MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
REMEDIATION AND REDEVELOPMENT DIVISION

In the matter of:

Dan Weber MDEQ Reference No. AOC-RRD-09-003

ADMINISTRATIVE ORDER BY CONSENT
FOR PAYMENT OF PAST AND FUTURE RESPONSE ACTIVITY COSTS

A. This Administrative Order by Consent (Order) is entered into voluntarily by and between the Michigan Department of Environmental Quality (MDEQ) and the Attorney General for the State of Michigan (the State), and Mr. Dan Weber, (Mr. Weber), under the authority vested in the Attorney General and the MDEQ by Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20101, *et seq.* The State and Mr. Weber are collectively referred to herein as the Parties. All terms used in this Order that are defined in Part 201 or its administrative rules, 2002 AACS R 299.5101 *et seq*, (Part 201 Rules), shall have the same meaning in this Order as in the Part 201 Rules.

B. This Order concerns the settlement between the State and Mr. Weber for the State's past and future response activity costs, which have been and will continue to be incurred by the State in responding to the release or threat of release of hazardous substances at and emanating from the property commonly referred to as Dan's Service Station, 636 East Front Street, Traverse City, Grand Traverse County, Michigan, and described as follows:

> Parcel 1: Part of Government Lot 3, Section 2, Town 27 North, Range 11 West, Traverse City, Michigan, described as: beginning at an iron stake at the Southwest corner of Hope and Front Streets, Traverse City, Michigan; thence West, 180.35 feet, along the South line of Front Street to an iron monument; thence South along the East line of the parcel now or formerly held by the

Traverse City Lumber Co. 151.81 feet, to an iron stake 15 feet measured normally from the centerline of the Penndel Co. main Railroad trac; thence Northeasterly along a curve to the left running parallel to and 15 feet distant from the centerline of said railroad track, whose long chord bears North 57'05' East along said West line of Hope Street to the point of beginning. 28051-102-006-00.

Parcel 2: Part of Section 2, Town 27 North, Range 11 West, City of Traverse City, Grand Traverse County, Michigan, more fully described as: commencing at the intersection of the South right of way line of Front Street and West right of way line of Hope Street; thence South 1°46'04" East, 35.44 feet, previously recorded as South, along the West line of said Hope Street to the point of beginning; thence South 1°46'04" East, 27.91 feet, along the West line of said Hope Street; thence Southwesterly, 213.49 feet, along the arc of a 765.00 foot radius curve to the right, the long chord of which bears South 56°06'03" West, 212.79 feet; thence North 1°48'59" West, 24.57 feet; thence Northeasterly, 217.34 feet, along the Northerly right of way line of Penn Central Railroad spur track and the arc of a 395.21 foot radius curve to the left, the long chord of which bears North 55°20'50" East, 214.61 feet, previously recorded as North 57°05' East, to the point of beginning.

The Dan's Service Station Property and any associated area, place, or other property where concentrations of hazardous substances exceed the residential cleanup criteria under MCL 324.20120a(1)(a) and (17), and as further defined in the Part 201 Rules, is a "facility" as defined in Section 20101 of the NREPA, MCL 324.20101(1)(o), subject to Part 201 regulation and is referred to as Dan's Service Station Facility

C. Under Part 201, the State has incurred and will continue to incur costs in responding to the release or threat of a release of hazardous substances at the Dan's Service Station Facility. Under Section 20126a(1)(a) of the NREPA, MCL 324.20126a(1)(a), a person liable under Section 20126 of the NREPA, MCL 324.20126, is liable for all response activity costs that the State has lawfully incurred. The Parties to this Order intend to resolve claims against Mr. Weber for past and future response activity costs in connection with the Dan's Service Station Facility. Settling these claims is in the public interest and will avoid litigation.

D. By executing this Order, Mr. Weber neither admits liability with respect to any issue covered under this Order, nor admits or denies any findings of fact or legal determinations, whether stated or implied.

E. This Order shall apply to and bind Mr. Weber, his successors, and assigns. No change in Mr. Weber's ownership or corporate status shall alter in any way his obligations under this Order. The signatories to this Order certify that they are authorized to sign this Order and legally bind the parties they represent.

BASED UPON THESE FACTS AND DETERMINATIONS, THE MDEQ, THE ATTORNEY GENERAL, AND MR. WEBER AGREE TO THE FOLLOWING:

1. To resolve all claims associated with the Dan's Service Station Facility, for past and future response activity costs under Part 201:

A. Mr. Weber agrees to pay the sum of $40,000.00 in $10,000.00 installments beginning on July 1, 2009 and every three months thereafter.

B. For the purposes of this Order, "past and future response activity costs" means all costs incurred, and paid, for response activities to date, or costs that will be incurred in the future, at the Dan's Service Station Facility, resulting from releases of hazardous substances that occurred before this Order's Effective Date.

2. Payment shall be made by certified check, payable to the "State of Michigan Environmental Response Fund" and sent to:

Revenue Control Unit
Financial and Business Services Division
Michigan Department of Environmental Quality
P.O. Box 30657
Lansing, Michigan 48909-8157

If via courier:

Revenue Control Unit
Financial and Business Services Division
Michigan Department of Environmental Quality
Constitution Hall, 5th Floor, South Tower
525 West Allegan Street
Lansing, Michigan 48933

To ensure proper credit, payments made under this Order must be by certified check, referencing the "Dan's Service Station Facility," the MDEQ Reference No. AOC-RRD-09-003, and the Remediation and Redevelopment Division Settlement ID No. RRD2247. A copy of the transmittal letter and the certified check shall also be provided to:

Ms. Jaclyn VanOverbeke
Part 213/215 Enforcement Unit
Compliance and Enforcement Section
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
Constitution Hall, 4th Floor, South Tower
P.O. Box 30426
Lansing, Michigan 48909

and:

Ms. Kathleen L. Cavanaugh
Environment, Natural Resources, and Agriculture Division
Department of Attorney General
P.O. Box 30755
Lansing, Michigan 48909

Costs recovered under this Order shall be deposited in the Environmental Response Fund in accordance with Section 20108(3) of the NREPA, MCL 324.20108(3).

3. If Mr. Weber fails to make timely payment required under subparagraph 1.A., he shall also pay the MDEQ interest on the balance not paid at the rate provided for in Section 20126a(3) of the NREPA, MCL 324.20126a(3).

4. In consideration of the payment that Mr. Weber shall make under this Order, except as otherwise provided in this Order under Section 20134 of the NREPA, MCL 324.20134, the State covenants not to sue or to take further administrative action against Mr.

Weber to recover any past and future response activity costs as defined in Subparagraph 1 B. The State's Covenant Not To Sue shall not take effect until Mr. Weber has remitted all payments due under subparagraph 1.A., and under Paragraph 3.

5. Mr. Weber hereby covenants not to sue or to take any civil, judicial or administrative action against the State, its agencies, or their authorized representatives for any claims or causes of action against the State that arise from this Order, including, but not limited to, any direct or indirect claim for reimbursement from the Cleanup and Redevelopment Fund pursuant to Section 20119(5) of the NREPA or any other provision of law.

6. This Order applies to and binds Mr. Weber. Nothing in this Order shall be construed as releasing or discharging any person's liability to Mr. Weber, who specifically reserves his rights against such person, subject to Paragraph 11.

7. Mr. Weber agrees that all applicable statutes of limitation are tolled until he has complied with Paragraphs 1 and 3.

8. Except as provided in paragraph 4, the State reserves all of its rights under state and federal law to perform response activities and to take enforcement action, including but not limited to: recovering natural resource damages and costs incurred to assess those damages; and liability for criminal acts. The State expressly reserves all rights and defenses under any available legal authority to enforce this Order.

9. The State has concluded that this Order's entry is appropriate based in part on Mr. Weber's representations, information, and documentation that he has provided relating to his financial status. If the MDEQ subsequently determines that financial information or documents that Mr. Weber has provided are substantially inaccurate concerning his financial status, the Covenant Not to Sue in Paragraph 4 shall be void.

10. Nothing in this Order shall limit the MDEQ's or the State's power and authority under Section 20132(8) of the NREPA, MCL 324.20132(8) to direct or order all appropriate action necessary to protect the public health, safety, or welfare, or the environment; or to prevent, abate, or minimize a release or threatened release of a hazardous substance, pollutant, or contaminant on, at, or from Dan's Service Station Facility.

11. Upon the effective date of this Order, under Section 20129(5) of the NREPA, MCL 324.20129(5), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Section 113(f)(2), 42 USC 9613(f)(2), and to the extent provided in Paragraph 4, Mr. Weber shall not be liable for contribution claims for the matters addressed in Paragraph 4. This Order applies only to Mr. Weber, and entering this Order does not discharge any other person's liability under Section 20126 of the NREPA, MCL 324.20126, or the CERCLA, Sections 107 and 113, 42 USC 9607 and 9613, to the extent allowed by law. Under NREPA Section 20129(9), MCL 324.20129(9), any action by Mr. Weber for contribution from any person not a party to this Order shall be subordinated to the State's rights if the State files an action under Part 201 or other applicable state or federal law.

12. This Order shall become effective on the date that the MDEQ signs it. All dates for performing obligations under this Order shall be calculated from this Order's Effective Date. For this Order's purposes, "day" means a calendar day unless otherwise noted.

SIGNATORIES

Mr. Weber

By: Dan Weber
Dan Weber

Dated: 6-30-09

SIGNATORIES (continued)

THE MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY

By: _____

Lynelle Marolf, Acting Chief
Remediation and Redevelopment Division

Dated: 07/09/09

SIGNATORIES (continued)

DEPARTMENT OF ATTORNEY GENERAL

By: _____

Kathleen L. Cavanaugh (~~P63473~~) 38006
Assistant Attorney General
Environment, Natural Resources and Agriculture Division
P.O. Box 30755
Lansing, Michigan 48909

ATTORNEY FOR MICHIGAN DEPARTMENT
OF ENVIRONMENTAL QUALITY

Dated: 7-9-09