

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 20TH JUDICIAL CIRCUIT
OTTAWA COUNTY

ATTORNEY GENERAL OF THE
STATE OF MICHIGAN, *ex rel*,
MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY,

Ottawa File No. 01-40990-CE

Honorable Edward R. Post

Plaintiff,

v

Dept. of Attorney General
RECEIVED

APR 11 2005

**NATURAL RESOURCES
DIVISION**

COUNTY OF OTTAWA; WASTE MANAGEMENT
OF MICHIGAN, INCORPORATED, a Michigan
corporation; H.J. HEINZ COMPANY, a Pennsylvania
corporation; HERMAN MILLER, a Michigan corporation
and HEXCEL CORPORATION, a Delaware corporation,

Defendants.

S. Peter Manning (P45719)
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and Agriculture Division
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Attorney for Plaintiff

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Management of Michigan, Inc.

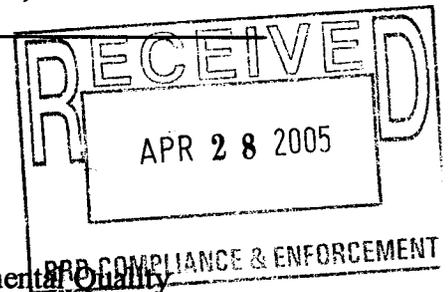
STIPULATION AND ORDER OF DISMISSAL

STIPULATION

Plaintiffs Michael A. Cox and the Michigan Department of Environmental Quality

(MDEQ) and Defendants the County of Ottawa (County) and Waste Management of Michigan,

Inc. (WMMI) (collectively the Parties) stipulate to the dismissal of this matter as follows:



1. The underlying case was initiated by MDEQ against, *inter alia*, the County and WMMI under Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended, MCL 324.20101 *et seq.* The suit seeks injunctive relief and recovery of costs incurred by the MDEQ.
2. The subject matter of the litigation is the Southwest Ottawa County Landfill (Landfill), which is located in Park Township, Ottawa County. The Landfill was operated from 1969 to 1981. It is currently owned by the County and was historically operated under contract with the County by a corporate predecessor to WMMI.
3. The Landfill was closed in 1981 due to concerns about groundwater contamination emanating from the Landfill.
4. In June 1981 the predecessor agency to MDEQ, the County, and WMMI entered into a "Stipulation; Consent Order." Pursuant to that agreement a cap was constructed for the landfill in accordance with the terms of that agreement.
5. In 1984 the predecessor agency to MDEQ and the County entered into a Groundwater Restoration Agreement. That agreement required the County to address the groundwater contamination caused by the Landfill. Pursuant to that agreement the County constructed a system designed to capture and treat groundwater contaminated by the Landfill.
6. Subsequently, the County and WMMI brought claims against each other in federal court concerning their respective responsibilities for the environmental conditions at and emanating from the Landfill (Facility). This litigation ultimately resulted in a settlement between the County and WMMI.

7. The MDEQ initiated the underlying lawsuit because it believed the groundwater contamination emanating from the Landfill was not being adequately addressed by the current system, and to obtain reimbursement for response costs.

8. The County and WMMI dispute the MDEQ's allegations and have asserted various defenses to the claims of the MDEQ, including but not limited to, reliance on the applicability of the Groundwater Restoration Agreement, the "Stipulation; Consent Order" and the inapplicability of current standards under Part 115 of the NREPA to the Landfill cap.

9. In 2001 the County proposed to the MDEQ changes to the current treatment system to more efficiently address remediation.

10. The Parties have been engaged in settlement discussions for the past three years. The County has proposed to conduct additional activities designed to address the groundwater contamination. These activities are described in the document attached as Exhibit 1, entitled "Feasibility Study – For Improvements to the Groundwater Extraction/Treatment System and Installation of Landfill Cap" (September, 2004), and include recapping the landfill and constructing additional purge wells. The estimated cost of the proposed activities is \$4.09 million.

11. The County will undertake these activities and also agrees that it will complete the remediation of the groundwater contamination in compliance with the requirements of Part 201, so long as the MDEQ and/or any third party do not sue it, judicially or administratively, in an effort to compel compliance with Part 201; provided, however, that the Parties to this Stipulation may seek to enforce the terms of this Stipulation.

12. MDEQ asserts that recapping the landfill and improving the system for capturing and treating the groundwater are necessary to meet the requirements of Part 201, but expresses

no opinion on the effectiveness of the activities described in Exhibit 1. For purposes of this Stipulation only, the following response activities to be undertaken by the County are considered by the MDEQ to be consistent with an approvable remedy under Part 201:

a. Construct a landfill cap that will control infiltration, allow management of any methane, manage stormwater and other erosion threats, and otherwise ensure the long-term integrity and effectiveness of the landfill cap in a manner reasonably equivalent to the relevant and appropriate requirements of the administrative rules for Part 115, Solid Waste, of the NREPA.

b. Install and operate an extraction well system that will assure hydraulic control of the groundwater contamination plume in close proximity to the landfill boundary.

c. Prevent the discharge to Lake Michigan of groundwater containing hazardous substances above Part 201 Groundwater Surface Water Interface (GSI) criteria, and assure compliance with R 299.5716(3) with regard to water quality characteristics.

d. Implement reliable land and resource use restrictions to restrict construction or use of wells (other than extraction and monitoring wells necessary as part of response activity) at and downgradient of the landfill, including an adequate buffer zone. This may be accomplished by a local or county ordinance. It will also require identifying and properly abandoning all existing residential wells in the restricted area.

e. Operate the existing downgradient extraction well system until it is demonstrated that the requirements of paragraphs c and d had been achieved.

f. Within 24 months of entry of this Stipulation implement an MDEQ reviewed and approved monitoring plan that will demonstrate that the following elements are being achieved:

i. GSI compliance.

ii. Extraction system effectiveness.

iii. Verification of compliance with land and resource use restriction imposed to prevent unacceptable exposures and manage other risks at the facility, and to prevent activities that may damage or interfere with the integrity of the landfill cap, extraction system or other remedial elements.

iv. Operation and maintenance of the landfill containment system, including plans for inspection, maintenance, and repair of the landfill cap and the extraction wells, including evaluation of methane generation and migration.

g. Provide a financial assurance mechanism for monitoring, operation and maintenance, and other activities necessary to assure the effectiveness and integrity of the required activities, which can be provided by the County through a resolution of the Board, acknowledging these obligations.

h. Within 12 months of implementing the monitoring plan, submit to MDEQ a report that demonstrates implementation of response activities that will bring the Facility into compliance with Part 201.

13. Based on the County's commitment to undertake additional remedial activities and its commitment to comply with Part 201, as qualified below, and in light of the complex legal and factual history of this site, the Parties have agreed that dismissal of the lawsuit under the following conditions is appropriate:

a. The Parties agree that the dismissal will be without prejudice and without costs.

b. WMMI agrees that until January 15, 2008, if MDEQ initiates a subsequent lawsuit under Part 201, it may reassert its existing claim against WMMI for MDEQ's response costs related to the Facility, and that reasserted claim will be deemed to have been filed and served as of the April 28, 2000 filing date of the underlying lawsuit. MDEQ agrees that, with respect to any interest MDEQ may seek as part of any such reasserted claim, the period of time from April 28, 2000 through the date of filing of the MDEQ's reasserted claim shall not be counted with respect to any claim by the MDEQ for accrued interest. WMMI agrees that it will not assert any defenses or arguments to any such response costs claim based on laches, estoppel, statute of limitations, or any other doctrine barring claims due to the passage of the time, except for any such defenses that the Defendants had as of April 28, 2000.

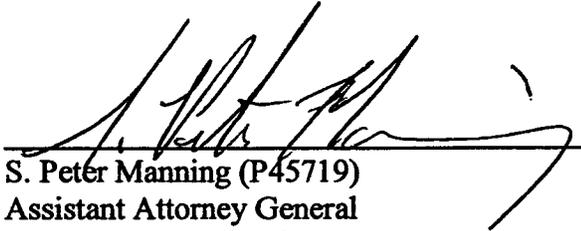
c. The County agrees that it will not seek contribution from WMMI or assert any other claim against WMMI for any of the County's costs incurred to comply with this Stipulation, including the County's performance of the activities described in Exhibit 1. This paragraph does not affect the 1997 agreement between WMMI and the County regarding the provision of certain goods and services by WMMI to the County.

d. This Stipulation and/or the activities described herein shall not be construed as an admission of liability by the County or WMMI and shall not otherwise operate as a waiver of any of the Parties' claims or defenses, including, but not limited to, the County's contention that the Groundwater Restoration Agreement and "Stipulation; Consent Order," not Part 201, define the County's obligations regarding the site

(including, but not limited to, its capping, groundwater restoration, closure, and GSI obligations). Also, nothing in this Agreement shall be construed as waiving or limiting WMMI's and/or the County's right to challenge the legal or factual necessity of the tasks, described in Paragraph 12, above. Likewise, neither the existence of, nor anything contained in, this Stipulation and Order shall be construed as waiving or limiting the MDEQ's right to pursue further or future claims to compel response activity under Part 201 against the County and/or WMMI.

(signatures follow on next page)

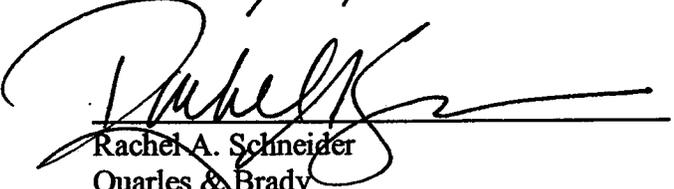
ACCORDINGLY, the Parties, through the undersigned attorneys, request that the Court enter the following order dismissing the underlying case consistent with this Stipulation.


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Date: March 11, 2005


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Date: 3/14/05


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Attorney for Defendant Waste
Management of Michigan, Inc.

Date: 3.14.05

ORDER

At a session of said Court, held in the County Courthouse, City of Grand Haven, County of Ottawa, Michigan, on the 30 day of March, 2005.

PRESENT: HONORABLE EDWARD R. POST
Circuit Court Judge

The Court has reviewed the Stipulation of Dismissal and is otherwise advised of the basis for the Parties agreement for the dismissal of this matter, and for those reasons:

IT IS HEREBY ORDERED that this case is dismissed consistent with and subject to the above stipulations of the Parties.

Edward R Post

HONORABLE EDWARD R. POST
Circuit Court Judge