

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF THE DIRECTOR

In the matter of administrative proceedings)
against **BERRIEN COUNTY**)
TREASURER, the County Treasurer's)
Office of Berrien County doing business at)
701 Main Street in the City of St. Joseph,)
County of Berrien, State of Michigan)
)

AQD No. 26-2016

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 Berrien County Treasurer (County), the County Treasurer's Office of Berrien County, doing business at 701 Main Street in the City of St. Joseph, County of Berrien, State of Michigan. The MDEQ alleges that the County has violated Section 112 of the federal Clean Air Act (CAA), 42 USC 7412, the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), Title 40 of the Code of Federal Regulations (CFR) Part 61, Subpart M, and Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, Mich Admin Code, R 336.1942 (Rule 942), as specified in Violation Notices dated January 26, 2016, January 27, 2016, and February 11, 2016. The alleged violations occurred during the asbestos demolition/renovation at a facility located at 368 Brunson Avenue and 668 Pearl Street in Benton Harbor, Michigan. Specifically, MDEQ alleges that the County, failed to remove regulated asbestos containing material (RACM) prior to demolition, failed to wet RACM, failed to seal RACM while wet in leak tight container, failed to deposit asbestos containing material as soon as practical, failed to use generator labels, and failed to provide proper notice of asbestos work. The County 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 County 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. Section 112 of the CAA, provides authority for the Administrator of the United States Environmental Protection Agency (USEPA) to establish emission standards for hazardous air pollutants.

6. The USEPA has promulgated NESHAP regulations for asbestos, which are set forth in the 40 CFR Part 61, Subpart M, Sections 61.140 through 61.156.

7. The USEPA has delegated authority for administration and enforcement of NESHAP asbestos regulations to MDEQ-AQD. This authority was granted in an April 11, 1988 letter from Valdas Adamkus (USEPA Regional Administrator) to Robert Miller (Air Quality Division, Chief).

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

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

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

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

COMPLIANCE PROGRAM

12. On and after the effective date of this Consent Order, the County shall fully comply with the National Emission Standards for Hazardous Air Pollutants (NESHAP), Title 40 of the Code of Federal Regulations (CFR) Part 61, Subpart M, incorporated by reference and made an enforceable part of the Consent Order.

GENERAL PROVISIONS

13. 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.

14. Within thirty (30) days after the effective date of this Consent Order, the County 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 \$9,700.00, which includes AQD costs for investigation and enforcement. This total settlement amount shall be paid within thirty (30) 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 AQD40137" 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 County by law.

15. On and after the effective date of this Consent Order, if the County fails to comply with paragraph 12 of this Consent Order, the County is subject to stipulated fines 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 AQD40137-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 County's obligation to comply with the terms and conditions of this Consent Order.

16. 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.

17. To ensure timely payment of the settlement amount assessed in paragraph 14 and any stipulated fines assessed pursuant to paragraph 15 of this Consent Order, the County 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 County 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 County before any remaining balance is applied to subsequent payment amount or interest penalty.

18. The County agrees not to contest the legal basis for the settlement amount assessed pursuant to paragraph 14. The County also agrees not to contest the legal basis for any stipulated fines assessed pursuant to paragraph 15 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 County 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.

19. This Consent Order shall remain in full force and effect for a period of at least five (5) years. Thereafter, the Consent Order may be terminated only upon the issuance of a written notice of termination issued by the AQD Chief. Prior to issuance of a written notice of termination, the County 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 County 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; (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 Division Chief. Termination of this Consent Order shall be executed upon completion of the terms and conditions of this contract and will not be unreasonably withheld.

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 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 County hereby stipulates that entry of this Consent Order is a result of an action by MDEQ to resolve alleged violations at 368 Brunson Avenue and 668 Pearl Street in Benton Harbor, Michigan. The County further stipulates that it will take all lawful actions necessary to fully comply with this Consent Order, even if the County files for bankruptcy in the future. The County will not seek discharge of the settlement amount and any stipulated fines imposed hereunder in any future bankruptcy proceedings, and the County will take necessary steps to ensure that the settlement amount and any future stipulated fines are not discharged. The County, 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 County to the extent allowed by applicable bankruptcy law.

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

BERRIEN COUNTY TREASURER

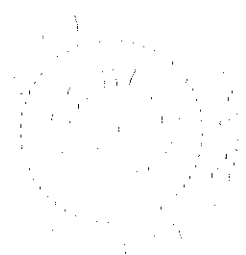
Bret Witkowski, Treasurer
Print Name and Title

Bret Witkowski Date: 6/27/16
Signature

The above signatory subscribed and sworn to before me this 27 day of June, 2016

J. ARENT
Notary Public, Berrien County, Michigan
My Commission Expires January 16, 2018

J. Arent
Notary Public Signature



Approved as to Content:

Approved as to Form:

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

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

Dated: 7/15/16

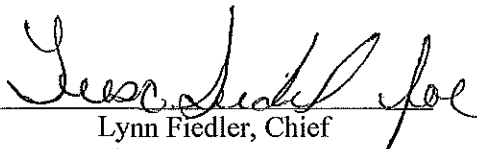
Dated: July 7, 2016

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: 7/15/16