

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
OFFICE OF THE DIRECTOR

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In the matter of administrative proceedings     )  
against **SALIM KEMERKO**, an individual         )  
doing business at 2860-2870 Woodward         )  
Avenue, City of Detroit, County of Wayne,     )  
State of Michigan                                     )

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AQD No. 11-2015

SRN: U82144369

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 Salim Kemerko (Kemerko), the owner of real property located at 2860-2870 Woodward Avenue, City of Detroit, Wayne County, Michigan, State Registration Number (SRN) U82144369. The MDEQ alleges that Kemerko 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, and Mich Admin Code R 336.1942 (Rule 942), as specified in Violation Notices dated June 13, 2014 and July 11, 2014. The alleged violations occurred as a result of a contractor's activities resulting from an ordered demolition of a building on Kemerko's property located at 2860-2870 Woodward Avenue, Detroit, Michigan after such building was destroyed by arson. The Violation Notices alleged that, during the demolition of the building, Kemerko failed to thoroughly inspect the facility for presence of asbestos before demolition; failed to submit a timely notification for an ordered demolition; failed to update the notification; failed to adequately wet regulated asbestos containing material (RACM); failed to deposit RACM as soon as practical; and failed to use warning signs during loading and unloading of RACM. Kemerko and MDEQ stipulate to the termination of this proceeding by entry of this Stipulation for Entry of a Final Order by Consent (Consent Order).

Kemerko 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. Kemerko and the MDEQ agree that the signing of this Consent Order is for settlement purposes only and does not constitute an admission by Kemerko 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. Kemerko shall comply with the aforementioned regulations in accordance with the requirements contained in this Consent Order.

#### COMPLIANCE PROGRAM AND IMPLEMENTATION SCHEDULE

12. On and after the effective date of this Consent Order, Kemerko shall fully comply with the asbestos NESHAP and with Rule 942, incorporated by reference and made an enforceable part of the Consent Order.

GENERAL PROVISIONS

13. This Consent Order in no way affects Kemerko'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.

14. This Consent Order constitutes a civil settlement and satisfaction as to the resolution of the Violation Notices and violations specifically addressed herein; however, it does not resolve any criminal action that may result from these same violations.

15. Within thirty (30) days after the effective date of this Consent Order, Kemerko 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 \$20,000.00 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 AQD40082" 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 Kemerko by law.

16. On and after the effective date of this Consent Order, if Kemerko fails to comply with paragraph 12 of the Consent Order, Kemerko is subject to a stipulated fine 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 AQD40082-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 Kemerko's obligation to comply with the terms and conditions of this Consent Order.

17. 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.

18. To ensure timely payment of the settlement amount assessed in paragraph 12 and any stipulated fines assessed pursuant to paragraph 13 of this Consent Order, Kemerko 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 Kemerko 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 Kemerko before any remaining balance is applied to subsequent payment amount or interest penalty.

19. Kemerko agrees not to contest the legal basis for the settlement amount assessed pursuant to paragraph 12. Kemerko also agrees not to contest the legal basis for any stipulated fines assessed pursuant to paragraph 13 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, Kemerko 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.

20. This compliance program is not a variance subject to the 12 month limitation specified in Section 5538 of Part 55.

21. This Consent Order shall remain in full force and effect for a period of at least three (3) 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, Kemerko 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 Kemerko 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 Detroit District Supervisor; (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 Chief.

22. 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.

23. Section 5530 of 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.

24. Kemerko hereby stipulates that entry of this Consent Order is a result of an action by MDEQ to resolve the Violation Notices and alleged violations of a facility located at 2860-2870 Woodward Avenue, Detroit, Michigan. Kemerko further stipulates that it will take all lawful actions necessary to fully comply with this Consent Order, even if Kemerko files for bankruptcy in the future. Kemerko will not seek discharge of the settlement amount and any stipulated fines imposed hereunder in any future bankruptcy proceedings, and Kemerko will take necessary steps to ensure that the settlement amount and any future stipulated fines are not discharged. Kemerko, 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 Kemerko to the extent allowed by applicable bankruptcy law.

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

**SALIM KEMERKO**

\_\_\_\_\_  
Print Name and Title




\_\_\_\_\_  
Signature

Date: 4/15/15


The above signatory subscribed and sworn to before me this 15th day of April, 2015.


SUSAN C. BROHMAN  
Notary Public, State of Michigan  
County of Oakland  
Commission Expires 08-09-2017  
My office is in the County of Oakland

  
\_\_\_\_\_  
Notary Public

Approved as to Content:

Approved as to Form:

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

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

Dated: 4/28/15

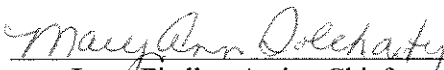
Dated: 4/27/15

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

  
for Lynn Fiedler, Acting Chief  
Air Quality Division

Effective Date: 4/28/15