

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:
Residential Wells Tekonsha, Site ID. No. 130052
and
Tekonsha Engineering Inc., Site ID No. 130347
905 Church Street, Tekonsha, Calhoun County, Michigan

MDEQ Reference No. AOC-ERD-02-001

**ADMINISTRATIVE ORDER BY CONSENT
FOR PAYMENT OF PAST RESPONSE ACTIVITY COSTS
AND FUTURE OVERSIGHT COSTS**

A. This Administrative Order by Consent (“Order”) is entered into voluntarily by and between the Michigan Department of Environmental Quality (“MDEQ”), Jennifer M. Granholm, Attorney General for the State of Michigan (collectively, the “State”), and Tekonsha Engineering Company, a Michigan corporation also known as Tekonsha Towing Systems (“TEC”), pursuant to the authority vested in the Attorney General and the MDEQ by Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (“NREPA”), MCL 324.20101, *et seq.* All terms used in this Order, which are defined in Part 201 of the NREPA or the Part 201 Administrative Rules, 1990 ACS R 299.5101 *et seq.*, shall have the same meaning in this Order as in Part 201 of the NREPA and the Part 201 Rules.

B. The State asserts that there have been releases or threats of releases of hazardous substances at a variety of locations and areas within the Village of Tekonsha, Calhoun County, Michigan (the “Village”) and that due to the releases or threats of releases the State undertook

certain response activities including remedial investigations and water supply replacement. The State refers to the affected area as the “Residential Wells Tekonsha Site”.

C. The State asserts that release(s) and/or threat(s) of releases of hazardous substances occurred at the TEC property located at 905 Church Street, Tekonsha, Michigan (“Property”). The State therefore asserts that any area of the Property where a hazardous substance has been released, deposited, disposed of, or otherwise come to be located in concentrations that exceed the requirements of Section 20120a(1)(a) or (17) of the NREPA or the cleanup criteria for unrestricted residential use under Part 213 of the NREPA, and any other area, place, or property where a hazardous substance, in concentrations that exceed these requirements or criteria, has come to be located as a result of the migration of the hazardous substance from the Property is a facility as defined by Part 201 and is referred to herein as the “Facility”. For purposes of this Order, the Residential Wells Tekonsha Site includes all areas affected by releases and threats of releases within the Village of Tekonsha that were known to the MDEQ on January 1, 2002 and for which the MDEQ has incurred response activity costs, excluding the release(s) or threat(s) of release(s) associated with the Facility.

D. Both the Facility and the Residential Wells Tekonsha Site are facilities regulated under Part 201. TEC is voluntarily undertaking response activities at the Facility and the MDEQ is overseeing those activities.

E. The State alleges that, pursuant to Part 201, it has incurred and will continue to incur response activity costs in responding to the release(s) or threat(s) of release(s) of hazardous

substances at the Facility and the Residential Wells Tekonsha Site. Sections 20119(4) and 20137(1)(b) of the NREPA authorize the State to recover response activity costs that the State has lawfully incurred. The parties to this Order desire to resolve all claims for the State's (a) past and future response activity costs incurred in association with the Residential Wells Tekonsha Site and (b) past response activity costs incurred in association with the Facility, and to enter into a binding agreement in which TEC agrees to pay Oversight Costs, which the State has or will incur after January 1, 2002 in association with the Facility. Settlement of this claim is in the public interest and will minimize litigation.

F. The execution of this Order by TEC is neither an admission of liability with respect to any issue covered under this Order nor an admission or denial of any findings of fact or legal determinations stated or implied herein.

G. This Order shall apply to and be binding upon the TEC and its successors and assigns. No change or changes in the ownership or corporate status of TEC shall alter in any way TEC's obligations under this Order. The signatories to this Order certify that they are authorized to execute this Order and legally bind the parties they represent.

BASED UPON THE FOREGOING FACTS AND DETERMINATIONS, THE MDEQ AND THE ATTORNEY GENERAL HEREBY ORDER, AND TEC HEREBY AGREES, TO THE FOLLOWING:

1. Within thirty (30) days of the effective date of this Order, TEC shall pay to the State the sum of \$500,000 to resolve all claims for past response activity costs incurred in association with the Facility and past and future response activity costs incurred in association

with the Residential Wells Tekonsha Site related to the releases(s) or threat(s) of releases of hazardous substances known to the MDEQ on January 1, 2002. For the purposes of this Order, the terms:

(a) “past response activity costs” means costs that the State has incurred prior to January 1, 2002 for response activities at the Facility and the Residential Wells Tekonsha Site, including but not limited to, costs associated with providing alternate water supplies; and,

(b) “future response activity costs” means costs that the State has incurred or will incur on or after January 1, 2002 for response activities associated with the Residential Wells Tekonsha Site.

2. TEC shall reimburse the State for all Oversight Costs incurred by the State in overseeing the performance of response activities by TEC at the Facility, as defined in this Paragraph. For purposes of this Order, the term “Oversight Costs” includes, but is not limited to, costs incurred on or after January 1, 2002 to: monitor response activities at the Facility; observe and comment on field activities; review and comment on submissions; collect and evaluate samples; purchase equipment and supplies to perform monitoring activities; attend and participate in meetings; negotiate this Order and monitor, document and enforce compliance with this Order. For purposes of this Order, Oversight Costs do not include future response activity costs associated with the Tekonsha Residential Wells Site. As soon as possible after each anniversary of the effective date of this Order, the MDEQ will send TEC a written demand for payment of Oversight Costs that the State has lawfully incurred. Any such demand will set forth with reasonable specificity the nature of the costs incurred. TEC shall pay the MDEQ the full amount of Oversight Costs within 30 days of receipt of the written demand.

3. Payments are to be made by check payable to the "State of Michigan - Environmental Response Fund" and sent to:

Revenue Control Unit
Financial and Business Services Division
Michigan Department of Environmental Quality
P.O. Box 30657
Lansing, Michigan 48909-8157

(via courier)
Constitution Hall South Tower, 5th Floor
525 West Allegan Street
Lansing, Michigan 48933

To ensure proper credit, payments made pursuant to this Order must be made by check referencing the Tekonsha Engineering facility, the MDEQ Reference No. AOC-ERD-02-001 and the Environmental Response Division Account Number ERD2152. A copy of the transmittal letter and the check shall be provided simultaneously to:

(a) Patricia A. McKay
Chief of the Compliance and Enforcement Section
Environmental Response Division
Department of Environmental Quality
P.O. Box 30426
Lansing, Michigan 48909-7926

(via courier)
Constitution Hall South Tower, 4th Floor
525 West Allegan Street
Lansing, Michigan 48933

(b) Mr. A. Michael Leffler, Assistant Attorney General in Charge
Natural Resources and Environmental Quality Division
Department of Attorney General
Constitution Hall South Tower, 5th Floor
525 West Allegan Street
Lansing, Michigan 48933.

Costs recovered pursuant to this Order shall be deposited in the Environmental Response Fund in accordance with the provisions of Section 20108(3) of the NREPA.

4. If TEC fails to pay the amounts indicated in Paragraphs 1 and 2 of this Order pursuant to the schedule set forth therein, TEC also shall pay the MDEQ interest on those unreimbursed costs at the rate provided for in Section 20126a(3) of the NREPA. If any of TEC's payments are more than 30 days past due, TEC also shall pay the MDEQ stipulated penalties of \$500.00 per day for every day of its noncompliance with Paragraphs 1 or 2 of this Order.

5. In consideration of the payments to be made by TEC under the terms of this Order, except as otherwise provided in this Order, the State covenants not to sue or to take further administrative action against TEC for the response activity costs and Oversight Costs addressed in Paragraphs 1 and 2 of this Order. With respect to TEC's liability for response activity costs and Oversight Costs, the covenant not to sue shall take effect upon the MDEQ's receipt of full payment from TEC for those costs and any associated interest and penalties that may have accrued pursuant to Paragraph 4 of this Order. The covenant not to sue applies only to the response activity costs and Oversight Costs defined in Paragraphs 1 and 2, and paid by TEC, and shall not be construed as a release of any other liability for the Facility and Residential Well Tekonsha site that TEC may have. The covenant not to sue extends only to TEC and does not extend to any other person.

6. Nothing in this Order shall be construed as releasing or discharging any liability of any person to TEC and TEC specifically reserves its rights against such persons.

7. The State reserves all of its rights under state and federal law to perform response activities and to take enforcement action, including action to seek injunctive relief, the recovery of response activity costs not addressed by this Order, the recovery of natural resource damages and costs incurred to assess natural resource damages, monetary penalties, punitive damages for any violation of law or this Order, and liability for criminal acts. The State expressly reserves all of its rights and defenses pursuant to any available legal authority to enforce this Order.

8. Nothing in this Order shall limit the power and authority of the MDEQ or the State of Michigan, pursuant to Section 20132(8) of the NREPA, to direct or order all appropriate action to protect the public health, safety, or welfare, or the environment; or to prevent, abate or minimize a release or threatened release of hazardous substances, pollutants or contaminants on, at, or from the Facility.

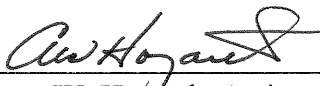
9. Pursuant to Section 20129(5) of the NREPA, and Section 113(f)(2) of the CERCLA, USC § 9613(f)(2), and to the extent provided in Paragraph 5, TEC shall not be liable for claims for contribution for the matters addressed in Paragraph 5 of this Order. Entry of this Order does not discharge the liability of any other person that may be liable under Section 20126 of the NREPA or Sections 107 and 113 of the CERCLA, 42 USC § 9607 and § 9613, to the extent allowable by law. Pursuant to Section 20129(9) of the NREPA, any action by TEC for

contribution from any person not a party to this Order shall be subordinate to the rights of the State if the State files an action pursuant to Part 201 of the NREPA or other applicable federal or state law.

10. This Order shall become effective on the latest date of execution by the State. All dates for the performance of obligations under this Order shall be calculated from the effective date of this Order. For the purposes of this Order, the term "day" shall mean a calendar day unless otherwise noted.

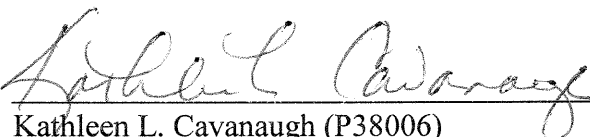
IT IS SO AGREED AND ORDERED BY:

FOR THE STATE:



Andrew W. Hogarth, Acting Chief
Environmental Response Division
Michigan Department of Environmental Quality

8/28/02
Date

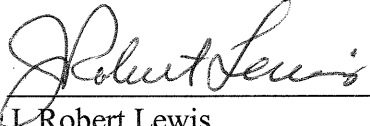


Kathleen L. Cavanaugh (P38006)
Assistant Attorney General
Natural Resources and Environmental Quality Division

8-27-02
Date

IT IS SO AGREED BY:

FOR TEKONSHA ENGINEERING COMPANY:



J. Robert Lewis
President, Tekonsha Engineering Company

8/28/02
Date

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