

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENT, GREAT LAKES, and ENERGY
REMEDATION AND REDEVELOPMENT DIVISION

M-64 Truck & Auto Repair, Inc.
1009 M-64
Ontonagon, Michigan 49953

AOC-RRD-21-003

Respondent _____/

**ADMINISTRATIVE AGREEMENT FOR THE RESOLUTION OF
LATE REPORT PENALTIES**

This Administrative Agreement (Agreement) is entered into voluntarily by and between the Michigan Department of Environment, Great Lakes, and Energy (EGLE) and the M-64 Truck & Auto Repair, Inc. (Respondent), to resolve the penalties assessed in the Late Report Penalty Assessment Letter dated May 14, 2021. The Respondent was notified on July 30, 2020, of its failure to comply with Part 213, Leaking Underground Storage Tanks (Part 213), of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended, MCL 324.21301 *et seq.* In the Penalty Assessment Letter dated May 14, 2021, EGLE notified the Respondent of the assessment of administrative penalties in the amount of \$23,100 for failure to submit required reports pursuant to Section 21313a of Part 213. EGLE alleges that the Respondent, who owned and operated the underground storage tank system(s) located at 1009 M-64, Ontonagon, Ontonagon County, Facility ID Number 00038471 (Property), is in violation of the Part 213 reporting requirements.

I. STIPULATIONS/UNCONTESTED FACTS

The Respondent and EGLE stipulate as follows:

1.1 Pursuant to the NREPA and Executive Order No. 2019-2 the Director of EGLE is the state official and EGLE is the state agency charged with the administration and enforcement of Part 213.

1.2 The Respondent is a Michigan corporation authorized to do business in Michigan. The Respondent is a "person" as defined by Section 301(h) of the NREPA.

1.3 The Respondent is the owner and operator of the underground storage tank system(s) located at the Property. Leak ID number C-0195-18 was confirmed on February 22, 2019. The Respondent is subject to Part 213.

1.4 The Respondent failed to complete and submit an Initial Assessment Report within 180 days after the discovery of a release as required pursuant to Section 21308a of Part 213. However, an Initial Assessment Report was submitted June 15, 2021.

1.5 The Respondent has failed to complete and submit a Final Assessment Report, that includes a Corrective Action Plan (CAP) as required by Section 21309a, within 365 days after the discovery of a release as required by Section 21311a of Part 213. A Final Assessment Report (FAR) was submitted June 1, 2021, but was deemed to have insufficient information for EGLE to make a decision. Following that submittal on November 16, 2021, Coleman Engineering installed 4 monitoring wells. A Revised FAR was submitted on December 22, 2021, however the audit determined that the Revised FAR contained insufficient information for EGLE to make a decision that corrective actions have been conducted in compliance with Part 213. In response to discussions held with EGLE to address insufficient information found in the revised FAR, the Respondent installed two additional monitoring wells on May 25, 2022.

II. COMPLIANCE PROGRAM

The Respondent will perform the following corrective actions pursuant to the schedule set forth below:

2.1 Respondent shall submit to EGLE a FAR that includes a CAP by September 30, 2022. The FAR and CAP must include all required elements and information listed in Sections 21311a and 21309a of Part 213, respectively. The FAR and CAP will be subject to EGLE's review and approval. The Respondent will implement the CAP according to the schedule contained within the FAR and shall submit documentation of the CAP implementation to EGLE within three hundred and sixty-five (365) days of the Effective Date of this Agreement.

III. SUBMITTALS

3.1 All correspondence and submittals are to be made to:

For EGLE:

Elizabeth Goetz (or current), Project Manager
Marquette District Office
Remediation and Redevelopment Division
Michigan Department of Environment, Great Lakes, and Energy
1504 West Washington Street
Marquette, Michigan 49855
Phone: 906-235-0002
FAX: 906-228-4940

For the Respondent, to both:

Barry Cole
M-64 Truck & Auto Repair, Inc.
1009 M-64
Ontonagon, Michigan 49953

Jeff Sjoquist
Coleman Engineering
200 East Ayer Street
Ironwood, Michigan 49938

3.2 If the Respondent changes its designated contact person, the name, address, and telephone number of the successor shall be provided to Elizabeth Goetz or the current Project Manager at the address designated in Paragraph 3.1 of this Agreement.

3.3 No informal advice, guidance, suggestions, or comments by EGLE will be construed as relieving the Respondent of its obligation to obtain written approval, if and when required, by this Agreement.

IV. LATE REPORT PENALTIES

4.1 Within thirty (30) days after the Effective Date of this Agreement, the Respondent shall pay EGLE three thousand dollars (\$3,000.00) to resolve the Late Report Penalties assessed in the Penalty Assessment Letter dated May 14, 2021.

4.2 Additional Late Report Penalties continue to accrue. Late Report Penalties that have accrued following the May 14, 2021 Penalty Assessment Letter continue to accrue, but shall not be assessed provided Respondent complies with the requirements of this Agreement. EGLE will not assess any Late Report Penalties that accrue following the May 14, 2021 Penalty Assessment Letter if EGLE determines that Respondent has complied with all requirements of Section 21309a and 21311a of Part 213 and this Agreement.

4.3 The Respondent agrees to pay all funds due under Paragraph 4.1 of this Agreement by certified check, made payable to the State of Michigan – Environmental Response Fund. To ensure proper credit, the payment made pursuant to Paragraph 4.1 of this Agreement must include Location Code 7H22 and Settlement ID Number (RRD60136) identified on the certified check.

4.4 All payments made pursuant to Paragraphs 4.1 of this Agreement shall be delivered to:

- Via Mail

Accounting Services Division
Cashier's Office for EGLE
P.O. Box 30657
Lansing, Michigan 48909-8157

OR

- Via Courier

Accounting Services Division
Cashier's Office for EGLE
425 West Ottawa Street
Lansing, Michigan 48933

V. COMPLIANCE WITH THIS AGREEMENT

5.1 If the Respondent fails to comply with Section II (Compliance Program) or Section III (Late Report Penalties) of this Agreement, EGLE may assess the additional Late Report Penalties that have accrued since the May 14, 2021 Penalty Assessment Letter.

5.2 The Respondent agrees to pay the additional Late Report Penalties assessed pursuant to Paragraph 5.1, within thirty (30) days from the date that the Respondent receives a demand for payment from EGLE. This payment shall be made in accordance with Paragraph 4.3 and 4.4 of this Agreement.

VI. RETENTION OF RECORDS

6.1 Pursuant to Section 21312a(1)(d) of Part 213, the Respondent shall preserve and retain, for a period of six (6) years after the completion of corrective actions, all records, sampling and test results, charts, plans, logs, and any other documents relating to the release(s) from the underground storage tank system(s), and the performance of corrective actions to address the resultant contamination. Upon request by an authorized representative of EGLE, the Respondent shall make available to EGLE all documents required to be maintained or provided under this Agreement or Part 213.

6.2 Upon written request by EGLE, the Respondent, or its successor(s), shall provide, within thirty (30) days of receipt of the request, all supporting documentation relating to the performance of corrective actions necessary to comply with this Agreement, including but not limited to, records, sampling and test results, charts, plans, logs, and any other documents necessary to comply with this Agreement.

VII. RIGHT OF ENTRY

7.1 To the extent the Respondent is in control of access to the Property, the Respondent shall allow EGLE or any EGLE authorized representative or contractor, upon presentation of proper credentials, to enter upon the premises of the Property at all reasonable times for the purpose of monitoring compliance with the provisions of this Agreement. This paragraph in no way limits the authority of EGLE to conduct tests and inspections pursuant to Part 213, or any other applicable statutory provision.

VIII. GENERAL PROVISIONS

8.1 This Agreement addresses only the past violations identified in the Penalty Assessment Letter. EGLE reserves the right to pursue any other remedies to which it is entitled for failure of the Respondent to comply with the requirements of this Agreement; to address releases of regulated substances covered under this Agreement; and to address future releases or conditions in accordance with the NREPA.

8.2 After the Effective Date of this Agreement, if EGLE or the Department of Attorney General (DAG) initiates any administrative or judicial proceeding for injunctive relief, recovery of corrective action costs, or other appropriate relief relating to the Property, the Respondent agrees not to assert and shall not maintain any defenses or claims that are based upon the principles or waiver, res judicata, collateral estoppel, issue preclusion, or claim splitting, or that are based upon a defense that contends any claims raised by EGLE or the DAG were or should have been brought in this matter.

8.3 EGLE reserves all of its enforcement rights including, but not limited to, seeking injunctive relief and additional fines for violations not resolved by this Agreement.

8.4 EGLE reserves its right to assess Late Report Penalties pursuant to Section 21313a of the NREPA for any new releases.

8.5 The State of Michigan expressly reserves all of its rights and defenses pursuant to any available legal authority to enforce this Agreement.

8.6 In addition to, and not as a limitation of any other provision of this Agreement, EGLE retains all of its authority and reserves all of its rights to perform, or contract to have performed, any corrective actions that EGLE deems necessary.

8.7 This Agreement in no way affects the Respondent's responsibility to comply with any other applicable local, state, or federal laws or regulations including, without limitation, any corrective action, or similar requirements applicable to the Property pursuant to the NREPA and its rules.

8.8 Nothing in this Agreement shall be considered to affect any liability that the Respondent may have for criminal action, state corrective action costs, or natural resources damages caused by the Respondent's ownership and/or operation of the Property. The State of Michigan expressly reserves any rights it may have to bring a criminal action or to bring a civil action to recover corrective action costs, natural resources damages, or to seek injunctive relief compelling the Respondent to perform necessary corrective actions pursuant to Part 213.

8.9 The provisions of this Agreement shall apply to, and be binding upon, the parties to this Agreement and their successors. No change in ownership, corporate or legal status of the Respondent, including but not limited to, any transfer of assets or real property or the bankruptcy of the Respondent shall alter in any way the Respondent's responsibilities under this Agreement.

8.10 The Respondent agrees not to contest the:

- (a) Legality of the administrative penalties assessed by the May 14, 2021 Penalty Assessment Letter;
- (b) Legality of the administrative penalties accrued, but not assessed, pursuant to Paragraph 4.1 of this Agreement; and
- (c) Legality of the assessments pursuant to Paragraph 5.1 of this Agreement of the administrative penalties accrued, but not assessed.

8.11 If any provision of this Agreement or the application of this Agreement to any party or circumstances is determined to be invalid, that provision shall be deemed severed and the remainder of the Agreement shall remain in full force.

IX. MODIFICATIONS

9.1 The deadlines contained in this Agreement may only be modified according to the terms of this section.

9.2 The deadlines provided in Section II of this Agreement may be extended in writing at the sole discretion of the Remediation and Redevelopment Division (RRD) Marquette District Supervisor. All other provisions may only be modified at the sole discretion of the RRD Director.

X. TERMINATION

10.1 This Agreement shall remain in full force and effect until EGLE issues a written Notice of Termination.

10.2 The Respondent may submit a written request for a Notice of Termination to the RRD District Supervisor identified in Paragraph 10.5 of this Agreement. The Respondent's request for termination shall consist of a written affidavit that the Respondent has fully complied with the requirements of this Agreement. Specifically, this affidavit shall include:

(a) An affirmative statement that the Respondent has complied with Section II (Compliance Program) and Section III (Late Report Penalties) of this Agreement;

(b) A statement that all required information has been submitted to the RRD District Supervisor; and

(c) A confirmation that all records required to be maintained pursuant to this Agreement are being maintained by the Respondent.

10.3 The written request for termination must be mailed to:

Sydney Hewson (or current), District Supervisor
Marquette District Office
Remediation and Redevelopment Division
Department of Environment, Great Lakes, and Energy
1504 West Washington Street
Marquette, Michigan 49855

A copy of the request for termination must also be mailed to the project manager identified in paragraph 3.1.

10.4 EGLE may also request additional information for verification that the conditions for termination have been satisfied. EGLE shall not unreasonably withhold a Notice of Termination.

10.5 EGLE may independently determine that the terms and conditions of the Agreement have been met. Should EGLE make such a determination, EGLE shall issue a Notice of Termination.

XI. EFFECTIVE DATE

11.1 This Agreement shall become effective on the date the EGLE RRD Assistant Division Director signs the Agreement (Effective Date). All dates for performing obligations under this Agreement shall be calculated from the Effective Date. For this Agreement, "day" means a calendar day unless otherwise noted.

XII. SIGNATORIES

The undersigned certify they are fully authorized by the party they represent to enter into this Agreement and to execute and legally bind that party to its terms and conditions.

MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, and ENERGY:



Joshua M. Mosher, Assistant Director
Remediation and Redevelopment Division
Michigan Department of Environment, Great Lakes, and Energy

09/13/2022

Date

M-64 Truck & Auto Repair, Inc.:

Barry Col Barry Col Owner M-64 Travel Center Inc
Name, Title:
Company:

9-13-22
Date

APPROVED AS TO FORM:



By: Danielle Allison-Yokom (P70950)
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division
Michigan Department of Attorney General

September 9, 2022
Date