

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
OFFICE OF THE DIRECTOR

---

In the matter of administrative proceedings against )  
**NORMAN PESTKA CONSTRUCTION, INC.**, a )  
corporation organized under the laws of the State of )  
Michigan and doing business at 115 Old Norwich )  
Trail, in the Village of Ontonagon, County of )  
Ontonagon, State of Michigan, and Mr. Norman )  
Pestka, an individual, jointly and severally, doing )  
business in the State of Michigan )

---

AQD No. 4-2011

ID: U66110015

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 Norman Pestka Construction, Inc., a Michigan corporation, located at 115 Old Norwich Trail, in the Village of Ontonagon, County of Ontonagon, State of Michigan, and also doing business as Mr. Norman Pestka, an individual, (hereinafter jointly and severally as the Company). The MDEQ alleges that the Company 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 is in violation of 2000 MR 18, R 336.1942 (Rule 942) in effect on November 30, 2000; as specified in a Violation Notices dated January 24, 2011 and February 16, 2011. The alleged violations occurred during the asbestos demolition, renovation and removal activities conducted at 411 Gorman Avenue, in the Village of Ontonagon, (Facility 1), and on the previous Smurfit Stone Container Corporation (SSCC) site, at the Chip Reclaim Building (Facility 2) and at the Chip Dumper Buildings Nos. 1 and 2 (Facility 3) in the County of Ontonagon, State of Michigan. Specifically, among other alleged violations, the Company failed to thoroughly inspect Facility 1 for asbestos materials, failed to provide written notice of intent to demolish or renovate, failed to deposit regulated asbestos-containing waste material as soon as practical at an approved disposal site, failed to remove all Regulated Asbestos Containing Material (RACM) from a facility being demolished before any activity began that would break up, dislodge, or similarly disturb the material, failed to adequately wet all RACM, including material that had been removed or stripped and ensure that it remain wet until collected and disposed of, and failed to discharge no visible emissions to outside air, as required by 40 CFR 61.140 *et seq.* and Rule 942. Additionally, the Company failed to thoroughly inspect Facilities 2 and 3 for asbestos materials and failed to provide written notice of intent to

demolish or renovate as required by 40 CFR 61.145(a), 40 CFR 61.145(b)(3) and Rule 942. The Company and the MDEQ 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 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 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 Company and the MDEQ 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 Section 61.145 (a) of the asbestos NESHAP and with Michigan Administrative Code (MAC), 1995 AACS R 336.1942 (Rule 942), including to conduct a survey prior to commencing demolition and/or renovation work.

13. On and after the effective date of this Consent Order, the Company shall fully comply with Section 61.145 (b) and with Michigan Administrative Code (MAC), 1995 AACS R 336.1942 (Rule 942) by providing to the MDEQ-AQD the required notification, which accurately describes the work practices and engineering controls to be used to comply with the asbestos NESHAP.

14. On and after the effective date of this Consent Order, the Company shall fully comply with Section 61.145 (c) of the asbestos NESHAP and with Michigan Administrative Code (MAC), 1995 AACS R 336.1942 (Rule 942), including adequately wetting RACM during demolition/renovation activities.

15. On and after the effective date of this Consent Order, the Company shall fully comply with Section 61.150 of the asbestos NESHAP and with Michigan Administrative Code (MAC), 1995 AACS R 336.1942 (Rule 942) including discharging no visible emissions to the outside air during the collection, processing, packaging, or transporting of any RACM.

GENERAL PROVISIONS

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. The Company shall pay to the General Fund of the State of Michigan, in the form of checks made payable to the "State of Michigan" and delivered to the Michigan Department of Environmental Quality, Financial and Business Services Division, Revenue Control, P.O. Box 30657, Lansing, Michigan 48909-8157, a total settlement amount of \$42,000.00 which includes AQD costs for investigation and enforcement. The total sum of \$42,000.00 shall be made in five (5) equal payments as follows: a payment of \$8,400.00 shall be made on or before October 21, 2011; a second payment of \$8,400.00 shall be made on or before August 20, 2012; a third payment of \$8,400.00 shall be paid on or before November 20, 2012; a fourth payment of \$8,400.00 shall be made on or before August 20, 2013; a final

payment of \$8,400.00 shall be made on or before November 20, 2013. To ensure proper credit, all payments made pursuant to this Consent Order shall include the Agreement Identification No. AQD1206 on the face of the checks. 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, 14 or 15 of this Consent Order, the Company is subject to stipulated fines of up to \$3,000.00 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. On and after the effective date of this Consent Order, if the Company fails to make timely payment as specified in paragraph 17, the Company is subject to stipulated fines of up to \$500.00 per violation per day. 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 demand and shall be delivered to the Michigan Department of Environmental Quality, 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. AQD1206-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 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.

20. To insure timely payment of the settlement amount assessed in paragraph 17 and any stipulated fines assessed pursuant to paragraph 18 of this Consent Order, the Company 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 penalty shall be determined at a rate of twelve percent (12%) per year compounded annually, 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 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 penalty owed by the Company before any remaining balance is applied to subsequent payment amount or interest penalty.

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 MDEQ of stipulated fines is made. In addition, the Company 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.

22. This Consent Order shall remain in full force and effect for a period of at least three (3) 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 Company 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 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 be executed upon completion of the terms and conditions of this contract and will not be unreasonably withheld.

23. In the event the Company 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 Upper Peninsula 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 Upper Peninsula District Supervisor within thirty (30) days of assuming the obligations of this Consent Order.

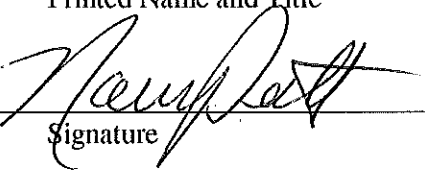
24. Prior to the effective date of this Consent Order and pursuant to the requirements of Sections 5511 and 5528(3) of Part 55, the public was notified of a 30-day public comment period and was provided the opportunity for a public hearing.

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 MDEQ to resolve alleged violations of its activity which occurred at Facilities 1, 2 and 3 in Ontonagon County, 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.

**NORMAN PESTKA CONSTRUCTION, INC.**

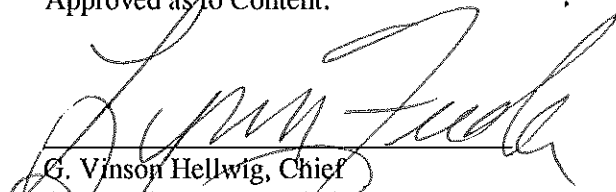
Norman Pestka, President  
Printed Name and Title  
 Date: 9-13-11  
Signature

The above signatory subscribed and sworn to before me this 13 day of September, 2011.

ACTING

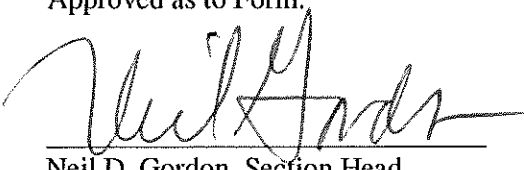
  
Notary Public

Approved as to Content:

  
G. Vinson Hellwig, Chief  
AIR QUALITY DIVISION  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY

Dated: 9/29/11

Approved as to Form:

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

Dated: 9/26/2011

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

ACTING

  
G. Vinson Hellwig, Chief  
Air Quality Division

Effective Date: 9/29/11