

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

In the matter of administrative proceedings
against **NDK PROPERTIES LLC**, a limited
liability company organized under the laws of
the State of Michigan doing business at
1600 Clay Street, City of Detroit, County of
Wayne, State of Michigan

AQD No. 2024-18

ID: U822403655

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 NDK Properties LLC (Company), a limited liability company organized under the laws of the State of Michigan and doing business at 1600 Clay Street, City of Detroit, County of Wayne, State of Michigan. EGLE alleges that the Company has violated the National Emission Standards for Hazardous Air Pollutants for asbestos, Title 40 Code of Federal Regulations (CFR), Part 61, Subpart M (Asbestos NESHAP), and Mich Admin Code, R 336.1942 (Rule 942). The alleged violations occurred during renovation activities at 4545 Beniteau Street, Detroit, Michigan. Specifically, EGLE alleges that the Company failed to thoroughly inspect for asbestos-containing materials and failed to provide a 10-working day notification, as specified in a Violation Notice dated June 27, 2024. 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 (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 the NREPA (Part 55), MCL 324.5501 *et seq.*, provides for air pollution control regulations in this State.
3. Executive Order 2019-06 renamed the Michigan Department of Environmental Quality as EGLE, and EGLE 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 Clean Air Act 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, MCL 324.5528, 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) 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 AND IMPLEMENTATION SCHEDULE

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 in no way affects the Company's responsibility to comply with any other applicable state, federal, or local laws or regulations, including without limitation, any amendments to the federal Clean Air Act, 42 USC 7401 *et seq.*, 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 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, 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 \$8,300.00. This total settlement amount shall be paid within thirty (30) days after the Effective Date. To ensure proper credit, all payments made pursuant to this Consent Order shall include the "Payment Identification Number AQD40345" 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.

16. 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 \$5,000.00 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 by check, payable to the State of Michigan within thirty (30) days after written 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 48909-8157. To ensure proper credit, all payments shall include the "Payment Identification Number AQD40345-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.

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 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.

18. If the Company fails to pay any part of the settlement amount assessed in paragraph 15 or any stipulated fines assessed pursuant to paragraph 16 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.

19. The Company agrees not to contest the legal basis for the settlement amount assessed pursuant to paragraph 15. The Company also agrees not to contest the legal basis for any stipulated fines assessed pursuant to paragraph 16 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, MCL 324.5529, 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, MCL 324.5538.

21. This Consent Order shall remain in full force and effect for a period of at least three (3) years. Thereafter, this Consent Order shall terminate only upon 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 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 Director. On or after the effective period has elapsed, the AQD Director reserves the right to terminate this Consent Order in lieu of receiving a written request for termination from the Company and may independently determine that the terms and conditions of this Consent Order have been met.

22. In the event NDK Properties LLC 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 of such transaction, the Company shall also notify the AQD Detroit 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.

23. Prior to the Effective Date, and pursuant to the requirements of Sections 5511 and 5528(3) of Part 55, MCL 324.5511 and MCL 324.5528(3), the public was notified of a 30-day public comment period and was provided the opportunity for a public hearing.

24. Section 5530 of Part 55, MCL 324.5530, may serve as a source of authority but not a limitation under which this Consent Order may be enforced. Further, Part 17 of the NREPA, MCL 324.1701 *et seq.*, and all other applicable laws and any other legal basis or applicable statute may be used to enforce this Consent Order.

25. The Company hereby stipulates that entry of this Consent Order is a result of an action by EGLE to resolve alleged violations at 4545 Beniteau Street, Detroit, Michigan. No other locations, if any, are included in this Consent Order. 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 and shall not discharge its compliance obligations under bankruptcy law.

The undersigned certifies that they are fully authorized by the Company to enter into this Consent Order and to execute and legally bind the Company to it.

NDK PROPERTIES LLC

Print Name and Title

Signature

Date

Approved as to Content:

Approved as to Form:

Annette Switzer, Director
AIR QUALITY DIVISION
DEPARTMENT OF
ENVIRONMENT, GREAT LAKES,
AND ENERGY

Margaret Bettenhausen, First Assistant
AIR AND WATER SECTION
ENVIRONMENT, NATURAL RESOURCES,
AND AGRICULTURE DIVISION
DEPARTMENT OF ATTORNEY GENERAL

Dated: _____

Dated: _____

FINAL ORDER

The Director of the Air Quality Division having had 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 the NREPA 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

Annette Switzer, Director
Air Quality Division

Effective Date: _____