

FILED

IN THE COURT OF COMMON PLEAS  
GREENE COUNTY, OHIO

2016 JUL 15 PM 3:21

STATE OF OHIO, ex rel.  
MICHAEL DeWINE  
OHIO ATTORNEY GENERAL

CASE NO.: 2014 CV 0512

CLERK  
COURT  
OHIO

Plaintiff,

JUDGE WOLAVER

v.

MF OIL BEAVER CREEK,  
INC., ET AL.

AGREED CONSENT ORDER

Defendants.

FINAL APPEALABLE ORDER.  
The clerk shall give notice and date  
of entry upon the journal to parties  
been filed herein, and  
not in default.

The Complaint and Answer in the above-captioned matter having been filed herein, and not in default, the Plaintiff, the State of Ohio, by its Attorney General Michael DeWine ("Plaintiff" or "State"), and Defendants, MF Oil Beaver Creek, Inc., Saif Mohammed, Prospect Petroleum, Inc., and Fateh Ali Hermani ("Defendants") having consented to the entry of this Order;

NOW THEREFORE, without trial of any issue of fact or law, without admission of any fact, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over the parties and the subject matter of this case. The Complaint states a claim upon which relief can be granted against Defendants under Chapters 3704 and 3737 of the Ohio Revised Code, and venue is proper in this Court.

II. PARTIES

2. The provisions of this Consent Order shall apply and be binding upon the State and Defendants, and Defendants' agents, officers, employees, assigns, successors in interest and any person acting in concert or privity with any of them. Defendants shall provide a copy of this

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Consent Order to each contractor they employ to perform work at the site referenced herein, and Defendants shall ask each general contractor to provide a copy of this Consent Order to each of its subcontractors for such work. The undersigned representatives of each party to this Consent Order certifies that he or she is fully authorized by the party or parties whom he or she represents to enter into the terms and conditions of the Consent Order and to execute and legally bind that party or parties to it.

### III. SATISFACTION OF LAWSUIT

3. Plaintiff alleges in its Complaint that Defendants have violated various provisions of R.C. Chapters 3704 and 3737 and the rules adopted thereunder at 2260 Heller Drive, Beavercreek, Ohio (the "Site"). Except as otherwise provided in paragraph 4 of this Consent Order, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability of Defendants for all claims under such laws as alleged in the Complaint.

4. Nothing in this Consent Order shall be construed to limit the authority of the State to seek relief from Defendants for: (a) claims or violations not referenced in the Complaint; (b) any violations arising out of acts or omissions first occurring after the entry of this Consent Order; or (c) claims or violations under the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. 9601, et seq. or R.C. 3734.20 through 3734.27 for any emergency, removal, remedial, corrective actions, or natural resource damages. Further, nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek immediate relief to abate any conditions that pose a threat to human health or the environment. Defendants retain all rights, defenses, and/or claims they may legally raise to the extent that the State seeks further relief from them in the future, or in any action brought to enforce the terms of this Consent Order, except that they shall not assert, and may not maintain,

any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim splitting, or other defenses based upon any contention that the claims raised by the State in subsequent proceedings were or should have been brought in the instant case.

5. Entering into this Consent Order, the Consent Order itself, or the taking of any action in accordance with it and/or any work performed at the Site to date does not constitute an admission of any liability, wrongdoing, or misconduct on the part of the Defendants, their officers, employees or representatives.

6. Nothing herein shall be construed to relieve Defendants of their obligation to comply with all applicable federal, state, or local statutes, regulations, or ordinances, including but not limited to the applicable permit requirements thereunder.

#### **IV. PERMANENT INJUNCTION**

7. Defendants are hereby permanently ordered and enjoined to immediately comply with the requirements of R.C. Chapters 3704 and 3737 and the rules adopted under that Chapter.

#### **V. CORRECTIVE ACTION COMPLIANCE**

8. Defendants are hereby ordered and enjoined to perform the following corrective actions at the Site:

- A. Within Thirty (30) days of entry of this Order, Defendants shall comply with all registration requirements for the UST system at the Site pursuant to Ohio Adm. Code 1301:7-9-04(B)(1).
- B. By July 29, 2016, Defendants shall complete corrosion protection testing set forth in Ohio Adm. Code 1301:7-9-06(D)(2) for all metal USTs at the Site and any piping that routinely contains regulated substances at the Site that is covered by earthen material.

- C. By July 29, 2016, Defendants shall complete testing of the annual simulated leak test for the pressure line leak detectors set forth in Ohio Adm. Code 1301:7-9-07(D)(2)(c)(ii).
- D. By July 29, 2016, Defendants shall complete testing of the underground piping that conveys regulated substances under pressure set forth in Ohio Adm. Code 1301:7-9-07(D)(2)(c)(iii).
- E. Where free product is present, Defendants shall perform all of the following activities:
  - 1. Pursuant to Ohio Adm. Code 1301:7-9-13(G)(3)(a) immediately implement a free product recovery program that removes free product to the maximum extent practicable, while continuing other actions required by Ohio Adm. Code 1301:7-9-13; and
  - 2. Pursuant to Ohio Adm. Code 1301:7-9-13(G)(3)(c) submit a written report to the fire marshal, on a monthly basis, until free product has been removed to the maximum extent practicable.
- F. All other corrective actions are to be conducted pursuant to the requirements set forth in Ohio Adm. Code 1301:7-9-13 until an NFA (“no further action”) status is achieved.
- G. If Defendants propose to return the out of service UST to service, Defendants shall:
  - 1. Complete corrosion protection testing set forth in Ohio Adm. Code 1301:7-9-06(D)(2) to determine whether the out of service UST meets the criteria for issuance of an out of service permit, set forth

in Ohio Adm. Code 1301:7-9-12(E)(4).

2. If the out of service UST meets the criteria for an out of service permit, Defendants shall apply for the permit no later than the earlier of July 15, 2016 or fifteen (15) working days after a written report of corrosion protection test results conforming to BUSTR's rules is submitted to BUSTR.
  3. If BUSTR grants an out of service permit, Defendants shall return the out of service UST to service pursuant to Ohio Adm. Code 1301:7-9-12(E)(7) prior to the expiration of the issued out of service permit. If BUSTR denies the out of service permit, Defendants shall comply with the closure requirements set forth in Ohio Adm. Code 1301:7-9-12 as directed by BUSTR.
- H. If Defendants do not elect to return the out of service UST at the Site back into service or if BUSTR determines that the out of service UST does not qualify for an out of service permit or a return to service permit,
1. By September 1, 2016, Defendants shall remove the out of service UST in accordance with Adm. Code 1301:7-9-10(C) and Adm. Code 1301:7-9-12(G).
  2. Within the later of ninety (90) days of entry of this Order, BUSTR's denial of an out of service permit or BUSTR's denial of a permit to return the out of service UST to service, pursuant to Ohio Adm. Code 1301:7-9-12(I) and (J), Defendants shall conduct a closure assessment and submit a closure report for the out of

service UST at the Site.

- I. Extensions for any deadline specified in this Order or in Ohio Adm. Code 1301:7-9-13 shall be requested in accordance with Ohio Adm. Code 1301:7-9-13(Q).

9. All reports or other documents approved by BUSTR and submitted pursuant to this Consent Order shall be considered incorporated into this Consent Order and fully enforceable as required by under this Consent Order.

10. The reports and documents required by Paragraph 8 and any other written notification applications, correspondence, permit applications, and plans as required by this Consent Order, shall be sent to:

Bureau of Underground Storage Tank Regulations  
8895 East Main Street  
Reynoldsburg, Ohio 43068  
Attn: Lynne Caughell, Environmental Specialist II

#### VI. CIVIL PENALTY

11. Defendants are hereby ordered to pay a civil penalty of one hundred fifty thousand dollars (\$150,000.00). In the event that Defendants fully comply with this Consent Order, one hundred thirty-five thousand dollars (\$135,000.00) of this civil penalty shall be forgiven. Pursuant to R.C. 3737.882 and R.C. 3704.06, Defendants are ordered and enjoined to pay a civil penalty of fifteen thousand dollars (\$15,000.00) to the State as follows:

- A. Payment shall be made in four installments of \$3,750 mailed to Scott Hainer, Paralegal, or his successor, Office of the Attorney General, Environmental Enforcement Section, 30 E. Broad Street, 25th Floor, Columbus, Ohio 43215-3400 by Ali Hemani and Prospect Petroleum and post-marked no later than July 1, August 1, September 1 and October 3,

2016.

- B. Payments shall be remitted by bank check or certified check payable to the order of "Treasurer, State of Ohio."
- C. There is no grace period for late mailing.
- D. Although Ali Hemani and Prospect Petroleum are responsible for mailing the checks, the financial obligation is joint and several among MF Oil, Saif Mohammed, Prospect Petroleum and Ali Hemani.

In the event that Defendants violate anything in this Consent Order, the entire civil penalty shall immediately become due and owing.

#### **VIII. STIPULATED PENALTIES**

12. If Defendants fail to comply with any of the requirements of this Order, Defendants shall immediately and automatically be liable for and shall pay stipulated penalties under the following schedule for each failure to comply:

- A. Defendants shall pay three hundred dollars (\$300.00) per day for each day any requirement of this Consent Order is violated up to the first thirty (30) days of violation;
- B. For each day any requirement of this Consent Order is violated between thirty (30) days and ninety (90) days of violation, Defendants shall pay six hundred dollars (\$600.00) per day;
- C. For each day any requirement of this Consent Order is violated greater than (90) days of violation, Defendants shall pay one thousand dollars (\$1,000.00) per day.

13. Stipulated penalties due under this Consent Order shall be immediately due and

owing without demand by the State and shall be paid by check or money order, payable to "Treasurer, State of Ohio" and delivered to Scott Hainer or his successor, Paralegal, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215.

14. Defendants' payment and Plaintiff's acceptance of such stipulated penalties under this Section shall not be construed to limit Plaintiff's authority, without exception, to seek: 1) additional relief under R.C. Chapter 3704, including civil penalties under R.C. 3704.06; 2) judicial enforcement of this Order for the same violations for which a stipulated penalty was paid; or 3) sanctions for additional remedies, civil, criminal, or administrative, for violations of applicable laws. Further, payment of stipulated penalties by Defendants shall not be an admission of liability by Defendants.

#### **IX. RETENTION OF JURISDICTION**

15. The Court will retain jurisdiction of this action for the purpose of administering and enforcing Defendants' compliance with the terms and provisions of this Order.

#### **X. SIGNATORIES**

16. Each of the undersigned representatives of the Parties represents that he/she is fully authorized to enter into the terms and conditions of this Consent Order and legally bind the respective Party to this document.

#### **XI. COSTS**

17. Defendants are hereby ordered to pay the court costs of this action.


#### **XII. ENTRY OF CONSENT ORDER**

18. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Order by the Court, the clerk is directed to enter it upon the journal. Within three (3) days of



entering the Order upon the journal, the clerk is directed to serve upon all parties notice of the Order and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and to note the service in the appearance docket.

SO ORDERED THIS 14 DAY OF July, 2016.

  
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JUDGE Tolaver  
GREENE COUNTY  
COURT OF COMMON PLEAS

APPROVED BY:

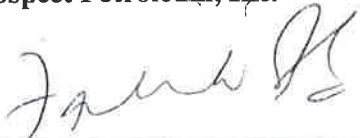
**MICHAEL DEWINE**  
**OHIO ATTORNEY GENERAL**

  
\_\_\_\_\_  
**NICHOLAS J. BRYAN (0079570)**  
Senior Assistant Attorney General  
Environmental Enforcement Section  
30 East Broad Street, 25th Floor  
Columbus, Ohio 43215-3400  
Telephone (614) 466-2766  
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Nicholas.Bryan@ohioattorneygeneral.gov

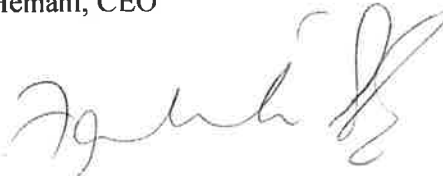
*Attorney for the State*

16-07-2165


**Defendant, Prospect Petroleum, Inc.**

by:   
Fateh Ali Hemani, CEO

Date: 06-20-2016

  
Defendant Fateh Ali Hemani, Individually

Date: 06-20-2016

  
John W. Herbert, Oh. SCR N 0006373  
**Blaugrund Kessler Myers & Postalakis Incorporated**  
300 W. Wilson Bridge Rd., Suite 100  
Worthington, OH 43085  
(voice) 614-764-0681  
(fax) 614-764-0774  
(e-mail) jwh@bhmlaw.com

Date: 06-27-2016

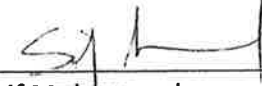
Attorney for defendants Prospect Petroleum, Inc., dba Site Food Mart and Fateh Ali Hemani

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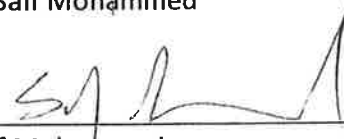
Approved:

**Defendants:**


MF Oil Beaver creek, Inc.

By:   
Saif Mohammed


6/26/2016  
Date

  
Saif Mohammed

6/26/2016  
Date

  
Charles J. Roedersheimer #0020273  
1340 Woodman Drive  
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[Charles@thompsonanddeveny.com](mailto:Charles@thompsonanddeveny.com)  
Attorney for MF Oil Beaver creek and  
Saif Mohammed

6/29/2016  
Date

 (Unv exam!)  
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Attorney for MF Oil Beaver creek and Saif  
Mohammed

6/29/2016  
Date

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