

IN THE CIRCUIT COURT OF PLATTE COUNTY, MISSOURI

STATE OF MISSOURI ex rel.)
Attorney General Chris Koster and)
Missouri Department of)
Natural Resources,)
)
Plaintiff,)
)
v.)
)
FOUR SEASONS INDUSTRIES INC.)
And)
JOHN CAZZELL,)
)
Defendants.)

FILED
JUL 22 2014
SANDRA L. DOWD
Clerk of the Circuit Court Platte County, MO

Case No. 14AE-CV02222

CONSENT JUDGMENT

Plaintiff State of Missouri, at the relation of Attorney General Chris Koster and the Missouri Department of Natural Resources and Defendants, *and Four Seasons Industries, Inc., (FCF)* John Cazzell, by and through counsel, have agreed to the entry of this Consent Judgment.

The Court has read Plaintiff's Petition for Injunctive Relief and Civil Penalties, in which Plaintiff alleges that Defendants violated the Missouri Underground and Petroleum Storage Tank Law. The Court is advised that the parties have consented to the terms in this Consent Judgment for settlement purposes only, and that their consent is conditioned upon the Court approving the Consent Judgment in its entirety. The Court is satisfied that the provisions of this Consent Judgment are intended to resolve the

issues raised by the Petition and that the parties want to terminate this controversy and consent to the entry of this judgment without trial. The Court retains jurisdiction over the matter in order to enforce each and every term of this Consent Judgment.

The parties hereto, having consented to the entry of this Consent Judgment, now therefore, before the taking of any testimony and upon the pleadings, it is hereby ORDERED, ADJUDGED, AND DECREED that:

I. Objectives of the Parties

1. The objectives of the parties to this Consent Judgment are to protect human health and the environment and to resolve allegations contained in Plaintiff's Petition.

II. Definitions

2. Terms used below shall have the same meaning as provided in the Missouri Underground and Petroleum Storage Tank Law and its implementing regulations. In addition, the following terms are specifically defined:

a. "Consent Judgment" means this Consent Judgment and all attachments, which are included by reference and fully enforceable as a term of the judgment.

b. "Defendants" means John Cazzell and Four Seasons Industries, Inc.

c. "Department" means the Missouri Department of Natural Resources.

d. "Facility" means Four Seasons Industries, Inc., located at 403 East Street, Parkville, Platte County, Missouri.

e. "Plaintiff" and "State" means the State of Missouri on the relationship of Attorney General Chris Koster, the Department and the Hazardous Waste Management Commission.

f. "USTs" means Underground Storage Tanks, as defined in § 319.100 RSMo¹ and used in the Missouri Underground and Petroleum Storage Tank Law.

III. Jurisdiction and Venue

3. This Court has jurisdiction over the subject matter and the parties in this case pursuant to § 319.127.1 RSMo. Venue is proper in this court pursuant to § 319.127.1 RSMo because the Defendants' conduct giving rise to this action took place in Platte County.

IV. Parties Bound

4. The provisions of this Judgment shall be binding upon the parties to this action as well as their agents, servants, employees, heirs, successors, assigns, and to all persons, firms, corporations and other entities who are, or

¹ All statutory references shall be to the Missouri Revised Statute 2000 unless specifically stated otherwise.

who will be, acting in concert or privity with, or on behalf of the parties to this action or their agents, servants, employees, heirs, successors, and assigns. Defendants shall provide a copy of this order to all persons or entities retained to perform work required by this order.

V. Satisfaction and Reservation of Rights

5. Upon the completion of all terms of this Consent Judgment, including the payment of civil penalties, completion of all schedules of compliance and the payment of any stipulated penalties due under the terms of this Consent Judgment, Defendants are relieved of liability for the violations alleged in the petition.

6. This Consent Judgment shall not be construed to limit the rights of the State to obtain penalties or injunctive relief under the Missouri Underground and Petroleum Storage Tank Law or its implementing regulations, or under other federal or state laws, or regulations, except as expressly stated in the preceding paragraph of this Consent Judgment.

Without limiting the foregoing, the parties expressly agree that:

- a. Nothing in this Consent Judgment shall prevent State from applying to this Court for further orders or relief if violations of this Consent Judgment occur.

b. Nothing in this Consent Judgment shall preclude State from seeking equitable or legal relief for violations of the Missouri laws or regulations that were not alleged in the petition.

c. Nothing in this Consent Judgment shall preclude State from seeking equitable or legal relief for future violations of the Missouri Underground and Petroleum Storage Tank Law or regulations promulgated under its authority.

d. The State of Missouri further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendants' facility, acts or omissions, whether related to the violations addressed in this Consent Judgment or otherwise.

VI. Injunctive Relief

7. Defendants are ordered to comply with the Missouri Underground Petroleum Storage Tank Law and all implementing regulations for any and all future activities in the State of Missouri.

8. Defendants shall immediately stop receiving deliveries of petroleum and discontinue dispensing petroleum at the facility. In addition, Defendants shall remove all remaining product from the USTs at the facility

and proceed immediately with UST closure in accordance with the following schedule:

a. Within thirty (30) days of signing this Consent Judgment, Defendants shall submit to the Department for approval, a complete *UST Closure Notice*.

b. Within sixty (60) days of receiving approval of the *UST Closure Notice*, Defendants shall complete permanent UST system closure according to the Department's requirements using the Missouri Risk-Based Corrective Action document, located at <http://www.dnr.mo.gov/env/hwp/tanks/mrbca-pet/docs/mrbca-pet-sect4.pdf> on the internet, or other written procedures approved by the Department.

c. Within sixty (60) days of completing closure activities, Defendants shall submit a *UST Closure Report*. The report shall include but not be limited to the following:

i. Documents demonstrating that all USTs have been cleaned out and all hazardous materials disposed of in an appropriate manner at an approved facility;

ii. Documents demonstrating that all USTs have been pulled out of the ground and disposed of at an approved facility;

- iii. Soil sampling data done pursuant to Missouri Risk-Based Corrective Action guidance;
 - iv. Groundwater sampling and testing data done pursuant to Missouri Risk-Based Corrective Action guidance; and
 - v. A statement of closure for the facility.
- d. Within thirty (30) days of receiving comments to the *UST Closure Report* by the Department, Defendants shall adequately respond and provide all requested information.

9. If the Department determines that additional characterization or remedial work is required, Defendants shall complete all required work in a timely and expeditious manner.

Information Collection and Retention

10. The State, through its authorized representatives, shall have the right of entry into any facility covered by this Consent Judgment, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Judgment;
- b. verify any data or information submitted to the State in accordance with the terms of this Consent Judgment;
- c. obtain samples and, upon request, splits of any samples taken by Defendants or their representatives, contractors, or consultants;

d. obtain documentary evidence, including photographs and similar data; and

e. assess Defendants' compliance with this Consent Judgment.

11. Upon request, Defendants shall provide the State, through its authorized representatives, splits of any samples taken by Defendants.

12. Until five years after the termination of this Consent Judgment, Defendants shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendants' performance of its obligations under this Consent Judgment. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the State, Defendants shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

13. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendants shall notify the State at least ninety (90) days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and,

upon request by the State, Defendants shall deliver any such documents, records, or other information to the State.

14. This Consent Judgment in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the State pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendants to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

VII. Civil Penalty

15. Defendants consent to the entry of judgment in favor of the State of Missouri for a civil penalty of \$10,000.00. Defendants hereby authorize entry of this judgment against them and in favor of the State of Missouri for this sum.

16. The parties further agree that \$7,500.00 of this civil penalty shall be suspended as described in paragraph eighteen.

17. Defendants agree to pay the \$2,500.00 up-front civil penalty in five (5) separate payments. Within thirty (30) days from the entry of this Consent Judgment, Defendants shall make the first payment of \$500.00. The remaining four payments shall be \$500.00. All but the first payment shall be made by the 1st day of each succeeding month. All of the payments shall be made by submitting a check made payable to the "*State of Missouri (Platte*

County)" to Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899. If Defendants fail to make any payment within five calendar days of the due date, it shall become immediately liable for payment of the entire unpaid amount, including the suspended penalty described in paragraph fifteen.

18. Suspended Civil Penalty. \$7,500.00 of the total penalty of \$10,000.00 shall be suspended upon the condition that Defendants comply with the Missouri Underground and Petroleum Storage Tank Law and its implementing regulations for a period of 3 years from the entry of this Consent Judgment. Once a violation of the Missouri Underground and Petroleum Storage Tank Law is documented by the Missouri Department of Natural Resources, the total suspended penalty shall become immediately due. Defendants shall submit the suspended penalty in the manner described in paragraph seventeen. The suspended penalty provided in this Consent Judgment shall be in addition to any other rights, remedies, or sanction available to State for Defendants' violation of this Consent Judgment or applicable law.

VIII. Stipulated Penalties

19. In the event that Defendants fails to comply with the requirements set forth in this Consent Judgment, Defendants shall be liable for stipulated penalties in accordance with the following schedule:

A. \$100.00 per day for each day of each violation up to thirty days.

B. \$200.00 per day for each day of each violation, from thirty-one days to sixty days.

C. \$300.00 per day for each day of each violation, beyond sixty days.

20. Defendants shall pay stipulated penalties by check made payable to the "*State of Missouri (Platte County)*" and mailed to: Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899. That check will be deposited and processed in accordance with the consent judgment and Missouri law.

21. The inclusion of stipulated penalty provisions in this Consent Judgment, and the payment of stipulated penalties, does not limit the State's ability to pursue other penalties for the same acts; where a violation of this Consent Judgment also constitutes a violation of a statute, stipulated penalties may be collected in addition to statutory penalties imposed for those violations.

IX. Notices and Submittals

22. Whenever under the terms of this Consent Judgment that notice is required to be given or a report or other document is required to be forwarded by one party to another, it shall be directed to the individuals at

the addresses specified below, unless those individuals or their successors give notice in writing of another individual designated to receive such communications. Notice to the individuals listed below or such other individuals designated pursuant to the foregoing, in writing and hand-delivered or sent by registered or certified mail, postage prepaid, shall constitute complete satisfaction of any notice requirement of the Consent Judgment.

To the Missouri Department of Natural Resources:

Mike Martin, or his successor
Missouri Department of Natural Resources
Hazardous Waste Program
P.O. Box 176
1730 E. Elm Street
Jefferson City, Missouri 65102
Phone: (573)526-2417
Fax: 573-526-5268

To the Attorney General's Office:

Kristin Stokely
Assistant Attorney General
Agriculture and Environment Division
State of Missouri Office of Attorney General
P.O. Box 899
Jefferson City, Missouri 65102
Phone: (573)751-8795
Fax: 573-751-8796

X. Modification

23. Except as otherwise specified herein, this Consent Judgment may be modified or amended only upon written agreement by and among the

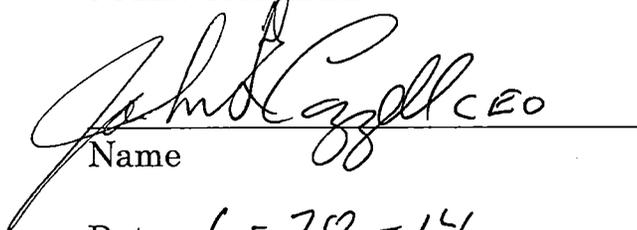
parties, their successors and assigns and with the approval of the Court. All modifications shall be in writing and filed with the Court.

XI. Costs

24. Defendants shall pay all court costs in this action.

The parties hereby consent to this Consent Judgment through their duly authorized representatives as indicated below.

JOHN CAZZELL


Name _____

Date: 6-20-14 and

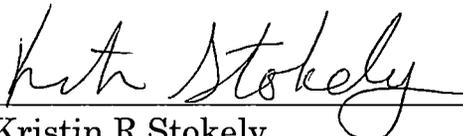
FOUR SEASONS INDUSTRIES, INC.


Name _____

Title: CEO

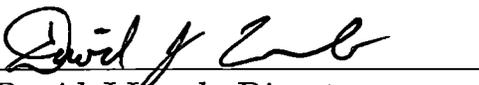
Date: 6-20-14

MISSOURI ATTORNEY GENERAL'S OFFICE

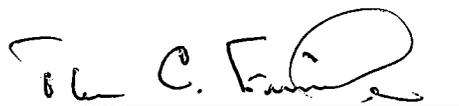
By: 
Kristin R Stokely
Assistant Attorney General

Date: 7-16-2014

MISSOURI DEPARTMENT OF NATURAL RESOURCES

By: 
David J Lamb, Director
Hazardous Waste Management Program

Date: 7-8-2014
SO ORDERED.


Circuit Judge

Date: 7-22-14