

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

In the matter of administrative proceedings)
against **MICHIGAN DEPARTMENT OF**)
CORRECTIONS, a State of Michigan)
agency organized under the laws of the State)
of Michigan and doing business at 38 Fourth)
Street, in the City of Coldwater, County of)
Branch, State of Michigan)

AQD No. 7-2010

SRN: K2087

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 the Michigan Department of Corrections ("MDC"), a State of Michigan agency located at 206 E. Michigan Avenue in the City of Lansing, Michigan 48913, doing business at 38 Fourth Street, Coldwater, Michigan, in the County of Branch, State of Michigan as the Florence Crane Correctional Facility with a State Registration Number ("SRN") K2087. The MDNRE alleges that the Florence Crane Correctional Facility is in violation of the federal Clean Air Act, 42 USC 7401 *et seq.* (CAA), Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, Michigan Administrative Code ("MAC"), MAC 2001 AACS, R 336.1210(1) ("Rule 210(1)"), MAC 2001 AACS R336.1210(4) ("Rule 210(4)"), MAC 2003 AACS R336.1212(6) ("Rule 212(6)") and MAC 1986 AACS R336.202 ("Rule 2"). Specifically, the MDNRE alleges that the MDC has operated at the Florence Crane Correctional Facility three gas/oil fired boilers absent a Title V Renewable Operating Permit ("ROP"), failed to submit a permit application to obtain an ROP, and has failed to report regulated air pollutants to the Michigan Air Emission Reporting System, as cited herein and in the Violation Notice ("VN") dated May 22, 2009. The MDC 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 MDC 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. The termination of this matter by a Consent Order pursuant to Section 5528 of Part 55 is proper and acceptable.

6. The MDC and the MDNRE agree that the signing of this Consent Order is for settlement purposes only and does not constitute an admission by the MDC that the law has been violated.

7. This Consent Order becomes effective on the date of execution ("effective date of this Consent Order") by the AQD Chief.

8. The MDC shall achieve compliance with the aforementioned regulations in accordance with the requirements contained in this Consent Order.

COMPLIANCE PROGRAM AND IMPLEMENTATION SCHEDULE

9. MAC Rule 208a

On and after the effective date of this Consent Order, the MDC shall limit their potential to emit through the registration process at the Florence Crane Correctional Facility and shall comply with the requirements of MAC 1996 AACRS R336.1208a ("Rule 208a") which is attached as Exhibit A of this Consent Order, incorporated by reference and made an enforceable part of this Consent Order.

SUPPLEMENTAL ENVIRONMENTAL PROJECTS

10. In addition to the civil fine in this Consent Order for the violations alleged in the VN, the MDC agrees to undertake the Supplemental Environmental Projects (SEP) described in Exhibit B which is attached, incorporated by reference, and made an enforceable part of this Consent Order. Performance of the SEP will benefit the environment and the Company agrees to implement the SEP in accordance with the details specified in Exhibit B and in accordance with the following terms and conditions below:

A. The total expenditure for the SEP shall not be less than \$48,000.00. All costs of the SEP shall be the responsibility of the MDC. The MDC certifies that any economic benefit, including tax abatement(s), tax credit(s), or similar tax relief that the MDC will realize as a result of the SEP, is detailed in Exhibit B. The SEPs that are fully and completely implemented, to the extent that the actual expenditures for the SEP totals less than 90 percent of \$48,000.00, the MDC shall pay to the Michigan Department of Natural Resources and Environment (MDNRE) as a civil fine, within thirty (30) days of submission of the SEP certificate of completion required in subparagraph (G) below, the amount of the monetary shortfall after it has been adjusted by the amount of any economic benefit, including abatement(s), tax credit(s), or similar tax relief, realized by the MDC.

B. The plans included in Exhibit B contain a schedule, including specific dates for the implementation of the SEP. The MDC shall fully implement all aspects of the SEP within the specified schedules.

C. The MDC further certifies that the MDC has not received, and is not presently negotiating to receive, a credit for the SEP as part of any other enforcement action or any grant from the state, U.S. Environmental Protection Agency, or any other entity. The MDC also certifies that the MDC will not seek tax benefits following completion of the SEP.

D. Disputes between the MDNRE and the MDC regarding the SEP costs, mitigation amounts, and fulfillment of the SEP obligations under Exhibit B are not subject to dispute resolution.

E. In the event the MDC fails to fully and completely implement the SEP as provided herein to the reasonable satisfaction of the MDNRE, the MDNRE will provide written notice to the MDC describing the nature of the deficiency. The MDC shall have thirty (30) days from receipt of the notice to submit documentation to the MDNRE demonstrating that the deficiency has been corrected. In the event the deficiency is not corrected to the satisfaction of the MDNRE, the MDC will be notified and the MDC shall be in violation of this Consent Order and required to pay a stipulated penalty of \$48,000.00 minus the MDC's SEP expenditures documented to the MDNRE to date, to the MDNRE within thirty (30) days of notification from the MDNRE. The amount of the stipulated penalty may be reduced or waived by the MDNRE if the Company made good faith and timely efforts to complete the project. Payment of stipulated penalties under the terms of this paragraph 10 E shall satisfy the MDC's obligation to complete the SEP under this Consent Order.

F. The MDC agrees that any public statement, oral or written, making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the MDNRE for violations of air quality law."

G. No later than thirty (30) days after the completion of all activities specified in Exhibit B, the MDC shall submit written certification of completion of the SEP to the chief of the Air Quality Division demonstrating that all SEP activities specified in Exhibit B have been completed in accordance with the terms and conditions of this Consent Order and Exhibit B. The certification shall be accompanied by appropriate documentation (such as invoices, receipts, or tax statement) to verify the total expenditure made by the MDC as a result of implementing the activities specified under Exhibit B. It shall be the sole determination of the MDNRE whether the MDC has completely implemented the activities specified in Exhibit B of this Consent Order.

GENERAL PROVISIONS

11. This Consent Order in no way affects the MDC'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.

12. 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.

13. Within thirty (30) days after the effective date of this Consent Order, the MDC 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 \$3,750.00, 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 1187 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 MDC by law.

14. On and after the effective date of this Consent Order, if the MDC fails to comply with paragraph 9 of this Consent Order, the MDC is subject to stipulated fines of up to \$3000.00 per violation per day. On and after the effective date of this Consent Order, if the MDC fails to comply with any other provision of this Consent Order, the MDC is subject to a stipulated fine 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. 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 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. To ensure proper credit, all payments shall include the Agreement Identification No. AQD 1187S on the face of the check. Payment of stipulated fines shall not alter or modify in any way the MDC's obligation to comply with the terms and conditions of this Consent Order.

15. 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.

16. To ensure timely payment of the settlement amount assessed in paragraph 13 and any stipulated fines assessed pursuant to paragraph 14 of this Consent Order, the MDC 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 MDC shall be made to the State of Michigan in accordance with paragraph 14 of this Consent Order. Interest payments shall be applied first towards the most overdue amount or outstanding interest penalty owed by the MDC before any remaining balance is applied to subsequent payment amount or interest penalty.

17. The MDC agrees not to contest the legal basis for the settlement amount assessed pursuant to paragraph 13. The MDC also agrees not to contest the legal basis for any stipulated fines assessed pursuant to paragraph 14 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 MDC 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.

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

19. This Consent Order shall remain in full force and effect for a period of at least five (5) 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 MDC 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 MDC 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 Kalamazoo 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.

20. In the event MDC sells or transfers the facility, with SRN: K2087, 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 MDC shall also notify the AQD Kalamazoo 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 MDC 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 Kalamazoo District Supervisor within thirty (30) days of assuming the obligations of this Consent Order.

21. 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.

22. 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.

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

MICHIGAN DEPARTMENT OF CORRECTIONS

Barry L. Wickman, Administrator
Print Name and Title

B. L. Wickman Date: 2/26/10
Signature

The above signatory subscribed and sworn to before me this 26 day of February, 2010.

Samuel C. Simon
Notary Public

Approved as to Content:

Approved as to Form:

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

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

Dated: 3/4/10

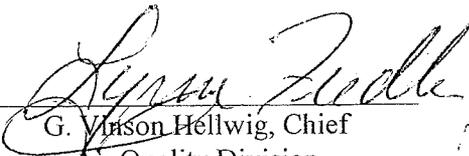
Dated: 3/4/10

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: 3/4/10