

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF THE DIRECTOR

In the matter of administrative proceedings)
against **BATTLE CREEK VA MEDICAL**)
CENTER a federal agency doing business at)
5500 Armstrong Road in the City of Battle)
Creek, County of Calhoun, State of Michigan)

AQD No. 6-2016

SRN: M3546

STIPULATION FOR ENTRY OF FINAL ORDER
BY CONSENT

This proceeding resulted from allegations by the Michigan Department of Environmental Quality (MDEQ) Air Quality Division (AQD) against Battle Creek VA Medical Center (Agency), a federal agency doing business at 5500 Armstrong Road, Battle Creek, Michigan, with State Registration Number (SRN) M3546. The MDEQ alleges that the Agency is in violation of Air Pollution Control Rule 2 (Mich Admin Code R 336.202). Specifically, the MDEQ alleges that the Agency has failed to submit the Michigan Air Emissions Reporting System (MAERS) report, as cited herein and in a Violation Notices dated May 6, 2015 and September 17, 2015. The Agency and MDEQ stipulate to the termination of this proceeding by entry of this Stipulation for Entry of a Final Order by Consent (Consent Order).

The Agency and MDEQ stipulate as follows:

1. The Natural Resources and Environmental Protection Act, 1994 PA 451 (Act 451), MCL 324.101 *et seq.* is an act that controls pollution to protect the environment and natural resources in this State.
2. Article II, Pollution Control, Part 55 of Act 451 (Part 55), MCL 324.5501 *et seq.* provides for air pollution control regulations in this State.
3. The MDEQ was created as a principal department within the Executive Branch of the State of Michigan pursuant to Executive Order 2011-1 and has all statutory authority, powers, duties, functions and responsibilities to administer and enforce all provisions of Part 55.
4. The Director has delegated authority to the Chief of the AQD (AQD Chief) to enter into this Consent Order.

5. The termination of this matter by a Consent Order pursuant to Section 5528 of Part 55 is proper and acceptable.

6. The Agency and the MDEQ agree that the signing of this Consent Order is for settlement purposes only and does not constitute an admission by the Agency that the law has been violated.

7. This Consent Order becomes effective on the date of execution (effective date of this Consent Order) by the AQD Chief.

8. The Agency shall achieve compliance with the aforementioned regulations in accordance with the requirements contained in this Consent Order.

COMPLIANCE PROGRAM AND IMPLEMENTATION SCHEDULE

9. Reporting

A. On and after the effective date of this Consent Order, the Agency shall complete and submit annually, by March 15th of each year, its MAERS report to the AQD. This report shall be submitted to the AQD Kalamazoo District Supervisor for each year following notification by the AQD that the report is required.

GENERAL PROVISIONS

10. This Consent Order in no way affects the Agency's responsibility to comply with any other applicable state and federal, or local laws or regulations, including without limitation, any amendments to the federal Clean Air Act, 42 USC 7401 *et seq.*, Act 451, Part 55 or their rules and regulations, or to the State Implementation Plan.

11. This Consent Order constitutes a civil settlement and satisfaction as to the resolution of the violations specifically addressed herein; however, it does not resolve any criminal action that may result from these same violations.

12. Within sixty (60) days after the effective date of this Consent Order, the Agency shall pay to the General Fund of the State of Michigan, in the form of a check made payable to the "State of Michigan" and mailed to the Michigan Department of Environmental Quality, Accounting Services Division, Cashier's Office, P.O. Box 30657, Lansing, Michigan 48909-8157, a settlement amount of \$5,000.00, which includes AQD costs for investigation and enforcement. This total settlement amount

shall be paid within sixty (60) days of the effective date of this Consent Order. To ensure proper credit, all payments made pursuant to this Consent Order shall include the "Payment Identification Number AQD40117" on the front of the check and/or in the cover letter with the payment. This settlement amount is in addition to any fees, taxes, or other fines that may be imposed on the Agency by law.

13. On and after the effective date of this Consent Order, if the Agency fails to comply with paragraph 9.A of this Consent Order, the Agency is subject to a stipulated fine of up to \$5,000.00 per violation. The amount of the stipulated fines imposed pursuant to this paragraph shall be within the discretion of the MDEQ. Stipulated fines submitted under this Consent Order shall be by check, payable to the State of Michigan within thirty (30) days of written demand and shall be mailed to the Michigan Department of Environmental Quality, Accounting Services Division, Cashier's Office, P.O. Box 30657, Lansing, Michigan 48909-8157. To ensure proper credit, all payments shall include the "Payment Identification Number AQD40117-S" on the front of the check and/or in the cover letter with the payment. Payment of stipulated fines shall not alter or modify in any way the Agency's obligation to comply with the terms and conditions of this Consent Order.

14. The AQD, at its discretion, may seek stipulated fines or statutory fines for any violation of this Consent Order which is also a violation of any provision of applicable federal and state law, rule, regulation, permit, or MDEQ administrative order. However, the AQD is precluded from seeking both a stipulated fine under this Consent Order and a statutory fine for the same violation.

15. To ensure timely payment of the settlement amount assessed in paragraph 12 and any stipulated fines assessed pursuant to paragraph 13 of this Consent Order, the Agency shall pay an interest penalty to the State of Michigan each time it fails to make a complete or timely payment under this Consent Order. The interest payment shall be determined at a rate of interest that is equal to one percent (1%) plus the average interest rate paid at auctions of 5-year United States treasury notes during the six months immediately preceding July 1 and January 1, as certified by the state treasurer, compounded annually, and using the full increment of amount due as principal, calculated from the due date specified in this Consent Order until the date that delinquent payment is finally paid in full. Payment of an interest penalty by the Agency shall be made to the State of Michigan in accordance with paragraph 13 of this Consent Order. Interest payments shall be applied first towards the most overdue

amount or outstanding interest penalty owed by the Agency before any remaining balance is applied to subsequent payment amount or interest penalty.

16. The Agency agrees not to contest the legal basis for the settlement amount assessed pursuant to paragraph 12. The Agency also agrees not to contest the legal basis for any stipulated fines assessed pursuant to paragraph 13 of this Consent Order, but reserves the right to dispute in a court of competent jurisdiction the factual basis upon which a demand by MDEQ of stipulated fines is made. In addition, the Agency agrees that said fines have not been assessed by the MDEQ pursuant to Section 5529 of Part 55 and therefore are not reviewable under Section 5529 of Part 55.

17. This compliance program is not a variance subject to the 12 month limitation specified in Section 5538 of Part 55.

18. This Consent Order shall remain in full force and effect for a period of at least three (3) years. Thereafter, the Consent Order shall terminate only upon written notice of termination issued by the AQD Chief. Prior to issuance of a written notice of termination, the Agency shall submit a request, to the AQD Chief at the Michigan Department of Environmental Quality, Air Quality Division, P.O. Box 30260, Lansing, Michigan 48909-7760, consisting of a written certification that the Agency has fully complied with all the requirements of this Consent Order and has made all payments including all stipulated fines required by this Consent Order. Specifically, this certification shall include: (i) the date of compliance with each provision of the compliance program and the date any payments or stipulated fines were paid; (ii) a statement that all required information has been reported to the AQD Kalamazoo District Supervisor; (iii) confirmation that all records required to be maintained pursuant to this Consent Order are being maintained at the facility; and, (iv) such information as may be requested by the AQD Chief.

19. In the event the Agency sells or transfers the facility, with SRN M3546, it shall advise any purchaser or transferee of the existence of this Consent Order in connection with such sale or transfer. Within thirty (30) calendar days, the Agency shall also notify the AQD Kalamazoo District Office Supervisor, in writing, of such sale or transfer, the identity and address of any purchaser or transferee, and confirm the fact that notice of this Consent Order has been given to the purchaser and/or transferee. As a condition of the sale, the Agency must obtain the consent of the purchaser and/or transferee, in writing, to assume all of the obligations of this Consent Order. A copy of that agreement shall be forwarded to the

AQD Kalamazoo District Supervisor within thirty (30) days of assuming the obligations of this Consent Order.

20. Prior to the effective date of this Consent Order and pursuant to the requirements of Sections 5511 and 5528(3) of Part 55, the public was notified of a 30-day public comment period and was provided the opportunity for a public hearing.

21. Section 5530 of Part 55 may serve as a source of authority but not a limitation under which the Consent Order may be enforced. Further, Part 17 of Act 451 and all other applicable laws and any other legal basis or applicable statute may be used to enforce this Consent Order.

22. The Agency hereby stipulates that entry of this Consent Order is a result of an action by MDEQ to resolve alleged violations of its facility located at 5500 Armstrong Road, Battle Creek, Michigan. The Agency further stipulates that it will take all lawful actions necessary to fully comply with this Consent Order, even if the Agency files for bankruptcy in the future. The Agency will not seek discharge of the settlement amount and any stipulated fines imposed hereunder in any future bankruptcy proceedings, and the Agency will take necessary steps to ensure that the settlement amount and any future stipulated fines are not discharged. The Agency, during and after any future bankruptcy proceedings, will ensure that the settlement amount and any future stipulated fines remain an obligation to be paid in full by the Agency to the extent allowed by applicable bankruptcy law.

The undersigned certifies that he/she is fully authorized by the Agency to enter into this Consent Order and to execute and legally bind the Agency to it.

BATTLE CREEK VA MEDICAL CENTER

Mary Beth Skupien, PhD, Medical Center Director
Print Name and Title

Mary Beth Skupien Date: 3/30/16
Signature

The above signatory subscribed and sworn to before me this 30 day of March, 2016.

State of Michigan
Melissa Taylor - Notary Public
Appointment Date & County: 03/29/2010, Calhoun
Expiration Date: 03/29/2016
Melissa Taylor
(Signature)

Melissa Taylor
Notary Public

Approved as to Content:

Lynn Fiedler
Lynn Fiedler, Chief
AIR QUALITY DIVISION
DEPARTMENT OF
ENVIRONMENTAL QUALITY

Approved as to Form:

Neil Gordon
Neil Gordon, Section Head
ENVIRONMENTAL REGULATION SECTION
ENVIRONMENT, NATURAL RESOURCES,
AND AGRICULTURE DIVISION
DEPARTMENT OF ATTORNEY GENERAL

Dated: 4/2/16

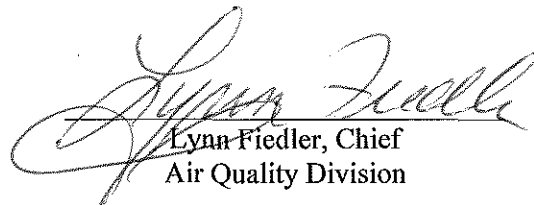
Dated: April 11, 2016

FINAL ORDER

The Chief of the Air Quality Division having had opportunity to review the Consent Order and having been delegated authority to enter into Consent Orders by the Director of the Michigan Department of Environmental Quality pursuant to the provisions of Part 55 of Act 451 and otherwise being fully advised on the premises,

HAS HEREBY ORDERED that the Consent Order is approved and shall be entered in the record of the MDEQ as a Final Order.

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY


Lynn Fiedler, Chief
Air Quality Division

Effective Date: 4/12/16