

STATE OF WISCONSIN

Plaintiff,

v.

Case No.: 95-CV-263

Unclassified: 30703

FRASER SHIPYARDS, INC.,  
RONALD PETERSON

Defendants.

FILED  
JAN 08 1999  
Joan Oaty  
Clerk of Circuit Court

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**STIPULATION AND ORDER FOR JUDGMENT**

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The plaintiff State of Wisconsin (State) brought this civil action against the above-named defendants, seeking forfeitures and injunctive relief for the defendants' violations of Wisconsin's hazardous waste management laws. The parties now wish to settle this matter by agreement and avoid further litigation and, therefore, enter into this stipulation.

IT IS THEREFORE STIPULATED AND AGREED between the parties, the State by its attorneys James E. Doyle, Attorney General, and Lorraine C. Stoltzfus, Assistant Attorney General, and the defendants by their attorneys, Timm Speerschneider and David Weiby, and by defendant Fraser Shipyards, Inc.'s president, Troy Johnson, that this case shall be settled on the following terms and conditions:

1. As agreed to by the parties' partial stipulation which was filed by the court on March 20, 1997, Ronald Peterson is dismissed with prejudice from this lawsuit as a defendant.

2. Full compliance with the terms of this Stipulation and Order for Judgment and Judgment shall constitute full satisfaction and release of the defendants, their successors, assignees, officers, employees, and shareholders liability for the violations alleged in (a) the Complaint filed in this action, except to the extent that any claim in the complaint relates to liability and remediation issues for AOC #14. (b) the Notice of Violation dated June 10, 1993; and (c) the referral letter dated November 7, 1994. It is expressly understood that this Stipulation and Judgment releases the above from any forfeitures relating to Area of Concern #14 (Howard's Bay); however, it does not address the liability and remediation issues concerning Howard's Bay and therefore does not release defendants from any responsibility they may have, if any, in that regard. Specifically defendant's acknowledge that the § 292.11(11) enforcement exclusion does not bar a subsequent proceeding relating to the liability for and/or the remediation of AOC #14.

3. Except as between the parties hereto, nothing contained in the Stipulation and Judgment shall be construed as an admission of liability by the defendants in any proceeding now pending or hereafter commenced.

4. Defendant Fraser Shipyard, Inc. (hereafter "Fraser"), shall pay forfeitures to the State of \$31,250, plus a 5% environmental assessment of \$1,563.50, plus a 23% penalty assessment of \$7,187.50, for a total of \$40,000. Fraser shall also reimburse the plaintiff for its costs of \$98.00. Payment shall

be made within thirty days of the date of filing of this judgment. A check in the amount of \$40,098 shall be made payable to the "State of Wisconsin," and shall be postmarked or delivered by the due date to Lorraine C. Stoltzfus, Assistant Attorney General, Post Office Box 7857, Madison, WI 53707.

5. Fraser shall also reimburse the Wisconsin Department of Natural Resources for its costs of \$4,200.80 for the testing of samples taken in April of 1993. Payment shall be made within thirty days of the date of filing of this judgment. A check for \$4,200.80 shall be made payable to the Wisconsin Department of Natural Resources and shall be postmarked or delivered by the due date to Colleen Hellenbrand, Department of Natural Resources - Waste Management Bureau, P.O. Box 7921, Madison, WI 53707.

6. Fraser agrees to complete all further work required at Area of Concern Number 5, pursuant to the applicable requirements set forth at Wis. Admin. Code NR 700-750, including but not limited to fully and timely performing the SEH Work Plan for the site dated March 1998 and as approved by the DNR by letter dated July 2, 1998. The work plan and its implementation shall comply with all applicable provisions of NR 700-750, Wis. Admin. Code, including a total of four successive rounds of quarterly groundwater monitoring for dissolved lead at MW2 (three of which have been completed). On or before March 1, 1999, Fraser shall submit the investigation report pursuant to NR 716.15, including any recommendations for further response actions.

Furthermore, site closure shall include, at a minimum, a deed restriction for AOC #5, unless, pursuant to a DNR-approved work plan, the contaminated soil is removed to comply with applicable Wis. Admin. Code NR 720 Soil Cleanup Standards.

7. The parties agree that Area of Concern #11 may be managed in accordance with the provisions of Wis. Admin. Code NR 700-750. Fraser agrees to complete all further work required at AOC #11, pursuant to the applicable requirements set forth at Wis. Admin. Code NR 700-750. AOC #11 may be closed if the following conditions of NR 700-750 are met:

DW  
TZ  
TPS  
LCS

a. By ~~January~~ <sup>APRIL</sup> 1, 1999, Fraser shall submit to the DNR documentation demonstrating that the sump pump and drain construction in dry dock #1 effectively seal off the possibility of lead contamination migrating into the sump pump drain from the gravel layer interface between the concrete covering the dry dock and the lead-contaminated clay soil underneath. If the sump pump and drain are not currently constructed so as to seal off that pathway, Fraser agrees to reconstruct it to seal off that pathway, and to provide documentation to the DNR that it has done so by June 1, 1999.

b. By January 1, 1999, Fraser shall submit to the DNR an operation and maintenance plan for AOC #11 which conforms to the requirements of Wis. Admin. Code NR 724.13, and shall perform the requirements of the plan as approved or conditionally approved by the DNR. At a minimum, the plan shall

provide that Fraser will maintain the integrity of the concrete as a barrier to direct contact and to prevent pathways for migration of contamination and properly abandon the lysimeter.

DWJ  
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TPS  
LCS

c. By ~~January~~<sup>February</sup>, 1999, Fraser shall submit to the DNR for review a deed restriction for AOC #11 which includes at a minimum: a description of the location of the lead contamination and where the higher levels are located; that the site may be used for industrial use only; and that if the concrete is ever removed or substantially changed, the owner shall do a re-analysis under the applicable law of whether any further remedy is needed. By June 1, 1999, the deed restriction shall be recorded with the Register of Deeds.

8. In the event that a dispute arises regarding the requirements of NR 700-750, the parties agree that the Court will have continuing jurisdiction over this matter and shall have the authority to resolve the dispute.

9. Within 30 days after Fraser has been notified that the final of AOCs Numbers 5, 8, and 11 has been approved for closure by the DNR close out committee, Fraser agrees to submit to the DNR a report summarizing the work done and the closure status of those three AOC's.

10. The provisions of this Stipulation and the Judgment shall apply to and be binding upon the parties hereto, their agents, servants, employees, successors and assigns.

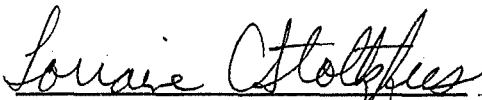
11. The accompanying Judgment may be entered incorporating the terms of this Stipulation without notice or further proceedings.

Dated: 11/24/98

Dated: 11/23/98

JAMES E. DOYLE  
Attorney General

DEWITT ROSS & STEVENS



LORRAINE C. STOLZFUSS  
Assistant Attorney General  
State Bar No. 1003676  
Attorneys for Plaintiff



TIMM P. SPEERSCHNEIDER  
Attorney at Law  
State Bar No. 1012525  
Attorneys for Defendants

Dated: 12/16/98

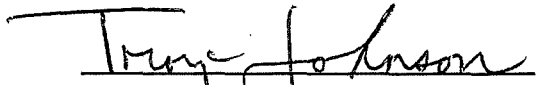
WEIBY, MAKI, DURST, LEDIN, BICK & LEHR



DAVID M. WEIBY  
Attorney at Law  
State Bar No. 1010370  
Attorneys for Defendants

12-22-98 TW

Dated: 12/16/98



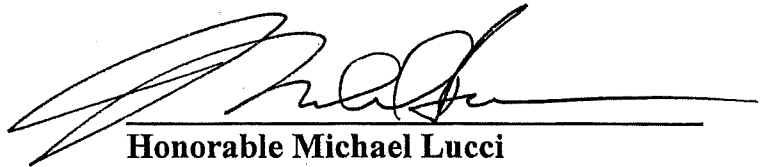
TROY JOHNSON  
President  
Fraser Shipyards, Inc.

**ORDER FOR JUDGMENT**

The terms and conditions of the foregoing Stipulation are hereby accepted by the Court and the Court orders that Judgment be entered accordingly.

Dated this 8<sup>th</sup> day of Jan, 1998.

BY THE COURT:

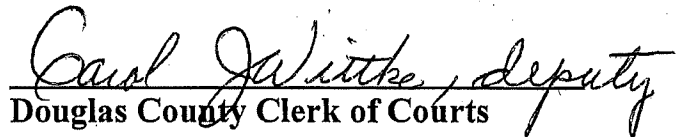


Honorable Michael Lucci  
Circuit Court Judge

**JUDGMENT**

The foregoing Stipulation is adopted as the Judgment of the Court, and Judgment is hereby entered accordingly.

Dated this 8<sup>th</sup> day of Jan, 1998.



Douglas County Clerk of Courts