STATE OF MICHIGAN

COURT OF APPEALS

ATTORNEY GENERAL and DEPARTMENT OF ENVIRONMENTAL QUALITY, Plaintiffs-Appellants, v WOODLAND OIL COMPANY, INC., and BAY OIL COMPANY, INC., Defendants-Appellants.	UNPUBLISHED July 27, 2001 No. 213707 Ingham Circuit Court LC No. 97-085844-CE ON REMAND

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

PER CURIAM.

In our previous opinion in this case,[1] we relied on *Shields v Shell Oil Co*, 237 Mich App 682; 604 NW2d 719 (1999), to affirm the trial court. Subsequently, the Michigan Supreme Court reversed *Shields*.[2] Therefore, upon plaintiffs' application for leave to appeal and motion for peremptory reversal, our Supreme Court vacated our previous opinion and remanded the case for reconsideration in light of the reversal of this Court's opinion in *Shields*.[3] Upon reconsideration, we again affirm, but for different reasons, and we remand for further action.

As we stated in our previous decision, this case concerns environmental contamination that occurred from petroleum products released by defendants at a site in Frankfort, Michigan. In their complaint, plaintiffs claim that they are entitled to recover from defendants "response activity" costs pursuant to § 20126a of Part 201 of the Natural Resources and Environmental Protection Act (NREPA), MCL 324.20101 *et seq.*, for plaintiffs' efforts to clean-up the contaminated site. The trial court determined that the cause of action was barred under both subsection 20140(1)(a) and subsection 20140(2) of the NREPA, and therefore granted summary disposition pursuant to MCR 2.116(C)(7).

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[1] *Attorney General v Woodland Oil Co, Inc*, unpublished memorandum opinion of the Court of Appeals, issued March 31, 2000 (Docket No. 213707).

[2] *Shields v Shell Oil Co*, 463 Mich 939; 621 NW2d 215 (2000).

[3] *Attorney General v Woodland Oil Co, Inc*, 463 Mich 940 (2000).

In our previous decision, we relied on the now vacated *Shields* decision in concluding that plaintiffs' 1997 filing of the lawsuit to recover "response activity" costs was untimely under subsection 20140(2) of the NREPA and thus that the trial court did not err in dismissing the case as to claims existing before July 1, 1991. Since that decision, both our Supreme Court and the Legislature have clarified the meaning of subsection 20140(2).[4] In vacating this Court's decision in *Shields*, our Supreme Court addressed both the former version of § 20140, which was in place when we first considered the instant case, and the subsequent amendment of that section, explaining that "[u]nder either the former or amended version of MCL 324.20140; MSA 13A.20140, it is clear that only actions for recovery of response activity costs *incurred* before July 1, 1991, were subject to the July 1, 1994, limitation period." *Shields v Shell Oil Co*, 463 Mich 939, 939; 621 NW2d 215 (2000) (emphasis in original). With this clarification in mind, we must determine whether the trial court's grant of summary disposition was proper in light of our Supreme Court's interpretation. After reconsidering the statute, we conclude that the trial court's grant of summary disposition was improper with regard to subsection 20140(2), but proper under subsection 20140(1)(a).

We review a trial court's grant of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998); *Russell v Dep't of Corrections*, 234 Mich App 135, 136; 592 NW2d 125 (1999). Whether a statute of limitation bars a cause of action is question of law that is reviewed under the same standard. *Insurance Comm'r v Aageson Thibo Agency*, 226 Mich App 336, 340-341; 573 NW2d 637 (1997). Likewise, statutory interpretation is a question of law that this Court reviews de novo. *Crown Technology Park v D&N Bank, FSB*, 242 Mich App 538, 546; 619 NW2d 66 (2000).

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[4] The Legislature's amended version of § 20140, effective June 29, 2000, provides in relevant part:

> (1) Except as provided in subsections (2) and (3), the limitation period for filing actions under this part is as follows:
>
> (a) For recovery of response activity costs and natural resources damages pursuant to section 20126a(1)(a), (b), or (c), within 6 years of initiation of physical on-site construction activities for the remedial action selected or approved by the department at a facility . . . .
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> * * *
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> (2) For recovery of natural resources damages that accrued prior to July 1, 1991, the limitation period for filing actions under this part is July 1, 1994.
>
> (3) For recovery of response activity costs that were incurred prior to July 1, 1991, the limitation period for filing actions under this part is July 1, 1994.
>
> (4) Subsection (3) is curative and intended to clarify the original intent of the legislature and applies retroactively.

The present case requires us to interpret and apply § 20140 of the NREPA. When construing a statute, the primary goal is to discern and give effect to the Legislature's intent when it enacted a provision. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). The specific language of the statute should first be examined because the words provide the most reliable evidence of the statute's intent. *Id.* If the plain and ordinary meaning of the language is clear, judicial construction is neither necessary nor permitted. *Id.*

We first address the trial court's grant of summary disposition on the basis of subsection 20140(2), now in part subsection 20140(3). In light of the interpretation made by our Supreme Court and the new legislation passed by the Legislature, we find the trial court's grant of summary disposition on this basis improper because plaintiffs only sought "response activity" costs that they incurred *after* July 1, 1991.[5] Thus, subsection 20140(2) is inapplicable here. Having reached this conclusion, we turn to whether the six-year statute of limitations found in subsection 20140(1)(a) bars plaintiffs' claim.

Plaintiffs contend that the six-year statute of limitation in subsection 20140(1)(a) does not bar their claim to recover "response activity" costs because defendants did not perform a "remedial action" at the site. Specifically, plaintiffs argue that a "final plan" to clean up the site was never executed, and that the statutory requirements of subsection 20118(2) (requiring, e.g., response activities, remedial action and departmental selection or approval) were not met. Plaintiffs also contend that it did not approve or select a "remedial action." Plaintiffs therefore conclude that defendants performed an "interim response activity," not covered by the statute of limitation. We disagree.

Section 20101 provides definitions of the terms used throughout Part 201 of the NREPA. Subsection 20101(ee) defines "response activity" as:

> "Response activity" means evaluation, *interim response activity, remedial action,* demolition, or the taking of other actions necessary to protect the public health, safety, or welfare, or the environment or the natural resources. Response activity also includes health assessments or health effect studies carried out under the supervision, or with the approval of, the department of public health and enforcement actions related to any response activity. [Emphasis added.]

[5] Although not clearly stated in the complaint, the record reveals that plaintiffs were not seeking costs incurred before July 1, 1991. For example, at the hearing on defendants' motion for summary disposition, plaintiffs indicated that "[w]e have been prevented from going back to any costs that we incurred prior to July of '91 and we're not seeking those costs."

Subsection 20101(cc), in turn, defines "remedial action," and provides:

> "Remedial action" includes, but is not limited to, *cleanup, removal*, containment, isolation, destruction, or treatment of a hazardous substance released or threatened to be released into the environment, monitoring, maintenance, or the taking of other actions that may be necessary to prevent, minimize, or mitigate injury to the public health, safety, or welfare, or to the environment. [Emphasis added.]

Further, subsection 20101(dd) defines a "remedial action plan" as "a work plan for performing remedial action under this part." Finally, subsection 20101(u) states:

> "Interim response activity" means the *cleanup or removal* of a released hazardous substance or the taking of other actions, *prior to the implementation of a remedial action*, as may be necessary to prevent, minimize, or mitigate injury to the public health, safety, or welfare, or to the environment. Interim response activity also includes, but is not limited to, measures to limit access, replacement of water supplies, and temporary relocation of people as determined to be necessary by the department. In addition, interim response activity means the taking of other actions as may be necessary to prevent, minimize, or mitigate a threatened release. [Emphasis added.]

In analyzing the plain language of these statutory definitions, we conclude that an "interim response activity" is essentially a quick response to a release, see subsection 20101(bb) (defining "release"), that eliminates a hazard, or a quick response to prevent the hazard from increasing in size and strength before a "remedial action" can take place. In other words, it is a temporary activity until a plan can be developed to implement a remedial action. See *Random House Webster's Unabridged Dictionary, Second Edition* (1998) (defining "interim" as "a temporary or provisional arrangement."). A "remedial action," on the other hand, is essentially a work plan that is designed and implemented to completely eliminate a hazard. Contrary to plaintiffs' analysis, a "final plan" is not needed to give rise to a "remedial action." Rather, the statutes contemplate a plan to cure the problem.

Applying this reasoning, defendants performed a "remedial action" rather than an "interim response activity" because: (1) in 1989 Woodland Oil had a three-phase "remedial action" plan to remove large amounts of contaminated soil at the site; (2) in 1989 Woodland Oil implemented that plan by removing approximately 2,500 cubic yards of contaminated soil from the site; (3) Woodland Oil disconnected the entire bulk plant and emptied and moved the tanks; and (4) Woodland Oil subsequently reconditioned the tanks and built a new facility. These actions were not a quick response to either eliminate a hazard or prevent the hazard from increasing in size and strength. Indeed, in 1991, two years after Woodland Oil began phase I of the plan, plaintiffs took over and began phase II of the plan and are apparently still working at the site. Moreover, contrary to plaintiffs' assertion, the definition of a "remedial action" is not found in subsection 20118(2). That provision is not a definitional provision; it merely details what a "remedial action" must ultimately accomplish.

Having determined that in 1989 Woodland Oil performed a "remedial action" at the site, we must next determine whether plaintiffs' claim to recover "response activity" costs is barred by subsection 20140(1)(a). That subsection provides the following limitation period for filing a complaint:

> For recovery of response activity costs and natural resources damages pursuant to section 20126a(1)(a), (b), or (c), within 6 years of initiation of physical on-site construction activities for the remedial action selected or approved by the department at a facility . . . . [MCL 324.20140(1)(a).]

Under the plain language of the statute, the six-year period of limitation to recover "response activity" costs begins to run when the state has selected or approved a remedial action and there has been an initiation of physical on-site construction activities to begin the remedial action. After these events occur, the state has six years to file its claim; otherwise, the claim is barred.

In the present case, the six-year statute of limitation began to run in 1989. On April 20, 1989, Robert Kettner, Michigan Department of Environmental Quality's[6] project manager for the site, actually approved and advised Woodland Oil to proceed with phase I of its "remedial action" plan to clean up the site. Additionally, in 1989 Woodland Oil initiated physical on-site construction activities at the site to begin the remedial action when it removed approximately 2,500 cubic yards of contaminated soil from the site. Despite plaintiffs' protestations to the contrary, there was a remedial action plan approved by the agency with work commenced in 1989. Because plaintiffs filed their claim for "response activity" costs on April 11, 1997, approximately eight years after these events took place, the six-year statute of limitation bars their claim. Accordingly, the trial court's grant of summary disposition in favor of defendants with respect to response activity costs relating to the contamination necessitating the 1989 remedial action must be affirmed.

However, the trial court did not address contamination not considered in said remedial action plan and the parties dispute whether further contamination necessitating response activity occurred. Under these circumstances, we remand to the trial court for further proceedings.

Affirmed and remanded. We do not retain jurisdiction.

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

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[6] At the time of the contamination, these matters were handled by the Michigan Department of Natural Resources (MDNR). However, MCL 324.99903 transferred certain powers of the MDNR to the Michigan Department of Environmental Quality (MDEQ), effective October 1, 1995. In this opinion, any reference to the MDEQ embodies the MDNR.