

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

MICHIGAN DEPARTMENT OF NATURAL
RESOURCES AND ENVIRONMENT,

Plaintiff,

STREFLING OIL COMPANY, a Michigan
corporation, STREFLING REAL ESTATE
INVESTMENTS #1, LLC, a Michigan limited
liability company, and RONALD G. STREFLING,

Defendants.

Case No.: 11- 156 -CE

HON. ROSEMARIE E. AQUILINA

Andrew T. Prins (P70157)
Danielle Allison-Yokom, (P70950)
Assistant Attorneys General
Environment, Natural Resources
and Agriculture Division
P.O. Box 30755
Lansing, Michigan 48909
(517) 373-7540
Attorneys for the Plaintiff DNRE

There is no other pending or resolved civil action arising out of
the transaction or occurrence alleged in the complaint.

COMPLAINT

Plaintiff Michigan Department of Natural Resources and Environment (DNRE), by its
attorneys, Bill Schuette, Attorney General of the State of Michigan, and Andrew T. Prins and
Danielle Allison-Yokom, Assistant Attorneys 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 regulated substances: at the Galien Filling Station site located at 120 US 12, Galien, Berrien County, Michigan; at the former John's Pro Filling Station site located at 1665 Lemon Creek Road, Baroda, Berrien County, Michigan; and at the former Strefling Bulk Plant site located directly east of the former John's Pro Filling Station site at 1663 Lemon Creek Road, Baroda, Berrien County, Michigan, and these releases have contaminated the soil and groundwater. Pursuant to MCL 324.21323(1)(a), the DNRE is seeking a permanent injunction requiring the Defendants Strefling Oil Company, Strefling Real Estate Investments #1, L.L.C., and Ronald G. Strefling (Defendants) to perform corrective actions consistent with the requirements of Part 213 of the NREPA at and in the vicinity of the aforementioned sites. DNRE seeks administrative penalties pursuant to Section 21313a of Part 213, MCL 324.21313a, for violations by Strefling Oil Company of Section 21311a of Part 213, MCL 324.21311a, and civil fines against the Defendants pursuant to Section 21323(1)(d) of Part 213, MCL 324.21323(1)(d). Finally, DNRE seeks to recover any costs lawfully incurred by the State of Michigan under Section 20137(1)(b) of Part 201, MCL 324.20137(1)(b), and a declaratory judgment for future response activity costs incurred by the State of Michigan pursuant to Section 20137(1)(d) of Part 201, MCL 324.20137(1)(d).

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(5).

PARTIES

4. Plaintiff DNRE is a principal department within the Executive Branch of the State of Michigan and successor to the Michigan Department of Environmental Quality (MDEQ) and Michigan Department of Natural Resources (DNR) pursuant to Executive Order 2009-45. MDEQ was created as a principal department within the Executive Branch of the State of Michigan pursuant to Executive Order 1995-18 and assumed certain functions, duties and responsibilities of the former DNR. DNRE 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.* Throughout this Complaint, for ease of reference, the term "DNRE" shall mean any of the aforementioned departments named in this Paragraph.

5. Defendant Strefling Oil Company is a Michigan corporation with its principal place of business at 1663 Lemon Creek Road, Baroda, Berrien County, Michigan.

6. Defendant Strefling Real Estate Investments #1, L.L.C. (Strefling Real Estate Investments #1) is a Michigan limited liability company with its principal place of business at 15613 Pardee Road, Galien, Berrien County, Michigan.

7. Defendant Ronald G. Strefling is a resident of Michigan, an officer of Strefling Oil Company, and his principal residence is located at 608 East Snow Road, Berrien Springs, Berrien County, Michigan.

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

GENERAL ALLEGATIONS

Galien Filling Station

9. The Galien Filling Station site is located at 120 US 12 Galien, Berrien County, Michigan, on Lots 68, 69, 70 and the south ½ of Lot 71 of Blakeslee Place Addition to Village of Galien.

10. Upon information and belief, in 1977, Ronald G. Strefling acquired an ownership interest in Lots 68 and 69.

11. Upon information and belief, in 1986, Ronald G. Strefling acquired an ownership interest in Lot 70 and the south ½ of Lot 71.

12. On April 23, 1986, Strefling Oil Company notified DNRE that it was the owner of (1) 2,000 gallon underground storage tank (UST), (2) 8,000 gallon USTs, and (1) 500 gallon UST, located at the Galien Filling Station. A copy of the Notification is attached as Exhibit 1.

13. On February 9, 1994, a release of gasoline from one of the 8,000 gallon USTs at the Galien Filling Station was confirmed by Gregg F. Gallagher, Superior Environmental, based upon petroleum vapors being present in the subsurface soils surrounding the UST (Release No. C-0071-94). A copy of the Release Report Form is attached as Exhibit 2.

14. On February 16, 1994, DNRE notified Strefling Oil Company that under Michigan's "Leaking Underground Storage Tank Act," 1988 PA 478 (Act 478), Strefling Oil Company was responsible for retaining a qualified underground storage tank consultant to perform activities required by Act 478 at the Galien Filling Station. A copy of the letter is attached as Exhibit 3.

15. In 1995, Act 478 was repealed and recodified as Part 213 "Leaking Underground Storage Tanks," of the NREPA, 1994 PA 451, as amended, MCL 324.21301 *et seq.*

16. Part 213 was amended pursuant to 1995 PA 22 adding the requirement of a final assessment report (FAR) for releases.

17. A FAR for the Galien Filling Station was required to be submitted to DNRE pertaining to Release No. C-0071-94 by October 1, 1996.

18. On September 19, 2006, DNRE notified Strefling Oil Company that it was not in compliance with the reporting requirements of Part 213 because the statutorily required FAR was overdue. DNRE also notified Strefling Oil Company that it was subject to the assessment of penalties for failing to comply with the reporting requirements of Part 213 and penalties would begin to accrue upon receipt of the letter. A copy of the letter is attached as Exhibit 4.

19. On February 20, 2007, DNRE assessed a Leaking Underground Storage Tank Late Report Penalty in the amount of \$110,200.00 pursuant to Section 21313a of Part 213, MCL 324.21313a, against Strefling Oil Company, based upon Strefling Oil Company's failure to comply with Section 21311a of Part 213, MCL 324.21311a, in regards to the Release No. C-0071-94 at the Galien Filling Station. The administrative penalty imposed upon Strefling Oil Company was calculated for the period between September 20, 2006 and January 18, 2007. A copy of the letter is attached as Exhibit 5.

20. Strefling Oil Company has not paid the assessed penalty nor has it appealed the penalty assessment pursuant to Section 21313a(6) of Part 213, MCL 324.21313a(6).

21. Upon information and belief, free product is present at the Galien Filling Station site and has not been addressed as required by Section 21307 of Part 213, MCL 324.21307.

22. Neither Strefling Oil Company nor Ronald G. Strefling has submitted the statutorily required FAR for the Release No. C-0071-94.

John's Pro Filling Station

23. The former John's Pro Filling Station site was located at 1665 Lemon Creek Road, Baroda, Berrien County, Michigan.

24. On April 23, 1986, Strefling Oil Company notified DNRE that it was the owner of (2) 3,000 gallon USTs located at John's Pro Filling Station. A copy of the Notification is attached as Exhibit 6.

25. Upon information and belief, in November 1996, Strefling Real Estate Investments #1 acquired an ownership interest in the property John's Pro Filling Station was located on.

26. On March 22, 2000, a release of gasoline from a UST at John's Pro Filling Station was confirmed by Greg Miller, Wightman Environmental, based upon petroleum stained subsurface soils at UST No.1 and at the dispensers (Release No. C-300-00). A copy of the Confirmed Release Report is attached as Exhibit 7.

27. On March 28, 2000, DNRE notified Strefling Oil Company that it was responsible for hiring a qualified underground storage tank consultant to conduct all appropriate corrective actions at John's Pro Filling Station, including submission of reports by the deadlines set forth in Part 213. DNRE notified Strefling Oil Company that pursuant to Section 21313a and 21323 of Part 213, MCL 324.21313a and MCL 324.21323, Strefling Oil Company may be subject to penalties for not submitting the reports outlined in Part 213. A copy of the letter is attached as Exhibit 8.

28. On September 19, 2006, DNRE notified Strefling Oil Company that it was not in compliance with the reporting requirements of Part 213 because the statutorily required FAR for the John's Pro Filling Station was overdue. DNRE also notified Strefling Oil Company that it

was subject to the assessment of penalties for failing to comply with the reporting requirements of Part 213 and penalties would begin to accrue upon receipt of the letter. A copy of the letter is attached as Exhibit 9.

29. On February 20, 2007, DNRE assessed a Leaking Underground Storage Tank Lake Report Penalty pursuant to Section 21313a of Part 213, MCL 324.21313a, in the amount of \$82,650.00 against Strefling Oil Company based upon Strefling Oil Company's failure to comply with Section 21311a of Part 213, MCL 324.21311a, in regards to the Release No. C-300-00 at the former John's Pro Filling Station. The penalty imposed upon Strefling Oil Company was calculated for the period between September 20, 2006 and January 18, 2007. A copy of the letter is attached as Exhibit 10.

30. Strefling Oil Company has not paid the assessed penalty nor has it appealed the penalty assessment pursuant to Section 21313a(6) of Part 213, MCL 324.21313a(6).

31. Neither Strefling Oil Company nor Strefling Real Estate Investments #1 has submitted the statutorily required FAR for Release No. C-300-00.

Strefling Bulk Plant

32. Upon information and belief, the former Strefling Bulk Plant site was located directly east of the former John's Pro Filling Station at 1663 Lemon Creek Road, Baroda, Berrien County, Michigan.

33. On April 23, 1986, Strefling Oil Company notified DNRE that it was the owner of (1) 10,000 gallon UST, (1) 500 gallon UST, and (1) 1,000 gallon UST located at the Strefling Bulk Plant. A copy of the Notification is attached as Exhibit 11.

34. Upon information and belief, in November 1996, Strefling Real Estate Investments #1 acquired an ownership interest in the property the Strefling Bulk Plant was located on.

35. On March 22, 2000, a release of gasoline from the 500 gallon UST and 1,000 gallon UST at the Strefling Bulk Plant was confirmed by Greg Miller, Wightman Environmental, based upon petroleum stains and vapors (Release No. C-301-00). A copy of the Confirmed Release Report is attached as Exhibit 12.

36. On March 28, 2000, DNRE notified Strefling Oil Company that they were responsible for hiring a qualified underground storage tank consultant to conduct all appropriate corrective actions with regard to Release No. C-301-00 at the Strefling Bulk Plant, including submission of reports by the deadlines set forth in Part 213. DNRE notified Strefling Oil Company that pursuant to Section 21313a and 21323 of Part 213, MCL 324.21313a and MCL 324.21323, they may be subject to penalties for not submitting the reports outlined in Part 213. A copy of the letter is attached as Exhibit 13.

37. On October 4, 2001, a release of gasoline from the 10,000 gallon UST at the Strefling Bulk Plant was confirmed by Greg Miller, Wightman Environmental, based upon petroleum stains and vapors (Release No. C-1294-01). A copy of the Confirmed Release Report is attached as Exhibit 14.

38. On October 5, 2001, DNRE notified Strefling Oil Company that they were responsible for hiring a qualified underground storage tank consultant to conduct all appropriate corrective actions with regard to Release No. C-1294-01 at the Strefling Bulk Plant, including submission of reports by the deadlines set forth in Part 213. DNRE notified Strefling Oil

Company that they may be subject to penalties for not submitting the reports outlined in Part 213. A copy of the letter is attached as Exhibit 15.

39. On September 19, 2006, DNRE notified Strefling Oil Company that it was not in compliance with the reporting requirements of Part 213 because the statutorily required FARs for the Strefling Bulk Plant were overdue. DNRE also notified Strefling Oil Company that it was subject to the assessment of penalties for failing to comply with the reporting requirements of Part 213 and penalties would begin to accrue upon receipt of the letter. A copy of the letter is attached as Exhibit 16.

40. On February 20, 2007, DNRE assessed a Leaking Underground Storage Tank Lake Report Penalty in the amount of \$82,650.00 pursuant to Section 21313a of Part 213, MCL 324.21313a, against Strefling Oil Company, based upon Strefling Oil Company's failure to comply with Section 21311a of Part 213, MCL 324.21311a, in regards to Release Nos. C-301-00 and C-1294-01 at the Strefling Bulk Plant. The penalty imposed upon Strefling Oil Company was calculated for the period between September 20, 2006 and January 18, 2007. A copy of the letter is attached as Exhibit 17.

41. Strefling Oil Company has not paid the assessed penalty nor has it appealed the penalty assessment pursuant to Section 21313a(6) of Part 213.

42. Neither Strefling Oil Company nor Strefling Real Estate Investments #1 has submitted the statutorily required FARs for Release Nos. C-301-00 and C-1294-01.

COUNT I

Liability under Part 201

Paragraphs 1 through 42 of this Complaint are re-alleged and incorporated herein by reference.

43. Section 20126(1) of Part 201, MCL 324.20126(1), provides, in part:

(1) Notwithstanding any other provision 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.

44. There have been "releases" or "threatened releases" of "hazardous substances" into the environment at the Galien Filling Station site, the former John's Pro Filling Station site, and the former Strefling Bulk Plant site, within the meaning of Sections 20101(1)(ll), 20101(1)(uu), and 20101(1)(x) of Part 201, MCL 324.20101(1)(ll), MCL 324.20101(1)(uu), and MCL 324.20101(1)(x).

45. There was a confirmed release on February 9, 1994 at the Galien Filling Station site.

46. There was a confirmed release on March 22, 2000 at the former John's Pro Filling Station site.

47. There were confirmed releases on March 22, 2000 and October 4, 2001 at the former Strefling Bulk Plant site.

48. The Galien Filling Station site, the former John's Pro Filling Station site, and the former Strefling Bulk Plant site are each a "facility" as defined in Section 20101(1)(r) of Part 201, MCL 324.20101(1)(r).

49. Strefling Oil Company operated the Galien Filling Station site, the former John's Pro Filling Station site, and the former Strefling Bulk Plant site at the times of disposal of a hazardous substance and was responsible for an activity causing the releases or threats of release.

50. Strefling Real Estate Investments #1 is the owner of the former John's Pro Filling Station site and the former Strefling Bulk Plant site and is responsible for an activity causing the releases or threats of release.

51. Strefling Real Estate Investments #1 owned the former John's Pro Filling Station site and the former Strefling Bulk Plant site at the times of disposal of a hazardous substance and was responsible for an activity causing the releases or threats of release.

52. Ronald G. Strefling is the owner of the Galien Filling Station site and is responsible for an activity causing a release or threat of release.

53. Ronald G. Strefling owned the Galien Filling Station site at the time of disposal of a hazardous substance and was responsible for an activity causing the release or threats of release.

54. The Defendants are liable persons under Section 20126 of Part 201, MCL 324.20126.

55. Section 20137(1) of Part 201, MCL 324.20137(1), provides in part:

(1) Subject to subsections (2) and (3), 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 activity costs and damages.

* * *

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

56. The DNRE has lawfully incurred and is continuing to incur, response activity costs arising from releases or the threats of release at the Galien Filling Station site, the former John's Pro Filling Station site, and the former Strefling Bulk Plant site.

57. Strefling Oil Company and Ronald G. Strefling 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 Galien Filling Station site.

58. Strefling Oil Company and Strefling Real Estate Investments #1 are liable to the State for all response activity costs lawfully incurred by the State relating to the releases or threatened releases of hazardous substances at the former John's Pro Filling Station site and the former Strefling Bulk Plant site.

COUNT II

Liability under Part 213

59. Paragraphs 1 through 58 of the Complaint are re-alleged and incorporated herein by reference.

60. Section 21301a of Part 213, MCL 324.21301a, provides,

the (1) This part is intended to provide remedies for sites posing a threat to public health, safety, or welfare, or to the environment, regardless of whether the release or threat of release of a regulated substance occurred before or after January 19, 1989, the effective date of the former leaking underground storage tank act, Act No. 478 of the Public Acts of 1988, and for this purpose, this part shall be given retroactive application. However, criminal penalties provided in the amendatory act that added this section only apply to violations of this part that occur after April 13, 1995.

(2) The changes in liability that are provided for in the amendatory act that added this subsection shall be given retroactive application.

61. There have been "releases" at the Galien Filling Station site, the former John's Pro Filling Station site, and the former Strefling Bulk Plant site within the meaning of Section 21303(e) of Part 213, MCL 324.21303(e).

62. Under Section 21303(a) of Part 213 an, "[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."

63. Under Section 21303(b) of Part 213 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."

64. The Galien Filling Station site, the former John's Pro Filling Station site, and the former Strefling Bulk Plant site are "Sites" as defined by Section 21303(f) of Part 213, MCL 324.21303(f).

65. Strefling Oil Company is an owner and operator and is liable for Release Nos. C-0071-94, C-300-00, C-301-00, and C-1294-01, under Sections 21303(a), MCL 324.21303(a) and 21303(b), MCL 324.21303(b), of Part 213.

66. Strefling Real Estate Investments #1 is an owner and is liable for Release Nos. C-300-00, C-301-00, and C-1294-01, under Section 21303(b) of Part 213, MCL 324.21303(b).

67. Ronald G. Strefling is an owner and is liable for Release No. C-0071-94, under Section 21303(b) of Part 213, MCL 324.21303(b).

68. Section 21311a of Part 213, 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.

69. Section 21311a of Part 213, MCL 324.21311a, became effective on April 13, 1995 pursuant to 1995 PA 22.

70. Strefling Oil Company has failed to submit the statutorily required FARs for Release Nos. C-0071-94, C-300-00, C-301-00, and C-1294-01.

71. Strefling Real Estate Investments #1 has failed to submit the statutorily required FARs for Release Nos. C-300-00, C-301-00, and C-1294-01.

72. Ronald G. Strefling has failed to submit the statutorily required FAR for Release No. C-0071-94.

73. 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(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 day 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 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 notified the person on whom the penalty is imposed that he or she is subject to the penalties provided in this section.

74. DNRE sent letters dated September 19, 2006 to Strefling Oil Company advising them that penalties will begin to accrue.

75. Strefling Oil Company has failed to pay the \$275,500.00 in administrative penalties already assessed for their failure to submit the required FARs.

76. Strefling Oil Company did not appeal the penalty assessments as provided in Section 21313a(6), MCL 324.21313a(6), of Part 213.

77. Strefling Oil Company has not developed nor implemented a corrective action plan to the extent required under Section 21309a of Part 213, MCL 324.21309a, pertaining to Release Nos. C-0071-94, C-300-00, C-301-00, and C-1294-01.

78. Strefling Real Estate Investments #1 has not developed nor implemented a corrective action plan to the extent required under Section 21309a of Part 213, MCL 324.21309a, pertaining to Release Nos. C-300-00, C-301-00, and C-1294-01.

79. Ronald G. Strefling has not developed nor implemented a corrective action plan to the extent required under Section 21309a of Part 213, MCL 324.21309a, pertaining to Release No. C-0071-94.

80. Section 21323(1) of Part 213, MCL 324.21323(1) provides in pertinent part:

(1) 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.

81. The Defendants are liable to the State for civil fines of up to \$10,000.00 for each underground storage tank system for each day of noncompliance with any requirement under Part 213 of the NREPA.

RELIEF REQUESTED

Wherefore, the DNRE respectfully requests that the Court:

A. Order the Defendants to submit statutorily complete FARs that include corrective action plans developed under MCL 324.21309a for the confirmed releases and implement the corrective action plans consistent with Part 213, and otherwise comply with Part 213;

B. Order Strefling Oil Company to pay the \$275,500.00 in administrative civil penalties already assessed by DNRE for failing to comply with the requirements of Part 213;

C. Impose civil fines on Defendants of up to \$10,000.00 per day per UST system for continuing violations of Part 213;

D. Order the Defendants to reimburse the State for past response activity costs it has incurred at the sites;

E. Enter a declaratory judgment against Defendants for any future response activity costs incurred by the State; and

F. Award any further relief as the Court deems just and proper.

Respectfully Submitted,

Bill Schuette
Attorney General



Andrew T. Prins (P70157)
Danielle Allison-Yokom (P70950)
Assistant Attorneys General
Attorneys for DNRE
G. Mennen Williams Bldg, 6th Floor
525 W. Ottawa Street
Post Office Box 30755
Lansing, Michigan 48909
(517) 373-7540

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