

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE 30th JUDICIAL DISTRICT
INGHAM COUNTY

MICHAEL A. COX, Attorney General of the
State of Michigan, *ex rel*, the MICHIGAN
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

File No. 03-1487-CE

Hon. Thomas L. Brown

Plaintiff,

v

TAPPER MOTORS, INC.,

Defendant.

Joshua W. Gubkin (P59972)
Attorney for Appellee
Michigan Department of Attorney General
Environment, Natural Resources and
Agriculture Division
5th Floor South, Constitution Hall
525 West Allegan
Lansing, MI 48913
(517) 373-7540

Kelly L. Page (P24787)
Gary A. Stewart Jr. (P49442)
Attorneys for Defendant
203 South Niles Street
Paw Paw, MI 49079
(269) 657-5591

CONSENT JUDGMENT

The parties to this Consent Judgment are the Michigan Department of Environmental Quality ("MDEQ") and Tapper Motors, Inc. 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, and without this Consent Judgment constituting an admission of any of the allegations in the Complaint or as evidence of the same, it is hereby ORDERED, ADJUDGED, and DECREED:

I. JURISDICTION

1.1 This Court has jurisdiction in this matter pursuant to Section 21323(1) of Part 213 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, (“NREPA”), MCL 324.21323(1). Venue is proper in this Court pursuant to Section 21323(2) of Part 213 of NREPA, MCL 324.21323(2). This Court also has personal jurisdiction over Defendant Tapper Motors, Inc. and Defendant waives any and all objections and defenses that it 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 Plaintiffs and Defendant is to ensure compliance with the Order of the Van Buren County Circuit Court, issued on August 20, 2002, which affirmed the \$20,200.00 late report penalty assessed by the MDEQ under Part 213 of NREPA and indicating the reporting penalty was to be paid within 30 days, (See attached Order), and to resolve Defendant’s continued failure to submit a statutorily complete final assessment report (“FAR”), 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 Defendant has submitted a statutorily complete FAR.

4.2 Defendant shall implement the corrective action plan ("CAP"), as detailed within the FAR, in accordance with Sections 21311a and 21309a of Part 213.

V. FINES, COSTS, AND PENALTIES

5.1 Defendant has paid to Plaintiffs the sum of \$20,200.00 to resolve the administrative penalties affirmed by the Van Buren County Circuit Order, dated August 20, 2002.

5.2 Payment under Paragraph 5.1 is 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 RRD 1002 on the check.

5.3 For each failure to comply with the provisions of this Consent Judgment, Defendant will be assessed, and must pay, stipulated penalties of \$1000.00 per day for each day of violation. The MDEQ shall provide notice to Defendant of any violations of the Consent

Judgment, with an opportunity to comply within 30 days, prior to stipulated penalties accruing. Stipulated penalties must be paid within 30 days after written demand is made by the MDEQ.

5.4 Defendant agrees not to contest the legality of the monies paid pursuant to Paragraph 5.1, above. Defendant further agrees not to contest the legality of any stipulated penalties assessed pursuant to Paragraph 5.3, 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 Tapper'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 Tapper to delay the performance of the CAP required under this Consent Judgment, unless the dispute directly involves an activity in the CAP and Tapper submits a schedule modification request and the MDEQ approves it.

6.2 The State shall maintain an administrative record of any disputes initiated pursuant to this Section. The administrative record shall include the information Tapper 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 Tapper. 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 Tapper. In the absence of initiation of formal dispute resolution by Tapper 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 Tapper and the MDEQ cannot informally resolve a dispute under Paragraph 6.3, Tapper may initiate formal dispute resolution. If the informal process in Paragraph 6.3 did not resolve the dispute, Tapper 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 Tapper'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, Tapper 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 Tapper's Request for Review, Tapper's Notice of Dispute, or Tapper's rebuttal the RRD Division Chief will provide the MDEQ's Final Statement of Decision, in writing, to Tapper, 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. In the absence of a formal appeal to the Ingham County Circuit Court, the MDEQ's Final Statement of Decision shall be binding on the Parties. Appeals to the Ingham County Circuit Court shall be in conformance with RJA 631.

6.5 Notwithstanding the invocation of a dispute resolution proceeding, stipulated penalties shall accrue from the first day of Tapper's failure or refusal to comply with any term or condition of this Consent Judgment, but payment shall be stayed pending resolution of the dispute. In the event, and to the extent that Tapper does not prevail on the disputed matters, the MDEQ may demand payment of stipulated penalties and Tapper shall pay stipulated penalties as set forth in Paragraph 5.3 of Section V (Fines, Costs, and Penalties). Tapper shall not be assessed stipulated penalties for disputes that are resolved in their favor. The Department of Attorney General, on behalf of the MDEQ, may take civil enforcement action against Tapper to seek the assessment of civil penalties or damages pursuant to Parts 201 and 213 of NREPA or other statutory and equitable authorities.

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 Defendant to comply with the requirements of Part 213.

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

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.

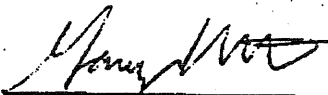
FOR PLAINTIFFS

FOR DEFENDANT

MICHAEL A. COX, Attorney General
of the State of Michigan, and the MICHIGAN
DEPARTMENT OF
ENVIRONMENTAL QUALITY

TAPPER MOTORS, INC.

Joshua W. Gubkin (P59972)
Attorney for Plaintiffs
Assistant Attorney General
Environment, Natural Resources and
Agriculture Division



Gary A. Stewart Jr. (P49442)
Attorney for Defendant

Dated: _____

Dated: 5-6-04

IT IS SO ORDERED, ADJUDGED AND DECREED THIS _____ day of
_____ 2004.

ATTEST: A TRUE COPY

Honorable Thomas L. Brown

Deputy Court Clerk