

SETTLEMENT AGREEMENT

In the Matter of

Frank J. Kelley, Attorney General of the State of Michigan, ex rel, and the Michigan Department of Environmental Quality v Pittsfield Products, Inc. et al.;
Ingham County Case No. 94-77806-CE;
EGLE Facility ID No. 47000013.

This Settlement Agreement ("Agreement"), is made by and between Pittsfield Products, Inc., ACO Division of Pittsfield Products (collectively "Settling Defendants"), P.O. Box 1027, Ann Arbor, MI 48106, and the Michigan Department of Environment, Great Lakes, and Energy, Redevelopment Division ("EGLE"), 525 W. Allegan Street, Lansing, MI 48933.

Recitals

- A. On December 21, 1995, a Consent Decree, which continues in full force and effect, was entered in *Frank J. Kelley, Attorney General of the State of Michigan, ex rel, and the Michigan Department of Environmental Quality v Pittsfield Products, Inc., et al.*, Ingham County Case No. 94-77806-CE, among Frank J. Kelley, Attorney General of the State of Michigan, and the Michigan Department of Environmental Quality ("MDEQ") (collectively, "Plaintiffs"), and the

Settling Defendants, regarding the Hamburg Unadilla Roads Contamination Area, Livingston County, Michigan (the “Facility”);

- B. EGLE is the successor by law to the MDEQ;
- C. Paragraph 21.3 of the Consent Decree requires the Settling Defendants to “reimburse the Plaintiffs for future response activity costs incurred by Plaintiffs and all future oversight costs incurred by the Plaintiffs in overseeing the remedial activities of Settling Defendants for matters covered in this Consent Decree.”
- D. On September 5, 2019, in accordance with paragraph 21.3 of the Consent Decree, EGLE requested reimbursement of \$97,514.41 that is more specifically set forth on Cost Recovery Summary Report 19i (the “2019 Request for Reimbursement”);
- E. Settling Defendants disputed the 2019 Request for Reimbursement on September 30, 2019, invoking the Dispute Resolution provisions of Section XX of the Consent Decree;
- F. On July 2, 2020, in accordance with paragraph 21.3 of the Consent Decree, EGLE requested reimbursement of \$144,987.01 that is more specifically set forth on Cost Recovery Summary Report 20i/21i (the “2020 Request for Reimbursement”);
- G. Settling Defendants disputed the 2020 Request for Reimbursement on July 28, 2020, again invoking the Dispute Resolution provisions of Section XX of the Consent Decree;

- H. Paragraph 7.1 of the Consent Decree required Settling Defendants to establish and fund an Environmental Escrow which was attached as Appendix B to the Consent Decree and became effective December 27, 1995;
- I. Paragraph 7.1 of the Consent Decree states, in part, “[t]he Environmental Escrow shall be used solely and exclusively to reimburse the Plaintiff’s [*sic*] response costs (if any) and oversight costs, and to conduct the Response Activities set forth in this Consent Decree”
- J. Paragraph 7.4 provides, in part, that each year, on the anniversary of the effective date of this Consent Decree, Settling Defendants’ Project Coordinator shall submit to MDEQ for review and approval a Draft Cost Projection which itemizes the costs of all Response Activities to be conducted during the next calendar year and includes fifteen (15) percent allowance for cost overruns and MDEQ oversight expenses. Within sixty (60) days of receipt of MDEQ approval of the Final Cost Projection, Settling Defendants shall deposit such additional sums of cash into the Environmental Escrow as may be necessary to supplement shortages in the Environmental Escrow in order to conduct Response Activities for that year and reimburse MDEQ for response costs (if any) and oversight costs.
- K. Paragraph C of the Environmental Escrow states:
- The [State of Michigan and its Department of Environmental Quality] and **Pittsfield Products** have entered into the **Consent Decree** which provides that **Pittsfield Products** or persons authorized by **Pittsfield Products** (“Authorized Person”) shall direct the use of the Escrow Amount for purposes of conducting **Response Activity (as that term is defined in Part 201 of the Natural Resources and Environmental Protection Act)** at the facility approved by the [MDEQ]. [Emphasis in original.]

L. Paragraph 2.1 of the Environmental Escrow states, in part:

At the written direction of the Authorized Person, delivered from time to time, and certifying that such direction is made for the purpose of paying **Response Activity** Costs, the Escrow Agent shall disburse funds held hereunder in an aggregate amount not to exceed the Escrow Amount to pay **Response Activity** costs incurred in connection with **Response Activity** undertaken pursuant to the terms of the **Consent Decree** [Emphasis in original.]

M. Instead of continuing further with the dispute resolution process regarding the \$242,501.42, the parties mutually agree that it would be in their best interest to resolve the dispute on the terms set forth below.

The Settling Defendants and EGLE agree as follows:

1. **Payment by Settling Defendants.** In consideration of this Agreement and payment of \$130,000.00, to be paid to EGLE by Settling Defendants in accordance with the terms of this Agreement, EGLE agrees to release and forever discharge Settling Defendants from all claims, demands, actions, causes of action, suits, debts, agreements, damages, liabilities and controversies whatsoever, in law or in equity, it either had or now has, arising out of the 2019 Request for Reimbursement and 2020 Request for Reimbursement. This release and discharge shall take effect on the date that the \$130,000.00 is paid in full. The \$130,000.00 shall be paid in five (5) yearly installments of \$26,000.00. The first installment payment will be due December 30, 2020 and the remaining installment payments shall be due on the 30th day of December, each year thereafter, until the \$130,000.00 is paid in full. The \$130,000.00 may be paid with funds from the

Environmental Escrow. However, payment of these costs from the Environmental Escrow shall not be included within the Draft Cost Projection calculation required pursuant to paragraph 7.4 of the Environmental Escrow.

2. Payment method. Payments shall be made by check payable to the “State of Michigan – Environmental Response Fund” and remitted to the following address:

Michigan Department of Environment, Great Lakes, and Energy
Cashiers Office
P.O. Box 30657
Lansing, MI 48909-8157

The check or transmittal letter should reference Consent Decree No. 94-77806-CE, Settlement ID No. ERD2065.

3. Additional Documents. All parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

4. Non-Admission. This Agreement is being entered into solely for the purpose of settlement and does not constitute, and shall in no way be construed as, an admission of liability of any sort by any party, or an admission that the costs claimed in the 2019 Request for Reimbursement or 2020 Request for Reimbursement were lawfully or unlawfully incurred. Nothing in this Agreement shall be construed to limit, in any way, EGLE’s rights with respect to future requests for reimbursement of response activity costs or oversight costs.

5. Settling Defendants' Waiver of Claims. Settling Defendants agree to release and forever discharge EGLE from all claims and demands arising out of the 2019 Request for Reimbursement and 2020 Request for Reimbursement. However, nothing in this Agreement shall be construed to limit in any way Settling Defendants' right to dispute any future requests from EGLE for reimbursement of response activity costs.

6. Reservations. The parties expressly reserve all of their rights, claims, and defenses, under any available law or legal theory, to enforce this Agreement.

7. Entire Agreement; Binding Effect. This Agreement contains the entire agreement of the parties hereto with regard to the matters set forth herein and shall be binding upon and inure to the benefit of the parties and their successors and assigns. This Agreement may not be amended or modified, except by a written agreement signed by all of the parties.

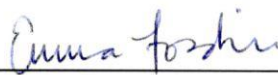
8. Counterparts and Electronic Signatures. This Agreement may be executed in counterparts, each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute one and the same instrument. Documents scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Agreement and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

9. **Governing Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Michigan.


10. **Forum Selection.** All legal proceedings brought by the parties relating to this Agreement shall be in the State of Michigan, and in the circuit court in Ingham County, Michigan, as a continuation of *Frank J. Kelley, Attorney General of the State of Michigan, ex rel, and the Michigan Department of Environmental Quality v Pittsfield Products, Inc., et al.*, Ingham County Circuit Court Case No. 94-77806-CE. The parties waive any and all rights to contest such jurisdiction and venue, and any objection that such county is not convenient.

The undersigned individuals represent and warrant that they are duly authorized to enter into this Agreement on behalf of the Settling Defendants and EGLE and bind the parties to the Agreement's terms and conditions.

FOR SETTLING DEFENDANTS:



Emma Fosdick
President
Pittsfield Products, Inc.



Dated

FOR EGLE:



Mike Neller
Division Chief
Remediation and Redevelopment Division

12/18/2020

Dated

LF: Pittsfield Products, Inc. (MDEQ); AG# 1994-05845-A/Settlement Agreement 2020-12-11