

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ATTORNEY GENERAL and DEPARTMENT OF  
ENVIRONMENTAL QUALITY,

Plaintiffs-Appellants

v

WOODLAND OIL COMPANY, INC. and BAY  
OIL COMPANY, INC.,

Defendants-Appellees.

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UNPUBLISHED  
March 31, 2000

No. 213707  
Ingham Circuit Court  
LC No. 97-085844-CE

Before: Zahra, P.J., and White and Hoekstra, JJ.

MEMORANDUM.

In this action to recover “response activity” costs under subsection 20126a(1)(a) of the Natural Resources and Environmental Protection Act, MCL 324.20101 *et seq.*; MSA 13A.20101 *et seq.* (NREPA), plaintiffs appeal as of right from an order granting summary disposition in favor of defendants under MCR 2.116(C)(7). We affirm in part and remand.

This case concerns environmental contamination that occurred from petroleum products released by defendants at a site in Michigan. In their complaint, plaintiffs claim that they are entitled to recover “response activity” costs from defendants for plaintiffs’ efforts to clean up the contaminated site. The trial court determined that the six-year statute of limitation, MCL 324.20140(1)(a); MSA 13A.20140(1)(a), and the three-year statute of repose, MCL 324.20140(2); MSA 13A.20140(2), barred plaintiffs’ claim to recover “response activity” costs from defendants. On appeal, plaintiffs contend that the trial court erred in making its determinations. This Court reviews de novo whether a trial court correctly granted or denied a motion for summary disposition and whether a statute of limitations bars a cause of action. *Shields v Shell Oil Co*, 237 Mich App 682, 687-688; 604 NW2d 719 (1999). Further, the question presented for this Court to decide calls for statutory interpretation, which is subject to de novo review. *Id.* at 688.

A recent decision of this Court is controlling in this case. In *Shields, supra*, we interpreted § 20140 of the NREPA under the rules of statutory construction and held that subsection (2) of this provision is a statute of repose. *Id.* at 684. As such, subsection (2) bars actions that accrued before

July 1, 1991, if not filed before July 1, 1994. *Id.* at 694-695. “[A] statute of repose may bar a claim even before an injury or damage occurs.” *Id.* at 692.

Because all the elements of a NREPA claim would have accrued for plaintiffs in 1983 when the initial release occurred or by at least 1989, when plaintiffs were aware of defendants’ plans to remedy the contamination on the site, plaintiffs’ claim accrued before July 1, 1991, and is barred if not filed by July 1, 1994. Thus, under subsection (2), plaintiffs’ 1997 filing in this case was untimely, see *Shields, supra* at 694-695, and therefore the trial court did not err in dismissing the case as to claims existing before July 1, 1991.

In response to the *Shields* decision, plaintiffs further argue that they mentioned before the trial court that releases also occurred subsequent to July 1, 1991. Defendant counters that there was insufficient evidence of post-July 1991 releases requiring response activity. The trial court did not distinguish between pre- and post-1991 releases. Thus, we remand to the trial court to determine whether plaintiffs have presented sufficient evidence to support a cause of action based on the release of contaminants into the environment post July 1, 1991.

Affirmed in part and remanded to the trial court for further action consistent with this opinion.

Brian K. Zahra  
Helene N. White  
Joel P. Hoekstra