

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY
OFFICE OF THE DIRECTOR

In the matter of administrative proceedings
against: **HOLLERBACH EXCAVATING,
INC.**, a corporation, organized under the
laws of the State of Michigan and doing
business at 3409 Linco Road in the City of
Stevensville, County of Berrien, State of
Michigan

AQD No. 2019-08

SRN/ID: U111900321

STIPULATION FOR ENTRY OF FINAL ORDER
BY CONSENT

This proceeding resulted from allegations by the Michigan Department of Environment, Great Lakes, and Energy (EGLE), Air Quality Division (AQD) against Hollerbach Excavating Inc., (Company), a corporation organized under the laws of the State of Michigan and doing business at 3409 Linco Road, City of Stevensville, County of Berrien, State of Michigan. EGLE alleges that the Company has violated the National Emission Standards for Hazardous Air Pollutants for asbestos, Code of Federal Regulations (CFR), Title 40, Part 61, Subpart M (Asbestos NESHAP) and Mich Admin Code, R 336.1942 (Rule 942). The alleged violations occurred during the asbestos demolition/renovation at 8981 Red Arrow Highway, Bridgman, Michigan (SRN/ID: U111900321). Specifically, EGLE alleges that the Company failed to thoroughly inspect for asbestos-containing materials and provide a ten-day notification prior to demolition, as specified in a Violation Notice dated January 14, 2019. The Company and EGLE stipulate to the termination of this proceeding by entry of a Stipulation for Entry of a Final Order by Consent (Consent Order).

The Company and EGLE stipulate as follows:

1. The Natural Resources and Environmental Protection Act, 1994 PA 451, (NREPA), 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. EGLE was created as a principal department within the Executive Branch of the State of Michigan pursuant to Executive Order 2019-06 and has all statutory authority, powers, duties, functions and responsibilities to administer and enforce all provisions of Part 55.
4. The EGLE Director has delegated authority to the Director of the AQD (AQD

Director) 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 the Asbestos NESHAP, which is set forth in 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 EGLE-AQD. This authority was granted in an April 11, 1988, letter from Valdus Adamkus (USEPA Regional Administrator) to Robert Miller (AQD).

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

9. The Company and EGLE agree that the signing of this Consent Order is for settlement purposes only and does not constitute an admission by the Company 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 Director.

11. The Company 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 Company shall fully comply with the Asbestos NESHAP, which is incorporated by reference and made an enforceable part of this 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 Company 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 Environment, Great Lakes, and Energy, Accounting Services Division, Cashier's Office, P.O. Box 30657, Lansing, Michigan 48909-8157, a settlement amount of \$15,000.00, 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 AQD40212" 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 Company by law.

15. On and after the effective date of this Consent Order, if the Company fails to comply with paragraph 12 of this Consent Order, the Company is subject to stipulated fines of up to \$7,500.00 per violation. The amount of the stipulated fines imposed pursuant to this paragraph shall be within the discretion of EGLE. Stipulated fines submitted under this Consent Order shall be made by check, payable to the "State of Michigan" within thirty (30) days of demand and shall be mailed to the Michigan Department of Environment, Great Lakes, and Energy, Accounting Services Division, Cashier's Office, P.O. Box 30657, Lansing, Michigan 48909. To ensure proper credit, all payments shall include the "Payment Identification Number AQD40212-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 Company'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 EGLE 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. If the Company fails to pay any part of the settlement amount assessed in paragraph 14 or any stipulated fines assessed pursuant to paragraph 15 under this Consent Order by the due date, the Company shall pay a late payment penalty of \$50.00 per day for each day that the settlement amount or stipulated fines are past due.

18. The Company agrees not to contest the legal basis for the settlement amount assessed pursuant to paragraph 14. The Company 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 EGLE of stipulated fines is made. In addition, the Company agrees that said fines have not been assessed by EGLE 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 5 years. Thereafter, this Consent Order may be terminated only upon the issuance of a written notice of termination issued by the AQD Director. Prior to issuance of a written notice of

termination, the Company shall submit a request to the AQD Director at the Michigan Department of Environment, Great Lakes, and Energy, Air Quality Division, P.O. Box 30260, Lansing, Michigan 48909-7760, consisting of a written certification that the Company 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 Director.

20. In the event Hollerbach Excavating, Inc. sells or transfers the Company, 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 Company shall also notify the AQD Kalamazoo District 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 Company 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.

21. 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.

22. Section 5530 Part 55 may serve as a source of authority but not a limitation under which this 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.

23. The Company hereby stipulates that entry of this Consent Order is a result of an action by EGLE to resolve alleged violations at 8981 Red Arrow Highway, Bridgman, Michigan (SRN/ID: U111900321). The Company further stipulates that it will take all lawful actions necessary to fully comply with this Consent Order, even if the Company files for bankruptcy in the future. The Company will not seek discharge of the settlement amount and any stipulated fines imposed hereunder in any future bankruptcy proceedings, and the Company will take the necessary steps to ensure that the settlement amount and any future stipulated fines are not discharged. The Company, 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 Company to the extent allowed by applicable bankruptcy law.

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

HOLLERBACH EXCAVATING, INC.

Michael J. Hollerbach-President
Print Name and Title

Michael J. Hollerbach Date: 05-15-2019
Signature

The above signatory subscribed and sworn to before me this 15 day of May, 2019

Rebecca A. Black
Notary Public Signature

Rebecca A. Black
Notary Public Printed Name

My Commission Expires: 04-27-2025

Approved as to Content:

Mary Ann Dolehanty
Mary Ann Dolehanty, Director
AIR QUALITY DIVISION
DEPARTMENT OF
ENVIRONMENT, GREAT LAKES,
AND ENERGY

Dated: 5/29/19

Approved as to Form:

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

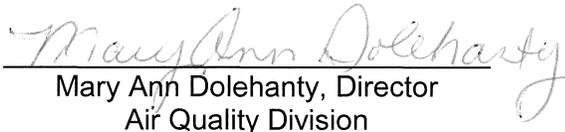
Dated: 5/24/2019

FINAL ORDER

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

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

MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY



Mary Ann Dolehanty, Director
Air Quality Division

Effective Date: 5/29/19