

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

MICHIGAN DEPARTMENT OF  
ENVIRONMENTAL QUALITY,

Plaintiff,

File No. 09- 13 -CE

v

Hon.

PATAN, INC., a Michigan  
corporation, and ANGELO  
DISTEFANO,

Defendants.

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Andrew T. Prins (P70157)  
Assistant Attorney General  
Environment, Natural Resources,  
and Agriculture Division  
P.O. Box 30755  
Lansing, MI 48909  
(517) 373-7540

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There are no other civil actions arising from  
the facts or occurrences pending before this  
Court or previously dismissed between the parties.

**COMPLAINT**

Plaintiff Michigan Department of Environmental Quality ("MDEQ"), by its attorneys,  
Michael A. Cox, Attorney General of the State of Michigan, and Andrew T. Prins, Assistant  
Attorney General, says:

**STATEMENT OF CASE**

1. This civil action is being brought pursuant to Part 213 "Leaking Underground  
Storage Tanks" and Part 201 "Environmental Remediation" of the Natural Resources and

Environmental Protection Act ("NREPA"), 1994 PA 451, as amended, MCL 324.21301 *et seq* and 324.20101 *et seq*. There have been releases of petroleum based products from the underground storage tanks at the former Distefano Auto Service (Site) located at 3 West Monroe Street, Bangor, Van Buren County, Michigan. The releases of hazardous substances have caused soil and groundwater contamination. Pursuant to MCL 324.21323(1)(a), the MDEQ is seeking a permanent injunction requiring Angelo Distefano (Defendant) to perform corrective actions at and in the vicinity of the Site consistent with the requirements of Part 213 of the NREPA. MDEQ seeks administrative penalties against Defendant Angelo Distefano pursuant to Section 21313a of the NREPA, MCL 324.21313a, for violations by Defendant of Section 21311a of the NREPA, MCL 324.21311a, and civil fines against Defendant Angelo Distefano and Defendant Patan, Inc. pursuant to Sections 21323(1)(d), MCL 324.21323(1)(d), and 20137(1)(f), MCL 324.20137(1)(f). Finally, MDEQ seeks to recover any costs lawfully incurred by the State of Michigan under Section 20137(1)(b), MCL 324.20137(1)(b), and Section 21323(1)(b), MCL 324.21323(1)(b).

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter of this action pursuant to MCL 324.21323(1), MCL 324.20137(1), and MCL 600.605.

3. Venue is proper in this Court pursuant to MCL 324.21323(2) and MCL 324.20137(3).

### **PARTIES**

4. Plaintiff MDEQ is a principal department within the Executive Branch of the State of Michigan pursuant to Executive Order 1995-18. The MDEQ is the state agency mandated to protect the health, safety, and welfare of the people and to conserve and protect the

natural resources of the state of Michigan pursuant to MCL 324.501 *et seq.*, and is responsible for implementing the provisions of Part 213 and Part 201 of the NREPA, MCL 324.21301 *et seq* and MCL 324.20101 *et seq.*

5. Defendant, Patan, Inc., is a Michigan corporation with its registered office at 31760 County Road 681, Bangor, MI 49013-9761. Patan, Inc. owned the property where Distefano Auto Service was located at 3 West Monroe Street, Bangor, Michigan from December 18, 2000, to June 19, 2001. Patan, Inc. automatically dissolved on July 15, 2006.

6. Defendant, Angelo Distefano, an individual, is a resident of Michigan, the sole officer of Patan, Inc., and his principal residence is located at 31760 County Road 681, Bangor, MI 49013-9761. Defendant Angelo Distefano owned and operated the gasoline station located at 3 West Monroe, Bangor Street, Michigan. Defendant Angelo Distefano, along with his wife Patricia Distefano, owned the property where Distefano Auto Service was located until December 18, 2000.

7. Defendant Angelo Distefano, along with his wife Patricia Distefano, quitclaim deeded the property where Distefano Auto Service was located to Defendant Patan, Inc. on December 18, 2000.

8. The Defendants are "persons" within the meaning of Section 301(g) of the NREPA, MCL 324.301(g).

#### **GENERAL ALLEGATIONS**

9. The former Distefano Auto Service was a gasoline station located at 3 West Monroe Street, Bangor, Michigan.

10. Upon information and belief, Defendant Angelo Distefano was doing business as Distefano Auto Service.

11. During the time Defendant Angelo Distefano owned and operated the gasoline station eight underground storage tanks were located at the Site.

12. In or about 1966, one 4,000 gallon underground storage tank (UST) and one 2,000 gallon UST were installed at the Site, and based upon information and belief, they were used to store gasoline. See copy of 4/29/1986 UST Registration attached as Exhibit A.

13. In or about 1971, two 6,000 gallon USTs and one 4,000 gallon UST were installed at the Site, and based upon information and belief, they were used to store gasoline. See copy of 4/29/1986 UST Registration attached as Exhibit A.

14. Upon information and belief, in October of 1988, all five USTs were removed from the Site.

15. In or about October of 1988, one 8,000 gallon UST and two 6,000 gallon USTs were installed at the Site, and based upon information and belief, they were used to store gasoline. See copy of 10/18/1988 UST Registration attached as Exhibit B.

16. On July 24, 1998, a release of gasoline at the Site was confirmed by Defendant Angelo Distefano, based upon the presence of gasoline contaminated groundwater in the vicinity of the UST system (the "1998 Release"). A copy of the Confirmed Release Report is attached as Exhibit C.

17. On July 27, 1998, the MDEQ notified Defendant Angelo Distefano that he was responsible for hiring a qualified underground storage tank consultant to conduct appropriate corrective actions in regards to the release including submitting reports in accordance with Part 213 of the NREPA, 1994 PA 451, as amended. The MDEQ notified the Defendant Angelo Distefano that he may be subject to penalties if he failed to prepare and submit the reports required by Part 213. The MDEQ informed Defendant Angelo Distefano that if he did not

believe that he was responsible for causing the release, then he may submit supporting documentation to the MDEQ. A copy of the letter has been attached as Exhibit D.

18. Defendant Angelo Distefano did not challenge the assertion that he was responsible for the 1998 Release.

19. On October 26, 1998, an initial assessment report (IAR) was submitted to MDEQ on behalf of Defendant Angelo Distefano by Michael Belsito, the certified underground storage tank consultant.

20. Defendant Angelo Distefano failed to submit a final assessment report (FAR) to the MDEQ by July 24, 1999, as required by Section 21311a of Part 213, MCL 324.21311a.

21. On May 26, 2000, Defendant Angelo Distefano incorporated Patan, Inc., a Michigan corporation.

22. Defendant Angelo Distefano was notified by certified mail on November 8, 2000, that the FAR that he was required to submit by July 24, 1999, in regards to the 1998 Release, was overdue. MDEQ requested that Defendant Angelo Distefano provide the FAR along with his written intention to proceed with an investigation as well as a schedule for the implementation of the investigation. A copy of the letter is attached as Exhibit E.

23. On December 18, 2000, the Defendant Angelo Distefano, along with his wife Patricia Distefano, transferred the Distefano Auto Service property to Defendant Patan, Inc., by quitclaim deed. A copy of the quitclaim deed has been attached as Exhibit F.

24. Defendant Angelo Distefano was notified by certified mail on January 26, 2001, that MDEQ had still not received the required FAR and schedule for its implementation. MDEQ notified Defendant Angelo Distefano that he was responsible for undertaking the necessary corrective activities in accordance with Part 213. MDEQ requested that Defendant Angelo

Distefano provide a written commitment to submit the documents requested in MDEQ's November 8, 2000, letter; including, a fixed date schedule for completion of the necessary actions to submit a FAR and its date of completion. MDEQ notified Defendant Angelo Distefano that it may pursue escalated enforcement actions as provided by Part 213 if no written commitment was received. The MDEQ notified Defendant Angelo Distefano that it may use public funds for corrective actions, and that such expenditures are subject to cost recovery actions against liable owners and operators. A copy of the letter is attached as Exhibit G.

25. The Defendant Patan, Inc. transferred the Distefano Auto Service property to Robert Levine by warranty deed dated June 19, 2001. See copy of 6/19/01 warranty deed attached as Exhibit H.

26. Defendant Patan, Inc. was notified by certified mail on July 2, 2003, that MDEQ considered Patan, Inc. liable for the contamination at the Site pursuant to MCL 324.20126(1)(c) because Patan, Inc. took ownership of the property on or after March 6, 1996, and did not conduct and disclose a baseline environmental assessment (BEA) to the MDEQ. MDEQ requested that Patan, Inc. perform the required response actions pursuant to Part 213 and provide a written commitment to voluntarily undertake the necessary response activities at the Site. A copy of the letter is attached as Exhibit I.

27. The Defendants, Angelo Distefano and Patan, Inc., were notified by certified mail on October 23, 2003, that they, as sellers of the Site, were in violation of Section 20116(1) of Part 201, MCL 324.20116(1), for failing to provide written notice to a purchaser that the Site was a facility and failing to disclose the general nature and extent of the release. Defendants were notified that they were subject to a civil fine as provided for in Section 20137(1)(f), MCL 324.20137(1)(f), of up to \$10,000 for each day of violation of Part 201. Defendants were also

formally notified that they were subject to the assessment of administrative penalties pursuant to Section 21313a of Part 213, MCL 324.21313a, for failure to submit a statutorily complete FAR, and that the penalties would begin to accrue upon Defendants' receipt of the letter. A copy of the letter is attached as Exhibit J.

28. The Defendants were sent a late report penalty notice letter by certified mail dated November 15, 2006, notifying Defendants that they were subject to assessment of administrative penalties as set forth in Section 21313a of Part 213, MCL 324.21313a, for failure to submit a FAR as required by Section 21311a of Part 213, MCL 324.21311a. The Defendants were also formally notified that if they continued to remain non-compliant with Part 213, administrative penalties may be assessed. MDEQ advised that they would notify the Defendants of the amount of assessed penalties if a statutorily complete FAR was not received. MDEQ also notified the Defendants that the continued failure to submit a statutorily complete FAR would result in the ongoing accumulation of penalties until the FAR was received. A copy of the letter is attached as Exhibit K.

29. Pursuant to Section 21313a of Part 213, MDEQ assessed a Leaking Underground Storage Tank Late Report Penalty in the amount of \$82,650 against the Defendants by certified mail dated March 21, 2007. The penalty was calculated for the period between November 16, 2006, and March 16, 2007. The penalty was based upon the Defendants' failure to comply with MCL 324.21311a in regards to the 1998 Release. A copy of the letter is attached as Exhibit L.

30. Defendant Angelo Distefano has not paid the assessed penalty nor has he challenged the penalty assessment.

31. Defendant Angelo Distefano has not submitted the required FAR for the 1998 Release and the penalty amount continues to accrue.

32. The release of hazardous substances into the soil and groundwater at the Site is a threat to human health and the environment and has not been addressed.

## COUNT I

### Part 201 Liability

33. Paragraphs 1 through 32 of this Complaint are re-alleged and incorporated herein by reference.

34. Section 20126(1) of the NREPA, MCL 324.20126(1), provides, in part:

(1) Notwithstanding any other provisions or rule of law and except as provided in subsections (2), (3), (4), and (5) and section 20128, the following persons are liable under this part:

(a) The owner or operator of a facility if the owner or operator is responsible for an activity causing a release or threat of release.

(b) The owner or operator of a facility at the time of disposal of a hazardous substance if the owner or operator is responsible for an activity causing the release or threat of release.

(c) An owner or operator of a facility who becomes an owner or operator on or after June 5, 1995, unless the owner or operator complies with both of the following:

(i) A baseline environmental assessment is conducted prior to or within 45 days after the earlier of the date of purchase, occupancy, or foreclosure. For purposes of this section, assessing property to conduct a baseline environmental assessment does not constitute occupancy.

(ii) The owner or operator discloses the results of a baseline environmental assessment to the department and subsequent purchaser or transferee if the baseline environmental assessment confirms that the property is a facility.

35. Section 20126(1)(c) requirements became effective against underground storage tank sites regulated under Part 213 on March 6, 1996.



36. "Hazardous substances" as defined by Section 20101(t), MCL 324.20101(t), includes petroleum as described in Part 213.

37. There has been a "release" or "threatened release" of "hazardous substances" into the environment at the Site, within the meaning of Sections 20101(1)(bb), 20101(1)(ii), and 20101(1)(t) of the NREPA, MCL 324.20101(1)(bb), MCL 324.20101(1)(ii), and MCL 324.20101(1)(t).

38. The Site is a "facility" as defined in Section 20101(1)(o) of the NREPA, MCL 324.20101(1)(o).

39. Defendant Angelo Distefano was an owner and operator of the Site at the time of disposal of a hazardous substance and was responsible for an activity causing the release or the threat of release.

40. Defendant Patan, Inc. became owner of the Site after March 6, 1996, and did not conduct nor disclose results of a baseline environmental assessment to the department.

41. The Defendants are liable persons under Section 20126(1) of the NREPA, MCL 324.20126(1).

42. Section 20116 of the NREPA, MCL 324.20116, provides in part:

(1) A person who has knowledge or information or is on notice through a recorded instrument that a parcel of his or her real property is a facility shall not transfer an interest in that real property unless he or she provides written notice to the purchaser or the other person to which the property is transferred that the real property is a facility and discloses the general nature and extent of the release.

\* \* \*

(3) A person shall not transfer an interest in real property unless the person fully discloses any land or resource use restrictions that apply to that real property as a part of remedial action that has been or is being implemented in compliance with section 20120a.

43. The Defendants had knowledge and information that the Site was a facility.

44. The Defendants transferred an interest in real property without written notice to the purchaser that the real property was a facility and failed to disclose the nature and extent of the release.

45. Section 20137(1) of the NREPA, MCL 324.20137(1), provides in part:

(1) In addition to other relief authorized by law, the attorney general may, on behalf of the state, commence a civil action seeking 1 or more of the following:

(a) Temporary or permanent injunctive relief necessary to protect the public health, safety, or welfare, or the environment from the release or threat of release.

(b) Recovery of State response activity costs pursuant to Section 20126a.

\* \* \*

(d) A declaratory judgment on liability for future response costs and damages.

\* \* \*

(f) A civil fine of not more than \$10,000 for each day of violation of this part or a rule promulgated under this part. A fine imposed under this subdivision shall be based upon the seriousness of the violation and any good faith efforts of the person to comply with this part or a rule promulgated under this part.

\* \* \*

(k) Any other relief necessary for enforcement of this part.

46. The Defendants are liable to the State for civil fines of up to \$10,000 for each day of violation of Part 201 or any rule promulgated under Part 201.

47. The MDEQ has lawfully incurred and is continuing to incur, response activity costs arising from release or the threat of release at the Site.

48. The Defendants are liable to the State for all response activity costs lawfully incurred by the State relating to the release or threatened release of hazardous substances at the Site.

## COUNT II

### Part 213 Liability

49. Paragraphs 1 through 48 of the Complaint are re-alleged and incorporated herein by reference.

50. Section 21303(a) of the NREPA provides that, "[o]perator means a person who is presently, or was at the time of a release, in control of, or responsible for, the operation of an underground storage tank system and who is liable under part 201."

51. Under Section 21303(b) an "[o]wner means a person who holds, or at the time of a release who held, a legal, equitable, or possessory interest of any kind in an underground storage tank system or in the property on which an underground storage tank system is located including, but not limited to, a trust, vendor, vendee, lessor, or lessee and who is liable under part 201."

52. Defendant Angelo Distefano is an owner and operator under Sections 21303(a) and 21303(b) of the NREPA, MCL 324.21303(a) and MCL 324.21303(b).

53. Section 21307 of the NREPA, MCL 324.21307 provides in pertinent part:

(1) Upon confirmation of a release from an underground storage tank system, the owner or operator shall report the release and whether free product has been discovered to the department within 24 hours after the discovery. The department may investigate the release. However, an investigation by the department does not relieve the owner or operator from any responsibilities related to the release provided for in this part.

(2) After a release has been reported under subsection (1), the owner or operator or a consultant retained by the owner or operator shall immediately begin and expeditiously perform all of the following initial response actions:

(a) Identify and mitigate fire, explosion, and vapor hazards.

(b) Take action to prevent further release of the regulated substance into the environment including removing the regulated substance from the underground storage tank system that is causing the release.

(c) Identify and recover free product. If free product is identified, do all of the following:

(i) Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the conditions at the site and in a manner that properly treats, discharges, or disposes of recovery by-products as required by law.

(ii) Use abatement of free product migration as a minimum objective for the design of the free product removal system.

(iii) Handle any flammable products in a safe and competent manner to prevent fires or explosions.

(iv) If a discharge is necessary in conducting free product removal, obtain all necessary permits or authorization as required by law.

(d) Excavate and contain, treat, or dispose of soils above the water table that are visibly contaminated with a regulated substance if the contamination is likely to cause a fire hazard or spread and increase the cost of corrective action.

(e) Take any other action necessary to abate an immediate threat to public health, safety, or welfare, or the environment.

(f) If free product is discovered after the release was reported under subsection (1), report the free product discovery to the department within 24 hours of its discovery.

(3) Immediately following initiation of initial response actions under this section, the consultant retained by the owner or operator shall do all of the following:

(a) Visually inspect the areas of any aboveground releases or exposed areas of belowground releases and prevent further migration of the released substance into surrounding soils, groundwater, and surface water.

(b) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the underground storage tank system excavation zone and entered into subsurface structures.

(c) If free product is discovered at any time at a location not previously identified under subsection (2)(c), report the discovery within 24 hours to

the department and initiate free product recovery in compliance with subsection (2)(c).

54. There has been a "release" at the Site within the meaning of Section 21303(e) of the NREPA, MCL 324.21303(e).

55. A confirmed release was reported on July 24, 1998.

56. Defendant Angelo Distefano is an "operator" and "owner" as defined in Sections 21303(a) and 21303(b) of the NREPA, MCL 324.21303(a) and MCL 324.21303(b).

57. The gas station located at 3 West Monroe Street, Bangor, Michigan is a "site" within the meaning of Section 21303(f) of the NREPA, MCL 324.21303(f).

58. Defendant Angelo Distefano has not performed all response activities as required under Section 21307(2), MCL 324.21307(2), or Section 21307(3), MCL 324.21307(3), of the NREPA nor has a consultant retained by the Defendant Angelo Distefano, performed these response activities.

59. Section 21311a of the NREPA, MCL 324.21311a provides in part:

(1) Within 365 days after a release has been discovered, a consultant retained by an owner or operator shall complete a final assessment report that includes a corrective action plan developed under Section 21309a and submit the report to the department on a form created pursuant to Section 21316.

60. Defendant Angelo Distefano has failed to submit the required final assessment report for the confirmed 1998 Release as required by Section 21311a of the NREPA, MCL 324.21311a.

61. The final assessment report was due on July 24, 1999.

62. Section 21313a provides in pertinent part:

(1) Beginning on the effective date of the amendatory act that added subsection (7), except as provided in subsection (7), and except for the confirmation provided in section 21312a(2), if a report is not completed or a required submittal under

section 21308a, 21311a, or 21312a(a)(1) is not provided during the time required, the department may impose a penalty according to the following schedule:

(a) Not more than \$100.00 per day for the first 7 days that the report is late.

(b) Not more than \$500.00 per day for days 8 through 14 that the report is late.

(c) Not more than \$1,000.00 per day for each day beyond 14 that the report is late.

(2) For purposes of this section, in computing a period of time, the day of the act, event, or default, after which the designated period of time begins to run is not included. The last day of the period is included, unless it is a Saturday, Sunday, legal holiday, or a holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or holiday.

\* \* \*

(6) An appeal of a penalty imposed under this section may be taken pursuant to section 631 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.631 of the Michigan Compiled Laws.

(7) A penalty shall not begin to accrue under this section unless the department has first noticed the person on whom the penalty is imposed that he or she is subject to the penalties provided in this section.

63. MDEQ sent letters dated October 23, 2003, and November 15, 2006, advising Defendant Angelo Distefano that he was subject to administrative penalties as set forth in Part 213.

64. MDEQ assessed an administrative penalty against Defendant Angelo Distefano pursuant to Section 21313a of Part 213.

65. Defendant Angelo Distefano has failed to pay the \$82,650 in administrative penalties already assessed for his failure to submit the required FAR report.

66. Defendant Angelo Distefano has not submitted the required FAR for the 1998 Release and penalties continue to accrue.

67. Defendant Angelo Distefano did not appeal the penalty assessment as provided in Section 21313a(6) of the NREPA, MCL 324.21313a(6).

68. Defendant Angelo Distefano has not developed a corrective action plan to the extent required under Section 21309a, MCL 324.21309a.

69. Section 21323(1) of the NREPA, MCL 324.21323(1) provides in pertinent part:

The attorney general, may, on behalf of the department, commence a civil action seeking any of the following:

(a) A temporary or permanent injunction.

(b) Recovery of all costs incurred by the state for taking corrective action.

\* \* \*

(d) A civil fine of not more than \$10,000.00 for each underground storage tank system for each day of noncompliance with a requirement of this part or a rule promulgated under this part. A fine imposed under this subsection shall be based upon the seriousness of the violation and any good faith efforts by the violator to comply with the part or rule.

70. Defendant Angelo Distefano is liable to the State for civil fines of up to \$10,000.00 for each underground storage tank for each day of noncompliance with any requirement under Part 213 of the NREPA.

71. The MDEQ has lawfully incurred and is continuing to lawfully incur, corrective action costs arising from the release or the threat of release at the Site.

72. Defendant Angelo Distefano is liable to the State for all corrective action costs lawfully incurred by the State relating to the release or threatened release of hazardous substances at the Site.

#### **RELIEF REQUESTED**

Wherefore, the MDEQ respectfully requests that this Court:

A. Order the Defendant Angelo Distefano to submit the required FAR for the confirmed 1998 Release;

B. Order the Defendant Angelo Distefano to perform all further response activities and corrective actions necessary to protect the public health, safety, and welfare of the environment from the release or threat of release of hazardous substances at the Site including but not limited to delineation of the full extent of contamination for the 1998 Release, and addressing the 1998 Release;

C. Order the Defendant Angelo Distefano to pay the \$82,650 in administrative civil penalties already assessed for failing to comply with the requirements of Part 213 and any additional administrative penalties that have accrued since the original assessment;

D. Impose civil fines on Defendant Angelo Distefano of up to \$10,000.00 per day per UST system for continuing violations of Part 213, and impose civil fines on Defendants of up to \$10,000 for each day of violation of Part 201 or any rule promulgated under Part 201.

E. Order the Defendants to reimburse the State for any response activity costs it has incurred at the Site;

F. Order Defendant Angelo Distefano to reimburse the State for any corrective action costs it has incurred at the Site;

G. Enter a declaratory judgment that Defendant Angelo Distefano is liable for all future response activity and corrective action costs incurred by the State;

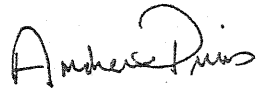
H. Enter a declaratory judgment that Defendant Patan, Inc. is liable for all future response activity costs incurred by the State;



- I. Award MDEQ costs in this action; and
- J. Award any further relief as the Court deems just and proper.

Respectfully submitted,

Michael A. Cox  
Attorney General

A handwritten signature in dark ink, appearing to read "Andrew T. Prins". The signature is fluid and cursive, with the first name "Andrew" and last name "Prins" clearly distinguishable.

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