

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT  
INGHAM COUNTY

MICHAEL A. COX, Attorney General  
of the State of Michigan, Public  
Officer-Successor in Interest  
and the MICHIGAN DEPARTMENT  
OF ENVIRONMENTAL QUALITY,  
Plaintiffs,

File No. 02-942-CE

Hon. Beverley Nettles-Nickerson

v

MIRVAT OIL CORPORATION, INC., a  
Michigan corporation, and ALI DIMACHK  
Defendants.

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Attorney for Plaintiffs  
Michigan Department of Attorney General  
Environment, Natural Resources, and  
Agriculture Division  
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**CONSENT JUDGMENT**

At a session of said court, held in the Ingham County Circuit Court,  
City of Lansing, Ingham County, Michigan,  
this 12 day of May 2003.

PRESENT: HONORABLE BEVERLEY NETTLES-NICKERSON  
CIRCUIT COURT JUDGE

## **CONSENT JUDGMENT**

The Plaintiffs are Michael A. Cox, Attorney General of the State of Michigan, and the Michigan Department of Environmental Quality ("MDEQ").

The Defendants are Mirvat Oil Corporation, Inc. ("Mirvat Oil") and Ali Dimachk.

This Consent Judgment ("Judgment") is to resolve and settle Counts I, II and III of Plaintiffs' Complaint and any civil penalty liability for those claims.

Defendants agree not to contest (a) the authority or jurisdiction of this Court to enter this Judgment, or (b) any terms or conditions set forth herein.

The entry of this Judgment by Defendants is neither an admission or denial of liability with respect to any issue dealt within this Judgment nor is it an admission or denial of any factual allegations or legal conclusions stated or implied herein, or in the Complaint.

The Parties agree that settlement of this action is in the public interest and the terms and conditions of the Judgment are fair, reasonable, and an appropriate means of resolving the issues presented in this action.

NOW, THEREFORE, before the taking of any testimony, and without this Judgment constituting an admission of any of the allegations in the Complaint or as evidence of the same, and upon the consent of the Parties, by their attorneys, it is hereby ORDERED, ADJUDGED, and DECREED:

### **I. JURISDICTION**

1.1 This Court has jurisdiction in this matter pursuant to § 20137(1) of Part 201 of NREPA, MCL 324.20137(1) and § 21323 of Part 213, Leaking Underground Storage Tanks, of NREPA, MCL 324.21323. Venue is proper in this Court pursuant to § 20137(3) of Part 201 of NREPA, MCL 324.20137(3) and § 21323(2) of Part 213 of NREPA, MCL 324.21323(2). This

Court also has personal jurisdiction over Defendants, and Defendants waive any and all objections and defenses that they may have with respect to jurisdiction and venue of this Court.

This Court determines that the terms and conditions of this Judgment are reasonable, adequately resolve the environmental issues raised and properly protect the interests of the people of the State of Michigan.

1.2 This Court shall retain jurisdiction over the Parties and subject matter of this action to enforce this Judgment and to resolve disputes arising under this Judgment, including those that may be necessary for its construction, execution, or implementation, subject to Section XIX (Dispute Resolution).

## **II. PARTIES BOUND**

2.1 This Judgment shall apply to and be binding upon Plaintiffs and Defendants and their successors and assigns. No change or changes in the ownership or corporate status of Mirvat Oil will in any way alter Defendants' responsibilities under this Judgment.

2.2 Defendants will provide the MDEQ with written notice prior to the transfer of ownership of part or all of the Facility and will also provide a copy of this Judgment to any subsequent owners, successors, or assigns, prior to the transfer of any ownership rights. Defendants shall comply with the requirements of § 20116 of Part 201 of NREPA, MCL 324.20116.

2.3 Defendants are jointly and severally liable for the payments specified in this Judgment in accordance with its terms. Defendants are jointly and severally liable for taking the corrective action and other action required by this Judgment except where otherwise indicated. The signatories to this Judgment certify that they are authorized to execute and legally bind the parties they represent.

2.4 Notwithstanding the terms of any contract the Defendants may enter with respect to the performance of their duties under this Judgment, Defendants are responsible for compliance with the terms of this Judgment and will ensure that their contractors, subcontractors, laboratories, and consultants perform all activities in conformance with the terms and conditions of this Judgment.

### **III. STATEMENT OF PURPOSE**

3.1 In entering into this Judgment, the mutual objectives of Plaintiffs and Defendants are: (a) to resolve, without further litigation, Plaintiffs' claims against Defendants as alleged in Counts I, II and III of the Complaint, and any civil penalty liability for those claims; and (b) to assure that Defendants take specific actions to abate and remedy releases of regulated substances into the environment from the UST system at the Facility and submit the appropriate reports as required by the Administrative Order and Part 213 of NREPA.

3.2 This Judgment in no way obligates MDEQ or any other state agency to undertake any response activities or other actions to remediate or further define the nature and extent of the release and contamination at the Facility as defined in the Complaint.

### **IV. DEFINITIONS**

4.1 "Administrative Order" means the Administrative Order for Response Activity No. AO-USTD-97-01 issued by MDEQ on December 15, 1997.

4.2 "Corrective Action" means corrective action as defined in § 21302(d) of Part 213 of the NREPA, MCL 324.21302(d).

4.3 "Corrective Action Plan" means the corrective action plan and its required content as defined in § 21309a of Part 213 of the NREPA.

4.4 “Defendants” means Mirvat Oil and Ali Dimachk.

4.5 “District Supervisor” means the MDEQ Remediation and Redevelopment Division Supervisor for the Southeast Michigan District.

4.6 “Facility” means the property located at 258 Main Street, Belleville, Michigan, and identified as the Mirvat Oil Total-Belleville facility, and any area, place, or property where a release of a regulated substance, as defined by Section 21303(d) of Part 213, occurred.

4.7 “Future Response Activity Costs” means costs lawfully incurred by the State after the Effective Date to oversee, enforce, monitor, and document compliance with this Decree, including, but not limited to, costs incurred to review and comment on submissions, observe and comment on field investigation activities and other Corrective Action activities; collect and evaluate samples; purchase equipment and supplies to perform monitoring activities; attend and participate in meetings; prepare cost reimbursement documentation; and perform response activities pursuant to Section X (Creation of Danger).

4.8. “Judgment” means this Consent Judgment and any appendix hereto.

4.9 “MDEQ” means the Michigan Department of Environmental Quality, its successor entities, and those authorized persons acting on its behalf.

4.10 “Parties” means the Plaintiffs and Defendants.

4.11 “Plaintiffs” means Michael A. Cox, Attorney General of the State of Michigan, and the Michigan Department of Environmental Quality, their successor entities, and those authorized persons acting on their behalf.

4.12 “State” or “State of Michigan” means the Michigan Department of Attorney General and the Michigan Department of Environmental Quality, either together or alone, and any authorized representatives acting on their behalf.

4.13 "Work day" means each day of the common Monday through Friday work week, excluding all days which are celebrated as State of Michigan holidays.

4.14 All other terms used in this Judgment that are found in NREPA, or the rules pursuant to NREPA, will have the same meaning in this Judgment as in NREPA and its rules.

## **V. IMPLEMENTATION**

5.1 Defendants shall fully comply with all the requirements of this Judgment and Part 213 of the NREPA, including, but not limited to, the submission of all reports required under § 21308a, MCL 324.21308a, § 21309a, MCL 324.21309a, § 21311a, MCL 324.21311a, and § 21312a(1), MCL 324.21312a(1).

5.2 Defendants shall prepare and perform all Corrective Action activities in accordance with the schedules set forth in this Section. The Corrective Action activities conducted pursuant to this Judgment are subject to approval by the MDEQ in accordance with Section XIV (Submissions and Approvals), and shall be consistent with and in compliance with Part 213 of the NREPA.

5.3 Defendants shall complete all remaining field investigation activities necessary and sufficient to fully define the horizontal and vertical extent of soil contamination and to fully define and verify the horizontal and vertical extent of groundwater contamination at and emanating from the facility. The remaining investigation shall include, but may not be limited to, all activities described in the investigation work plan as approved by the MDEQ on July 31, 2002; updated sampling and other measures necessary to determine if petroleum product contamination continues to enter the storm sewer discharging to Belleville Lake; and a determination of the concentrations of contaminants discharging from the groundwater into this storm sewer.

5.4 Defendants shall, on a quarterly basis as originally required by the Administrative Order, conduct monitoring of the groundwater contamination plume and monitoring necessary to confirm and track the plume's horizontal and vertical boundaries. The first event of this quarterly groundwater monitoring shall occur within 30 calendar days of the effective date of this Judgment. Quarterly groundwater monitoring shall continue until such time as an alternative groundwater monitoring schedule contained within the Corrective Action Plan, if applicable, is approved by the District Supervisor. Defendants shall not implement any change in the frequency of groundwater monitoring during the effective period of this Judgment without prior written approval of the District Supervisor.

5.5 Defendants shall diligently pursue and without avoidable interruption complete the remaining field investigation activities required under the July 31, 2002 MDEQ approval of the remaining field investigation activities work plan. Failure to complete the remaining field investigation activities according to the approved work plan schedule constitutes a violation of this Judgment subject to Section XXI (Stipulated Penalties). The field investigation work plan schedule may only be adjusted by the conditions set forth in Section XVIII (Delays in Performance/Force Majeure) and Section XIX (Dispute Resolution). Defendants shall notify the MDEQ Project Coordinator of on-site activities not less than seventy-two (72) hours prior to the initiation of those activities, and shall repeat this notification upon the initiation of all subsequent on-site activities until such time as the Corrective Action is completed.

5.6 If the remaining field investigation activities discover the presence of petroleum free product, Defendants shall immediately initiate free product recovery pursuant to § 21307(2)(c) of Part 213 of the NREPA, MCL 324.21307(2) and MDEQ STD Operational Memorandum No. 7, "Identification and Recovery of Free Product at LUST Sites."

5.7 Within sixty (60) work days of the effective date of this judgment Defendants shall submit to MDEQ a complete draft Final Assessment Report ("FAR") consistent with all requirements of § 21311a of Part 213, MCL 324.21311a. The draft Corrective Action Plan ("CAP") contained within the FAR shall be consistent with the requirements of § 21309a(2) of Part 213, MCL 21309a(2) and shall provide a detailed schedule that provides for implementation of the CAP within 30 calendar days of MDEQ approval of the FAR, or conditional approval of the FAR with MDEQ required revisions.

5.8 The CAP shall include a Health and Safety Plan, and other necessary plans developed in accordance with § 21309a(2), MCL 21309a(2), applicable guidance documents provided by the MDEQ, and this Judgment. Defendants shall implement the work detailed in the work plan and CAP, upon approval of each, pursuant to the procedures provided in this Judgment. As approved, each component of the work plan, FAR and CAP, and approved modifications thereto, shall be deemed incorporated herein and made an enforceable part of this Judgment. All work shall be conducted in accordance with Part 213 of Act 451, the MDEQ STD Guidance Document for Risked Based Corrective Action at Leaking Underground Storage Tanks (including attachments), STD Operational Memoranda, all other applicable MDEQ guidance documents and the requirements of this Judgment, including any standards, specifications, and schedules contained in the work plan, FAR and CAP.

(a) The FAR and CAP shall describe the Facility history, including, but not limited to past and present contamination characteristics, provide a detailed description of the tasks to be conducted during the response activity, including methodology, specifications and schedules and meet all applicable requirements of § 21311a, MCL 324.21311a, and § 21309a(2), MCL 21309a(2) of Part 213.



(b) The Defendants shall submit a Health and Safety Plan to the MDEQ. The Health and Safety Plan shall, at a minimum, assign Facility safety and security responsibilities to all on-site personnel, establish personnel safety and protection standards, establish mandatory safety operating procedures for physical and chemical hazards that may be encountered at the Facility, delineate and classify various zones of contamination, establish decontamination procedures and provide for contingencies that may arise during the course of the implementation of the Judgment. The Health and Safety Plan shall be developed in accordance with the standards promulgated pursuant to Section 126 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 USC §9621, Section 6 of the Occupational Safety and Health Act of 1970 and the Michigan Occupational Safety and Health Act.

5.9 Within 30 calendar days of MDEQ approval of the FAR and CAP contained therein, Settling Defendants shall implement the CAP. Thereafter, Defendants shall diligently continue CAP activities without interruption until the CAP activities have achieved the criteria of § 21304a of Part 213, MCL 324.21304a.

5.10 Within 30 calendar days following the completion of the Corrective Actions ordered herein, Defendants shall complete a closure report pursuant to § 21312a of Part 213, MCL 324.21312a, and submit the closure report and closure certification to the MDEQ.

#### **VI. ENGAGEMENT OF A QUALIFIED UNDERGROUND STORAGE TANK CONSULTANT**

6.1 Upon the effective date of this Judgment, Defendants shall immediately retain a qualified underground storage tank consultant ("QC") for the purpose of performing the work required by this Judgment. The QC shall be on the list of qualified underground storage tank

consultants prepared pursuant to § 21542 of Part 215, Underground Storage Tank Financial Assurance Act ("Part 215"), of the NREPA, MCL 324.21542.

6.2 A certified professional, pursuant to § 21543 of Part 215, of the NREPA, in the employment of the QC retained by the Defendants shall oversee and certify all Corrective Actions conducted at the Facility.

6.3 The MDEQ retains its audit authority and ultimate approval for all QC project personnel who shall have direct experience in the investigation and cleanup of sites of environmental contamination. A copy of Defendants' contract, including a statement of qualifications and identification of personnel designated for the project, shall be provided to the MDEQ within thirty (30) calendar days of the effective date of this Order.

6.4 Defendants shall notify the MDEQ regarding the identity and qualification of all subcontractors as soon as each subcontractor is engaged or at least two (2) weeks prior to the subcontractor's commencement of Facility work, whichever occurs first. The MDEQ shall have the right to disapprove, within ten (10) days of notification, of a QC, subcontractor or project personnel. If the MDEQ disapproves any such person(s), the MDEQ will provide Defendants written notice thereof, and Defendants shall have ten (10) calendar days to identify any replacement(s).

## **VII. QUALITY ASSURANCE/SAMPLING**

7.1 The MDEQ and its authorized representatives shall be allowed access to any laboratory utilized by Defendants in implementing this Judgment for quality assurance monitoring.

7.2 Defendants shall submit to the MDEQ the results of all sampling or tests generated by Defendants or their contractor(s), or on Defendants' behalf, both historically and in the course of implementing this Judgment upon receipt of such information by Defendants.

7.3 At the request of the MDEQ, Defendants shall allow the MDEQ or its authorized representatives to take split and/or duplicate samples of any samples collected by Defendants pursuant to the implementation of this Judgment. Except as allowed pursuant to Section X (Creation of Danger), Defendants shall notify the MDEQ not less than seventy-two (72) hours in advance of any sample collection activity. In addition, the MDEQ shall have the right to take any additional samples that it deems necessary.

7.4 Defendants shall submit to the MDEQ a complete written description of the activities conducted pursuant to this Section, as part of any submission, report, plan or other document required under the terms of this Judgment. Such description shall include, but not be limited to, an overview of the work conducted, a complete description of the methodologies employed and documentation and analysis of data collected pursuant to this Judgment and the subject submission, report, plan or other document.

7.5 Notwithstanding any provision of this Judgment, MDEQ shall retain all of its information gathering, inspection, and enforcement authorities under the NREPA and any other applicable state and federal statute or regulation.

## **VIII. PROJECT COORDINATORS**

8.1 Within seven (7) days of the effective date of this Judgment, Defendants shall notify the MDEQ in writing of the designation of a project coordinator who shall have primary responsibility for implementation of the work at the Facility. The Defendants' project

coordinator shall be an employee of the QC retained by the Defendants pursuant to Section VI (Engagement of a Qualified Underground Storage Tank Consultant). The MDEQ's project coordinator shall be Ms. Jeanne Schlauffmann, Remediation and Redevelopment Division, Southeast Michigan District Office. The MDEQ's project coordinator will be the primary designated representative for the MDEQ and its oversight and review of work performed by the Defendants required by this Judgment.

8.2 All communications between the parties and all documents, reports, approvals and other submissions and correspondence concerning the activities performed pursuant to the terms and conditions of this Judgment shall be directed through the project coordinators. If any party decides to change its designated project coordinator, the name, address and telephone number of the successor shall be provided, in writing, to the other party seven (7) days prior to the date on which the change is to be effective. This paragraph does not relieve Defendants from any other reporting obligations under the law.

8.3 In addition to the project coordinator, the MDEQ may designate other authorized representatives, employees, contractors and consultants to observe and monitor the progress of any activity undertaken pursuant to this Judgment.

## **IX. ACCESS**

9.1 To the extent access to the Facility is owned, controlled by or available to Defendants, from the effective date of this Judgment, the MDEQ, its authorized employees, agents, representatives, contractors and consultants, upon presentation of proper credentials, shall have access at all reasonable times to the Facility and any property to which access is required for the implementation of this Judgment, including but not limited to:

(a) Monitoring the work or any other activities taking place pursuant to this Judgment on the Facility;

(b) Verifying any data or information submitted to the MDEQ;

(c) Conducting investigations relating to contamination at or near the Facility;

(d) Obtaining samples;

(e) Assessing the need for, or planning and implementing, response actions at or near the Facility;

(f) Inspection and copying non-privileged records, operation logs, contracts or other documents; and

(g) Interviewing employees, contractors, agents or representatives of Defendants.

9.2 To the extent that the Facility or any other area where the work is to be performed by Defendants under this Judgment is owned or controlled by persons other than Defendants, Defendants shall use their best efforts to secure from such persons access for the Parties and their authorized employees, agents, representatives, contractors and consultants within ten (10) work days of the effective date of this Judgment. Defendants shall provide the MDEQ with a copy of each access agreement or order secured pursuant to this Section. For purposes of this paragraph, "best efforts" includes, but is not limited to, reasonable compensation to the owner to secure such access or taking judicial action to secure such access. If, after using best efforts, Defendants are unable to obtain access within fifteen (15) work days of the effective date of this Judgment, Defendants shall promptly notify the MDEQ. The State may thereafter assist Defendants in obtaining access.

9.3 Defendants' shall not make a claim under Section XVIII (Delays in Performance/Force Majeure) for delays in obtaining access unless Defendants' can provide

written documentation that Defendants have used their best efforts in the attempt to obtain the necessary access.

9.4 All parties granted access to the Facility pursuant to this Judgment shall comply with the Facility Health and Safety Plan, and all applicable health and safety laws and regulations.

9.5 Notwithstanding any provision of this Judgment, the MDEQ shall retain all of its information gathering, inspection, enforcement and access authorities under Part 201 and any other applicable statute or regulation.

#### **X. CREATION OF DANGER**

10.1 Upon obtaining information on the occurrence of any incident during the activities conducted pursuant to this Judgment that causes or threatens a release of a hazardous substance from the Facility or that may present an imminent and substantial endangerment to on-site personnel or to the public health, safety, welfare or the environment, Defendants shall immediately take all appropriate action to prevent, abate or minimize such release or endangerment and shall immediately notify the MDEQ project coordinator or, in the event of his or her unavailability, shall notify the Pollution Emergency Alerting System ("PEAS", 1-800-292-4706). Defendants shall take such action in accordance with all applicable health and safety laws and regulations and with the provisions of the Health and Safety Plan. Defendants shall submit a written report setting forth the events that occurred and the measures taken and to be taken to mitigate any release or endangerment caused or threatened by the incident and to prevent the recurrence of such an incident.

10.2 Nothing in the preceding paragraph shall be deemed to limit the power and authority of the MDEQ or the State of Michigan to take, direct or order all appropriate action to protect the public health, welfare, or the environment or to prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants or hazardous or solid waste on, at or from the Facility.

## **XI. COMPLIANCE WITH OTHER LAWS**

11.1 All actions required to be taken pursuant to this Judgment shall be undertaken in accordance with the requirements of all applicable or relevant and appropriate state and federal laws and regulations, including Part 201 and Part 213 of the NREPA, laws relating to occupational safety and health, and other state environmental laws. Other agencies may also be called upon to review the conduct of work under this Judgment. Further, Defendants must designate, in a report to the MDEQ, any facilities that Defendants propose to use for the off site transfer, storage, treatment or disposal of waste material.

## **XII. RECORD RETENTION/ACCESS TO INFORMATION**

12.1 Defendants and any representatives, consultants, and contractors shall preserve and retain, during the performance of the corrective action under this Judgment and for a period of ten (10) years after MDEQ acceptance of the closure report pursuant to Section XXIV, all records, sampling or test results, charts and other documents relating to historical hazardous substance disposal, treatment or handling activities at the Facility or that are maintained or generated pursuant to any requirement of this Judgment. After the ten (10) year period of document retention, Defendants and their successors shall obtain the MDEQ's written

permission prior to the destruction of such documents and, upon request, Defendants and/or their successors shall relinquish custody of all documents to the MDEQ. Defendants' request shall be accompanied by a copy of this Order and sent to the following address:

Chief  
Remediation and Redevelopment Division  
Michigan Department of Environmental Quality  
P.O Box 30426  
Lansing, MI 48909

12.2 Defendants shall, upon request, provide to the MDEQ all documents and information within their possession, or within the possession or control of their employees, contractors, agents or representatives relating to the work at the Facility or to the implementation of this Judgment, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence or other documents or information related to the work. Defendants shall also, upon request, make available to the MDEQ, upon reasonable notice, Defendants' employees, contractors, agents or representatives with knowledge of relevant facts concerning the performance of the work.

### **XIII. NOTICES**

13.1 Whenever notice is required to be given or a report, sampling data, analysis or other document is required to be forwarded to the MDEQ, such correspondence shall be directed to the following individual at the specified address or at such other address as may subsequently be designated in writing:

Ms. Jeanne Schlaufman  
Michigan Department of Environmental Quality  
Remediation and Redevelopment Division  
38980 Seven Mile Road  
Livonia, MI 48152  
Telephone: 313-953-1527



#### **XIV. SUBMISSIONS AND APPROVALS**

14.1 All plans, submissions and reports (“submissions”) identified in this Judgment shall be delivered to the MDEQ in accordance with the schedule set forth in this Judgment and approved work plans. Prior to receipt of MDEQ approval, any report submitted to the MDEQ for approval shall be marked “Draft” and shall include, in a prominent location in the document, the following disclaimer: “Disclaimer: This document is a DRAFT document, prepared by Defendants pursuant a court Consent Judgment, and has not received final acceptance from the Michigan Department of Environmental Quality (“MDEQ”). The opinions, findings and conclusions expressed are those of the authors and not those of the MDEQ.”

14.2 Upon receipt of any plan, FAR, CAP, report or other item relating to the work that is required to be submitted for approval pursuant to this Judgment, the MDEQ project coordinator will in writing: (a) approve the submission; (b) disapprove the submission, notifying Defendants of deficiencies; or (c) approve the submission with required modifications. Upon receipt of a notice of approval, or approval with required modification, from the MDEQ, Defendants shall proceed to take any action required by the plan, report or other item as approved or as modified and shall submit a new cover page marked “Final.”

14.3 Notice of any MDEQ disapproval will specify the reason(s) for the disapproval. Unless a notice of disapproval specifies a longer time period, upon receipt of a notice of disapproval, Defendants shall, within ten (10) work days thereafter, correct the deficiencies and resubmit the plan, report or other item for approval. Notwithstanding a notice of disapproval, Defendants shall proceed to take any response action not directly related to the deficient portion of the submission. If, upon resubmission, the plan, report or other item is not approved, the

MDEQ shall so advise Defendants, and Defendants shall be deemed to be in violation of this Judgment and subject to the penalties set forth in Section XXI (Stipulated Penalties).

14.4 A finding of approval or approval with required modifications shall not be construed to mean that the MDEQ concurs with all conclusions, methods or statements in the submissions.

14.5 No informal advise, guidance, suggestions or comments by the MDEQ regarding reports, plans, specifications, schedules or any other writing submitted by Defendants shall be construed as relieving Defendants of their obligation to obtain such formal approval as may be required by this Judgment.

#### **XV. PROGRESS REPORT**

15.1 Defendants shall provide to the MDEQ written monthly progress reports relating to Corrective Action that shall: (a) describe the actions that have been taken toward achieving compliance with this Judgment during the previous month; (b) describe data collection and/or other Corrective Action activities scheduled for the next month; and c) include all results of sampling and tests and other data received by Defendants, their employees or authorized pursuant to this Judgment. Monthly reports shall be submitted to the MDEQ on the fifteenth day of each month following the effective date of this Judgment.

15.2 Should Defendants fail to submit to the MDEQ the required monthly progress reports, or submit to the MDEQ monthly progress reports which do not fully contain the information required by Section 15.1, Defendants shall be deemed to be in violation of this Judgment and subject to the penalties set forth in Section XXI (Stipulated Penalties).

## **VI. INDEMNIFICATION AND INSURANCE**

16.1 The State of Michigan does not assume any liability by entering into this Judgment. This Judgment shall not be construed to be an indemnity by the state for the benefit of Defendants or any other person.

16.2 Defendants shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors and representatives for any claims or causes of action that arise from, or on account of, any acts or omissions of Defendants, their officers, employees, agents, or any other persons acting on their behalf, or under their control, in performing the activities required by this Judgment.

16.3 Defendants shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, agents, employees, contractors and representatives from any claims or causes of action for damages or reimbursement from the State that arise from, or on account of, any contract, agreement, or arrangement between Defendants and any person for the performance of response activities at the Facility, including any claims on account of construction delays.

16.4 The State will provide Defendants timely notice of any claim for which the State intends to seek indemnification pursuant to paragraphs 16.2 and 16.3.

16.5 Neither the State of Michigan nor any of its departments, agencies, officials, agents, employees, contractors or representatives shall be held out as a party to any contract that is entered into by or on behalf of Defendants for the performance of activities required by this Consent Judgment. Neither Defendants nor any contractor shall be considered an agent of the State.

16.6 Defendants waive all claims or causes of action against the State of Michigan and its departments, agencies, officials, agents, employees, contractors, and representatives for damages, reimbursement, or set-off of any payments made or to be made to the State, that arise from, or on account of, any contract, agreement or arrangement between Defendants and any other person for the performance of response activities at the Facility, including any claims on account of construction delays.

16.7 Prior to commencing any response activities pursuant to this Judgment and for the duration of this Judgment, Defendants shall require their contractors and any subcontractors to secure and maintain comprehensive general liability insurance with limits of two million dollars (\$2,000,000.00), combined single limit, which names the State of Michigan as an additional insured party. If Defendants demonstrate by evidence satisfactory to the MDEQ that any contractor or subcontractor maintains insurance equivalent to that described above, then with respect to that contractor or subcontractor, Defendants shall provide only that portion, if any, of the insurance described above that is not maintained by the contractor or subcontractor. Regardless of the insurance method used by Defendants, prior to the commencement of response activities pursuant to this Judgment, Defendants shall provide the MDEQ Project Coordinator and the Attorney General with certificates evidencing said insurance and the State of Michigan's status as an additional insured party. In addition, for the duration of this Consent Judgment, Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of Workers' Disability Compensation Insurance for all persons performing response activities on behalf of Defendants in furtherance of this Consent Judgment.

## **XVII. MODIFICATIONS**

17.1 **Extension of Time.** The parties may extend, by mutual written agreement, any deadline or schedule requirement under this Consent Judgment, including, without limitation, changes in the schedule under Section V. A copy of such agreement shall be submitted to the Court and shall become an enforceable part of this Consent Judgment on Court entry.

17.2 **Modification.** Any party to this Consent Judgment may petition the court for modification of this Consent Judgment. Any modification must be in writing and approved by the Court.

17.3 This Consent Judgment may only be modified according to the terms of this Section XVII. Any attachment to or Submission required pursuant to this Judgment may be modified by written agreement of the MDEQ Project Coordinator and Defendants, as specified in this Judgment.

17.4 Modification of any other provision of this Consent Judgment shall, upon written agreement between Defendants, the MDEQ, and the Michigan Department of Attorney General, be entered with the Court.

## **XVIII. DELAYS IN PERFORMANCE / FORCE MAJEURE**

18.1 Defendants shall perform the requirements of this Judgment within the time limits established herein, unless performance is prevented or delayed by events that constitute a "Force Majeure." Any delay in the performance attributable to a "Force Majeure" shall not be deemed a violation of Defendants' obligations under this Judgment in accordance with this Section.

18.2 "Force Majeure" is defined, for the purpose of this Judgment, as an occurrence or nonoccurrence arising from causes beyond the control of, not foreseeable, and without the fault of the Defendants such as: an Act of God, untimely review of permit applications or submissions

by the MDEQ or other applicable authority, and acts or omissions by third parties that could not have been avoided or overcome by Defendants' due diligence and that delay the performance of an obligation under this Judgment. "Force Majeure" does not include, among other things, unanticipated or increased costs, changed financial circumstances, commencement of a proceeding in bankruptcy, contractual disputes, or failure to obtain a permit or license as a result of Defendants' actions or omissions.

18.3 When circumstances occur that Defendants believe constitute a Force Majeure event, which causes a delay in compliance with any provision of this Judgment, Defendants shall notify the MDEQ, by telephone or telefax, of the circumstances within twenty-four (24) hours after first becoming aware of those circumstances. Within five (5) working days after Defendants first become aware of such circumstances, Defendants shall supply the MDEQ a written notice that must describe, in detail, the anticipated duration of the delay, the precise cause or causes of the delay, the measures taken and/or to be taken by Defendants to prevent or minimize the delay, and a timetable by which these measures will be implemented. Defendants must adopt all reasonable measures to avoid or minimize any such delay.

18.4 Failure of Defendants to comply with the notice requirements of subsection 18.3 will render this Section XVIII (Delay in Performance/Force Majeure) void and of no force and effect as to the particular incident involved. The MDEQ may, at its sole discretion and in appropriate circumstances, waive the notice requirements of Subsection 18.3.

18.5 If the Parties agree that the delay or anticipated delay was beyond the control of Defendants, this may be so stipulated and the Parties to this Judgment may agree upon an appropriate modification of this Judgment. If the Parties are unable to reach such agreement, the dispute will be resolved in accordance with Section XIX (Dispute Resolution) of this Judgment.

The burden of proof that any delay was beyond the reasonable control of Defendants, and that all the requirements of this Section XVIII (Delay in Performance/Force Majeure) have been met by Defendants, is on the Defendants, including, but not limited to, that the amount of additional time requested is necessary to compensate for that event.

18.6 An extension of one compliance date based upon a particular "Force Majeure" incident does not mean that Defendants qualify for an automatic extension of a subsequent compliance date without meeting their burden of proof for each step or other requirement of the Corrective Action for which an extension is sought.

### **XIX. DISPUTE RESOLUTION**

19.1 The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under this Judgment and shall apply to all provisions of this Judgment, excluding Section X, Creation of Danger. Any dispute that arises under this Judgment shall in the first instance be the subject of informal negotiations between the parties. This period of informal negotiations shall not exceed ten (10) calendar days from the date of written notice by any party that a dispute has arisen, but it may be extended by an agreement of the Parties. The period for informal negotiations shall end when MDEQ provides a written statement setting forth its proposed resolution of the dispute to Defendants.

19.2 If the Parties fail to resolve a dispute by informal negotiations, then the dispute shall be resolved in accordance with the resolution proposed by the MDEQ unless, within five (5) working days after receipt of MDEQ's proposed resolution, Defendants file a petition for resolution with this Court setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to insure orderly implementation of this Judgment.

19.3 The filing of a petition asking the Court to resolve a dispute shall not of itself extend or postpone any obligation of Defendants under this Judgment, provided that payment of a demand from MDEQ for reimbursement of costs or stipulated penalties with respect to the disputed matter, with any applicable interest, shall be deposited in an escrow fund during the pendency of the dispute resolution. Notwithstanding the invocation of the dispute resolution, stipulated penalties shall accrue from the first day of any failure or refusal to comply with any term or condition of this Judgment. Penalties shall be paid into this account as they continue to accrue, at least every seven (7) days. In the event, and to the extent, that Defendants do not prevail on the disputed issue, stipulated penalties and any applicable interest shall be paid within ten (10) calendar days in the manner provided in Subsection 20.6.

19.4 Notwithstanding this section, Defendants shall pay that portion of a demand for reimbursement of costs, payment of civil fines, or payment of stipulated penalties that is not subject to a good faith resolution in accordance with and in the manner provided in Sections XX (Payment of Civil Fines/Reimbursement of Costs) and XXI (Stipulated Penalties), as appropriate.

19.5 In proceedings on any dispute relating to the selection, extent, or adequacy of any aspect of the work, Defendants shall have the burden of demonstrating that the position of MDEQ is arbitrary and capricious or otherwise not in accordance with law. For purposes of this subsection, the adequacy of the work includes: (1) the adequacy or appropriateness of the investigation work plan, FAR, CAP, and necessary permits or licenses, and procedures to implement investigation work plan, CAP, or any other item requiring approval by MDEQ under this Judgment; and (2) the adequacy of construction and corrective action performed pursuant to this Judgment. In proceedings on any dispute, Defendants shall bear the burden of persuasion on



factual issues. Nothing herein shall prevent MDEQ from arguing that the Court should apply the arbitrary and capricious standard of review to all disputes under this Judgment.

✓✓ w/GOE  
XX. PAYMENT OF CIVIL FINES / REIMBURSEMENT OF COSTS

20.1 Within ten (10) calendar days of the effective date of this Judgment, Defendants shall pay the MDEQ five thousand dollars (\$5,000) to resolve all claims for civil fines under Parts 201 and 213 of the NREPA relating to past violations alleged in the complaint.

20.2 Within thirty (30) calendar days of the effective date of this Judgment Defendants shall pay the MDEQ ten thousand dollars (\$10,000) as reimbursement for past response activity costs incurred by the State prior to the effective date of this Judgment.

20.3 Defendants shall reimburse the state for all Future Response Activity Costs incurred by the State. As soon as possible after each anniversary of the Effective Date of this Decree, the MDEQ will provide Defendants with a written demand for payment of Future Response Activity Costs that have been lawfully incurred by the State since the Effective Date. Any such demand will identify, and will include written documentation supporting each cost incurred for which reimbursement is sought. Except as provided by Section XIX (Dispute Resolution), Defendants shall reimburse the MDEQ for such costs within ninety (90) days of receipt of a written demand from the MDEQ. — who bills Mr Dimack

20.4 Defendants shall have the right to request and receive a full and complete accounting of all MDEQ demands made hereunder, including time sheets, travel vouchers, contracts, invoices, and payment vouchers as may be available to the MDEQ. The MDEQ's provision of these documents to Defendants may result in the MDEQ incurring additional Future

Response Activity Costs, which will be included in the annual demand for payment of Future Response Activity Costs.

20.5 If the Defendants fail to make full payment to the MDEQ for Future Response Activity Costs as specified in Paragraph 20.3, interest shall begin to accrue on the unpaid balance at the rate specified in Section 20126a(3) of the NREPA on the day after payment was due until the date upon which Defendants make full payment of those costs and the accrued interest to the MDEQ, unless before the due date Defendants timely initiate dispute resolution proceedings under Section XIX (Dispute Resolution) with respect to the unpaid Future Response Activity Costs. In the event that such proceedings result in a final unappealable determination adverse to Defendants as to any challenged Future Response Activity Costs, interest on that portion of the challenged costs shall accrue from the day after payment was due and shall continue to accrue until the costs and interest thereon are fully paid. In any challenge by Defendants to a MDEQ demand for reimbursement of costs, Defendants shall have the burden of establishing that the MDEQ did not lawfully incur those costs in accordance with Sections 20126a(1)(a) or 21323(1)(b) of the NREPA.

20.6 All payments made pursuant to this Judgment shall be by certified check payable to the "State of Michigan", and shall be sent by first-class mail to the following address:

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

To ensure proper credits, all payments made pursuant to this Consent Judgment must include the Payment Identification Number RRD3005.

20.7 The Mirvat Oil name and Facility number shall be identified on each check. A copy of the transmittal letter and the check shall be provided simultaneously to the MDEQ Project Coordinator.

20.8 The Parties agree that the amount of civil fines and payment of past response activity costs incurred by the State provided for in paragraphs 20.1 and 20.2, respectively, are based on Defendants' representations that they have a limited financial ability to pay penalties and past response activity costs incurred by the State, and on financial information provided by Defendants to support their representations. Defendants represent that they have fairly and accurately stated their financial situation. If the financial information provided by Defendants is determined to have been substantially inaccurate in reflecting Defendants' financial situation, the Covenant Not to Sue provided by Plaintiffs in Section XXII shall be null and void.

**XXI. STIPULATED PENALTIES**

*Force Majeure*  
*Dispute Resolution*

21.1 Except as provided by Sections XVIII and XIX, if Defendants fail or refuse to comply with any term or condition in Sections V, VI, VII, VIII, IX, X, XI, XII, XV and XX, Defendants shall pay the MDEQ stipulated penalties in the following amounts for each day for every failure or refusal to comply or conform:

| <u>Period of Delay</u> | <u>Penalty Per Violation Per Day</u> |
|------------------------|--------------------------------------|
| 1st through 15th Day   | \$ 250.00 — 3,750                    |
| 15th through 30th Day  | \$ 500.00 — 7,500                    |
| Beyond 30 Days         | \$1,000.00                           |

21.2 Except as provided in Sections XVIII and XIX, if Defendants fail or refuse to comply with any other term or condition of this Decree not covered by Paragraph 21.1,

Defendants shall pay the MDEQ stipulated penalties of \$250.00 a day for each and every failure or refusal to comply.

21.3 Defendants shall notify the MDEQ, in writing, of any violation of this Consent Judgment no later than five (5) days after becoming aware of such violation and shall describe the violation. Failure to notify the MDEQ as required by this Paragraph constitutes an independent violation of this Consent Judgment.

21.4 Stipulated penalties shall begin to accrue on the day performance was due, or other failure or refusal to comply occurred, and shall continue to accrue until the final day of correction of the noncompliance. Separate penalties shall accrue for each separate failure or refusal to comply with the terms and conditions of this Consent Judgment.

21.5 Except as provided in Section XIX, stipulated penalties owed to the MDEQ shall be paid no later than thirty (30) days after receiving a written demand from the MDEQ. Payment shall be made in the manner provided in Paragraph 20.6. Interest shall accrue on the unpaid balance at the end of the thirty (30)- day period at the rate provided for in Section 20126a(3) of NREPA. Failure to pay the stipulated penalties within thirty (30) days after receipt of a written demand constitutes a further violation of the terms and conditions of this Judgment.

21.6 Liability for or payment of stipulated penalties are not MDEQ'S exclusive remedy in the event Defendants violate this Judgment. MDEQ reserves the right to pursue any other remedy or remedies that it is entitled to under this Judgment or any applicable law for any failure or refusal of Defendants to comply with the requirements of this Judgment, including, but not limited to, seeking civil penalties, injunctive relief, specific performance, reimbursement, exemplary damages in the amount of three (3) times the costs incurred by the State of Michigan,

*Include in  
penalty letter!*

and sanctions for contempt of court, provided that the stipulated penalties paid as set forth above shall be credited against any such civil penalties awarded by the Court.

21.7 Failure by the MDEQ or the Attorney General to enforce any term, condition, or requirement of this Judgment in a timely manner shall not:

- (a) Provide or be construed to provide a defense for Mirvat Oil noncompliance with any such term, condition, or requirement of this Judgment; or
- (b) Estop or limit the authority of MDEQ or the Attorney General to enforce any such term, condition, or requirement of the Judgment, or to seek any other remedy provided by law.

21.8 This Judgment does not constitute a warranty or representation of any kind by the MDEQ that the response activities performed by Mirvat Oil in accordance with the MDEQ-approved work plans required by this Judgment will result in the achievement of the performance objectives stated in Paragraph 5.1 or the remedial criteria established by law.

## **XXII. COVENANT NOT TO SUE BY PLAINTIFFS AND RESERVATION OF RIGHTS**

22.1 In consideration of the actions that will be performed and the payments that will be made by Defendants under the terms of this Judgment, and except as specifically provided in this Section, Plaintiffs covenant not to sue or to take administrative action against Defendants for Covered Matters.

22.2 "Covered Matters" shall include any liability to the State of Michigan under applicable state and federal law relating to the Facility for the following:

- (a) Performance of approved Corrective Actions by Defendants under this Judgment;

(b) Payment of civil fines to the State for violations of Parts 201 and 213 alleged in the Complaint prior to the effective date of the Judgment as set forth in Paragraphs 20.1 and 20.6 of this Judgment;

(c) Payment of past response activity costs incurred by the State prior to the effective date of this Judgment as set forth in Paragraph 20.2 and 20.6 of this Judgment; and

(d) Reimbursement of Future Response Activity Costs incurred by the State as set forth in Paragraph 20.3, 20.5, and 20.6 of this Judgment.

22.3 The covenant not to sue set forth in this Section does not pertain to any matters other than those expressly specified in "Covered Matters" in Paragraph 22.2. Plaintiffs reserve, and this Judgment is without prejudice to, all rights against Defendants with respect to all other matters, including but not limited to, the following:

(a) Liability arising from a violation by Defendants of a requirement of this Judgment, including conditions of approved submissions required herein;

(b) Liability for any other response activities required at the Facility;

(c) Liability for response costs other than those referred to in Section XX;

(d) Liability arising from the past, present, or future treatment, handling, disposal, release, or threat of release of hazardous substance(s) outside of the Facility and not attributable to Facility;

(e) Liability arising from the past, present, or future treatment, handling, disposal, release, or threat of release of hazardous substance(s) taken from the Facility;

(f) Liability for damages for injury to, destruction of, or loss of natural resources;

- (g) Liability for criminal acts;
- (h) Any matters for which the State is owed indemnification under Section XVI of this Judgment; and
- (i) Liability for violations of federal or state law which occur during or after implementation of the Corrective Actions.

22.4 With respect to liability for civil fines for violation of Parts 201 and 213 prior to the effective date of this Judgment, this covenant not to sue shall take effect upon receipt by the MDEQ of the payments required by Paragraphs 20.1 and 20.6. With respect to liability for payment of past response activity costs or Future Response Activity Costs incurred by the State, the covenant not to sue shall take effect upon receipt by the MDEQ of the payments required by Paragraphs 20.2 and 20.6 or Paragraphs 20.3, 20.5 and 20.6, respectively, as applicable. With respect to liability for performance of Corrective Actions required to be performed under this Judgment, the covenant not to sue shall take effect upon issuance by MDEQ of the Acceptance of Closure Report in accordance with Section XXIV. The covenant not to sue is conditioned upon the complete and satisfactory performance by Defendants of their obligations under this Judgment. The covenant not to sue extends only to the Defendants and does not extend to any other person.

22.5 If at any time, either before or after Acceptance of Closure Report, MDEQ determines that Defendants have failed to implement any provisions of this Judgment in an adequate or timely manner, MDEQ reserves the right to perform, or contract to have performed, any and all portions of the Corrective Action activity(ies) as MDEQ determines necessary and to recover response activity costs.

22.6 Notwithstanding any other provision of this Judgment, MDEQ retains all authority and reserves all rights to take any and all response activity(ies) and/or corrective actions authorized by law.

### **XXIII. COVENANT NOT TO SUE BY DEFENDANTS**

23.1 Defendants hereby covenant not to sue and agree not to assert any claim or cause of action against the State of Michigan with respect to the Facility or response activities relating to the Facility arising from this Judgment.

23.2 In any subsequent administrative or judicial proceeding initiated by the Attorney General for injunctive relief, recovery of response activity costs, or other appropriate relief relating to the Facility, Defendants agree not to assert, and may not and shall not maintain any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or any other defenses based upon any contention that the claims raised by the MDEQ or the Attorney General in the subsequent proceeding were or should have been brought in this case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXII (Covenants Not to Sue by Plaintiffs and Reservation of Rights).

### **XXIV. ACCEPTANCE OF CLOSURE REPORT**

24.1 When Defendants determine that they have completed all the Corrective Actions required by this Judgment, they shall submit to the MDEQ a closure report pursuant to § 21312a of the NREPA, MCL 324.21312a. The closure report shall comply with requirements of Part 213 and shall summarize all Corrective Actions performed under this Judgment.



24.2 Upon receipt of the closure report, the MDEQ will review the submittal, any supporting documentation, and the actual Corrective Actions performed pursuant to this Judgment. Within sixty (60) days of receipt of the closure report, the MDEQ will determine whether Defendants have satisfactorily completed all requirements of this Judgment, including, but not limited to, completing the Corrective Actions required by this Judgment, complying with all terms and conditions of this Judgment, and paying any fines, cost reimbursements and stipulated penalties owed to the MDEQ. If the MDEQ determines that all requirements have been satisfied, the MDEQ will so notify Defendants.

#### **XXV. SEPARATE DOCUMENTS**

This Judgment may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

#### **XXVI. SEVERABILITY**

The provisions of this Order shall be severable. If a court of competent jurisdiction declares that any provision of this Order is inconsistent with federal or state law and, therefore unenforceable, the remaining provisions of this Order shall remain in full force and effect.

**XXVI. EFFECTIVE DATE**

This Judgment shall be effective upon the date that the Court enters this Judgment. All times for performance of activities under this Judgment shall be calculated from that date.

IT IS SO ORDERED THIS 12 day of May, 2003.

BEVERLEY NETTLES-NICKERSON

Honorable Beverley Nettles-Nickerson  
Circuit Court Judge

FOR PLAINTIFFS:

MICHAEL A. COX  
Attorney General

Sharon J. Feldman  
Sharon Feldman (P40565)  
Attorney for Plaintiffs

Dated: 5/5/03

FOR DEFENDANTS:

Morris H. Goodman  
Morris H. Goodman (P14166) Ali Dimachk,  
Attorney for Defendants Individually & as President  
of Mirvat Oil Corporation, Inc.

Dated: 4/28/03

S: NR/cases/1996200051/Mirvat/consent judgment

A TRUE COPY  
CLERK OF THE COURT  
30th JUDICIAL CIRCUIT COURT