shall be calculated from that date.

IT IS SO AGREED AND ORDERED BY:

Attorney for Plaintiff

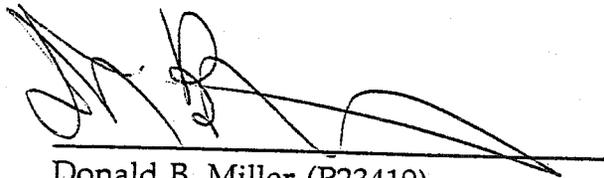
JENNIFER M. GRANHOLM
Attorney General



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Attorney for Defendants:



Donald B. Miller (P23419)
BUTZEL LONG
Attorney for Defendants Mobil Oil
and Dan Ogle

150 W. Jefferson, Suite 900
Detroit, MI 48221
(313) 225-7020



Mobil Oil Corporation Representative

IT IS SO ORDERED, ADJUDGED AND DECREED
THIS _____ day of _____, 2000.

JUN 21 2000

FRED M. MESTER

Honorable Fred M. Mester

ATTEST: A TRUE COPY

Deputy Court Clerk

3/cases/9405951/paschke/consent.mobil