

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of Administrative
Proceedings Against:

Quick-Sav Food Stores, Ltd
doing business as
B&B # 8
110 East Broad Street
Linden, Michigan 48451

AOC-RRD-18-007

Respondent
_____ /

ADMINISTRATIVE AGREEMENT
FOR THE RESOLUTION OF LATE REPORT PENALTIES

This Administrative Agreement (Agreement) is entered into voluntarily by and between the Michigan Department of Environmental Quality (MDEQ) and the Quick-Sav Food Stores Ltd, 6285 Taylor Drive, Flint, Michigan (Respondent), to resolve the violations identified and the penalties assessed in the Late Report Penalty Assessment Letter dated April 10, 2018. The Respondent was notified on February 12, 2018, of its failure to comply with Part 213, Leaking Underground Storage Tanks (Part 213), of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.21301 *et seq.* In the Penalty Assessment Letter dated April 10, 2018, the MDEQ notified the Respondent of the assessment of administrative penalties in the amount of \$40,200.00 for failure to submit required reports pursuant to Section 21313a of Part 213 of the NREPA. The MDEQ alleges that the Respondent, who owned and operated the underground storage tanks located at 110 E. Broad Street, Linden, Genesee County, Facility ID Number 0002778 (Property), is in violation of Part 213 reporting requirements.

I. STIPULATIONS/UNCONTESTED FACTS

The Respondent and the MDEQ stipulate as follows:

1.1 Pursuant to the NREPA and Executive Order No. 2011-1, the Director of the MDEQ is the state official and the MDEQ is the state agency charged with the administration and enforcement of Part 213.

1.2 The Respondent is a Michigan corporation authorized to do business in Michigan. The Respondent is a "person" as defined by Section 301(h) of Part 213.

1.3 The Respondent is the owner and operator of the underground storage tanks located at the Property, 110 E Broad Street, Linden, Genesee County, Facility ID Number 0002778. The Respondent is subject to Part 213 of the NREPA.

II. COMPLIANCE PROGRAM

IT IS THEREFORE AGREED THAT the Respondent will perform the following corrective actions pursuant to the schedule set forth below:

2.1 Respondent has submitted to the MDEQ a proposed Final Assessment Report (FAR) that includes a Corrective Action Plan (CAP). The FAR and CAP must include all of the required elements and information listed in Sections 21311a and 21309a of the NREPA, respectively, and remains subject to the MDEQ's final review and approval. The Respondent will implement the CAP according to the schedule contained within the FAR and shall submit documentation of the CAP implementation to the MDEQ within three hundred and sixty-five (365) days of the effective date of this Agreement.

2.2 All correspondence and submittals are to be made to:

For the MDEQ:

Mr. David LaBrecque (or current), Project Manager
Lansing District Office
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
P.O. Box 30242
Lansing, Michigan 48092
Phone: 517-284-5123
FAX: 517-241-3571

For the Respondent:

Mr. Robert Eastman
Quick-Sav Food Stores Ltd
6285 Taylor Drive
Flint, Michigan 48507

2.3 If the Respondent changes its designated contact person; the name, address, and telephone number of the successor shall be provided to Mr. LaBrecque or the current Project Manager at the address designated in Paragraph 2.2 of this Agreement.

2.4 No informal advice, guidance, suggestions, or comments by the MDEQ will be construed as relieving the Respondent of its obligation to obtain written approval, if and when required, by this Agreement.

III. LATE REPORT PENALTIES

3.1 Within thirty (30) days after the Effective Date of this Agreement, the Respondent shall pay the MDEQ \$10,000.00 to resolve the Late Report Penalties currently assessed. The remainder of the currently-assessed penalties, the sum of \$30,200, shall be held in abeyance subject to Section IV (Compliance with this Agreement). Upon Respondent's compliance with Section 21309a and 21311 of NREPA, those penalties held in abeyance shall be withdrawn and forgiven.

3.2 The Respondent agrees to pay all funds due under this Agreement by certified check, made payable to the State of Michigan – Environmental Response Fund, and deliver to:

- Via Mail

Accounting Services Division
Cashier's Office for MDEQ
P.O. Box 30657
Lansing, Michigan 48909-8157

OR

- Via Courier

Accounting Services Division
Cashier's Office for MDEQ
425 West Ottawa Street
Lansing, Michigan 48933

To ensure proper credit, all payments made pursuant to this Agreement must include Location Code 7862 and Settlement ID Number RRD60102 identified on the certified check.

IV. COMPLIANCE WITH THIS AGREEMENT

4.1 If the Respondent fails to comply with Section II (Compliance Program) or Section III (Late Report Penalties) of this Agreement, the Respondent shall also pay the penalties held in abeyance (\$30,200) pursuant to Paragraph 3.1 of this Agreement.

4.2 The Respondent agrees to pay the penalties held in abeyance within thirty (30) days from the date that the Respondent receives a demand for payment from the MDEQ. This payment shall be made in accordance with Paragraph 3.2 of this Agreement.

4.3 The Respondent agrees not to contest the:

- (a) legality of the administrative penalties assessed by the Penalty Assessment Letters;
- (b) legality of the administrative penalties held in abeyance per Paragraph 3.1 of this Agreement;
- (c) legality of the assessment, per Paragraph 4.1 of this Agreement, of the penalty held in abeyance.

V. RETENTION OF RECORDS

5.1 Pursuant to Section 21312a(1)(d) of the NREPA, the Respondent shall preserve and retain, for a period of six (6) years after the completion of corrective actions, all records, sampling and test results, charts, plans, logs, and any other

documents relating to the release(s) from the underground storage tank system(s), and the performance of corrective actions to address the resultant contamination. Upon request by an authorized representative of the MDEQ, the Respondent shall make available to the MDEQ all documents required to be maintained under this Agreement or required to be provided pursuant to Part 213.

5.2 Upon written request by the MDEQ, the Respondent, or its successor(s), shall relinquish, within thirty (30) days of receipt of the request, all supporting documentation relating to the performance of corrective actions necessary to comply with this Agreement, including but not limited to, records, sampling and test results, charts, plans, logs, and any other documents necessary to comply with this Agreement.

VI. RIGHT OF ENTRY

6.1 To the extent the Respondent is in control of access, the Respondent shall allow the MDEQ or any MDEQ authorized representative or contractor, upon presentation of proper credentials, to enter upon the premises of the Property at all reasonable times for the purpose of monitoring compliance with the provisions of this Agreement. This paragraph in no way limits the authority of the MDEQ to conduct tests and inspections pursuant to Part 213, and the rules promulgated thereunder, or any other applicable statutory provision.

VII. GENERAL PROVISIONS

7.1 This Agreement addresses the violations identified in the Penalty Assessment Letter. The MDEQ reserves the right to pursue any other remedies to which it is entitled for failure on the part of the Respondent to comply with the requirements of the NREPA including: violations of this agreement; releases of regulated substances covered under this agreement; and any other future releases or conditions.

7.2 After the Effective Date of this Agreement, if the MDEQ or the Department of Attorney General (DAG) initiates any administrative or judicial proceeding for

injunctive relief, recovery of corrective action costs, or other appropriate relief relating to the Property, the Respondent agrees not to assert and shall not maintain any defenses or claims that are based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, or claim splitting, or that are based upon a defense that contends any claims raised by the MDEQ or the DAG were or should have been brought in this case.

7.3 The MDEQ reserves all of its enforcement rights including, but not limited to, seeking injunctive relief and additional fines.

7.4 The MDEQ reserves its right to assess Late Report Penalties pursuant to Section 21313a of the NREPA.

7.5 The State of Michigan expressly reserves all of its rights and defenses pursuant to any available legal authority to enforce this Agreement.

7.6 In addition to, and not as a limitation of any other provision of this Agreement, the MDEQ retains all of its authority and reserves all of its rights to perform, or contract to have performed, any corrective actions that the MDEQ deems necessary.

7.7 This Agreement in no way affects the Respondent's responsibility to comply with any other applicable local, state, or federal laws or regulations including, without limitation, any corrective action or similar requirements applicable to the Property pursuant to the NREPA and its rules.

7.8 Nothing in this Agreement shall be considered to affect any liability that the Respondent may have for criminal action, state corrective action costs, or natural resources damages caused by the Respondent's ownership and/or operation of the Property. The State of Michigan expressly reserves any rights to bring a criminal action, or to bring a civil action to recover corrective action costs or natural resources damages and to seek injunctive relief compelling the Respondent to perform necessary corrective actions pursuant to Part 213.

7.9 The provisions of this Agreement shall apply to, and be binding upon, the parties to this Agreement and their successors. No change in ownership, corporate or legal status of the Respondent, including but not limited to, any transfer of assets or real property or the bankruptcy of the Respondent shall alter in any way the Respondent's responsibilities under this Agreement.

7.10 If any provision or authority of this Agreement or the application of this Agreement to any party or circumstances is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Agreement shall remain in full force and shall not be affected thereby.

VIII. MODIFICATIONS

8.1 The deadlines contained in this Agreement may only be modified according to the terms of this section.

8.2 The deadlines provided in Paragraph 2.1 of this Agreement may be extended in writing at the sole discretion of the Remediation and Redevelopment Division (RRD) Lansing District Supervisor or his successor. All other provisions may only be modified at the sole discretion of the RRD Director or her successor.

IX. TERMINATION

9.1 This Agreement shall remain in full force and effect until terminated by a written Notice of Termination issued by the MDEQ. Prior to the MDEQ issuance of a written Notice of Termination, the Respondent shall submit a written request for termination to the RRD District Supervisor identified in Paragraph 9.6 of this Agreement.

9.2 The Respondent's request for termination shall consist of a written affidavit that the Respondent has fully complied with the requirements of this Agreement. Specifically, this affidavit shall include:

(a) An affirmative statement that the Respondent has complied with Section II (Compliance Program) and Section III (Late Report Penalties & Past Costs) of this Agreement; and

(b) A statement that all required information has been submitted to the RRD District Supervisor; and

(c) A confirmation that all records required to be maintained pursuant to this Agreement are being maintained by the Respondent.

9.3 The MDEQ may also request additional information for verification that the conditions for termination have been satisfied. The MDEQ shall not unreasonably withhold issuance of a Notice of Termination.

9.4 The MDEQ may independently determine that the terms and conditions of the Agreement have been met. Should the MDEQ make such a determination, the MDEQ shall issue a Notice of Termination.

9.5 The MDEQ reserves the right to terminate this Agreement prior to receiving a written request for termination from the Respondent pursuant to Paragraph 8.1 of this Agreement should the Respondent fail to comply with any provision of this Agreement.

9.6 The written request for termination must be mailed to:
(with a copy to the Project Manager)

Mr. Dennis Eagle (or current), District Supervisor
Lansing District Office
Remediation and Redevelopment Division
Department of Environmental Quality
P.O. Box 30242
Lansing, Michigan 48092

X. EFFECTIVE DATE

10.1 This Agreement shall become effective on the date the MDEQ signs the Agreement. All dates for performing obligations under this Agreement shall be

calculated from the effective date. For this Agreement "day" means a calendar day unless otherwise noted.

XI. SIGNATORIES

The undersigned certify they are fully authorized by the party they represent to enter into this Administrative Agreement and to execute and legally bind that party to its terms and conditions.

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY:



Susan Leeming, Director
Remediation and Redevelopment Division
Michigan Department of Environmental Quality

5 Dec 2018
Date

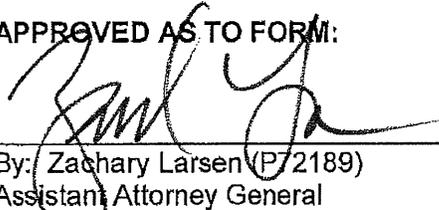
Quick-Sav Food Stores Ltd.:



Name, Title: *Scott Nelson, Vice President*
Company: *Beacon and Bridge*

11/27/18
Date

APPROVED AS TO FORM:



By: Zachary Larsen (PT2189)
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division
Michigan Department of Attorney General

11/30/2018
Date