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**BEFORE THE  
STATE OF WISCONSIN  
Division Of Hearings And Appeals**



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In the Matter of the Alleged Discharge of a  
Hazardous Substance at the Quearm Oil Company  
in the City of Ashland, Ashland, Wisconsin

Case No.: IH-97-04

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**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

On September 23, 1996, the Department of Natural Resources (the Department) issued an order to Fred Gygi and Gygi Heating Company, Inc. The order alleges that Mr. Gygi owns property in Ashland, Wisconsin on which a hazardous substance spill has been identified. The order required him to hire an environmental consultant to develop a remedial action plan and report all results to the Department. The order further required Mr. Gygi to arrange for implementation of the recommended and approved remedial actions.

By letter dated October 21, 1996, the Department received a request for a contested case hearing from Fred Gygi. On November 8, 1996, the Department granted the request for a contested case hearing. On March 20, 1997, the Department of Natural Resources forwarded the file to the Division of Hearings and Appeals for a hearing.

Pursuant to due notice a hearing was held on July 18, 1997, in Ashland, Wisconsin before Marl J. Kaiser, Administrative Law Judge.

In accordance with secs. 227.47 and 227.53(1)(b), Stats., the PARTIES to this proceeding are certified as follows:

Gygi Heating Company, Inc., by

Fred Gygi, president  
631 East McLeod Avenue  
Ironwood, Michigan 49938

Wisconsin Department of Natural Resources, by

Deborah J. Johnson, Attorney  
P. O. Box 7921  
Madison, Wisconsin 53707-7921

Agnes Moniza, by

Matthew F. Anich, Attorney  
Dallenbach, Anich & Haukaas, S.C.  
P. O. Box 677  
Ashland, Wisconsin 54806-0677

On August 1, 1997, Mr. Anich filed documents from a case captioned Fred Gygi and Gygi Heating Company, Inc., vs. Lakes Gas Company, Gogebic County, Michigan, Circuit Court File No. G-96-236-CH. By letter received on August 13, 1997, Attorney Marvin E. Marks, on behalf of Fred Gygi, responded to Mr. Anich's submission and requested a "mistrial" or a new hearing for Mr. Gygi. By letter dated August 13, 1997, Mr. Anich responded to Mr. Marks' letter. The litigation between Gygi and Lakes Gas is immaterial to the issues for this hearing and the documents filed by Mr. Anich will not be admitted to the record. To the extent the existence of the litigation may reflect on the credibility of Mr. Gygi's testimony at the hearing, these documents will not be considered. The request for a mistrial or new hearing is denied.

#### FINDINGS OF FACT

1. Gygi Heating Company, Inc., (Gygi Heating) owns property located at 105 West Sixth Street, in the City of Ashland, Ashland County, Wisconsin. The Queram Oil company is located on this property. Gygi Heating purchased the property and Queram Oil from George Moniza by land contract executed on October 2, 1992.
2. Queram Oil is a former bulk petroleum and retail petroleum facility. The Queram Oil property had six above ground storage tanks and four underground storage tanks.
3. On May 31, 1989, approximately 2,000-3,000 gallons of gasoline leaked out of the aboveground storage bulk tanks. Approximately 600-800 gallons were recovered. No emergency procedures or reporting were accomplished. A Notice of Violation was sent to Mr. Moniza on July 24, 1989, for failing to notify the Department of Natural Resources (Department) immediately of the petroleum leak.
4. On August 16, 1989, the Department received a letter from Mr. Moniza stating that a consultant was hired and soil borings would be performed.
5. On May 29, 1992, the Department sent a proposed Consent Order to Mr. Moniza. A revised Consent Order was signed by Mr. Moniza on June 19, 1992.

6. On July 20, 1992, the Department received a Remedial Investigation Work Plan from Ayres Associates on behalf of Mr. Moniza. The Department approved the work plan in a letter dated August 7, 1992.

7. On May 18, 1993, (after the land contract sale of the property and business to Mr. Gygi) the Department received Ayres Associates' Remedial Investigation Report along with a PECFA Form 4 application prepared on behalf of Mr. Moniza.

8. On July 2, 1993, the Department approved the Remedial Investigation Report and certified the PECFA Form 4 application for a progress payment to Mr. Moniza. The Department's approval letter requested that a remedial action work plan be submitted by August 6, 1994.

9. On January 27, 1994, the Department of Industry, Labor and Human Relations (DILHR) sent a state order to Mr. Gygi citing violations of Ch. ILHR 10, Wis. Adm. Code, and ordering compliance with this regulation by February 26, 1994.

10. On May 6, 1994, the City of Ashland Fire Department sent an official notice to Mr. Gygi stating that there was a leak detected during an inspection, and that a sump pump was pumping water mixed with fuel from the dikes area of the bulk plant into the parking area. The amount of fuel lost was unknown.

11. On May 24, 1994, the Department was notified by the Ashland Fire Department of a diesel fuel spill of approximately 19 gallons. The spill occurred when a dispenser nozzle fell from a truck's saddle tank during refueling. Product was soaked up with pads and absorbent before it could reach the storm sewer.

12. On July 1, 1995, an informal meeting was held between Mr. Gygi, Fred Hegeman of Alpha Terra Science, and Chris Saari of the Department. Mr. Gygi informed the Department that he planned to demolish the existing Quearm Oil station and bulk plant and construct a new convenience store and bulk plant. Demolition and contaminated soil remediation were to begin no later than September 1, 1994.

13. On November 14, 1995, the Department was notified by Mid-State Associates (MSA) that contamination was encountered during the removal of two 1,000 gallon underground unleaded gasoline storage tanks (USTs) from the site.

14. On December 1, 1995, the Department notified Mr. Gygi in writing of his responsibilities to investigate and remediate contamination associated with the USTs under sec. 292, Stats.

15. The Department received a Site Investigation Work Plan for the USTs on January 10, 1996, from MSA on behalf of Mr. Gygi, and approved it in a letter dated January 31, 1996.

16. On June 13, 1996, the Department received a Site Investigation and Remedial Action Options Report for the site's USTs, dated June 12, 1996, and prepared by MSA on behalf of Mr. Gygi. This submittal was approved by the Department on July 11, 1996.

17. On July 26, 1996, the Department received a Remedial Action Options Analysis Report for the site's aboveground storage tanks, dated July 24, 1996, and prepared by MSA on behalf of Mr. Gygi. This submittal was approved by the Department on July 30, 1996.

18. On April 15, 1997, the Ashland Fire Department responded to a fuel leak at the Queram Oil property. Fuel was apparently leaking from the above ground storage tanks. The Department hired a contractor to clean up the spill. The contractor performed follow-up work on April 25, 1997.

19. Soil at the Queram Oil property remains contaminated as evidenced by stains on the ground and the presence of free product. The contamination poses a threat to the environment and to the public. The remedial action requested by the Department is necessary to abate the threat to the environment and to the public.

#### DISCUSSION

The fact that contamination exists on the Quearm Oil site is undisputed. That Fred Gygi and Gygi Oil Company, Inc., are responsible parties pursuant to sec. 292.11(3), Stats., has also been determined as part of a ruling issued prior to the hearing. At the hearing, Mr. Gygi raised two arguments as to why it is unfair that he should pay for the cleanup of the site. Neither of these arguments are relevant to the issues for this hearing.

The first argument raised by Mr. Gygi is that the understanding he had with George Moniza (now deceased) at the time he purchased the property was that he (Mr. Gygi) would not be required to pay for any of the costs of the cleanup out of his pocket. This agreement is not contained in the written documents for the sale of the property. Apparently Mr. Moniza did pay the PECFA deductible and conceivably no additional out of pocket expenses would have accrued to Mr. Gygi if he had undertaken the cleanup of the site promptly; however, this was not done in this case.

Additionally, even if there was evidence of the agreement between Mr. Moniza and Mr. Gygi, such an agreement would have no bearing on this case. As noted above, Mr. Gygi as the current owner is the responsible party for the contamination. Mr. Gygi could seek reimbursement from the Monizas based upon the agreement. However, even if it was found that the agreement existed, no enforcement order would be directed to the Monizas at this time.

Mr. Gygi's second argument is that he had negotiated the sale of the contaminated property to Lakes Gas. Mr. Gygi alleges that this agreement fell through after representatives of Lakes Gas were contacted by an attorney on behalf of the Monizas. Mr. Gygi argues that he would have been relieved of the burden of the contaminated property but for the interference of an attorney on behalf of the Monizas. Mr. Gygi is still the lawful owner of the contaminated

property. If there was some actionable interference in the sale of the property on behalf of the Monizas, this may be grounds for litigation to seek reimbursement for any damages he sustained; however, the bottom line is that Mr. Gygi is still the responsible party for this contaminated property at this time.

### CONCLUSIONS OF LAW

1. The Division of Hearings and Appeals has authority to hear contested cases and enter necessary orders in cases involving hazardous substance spills pursuant to sec. 227.43, Stats.
1. Petroleum products and their constituents are "hazardous substances" as defined by sec. 292.01(5), Stats.
2. Fred Gygi and Gygi Heating Company, Inc., as the land contract purchaser of the Queram Oil site, is the responsible party pursuant to sec. 292.11(3), Stats., for the hazardous substances on the Queram Oil property.
3. Under sec. 292.11(7), Stats., the Department has the authority to issue special orders to responsible persons possessing, controlling, or responsible for the discharge of hazardous substances to fulfill their duty imposed by sec. 292.11(3), Stats., and Chs. NR 700 to 726, Wis. Adm. Code.
4. The following order is necessary to accomplish the purposes of sec. 292, Stats., and Chs. NR 700 to 726, Wis. Adm. Code, and is enforceable under secs. 299.95 and 299.98, Stats., and Ch. NR 728, Wis. Adm. Code.

### ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Division of Hearings and Appeals orders Fred Gygi and Gygi Heating Company, Inc., to do the following:

1. With ten (10) business days after the effective date of this order, provide the Department with the name of the qualified environmental consultant who will be conducting the remediation required by this order.

### Remedial Action

2. Within thirty (30) business days of the date of this order, submit to the Department for review and approval, a remedial action plan for remediation of soil and groundwater contamination. The remedial action plan shall comply with the requirements of Chs. NR 718 and NR 724, Wis. Adm. Code, and all applicable federal and state laws.
3. If the Department requires modification of the proposed remedial action plan, modify the remedial action plan to address the Department's comments within ten (10) business

days after receipt of the Department's notification. The Department may place conditions in the approval of the remedial action plan.

4. Within ten (10) business days after the Department's approval of the remedial action plan, conduct the remedial action in compliance with the terms and conditions of the Department's approval, Ch. NR 724, Wis. Adm. Code, and all applicable federal and state laws.

#### Interim Action

5. If interim action is required by secs. NR 708.11 or 708.13, Wis. Adm. Code, select the necessary interim action and submit to the Department an interim action plan for Department review and approval prior to implementation of the interim action. The interim action plan shall include a schedule for implementing the interim action.

6. If interim action is required, conduct the interim action according to the terms and conditions of the Department's approval and all applicable federal and state laws.

#### Notification of Sampling

7. Notify the Department, in writing, at least ten (10) business days prior to any sampling performed under any work plan required by this order.

#### Reporting

8. Submit written monthly progress report to the Department by the tenth (10th) of each month following the effective date of this order. These monthly progress reports shall:

- a. Describe the actions which have been taken toward achieving compliance with this order during the preceding month.
- b. Include tabulated results of sampling, testing, an updated groundwater contour map if groundwater sampling has been conducted during the preceding month and all other data generated during the preceding month.
- c. The following additional information shall be submitted every third month:
  - i. summary tables for all historical groundwater quality and elevation data related to each well.
  - ii. graphs of all historical groundwater chemistry data related to each monitoring well. At a minimum, these graphs shall be drawn depicting Ch. NR 140, Wis. Adm. Code, preventive action limit and enforcement standard exceedances for the compounds of concern.

iii. evaluation of the effectiveness of the site investigation and the remedial action and recommendations for improvements.

9. Mail or deliver copies of each report, plan or other submittal required by this Order to the following address:

Wisconsin Department of Natural Resources  
Attn: Christopher Saari  
Brule Area Headquarters  
6250 South Ranger Road  
P. O. Box 125  
Brule, WI 54820-0125 (2 copies)

Right to Amend

10. The Department shall have the authority to amend this order if such action is necessary for the protection of public health, safety or welfare. If the Department amends any provision of this order, Fred Gygi and Gygi Heating Company, Inc., will have the right to appeal the amended provisions.

Dated at Madison, Wisconsin on August 18, 1997.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
5005 University Avenue, Suite 201  
Madison, Wisconsin 53705  
Telephone: (608) 266-7709  
FAX: (608) 267-2744

By: Mark Kaiser  
MARK J. KAISER  
ADMINISTRATIVE LAW JUDGE

## NOTICE

Set out below is a list of alternative methods available to persons who may desire to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with sec. 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any party to this proceeding adversely affected by the decision attached hereto has the right within twenty (20) days after entry of the decision, to petition the secretary of the Department of Natural Resources for review of the decision as provided by Wisconsin Administrative Code NR 2.20. A petition for review under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

2. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Natural Resources a written petition for rehearing pursuant to sec. 227.49, Stats. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

3. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefor in accordance with the provisions of sec. 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (2) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Since the decision of the Administrative Law Judge in the attached order is by law a decision of the Department of Natural Resources, any petition for judicial review shall name the Department of Natural Resources as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of secs. 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.