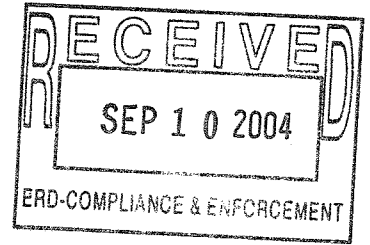


STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE 30<sup>th</sup> JUDICIAL CIRCUIT  
INGHAM COUNTY



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

File No. 02-1543-CE

Plaintiff,

Hon. Thomas L. Brown

v

PIPELINE OIL SALES, INC.,  
a Michigan corporation,

Defendant.

---

Joshua W. Gubkin (P59972)  
Assistant Attorney General  
Attorney for Plaintiffs  
6<sup>th</sup> Floor, G. Mennen Williams Building  
525 W. Ottawa Street  
Lansing, MI 48933  
(517) 373-7540

Tyler D. Tennent (P36708)  
Attorney for Defendant  
Dawda, Mann, Mulcahy & Sadler  
39533 Woodward Avenue, Suite 200  
Bloomfield Hills, MI 48304-2815  
(248) 642-4248

---

**CONSENT JUDGMENT**

Plaintiffs are Michael A. Cox, Attorney General of the State of Michigan, and Michigan Department of Environmental Quality ("MDEQ"). The Defendant is Pipeline Oil Sales, Inc., a Michigan corporation ("POS"). Defendant agrees 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 interest of the parties and entry of this Consent Judgment is the most appropriate means of resolving the disputed issues raised herein. The Parties agree to and shall be bound by the requirements of this Consent Judgment.

Defendant's agreement to the entry of this Consent Judgment is not an admission of liability with respect to any issue raised in the Complaint, nor is it an admission of any factual allegation stated therein.

It is the intent of the parties to this Consent Judgment to fully settle all claims against Defendant including those arising out of or in connection with the past costs of the MDEQ related to the temporary and alternate water supply and the municipal water supply for the Village of Parma and also includes all costs that may be incurred after the effective date of this Consent Judgment for the temporary and alternate water supply and the municipal water system for the Village of Parma, related to Defendant's confirmed release on September 5, 1995.

It is the intent of the parties that upon execution of this Consent Judgment that the case will be closed and that upon payment of the amounts due under the Consent Judgment, a satisfaction of judgment shall be entered.

It is also the intent of the parties that this Consent Judgment embodies the final integration of all the parties' agreements regarding the settlement and judgment in this matter.

NOW, THEREFORE, before the taking of any testimony and without trial of any issue of fact or law, 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 over the subject matter of this action and over the Parties pursuant to Section 21323(2) of Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act ("NREPA"), MCL 324.21323(2); and Section 20137(3) of Part 201, Environmental Remediation, of NREPA, MCL 324.20137(3).

Defendants waive all objections and defenses that they may have to the jurisdiction of the Court or to venue in this Court.

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

## **II. PARTIES BOUND**

2.1 This Consent Judgment shall apply to and be binding upon Plaintiffs and the Defendant and their successors. Unless by operation of law, no change or changes in the ownership or corporate status or other legal status of the Defendant, including, but not limited to, any transfer of assets or of real or personal property, shall in any way alter the Defendant's responsibilities under this Consent Judgment. The Defendant shall provide the MDEQ with written notice prior to the transfer of ownership of part or all of the Property, as herein defined, meeting the definition of a Facility under Part 201 that the Defendant owns. The Defendant shall comply with the requirements of § 20116 of NREPA, MCL 324.20116.

## **III. STATEMENT OF PURPOSE**

3.1 This Consent Judgment concerns the settlement between the State and POS of the State's claims in its Complaint, including claims for response activity costs up through the effective date of this Consent Judgment, which were allegedly incurred by the State in responding to the release of hazardous substances at and emanating from the property of Buddy's Parma Marathon, 107 West Main St., Parma, Michigan, (the "Property") reported on September 5, 1995. The Property and any associated area, place, or property where concentrations of hazardous substances emanating from the Property exceed the residential cleanup criteria of Section 20120a(1)(a) and (17) of Part 201 (the "Facility"), as further defined in the Part 201

Rules, is a facility as defined by Part 201 and a site as defined by Part 213 and is subject to regulation under Part 213 and Part 201.

3.2 Pursuant to Part 201 of the NREPA, the State alleged in its Complaint that it incurred costs in responding to the release or threat of a release of hazardous substances at the Facility. The State alleges that, pursuant to Section 20126a(1)(a) of the NREPA, Defendant is liable for all response activity costs lawfully incurred by the State. The parties to this Consent Judgment desire to resolve all claims for response activity costs that the State has incurred in connection with the reported release. It is the intent of the parties to this Consent Judgment to fully settle all claims against Defendant including those arising out of or in connection with the past costs of the MDEQ related to the temporary and alternate water supply and the municipal water supply for the Village of Parma and also includes all costs that may be incurred after the effective date of this Consent Judgment for the temporary and alternate water supply and the municipal water system for the Village of Parma, related to Defendant's confirmed release on September 5, 1995.

3.3 This Consent Judgment also settles POS's liability for civil penalties under Parts 201 and 213 of NREPA for the violations alleged in the Complaint to this matter.

3.4 This Consent Judgment does not resolve the obligations of POS to continue to comply with applicable provisions of Parts 201 and 213.

#### **IV. COSTS, FINES, AND PENALTIES**

4.1 POS shall pay to the State two hundred-twelve thousand five hundred dollars (\$212,500) to resolve all claims for past response activity costs for the Facility and for civil fines based on the violations alleged in the Complaint and consistent with paragraphs 3.2 above. For the purposes of this Consent Judgment, the term "past response activity costs" means costs that the State has incurred for response activities at the Facility as a result of the September 5, 1995

release up through the date of entry of this Consent Judgment and that in the future may be related to the temporary and alternate water supply and municipal water system as referenced in paragraph 3.2 above. The term "past response activity costs" does not cover any future response activity costs the MDEQ may incur to bring the Facility to closure under Parts 201 and 213.

4.2 POS shall pay the two hundred-twelve thousand five hundred dollars (\$212,500) in six installments under the following schedule. The first payment shall be in the amount of thirty-seven thousand five hundred dollars (\$37,500) to be paid to the DEQ within thirty (30 days) of the effective date of this Consent Judgment. POS shall make five additional annual payments in the amount of thirty-five thousand dollars (\$35,000), the first of these annual payments to be made not later than June 1, 2005, with each subsequent annual payment to be made not later than June 1 of each of the following four years, the final payment being due not later than June 1, 2009.

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

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

Via Courier:  
Constitution Hall, 5<sup>th</sup> Floor, South Tower  
525 West Allegan Street  
Lansing, MI 48933

To ensure proper credit, payments made pursuant to this Consent Judgment must be made by certified check referencing the POS/Buddy's Parma Marathon and the Remediation and Redevelopment Division Account Number: RRD Account #2187. A copy of the transmittal letter and the certified check shall be provided simultaneously to:

Brian Monroe, Unit Chief  
Enforcement and Cost Recovery Unit  
Compliance and Enforcement Section  
Remediation and Redevelopment Division  
Michigan Department of Environmental Quality  
P.O. Box 30426  
Lansing, Michigan 48909-7926

and to:

A. Michael Leffler  
Assistant Attorney General in Charge  
Environment, Natural Resources, and Agriculture Division  
Department of Attorney General  
Constitution Hall, 5<sup>th</sup> Floor, South Tower  
525 West Allegan Street  
Lansing, Michigan 48933.

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

4.4 If POS fails to pay the amount indicated in Paragraphs 4.1 and 4.2 pursuant to the schedule set forth therein, POS shall also pay the State interest on the balance not paid at the rate provided in Section 20126a(3) of the NREPA. If POS's payments are more than thirty (30) days past due, POS shall also pay the State stipulated penalties of \$500.00 per day for every day of its noncompliance with Paragraphs 4.1 and 4.2 within thirty (30) days of notification from the State.

#### **V. COVENANTS NOT TO SUE**

5.1 In consideration of the payments to be made by POS under the terms of this Consent Judgment, except as otherwise provided in this Consent Judgment, the State releases POS, Buddy's Mini Marts, Inc., H & A Investments Company, Inc., Ahead Investments, Inc. and the X-Vest Group and their respective shareholders, members, successors and officers from liability and covenants not to sue or to take further administrative action against them for the past response activity costs addressed in Paragraph 4.1 or for civil fines based on the violations alleged

in the Complaint filed in this matter. With respect to POS's liability for past response activity costs and civil fines based on violations alleged in the Complaint filed in this matter, the State's covenant not to sue shall take effect upon the MDEQ's receipt of full payment from POS for the total amount specified in Paragraph 4.1 and any associated interest and stipulated penalties that may have accrued pursuant to Paragraph 4.4. The covenant not to sue applies only to past response activity costs and civil fines based on the violations alleged in the Complaint filed in this matter consistent with paragraph 3.2 above and shall not be construed as a covenant not to sue for any other liability that POS Buddy's Mini Marts, Inc., H & A Investments Company, Inc., Ahead Investments, Inc. and the X-Vest Group and their respective shareholders, members, successors and officers may have to the State for the Facility including any future failures by POS to meet obligations under Part 213 and Part 201. The covenant not to sue shall extend only to POS and Buddy's Mini Marts, Inc., H & A Investments Company, Inc., Ahead Investments, Inc. and the X-Vest Group and their respective shareholders, members, successors and officers and does not extend to any other person. The terms of this provision shall be construed to be consistent with paragraph 3.2 above.

5.2 Nothing in this Consent Judgment shall be construed as releasing or discharging any liability of any person other than referenced in 5.1 above and POS specifically reserves its rights against such persons.

5.3 POS agrees that all applicable statutes of limitation are tolled with respect to allegations in Plaintiff's Complaint until POS has complied with the terms of this Consent Judgment.

## **VI. RESERVATION OF RIGHTS**

6.1 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 future response activity costs incurred after the entry of this Consent Judgment, 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 Consent Judgment, and liability for criminal acts that are not addressed by this Consent Judgment. The State expressly reserves all of its rights and defenses pursuant to any available legal authority to enforce this Consent Judgment.

6.2 Nothing in this Consent Judgment 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.

## **VII. CONTRIBUTION PROTECTION**

7.1 Pursuant to Section 20129(5) of the NREPA, and to the extent provided in Paragraph 5.1, POS, Buddy's Mini Marts, Inc., H & A Investments Company, Inc., Ahead Investments, Inc. and the X-Vest Group and their respective shareholders, members, successors and officers shall not be liable for claims for contribution for the matters addressed in this Consent Judgment. Entry of this Consent Judgment does not discharge the liability of any other person other than those referenced above 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 POS for contribution from any



person not a party to this Consent Judgment 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.

### **VIII. OTHER LAWS**

8.1 This Consent Judgment in no way affects Defendant's responsibility to comply with, or resolves Defendant's obligations with respect to, any other applicable state, federal, or local laws or regulations, or with any order of this or any other Court. Other such laws or regulations include, without limitation, any corrective action or similar requirement to the extent applicable to POS's Facility pursuant to Parts 201 or 213 of NREPA and the rules pertaining to each part.

### **IX. SATISFACTION OF JUDGMENT**

9.1 This Consent Judgment shall remain under the jurisdiction of this Court for purposes of enforcement of its terms until expressly terminated by a written Satisfaction of Judgment issued by the Division Chief of the MDEQ-Remediation and Redevelopment Division and filed with the clerk of the Court in accordance with MCR 2.620. The Defendant may request that the Division Chief issue a written Satisfaction of Judgment at any time after achieving full compliance with this Consent Judgment. Such a request shall consist of a written certification that the Defendant has fully complied with all of the requirements of this Consent Judgment and has made payment of any fines, penalties, and costs required under this Consent Judgment. Specifically, this certification shall include the date any fines, penalties, or costs were paid.

9.2 The Division Chief shall not unreasonably withhold a Satisfaction of Judgment, which shall be issued unless the MDEQ determines that the Defendant has not submitted the certification required under this Section or has failed to comply with, or complete, all of the requirements of this Consent Judgment.

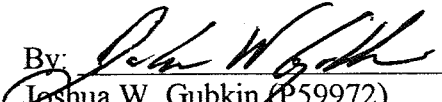
**SIGNATORIES**

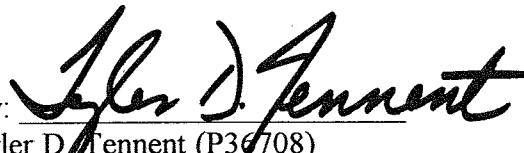
Each undersigned individual represents and warrants that he or she is fully authorized by the Party they represent to enter into this Consent Judgment and to legally bind such Party to the terms and conditions of this Consent Judgment.

FOR PLAINTIFFS

FOR DEFENDANT PIPELINE OIL SALES, INC.

MICHAEL A. COX,  
Attorney General  
for the State of Michigan, Public Officer-  
Successor in Interest and the  
Michigan Department of  
Environmental Quality

By:   
Joshua W. Gubkin (P59972)  
Assistant Attorney General  
Environment, Natural Resources and  
Agriculture Division  
Constitution Hall  
5<sup>th</sup> Floor, South Tower  
525 W. Allegan Street  
Lansing, Michigan 48913  
(517) 373-7540

By:   
Tyler D. Tennent (P36708)  
Attorney for Defendant  
Dawda, Mann, Mulcahy & Sadler  
39533 Woodward Avenue, Suite 200  
Bloomfield Hills, MI 48304-2815  
(248) 642-4248

Dated: 8/31/04

Dated: \_\_\_\_\_

IT IS SO ORDERED THIS 2nd day of Sept., 2004.

*This Consent Judgment resolves the last pending claim and closes the case. The Court shall retain jurisdiction to enforce the terms of this Consent Judgment. Plaintiff, by motion, may reopen this case if Defendant violates this Consent Judgment.*

**THOMAS L. BROWN**  
\_\_\_\_\_  
JUDGE THOMAS L. BROWN