

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE 6th JUDICIAL CIRCUIT
RECEIVED FOR FILING
OAKLAND COUNTY

LANIS E. FORD,

Petitioner-Appellant,

v

MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY

Respondent-Appellee.

2004 JUN 14 A 9:28

File No. 03-054910-AZ

OAKLAND COUNTY CLERK

Hon. Richard D. Kuhn

OAKLAND COUNTY CLERK

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CONSENT JUDGMENT

The parties to this Consent Judgment are Lanis E. Ford and the Michigan Department of Environmental Quality ("MDEQ"). 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 this matter pursuant to Section 631 of the Revised Judicature Act, 1961 PA 236, MCL 600.631; and Section 21313(6) of Part 213 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, ("NREPA"), MCL 324.21313(6). Venue is proper in this Court pursuant to MCL 600.631. 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 and to resolve disputes arising under this Consent Judgment, including those that may be necessary for their construction, execution, or implementation.

II. STATEMENT OF PURPOSE

2.1 In entering into this Consent Judgment, the mutual objective of Petitioner-Appellant and Respondent-Appellee is to: (1) resolve the Claim of Appeal filed by Petitioner-Appellant Lanis E. Ford, appealing the \$185,400 late report penalty assessed by the MDEQ under Part 213 of NREPA by letter dated October 30, 2003 against Petitioner-Appellant Lanis E. Ford and multiple other entities including: (i) L.E.F. Inc. d/b/a/ Viking Oil Company, a/k/a Lessing Street Bulk Plant, (ii) Under Car Care, (iii) Pontiac Muffler, (iv) Quality Sunoco, (v) Tuffy Muffler, and (vi) Filler Up Stations, Inc., a/k/a Gas City.; and (2) resolve Petitioner-Appellant's failure to submit statutorily complete initial assessment reports ("IARs") and final assessment reports ("FARs") at six facilities, as required by Section 21311a of NREPA. MCL 324.21311a.

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, rules and regulations, including, but not limited to Part 213, Leaking Underground Storage Tanks, of NREPA, MCL 324.21301 *et seq.* ("Part 213").

IV. COMPLIANCE PROGRAM

4.1 Petitioner-Appellant shall submit statutorily complete IARs for all six facilities to the MDEQ by July 15, 2004.

4.2 Petitioner-Appellant shall submit statutorily complete FARs for all six facilities to the MDEQ by April 1, 2005.

V. FINES, COSTS, AND PENALTIES

5.1 Petitioner-Appellant shall pay to The MDEQ the sum of \$90,000.00 to resolve the \$185,400 in administrative penalties assessed by letter dated October 30, 2003. (See Attached)

5.2 Petitioner-Appellant shall pay the \$90,000.00 according to the following schedule:

- a) \$10,000.00 shall be paid by August 1, 2004.
- b) \$15,000.00 shall be paid by August 1, 2005.
- c) \$20,000.00 shall be paid by August 1, 2006.
- d) \$20,000.00 shall be paid by August 1, 2007.
- e) \$25,000.00 shall be paid by August 1, 2008.

5.3 Payments under Paragraph 5.2 are to be made by certified check payable to the "State of Michigan-Department of Environmental Quality" at the following address:

Michigan Department of Environmental Quality
Financial and Business Services Division
Revenue Control
P.O. Box 30657
Lansing, MI 48909-7926

and shall include payment identification number RRD1003 on the check.

5.4 Failure to timely submit statutorily complete IARs or FARs for any of the six sites shall result in a stipulated penalty of \$95,400.00, paid in accordance with Paragraph 5.3 within 30 days of notification from the MDEQ.

5.5 No interest on payments under Paragraphs 5.2 and 5.4 shall be paid, so long as the payment schedule is followed. Failure to make timely payments under Paragraphs 5.2 or 5.4 shall result in interest added at rates allowed under the Revised Judicature Act.

5.6 Petitioner-Appellant agrees not to contest the legality of the monies paid pursuant to Paragraphs 5.2. Petitioner-Appellant further agrees not to contest the legality of the stipulated penalties assessed pursuant to Paragraph 5.4, above, but reserves the right to dispute the factual basis upon which a demand by the MDEQ for stipulated penalties is made.

VI. DISPUTE RESOLUTION

6.1 Unless otherwise expressly provided for in this Consent Judgment, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Judgment. However, the procedures set forth in this Section shall not apply to actions by the State to enforce any of Petitioner-Appellant's obligations that have not been disputed in accordance with this Section. Engagement of dispute resolution pursuant to this Section shall not be cause for Petitioner-Appellant to delay the submission of reports required under this Consent Judgment.

6.2 The State shall maintain an administrative record of any disputes initiated pursuant to this Section. The administrative record shall include the information Petitioner-Appellant provides to the State under Paragraphs 6.3 and 6.4 and any documents the MDEQ and the State rely on to make the decisions set forth in Paragraphs 6.3 and 6.4.

6.3 Except for undisputable matters identified in Paragraph 6.1 any dispute that arises under this Consent Judgment shall in the first instance be the subject of informal negotiations between the Project Coordinators representing the MDEQ and Petitioner-Appellant. A dispute shall be considered to have arisen on the date that a Party to this Consent Judgment receives a written Notice of Dispute from the other Party. The Notice of Dispute shall state the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting the Party's position; and supporting documentation upon which the Party bases its position. The period of informal negotiations shall not exceed ten (10) days from the date a Party receives a Notice of Dispute, unless the time period for negotiations is modified by written agreement between the Parties. If the Parties do not reach an agreement within ten (10) days, the RRD District Supervisor will thereafter provide the MDEQ's Statement of Decision, in writing, to Petitioner-Appellant. In the absence of initiation of formal dispute resolution by Petitioner-Appellant under Paragraph 6.4, the MDEQ's position as set forth in the MDEQ's Statement of Decision shall be binding on the Parties.

6.4 If Petitioner-Appellant and the MDEQ cannot informally resolve a dispute under Paragraph 6.3, Petitioner-Appellant may initiate formal dispute resolution. If the informal process in Paragraph 6.3 did not resolve the dispute, Petitioner-Appellant may initiate formal dispute resolution by submitting a written Request for Review to the RRD Division Chief, with a copy to the MDEQ Project Coordinator, requesting review of the disputed issues within

ten (10) days of Petitioner-Appellant's receipt of any Statement of Decision issued by the MDEQ pursuant to Paragraph 6.3. If the dispute is not subject to the informal dispute resolution process described in Paragraph 6.3, a dispute shall be considered to have arisen on the date that a Party to this Consent Judgment receives a written Notice of Dispute from the other Party, initiating the formal dispute resolution process. The Notice of Dispute shall state the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting the Party's position; and supporting documentation upon which the Party bases its position. When the MDEQ issues a Notice of Dispute, Petitioner-Appellant will have twenty (20) days to submit a written rebuttal to the RRD Division Chief, with copy to the MDEQ Project Coordinator. Within twenty (20) days of the RRD Division Chief's receipt of Petitioner-Appellant's Request for Review, Petitioner-Appellant's Notice of Dispute, or Petitioner-Appellant's rebuttal the RRD Division Chief will provide the MDEQ's Final Statement of Decision, in writing, to Petitioner-Appellant, which will include a statement of his/her understanding of the issues in dispute; the relevant facts upon which the dispute is based; factual data, analysis, or opinion supporting his/her position; and supporting documentation he/she relied upon in making the decision. The time period for the RRD Division Chief's review of the Request for Review may be extended by written agreement between the Parties. The MDEQ's Final Statement of Decision shall be binding on the Parties.

6.5 Notwithstanding the invocation of a dispute resolution proceeding, the MDEQ may take administrative or civil enforcement action against Petitioner-Appellant to seek the assessment of administrative fines, civil penalties or damages pursuant to Parts 201 and 213 of NREPA or other statutory and equitable authorities for any additional violations of Part 201 or 213 of NREPA or other statutory and equitable authorities.

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VII. GENERAL PROVISIONS

7.1 With respect to any violations not specifically addressed and resolved by this Consent Judgment, the MDEQ reserves the right to pursue any other remedies to which they are entitled for any failure on the part of Petitioner-Appellant to comply with the requirements of Part 213.

7.2 This Consent Judgment in no way affects Petitioner-Appellant's responsibility to comply with any other applicable state, federal, or local laws or regulations.

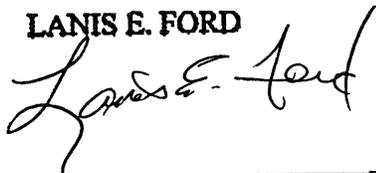
7.3 The MDEQ reserves all of its enforcement rights, including but not limited to, pursuit of additional late report penalties and civil penalties for any continued failures to submit the reports specified in Paragraphs 4.1 and 4.2, regardless of whether payment under Paragraph 5.4 is made.

VIII. SIGNATORIES

8.1 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 PETITIONER-APPELLANT

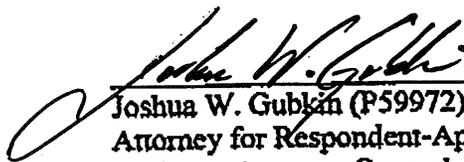
LANIS E. FORD



Neil S. Silver (P38224)
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Strobl, Cunningham & Sharp, PC

FOR RESPONDENT-APPELLEE

MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY



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Attorney for Respondent-Appellee
Assistant Attorney General
Environment, Natural Resources and
Agriculture Division

Dated: _____

Dated: 6/9/04

