



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



DAN WYANT
DIRECTOR

August 23, 2012

Ms. Jessica Routley
AZO Services Management, Inc.
5300 Miller Road
Kalamazoo, Michigan 49048

Dear Ms. Routley:

SUBJECT: Balkema Excavating, Inc.

Enclosed is the Notice of Termination for Stipulation for Entry of Final Order by Consent, AQD No. 15-2010. This is in response to the request made by your company to the Michigan Department of Environmental Quality (MDEQ).

If you have any questions regarding the enclosed notice, please contact Ms. Rachel McLeod, Enforcement Unit, Air Quality Division, at 517-241-7622.

Sincerely,

G. Vinson Hellwig, Chief
Air Quality Division
517-373-7069

Enclosure

cc/enc: Ms. Sara Breneman, U.S. Environmental Protection Agency, Region 5
Mr. Neil Gordon, Michigan Department of Attorney General
Ms. Mary Douglas, MDEQ
Mr. Thomas Hess, MDEQ
Ms. Karen Kajiya-Mills, MDEQ
Ms. Rachel McLeod, MDEQ

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR QUALITY DIVISION

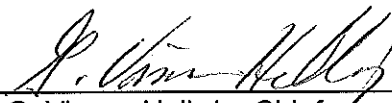
In the matter of administrative proceedings)
against **BALKEMA EXCAVATING, INC.**, a)
corporation organized under the laws of the)
State of Michigan and doing business at)
1500 River Street, City of Kalamazoo, County)
of Kalamazoo, State of Michigan)

AQD No. 15-2010

NOTICE OF TERMINATION

This Notice is issued pursuant to a request for termination submitted by AZO Services Management, Inc., on behalf of Balkema Excavating, Inc., pursuant to paragraph 22 of the Stipulation for Entry of Final Order by Consent (Consent Order), AQD No. 15-2010. The request contained supporting information as required by paragraph 22 of AQD No. 15-2010. Review of this request and supporting information indicates that Balkema Excavating, Inc. has achieved compliance with the terms and requirements of the Consent Order.

THEREFORE, effective on the date signed below, AQD No. 15-2010 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 AZO Services Management, Inc.'s request for termination of the Consent Order AQD No. 15-2010, on behalf of Balkema Excavating, Inc., 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: 
G. Vinson Hellwig, Chief
Air Quality Division
Michigan Department of
Environmental Quality

Dated: 8/24/12

STATE OF MICHIGAN
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENT
OFFICE OF THE DIRECTOR

In the matter of administrative proceedings)
against **BALKEMA EXCAVATING, INC.**,)
a corporation organized under the laws of the)
State of Michigan and doing business at 1500)
River Street, City of Kalamazoo, Michigan,)
County of Kalamazoo, State of Michigan.)
)

AQD No. 15-2010

STIPULATION FOR ENTRY OF FINAL ORDER
BY CONSENT

This proceeding resulted from allegations by the Michigan Department of Natural Resources and Environment ("MDNRE"), Air Quality Division ("AQD") against Balkema Excavating, Inc. ("Company"), located at 1500 River Street, in the City of Kalamazoo, County of Kalamazoo, State of Michigan. The MDNRE alleges that the Company violated Section 112 of the federal Clean Air Act ("CAA"), 42 USC 7412, the federal National Emission Standards for Hazardous Air Pollutants as listed in Title 40 of the Code of Federal Regulations, Part 61, Subpart M ("asbestos NESHAP"), Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, Michigan Administrative Code ("MAC") AACS 2002 R336.1301 ("Rule 301"), MAC AACS 1999 R336.1310 ("Rule 310") and MAC 2008 R 336.1942 ("Rule 942"); as specified in a Violation Notices dated April 29, 2009 and May 29, 2009. The alleged federal and state air quality violations occurred during the demolition of two houses and a garage at 5190 and 5246 O Avenue, in Pavilion Township, Michigan. Specifically, the MDNRE alleges that the Company failed to inspect for the presence of asbestos prior to demolition of two houses and a garage, failed to provide a 10 working day notification, failed to remove regulated asbestos containing material (RACM) before an activity to disturb it had occurred, failed to wet the stripped RACM, failed to wet RACM during demolition, failed to have a person on site trained in the Asbestos NESHAP regulations during the demolition, failed to seal RACM in leak tight containers while wet, generated visible emissions from asbestos containing waste material and open burned remnants of the demolished houses and garage. The Company and MDNRE 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 MDNRE 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 the 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 MDNRE was created as a principal department within the Executive Branch of the State of Michigan pursuant to Executive Order 2009-45 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 Asbestos NESHAP, Sections 61.140 through 61.156.
7. The USEPA has delegated authority for the administration of NESHAP asbestos regulations to MDEQ-AQD. This authority was granted in an April 11, 1998 letter from Valdus Adamkus ("USEPA Regional Administrator") to Robert Miller ("Air Quality Division, Chief"). In addition, MDEQ has authority for the enforcement of the asbestos regulations through the promulgation of MAC Rule 942 on November 30, 2000. Executive Order 2009-45 combined the Michigan Department of Environmental Quality and Department of Natural Resources to form the new Department of Resources and Environment (MDNRE) at which time MDEQ-AQD became MDNRE-AQD. The Executive Order was signed on October 08, 2009 and became effective on January 17, 2010.
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 the MDNRE 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 Chief.

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 and with Michigan Administrative Code ("MAC"), 1995 AACRS R 336.1942 ("Rule 942").

13. On and after the effective date of this Consent Order, the Company shall fully comply with Rule 301 regarding the "Standards for density of emissions".

14. On and after the effective date of this Consent Order, the Company shall fully comply with Rule 310 regarding "Open burning".

GENERAL PROVISIONS

15. This Consent Order in no way affects the Company'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.

16. 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.

17. 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 delivered to the Michigan Department of Natural Resources and Environment, Financial and Business Services Division, Revenue Control, P.O. Box 30657, Lansing, Michigan 48909-8157, a settlement amount of \$24,640.00, 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 Agreement

Identification No. AQD-1195 on the face of the check. This settlement amount is in addition to any fees, taxes, or other fines that may be imposed on the Company by law.

18. On and after the effective date of this Consent Order, if the Company fails to comply with paragraph 12, 13, or 14 of this Consent Order, the Company is subject to stipulated fines of up to \$2,000.00 per violation per day. On and after the effective date of this Consent Order, if the Company fails to comply with any other provision of this Consent Order, the Company is subject to stipulated fines of up to \$500.00 per violation. The amount of the stipulated fines imposed pursuant to this paragraph shall be within the discretion of the MDNRE up to the maximum amount stated. Stipulated fines submitted under this Consent Order shall be by check, payable to the "State of Michigan" within 30 days after written demand from the MDNRE AQD Chief and shall be delivered to the Michigan Department of Natural Resources and Environment, Financial & Business Services Division, Revenue Control, P.O. Box 30657, Lansing, Michigan 48909. To ensure proper credit, all payments shall include the Agreement Identification No. AQD-1195-S on the face of the check. 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.

19. 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 MDNRE 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.

20. To ensure timely payment of the settlement amount in paragraph 17 and any stipulated fines assessed pursuant to paragraph 18 of this Consent Order, the Company shall pay an interest payment 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 payment by the Company shall be made to the State of Michigan in accordance with paragraph 18 of this Consent Order. Interest payments shall be applied first towards the most overdue amount or outstanding

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

21. The Company agrees not to contest the legal basis for the settlement amount assessed pursuant to paragraph 17. The Company also agrees not to contest the legal basis for any stipulated fines assessed pursuant to paragraph 18 of this Consent Order, but reserves the right to dispute in a court of competent jurisdiction the factual basis upon which a demand by MDNRE of stipulated fines is made. In addition, the Company agrees that said fines have not been assessed by the MDNRE pursuant to Section 5529 of Part 55 and therefore are not reviewable under Section 5529 of Part 55.

22. This Consent Order shall remain in full force and effect for a period of at least two (2) 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 Company shall submit a request, to the AQD Chief at the Michigan Department of Natural Resources and Environment, 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 Division Chief. Termination of this Consent Order shall not be unreasonably withheld.

23. In the event the Company transfers their liability in this matter, the Company shall advise any purchaser or transferee of the existence of this Consent Order in connection with such transfer. Within 30 calendar days, the Company shall also notify the AQD Kalamazoo District Supervisor, in writing, of such transfer, the identity and address of any transferee, and confirm the fact that notice of this Consent Order has been given to the transferee. As a condition of the transfer, the Company must obtain the consent of the 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 30 days of assuming the obligations of this Consent Order.

24. 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.

25. 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.

26. The Company hereby stipulates that entry of this Consent Order is a result of an action by MDNRE to resolve the alleged violations at 5190 and 5246 O Avenue, in Pavilion Township, Michigan. 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 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.

BALKEMA EXCAVATING , INC.

Jeffrey Balkema Vice President
Print Name and Title

[Signature] Date: 07-07-2010
Signature

The above signatory subscribed and sworn to before me this 7th day of July, 2010.

JESSICA ROUTLEY
Notary Public, State of Michigan
County of Kalamazoo
My Commission Expires 08-04-2012
Acting in the county of _____

[Signature]
Notary Public

Approved as to Content:

[Signature]
G. Vinson Hellwig, Chief
AIR QUALITY DIVISION
DEPARTMENT OF NATURAL
RESOURCES AND ENVIRONMENT

Dated: 7/14/10

Approved as to Form:

[Signature]
Alan F. Hoffman, Section Head
ENVIRONMENTAL REGULATION SECTION
ENVIRONMENT, NATURAL RESOURCES,
AND AGRICULTURE DIVISION
DEPARTMENT OF ATTORNEY GENERAL

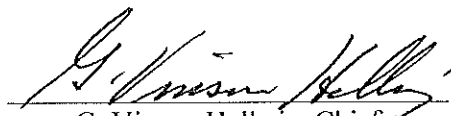
Dated: 7/14/2010

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 Natural Resources and Environment 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 MDNRE as a Final Order.

MICHIGAN DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENT


G. Vinson Hellwig, Chief
Air Quality Division

Dated: 7/14/10