



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



C. HEIDI GRETHNER
DIRECTOR

January 26, 2018

Mr. David C. Sproul, PE
Michigan Department of Technology, Management & Budget
State Facilities Administration
Design and Construction Division
3111 W. St. Joseph Street
Lansing, Michigan 48917

Dear Mr. Sproul:

SUBJECT: Notice of Termination for Consent Order AQD No. 46-2016; ID: U341604265

Enclosed is the Notice of Termination for Stipulation for Entry of Final Order by Consent (Consent Order), AQD No. 46-2016; ID: U341604265, Michigan Department of Technology, Management & Budget (DTMB). This is in response to the request made by the DTMB, State Facilities Administration – Design and Construction Division to the Michigan Department of Environmental Quality (MDEQ).

If you have any questions regarding the enclosed Notice of Termination, please contact Ms. Rachel McLeod, Enforcement Unit, Air Quality Division, at 517-284-6770; mcleodr1@michigan.gov; or MDEQ, P.O. Box 30260, Lansing, Michigan 48909-7760; or you may contact me.

Sincerely,

Lynn Fiedler, Director
Air Quality Division
517-284-6773

Enclosure

cc/enc: Ms. Sarah Marshall, U.S. Environmental Protection Agency, Region 5
Mr. Neil Gordon, Michigan Department of Attorney General
Ms. Jennifer Jackson, Michigan Department of Attorney General
Mr. Robert Hall, DTMB
Mr. Michael Turnquist, DTMB
Mr. Christopher Ethridge, MDEQ
Ms. Karen Kajiya-Mills, MDEQ
Mr. Thomas Hess, MDEQ
Ms. Rachel McLeod, MDEQ

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION

In the matter of administrative proceedings
against **DEPARTMENT OF
TECHNOLOGY, MANAGEMENT AND
BUDGET**, a department organized under the
laws of the State of Michigan and doing
business at 7150 Harris Drive in the City of
Lansing, County of Ingham, State of Michigan

AQD No. 46-2016

ID: U341604265

NOTICE OF TERMINATION

This Notice is issued pursuant to a request for termination submitted by Michigan Department of Technology, Management and Budget (DTMB), pursuant to paragraph 19 of the Stipulation for Entry of Final Order by Consent (Consent Order), AQD No. 46-2016. The request contained supporting information as required by paragraph 19 of AQD No. 46-2016. Review of this request and supporting information indicates that DTMB, has achieved compliance with the terms and requirements of the Consent Order.

THEREFORE, effective on the date signed below, AQD No. 46-2016 is terminated. The Michigan Department of Environmental Quality reserves the right to pursue administrative, civil and/or criminal proceedings, including the assessment of monetary fines, for any falsification of information submitted in support of DTMB's request for termination of the Consent Order AQD No. 46-2016, or for any violation of the Michigan Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.5501 *et seq.*; and all other applicable laws.

By: 

Lynn Fiedler, Director
Air Quality Division
Michigan Department of
Environmental Quality

Dated: 1/26/18

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF THE DIRECTOR

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business at 7150 Harris Drive, City of)
Lansing, County of Ingham, State of)
Michigan)

AQD No. 46-2016

ID: U341604265

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 the Michigan Department of Technology, Management & Budget (DTMB), which contracted to have construction services performed at Michigan Reformatory Power Plant. The MDEQ alleges that the DTMB, through the actions or inaction of its contractors and/or subcontractors, 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, 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 a Violation Notice dated May 23, 2016. The alleged violations occurred during demolition of a boiler at a facility located at 1342 West Main Street in Ionia, Ionia County, State of Michigan (ID: U341604265). Specifically, the MDEQ alleges that the DTMB, through the actions or inaction of their contractors and/or subcontractors, failed to contain regulated asbestos-containing material (RACM) in a leak tight container, failed to provide proper notice of asbestos work, failed to use generator labels, and failed to use signs during loading/unloading. The DTMB and the MDEQ stipulate to the termination of this proceeding by entry of this Stipulation for Entry of a Final Order by Consent (Consent Order).

The DTMB and the 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 the MDEQ-AQD. This authority was granted in an April 11, 1988 letter from Valdis 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 DTMB and the MDEQ agree that the signing of this Consent Order is for settlement purposes only and does not constitute an admission by the DTMB 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 DTMB 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 DTMB 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, which is 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 DTMB 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 \$2,000.00, which includes AQD costs for investigation and enforcement. To ensure proper credit, all payments made pursuant to this Consent Order shall include the “Payment Identification Number AQD40158” on the front of the check and/or in the cover letter with the payment.

15. On and after the effective date of this Consent Order, if the DTMB fails to comply with paragraph 12 of this Consent Order, the DTMB is subject to stipulated fines of up to \$2,000.00 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 AQD40158-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 DTMB’s obligation to comply with the terms and conditions of this Consent Order. Stipulated fines under this Consent Order are limited to violations that occur at Michigan Reformatory Power Plant.

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 the 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 DTMB 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 DTMB 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 DTMB before any remaining balance is applied to subsequent payment amount or interest penalty.

18. The DTMB agrees not to contest the legal basis for the settlement amount assessed pursuant to paragraph 14. The DTMB 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 the MDEQ of stipulated fines is made. In addition, the DTMB 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 one (1) year. 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 DTMB 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 DTMB 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 DTMB; 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.

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

MICHIGAN DEPARTMENT OF TECHNOLOGY, MANAGEMENT & BUDGET

DAVID B. BEHEN, DIRECTOR, DTMB & CIO
Print Name and Title

[Signature]
Signature

Date: 12.1.16

The above signatory subscribed and sworn to before me this 1 day of December, 2016.

Pamela A. Trakul

[Signature]
Notary Public Signature

Clinton acting in Ingham
Commission Expires 6/13/2018

Approved as to Content:

[Signature]
Lynn Fiedler, Chief
AIR QUALITY DIVISION
DEPARTMENT OF
ENVIRONMENTAL QUALITY

Dated: 12/7/16

Approved as to Form:

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

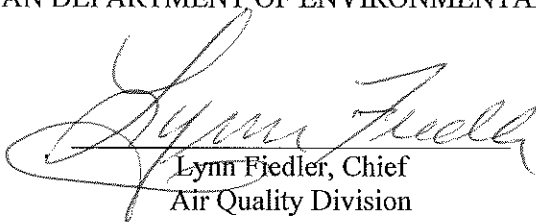
Dated: December 5, 2016

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: 12/7/16