

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

In the matter of administrative proceedings)
against **PAVILION TOWNSHIP**, a)
township organized under the laws of the)
State of Michigan and doing business at East)
Q Avenue in Scotts, Michigan, County of)
Kalamazoo, State of Michigan.)
)

AQD No. 12-2010

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 Pavilion Township (“Township”), located at 7510 East Q Avenue in the City of Scotts, Michigan, County of Kalamazoo, State of Michigan. The MDNRE alleges that the Township violated Section 112 of the federal Clean Air Act (“CAA”), 42 USC 7412, the federal National Emission Standards for Hazardous Air Pollutants as listed in Title 40 of the Code of Federal Regulations, Part 61, Subpart M (“asbestos NESHAP”), Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, Michigan Administrative Code (“MAC”) AACS 2002 R336.1301 (“Rule 301”), MAC AACS 1999 R336.1310 (“Rule 310”) and MAC 2008 R 336.1942 (“Rule 942”); as specified in a Violation Notices dated April 29, 2009 and May 29, 2009. The alleged federal and state air quality violations occurred during the demolition of two houses and a garage at 5190 and 5246 O Avenue, in Pavilion Township, Michigan. Specifically, the MDNRE alleges that the Township failed to inspect for the presence of asbestos prior to demolition of two houses and a garage, failed to provide a 10 working day notification, failed to remove regulated asbestos containing material (RACM) before an activity to disturb it had occurred, failed to wet stripped RACM, failed to wet RACM during demolition, failed to have a person on site trained in the Asbestos NESHAP regulations during the demolition, failed to seal RACM in leak tight containers while wet, generated visible emissions from asbestos containing waste material and open burned remnants of the demolished houses and garage. The Township 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 Company 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. 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 Asbestos NESHAP, Sections 61.140 through 61.156.
7. The USEPA has delegated authority for the administration of NESHAP asbestos regulations to MDEQ-AQD. This authority was granted in an April 11, 1998, letter from Valdus Adamkus ("USEPA Regional Administrator") to Robert Miller ("Air Quality Division, Chief") and has delegated authority for the enforcement of the asbestos regulations through the promulgation of MAC Rule 942 on November 30, 2000.
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 MDNRE 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 Township shall comply with the asbestos NESHAP and MAC Rule 942, as specified in Exhibit A of this Consent Order, incorporated by reference and made an enforceable part of this Consent Order.

13. On and after the effective date of this Consent Order, the Township shall comply with MAC Rule 301, as specified in Exhibit B of this Consent Order, incorporated by reference and made an enforceable part of this Consent Order.

14. On and after the effective date of this Consent Order, the Township shall comply with MAC Rule 310, as specified in Exhibit C of this Consent Order, incorporate by reference and made an enforceable part of this Consent Order.

GENERAL PROVISIONS

15. This Consent Order in no way affects the Company'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.

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 a checks 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 total settlement amount of \$6,119.00, which includes AQD costs for investigation and enforcement. The sum of \$6,119.00 shall be paid in two equal payments as follows: The sum of \$3,059.50 shall be made within thirty (30) days after the effective date of this Consent Order and a final payment of \$3,059.50 shall be made within three hundred and sixty five (365) days after 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 1190 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 Company by law.

18. On and after the effective date of this Consent Order, if the Township fails to comply with paragraph 12, 13, or 14 of this Consent Order, then the Township is subject to stipulated fines of up to \$2,000.00 per violation per day. On and after the effective date of this Consent Order, if the Township fails to comply with any other provision of this Consent Order, the Township is subject to stipulated fines 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 30 days of demand and shall be delivered to the Michigan Department of Natural Resources and Environment, 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. AQD 1190-S on the face of the check. Payment of stipulated fines shall not alter or modify in any way the Township'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 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.

20. To ensure timely payment of the settlement amount in paragraph 17 and any stipulated fines assessed pursuant to paragraph 18 of this Consent Order, the Township shall pay an interest payment to the State of Michigan each time it fails to make a complete or timely payment under this Consent Order. The interest payment shall be determined at a rate of interest that is equal to one percent (1%) plus the average interest rate paid at auctions of 5-year United States treasury notes during the six months immediately preceding July 1 and January 1, as certified by the state treasurer, compounded annually, and 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 payment by the Township 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 payment owed by the Township before any remaining balance is applied to subsequent payment amount or interest payment.

21. The Township agrees not to contest the legal basis for the settlement amount assessed pursuant to paragraph 17. The Township 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 MDNRE of stipulated fines is made. In addition, the Township 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.

22. This Consent Order shall remain in full force and effect for a period of at one (1) year or until full payment of the civil fine is made pursuant to paragraph 17 of this Consent Order. 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 Township 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 Township have 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 Township transfers their liability in this matter, the Township shall advise any purchaser or transferee of the existence of this Consent Order in connection with such transfer. Within 30 calendar days, the Township shall also notify the AQD Kalamazoo District Supervisor, in writing, of such transfer, the identity and address of any transferee, and confirm the fact that notice of this Consent Order has been given to the transferee. As a condition of the transfer, the Township must obtain the consent of the 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 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.

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

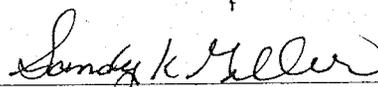
PAVILION TOWNSHIP

Patrick L. White, Supervisor
Print Name and Title


Signature

Date: 5/25/10

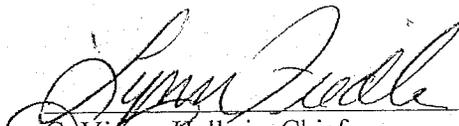
The above signatory subscribed and sworn to before me this 25 day of May, 2010.

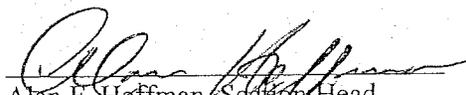


Notary Public Sandy K. Miller
Van Buren County, MI acting in
Kalamazoo County, MI
My commission expires: 3-13-2013

Approved as to Content:

Approved as to Form:

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


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

Dated: 5/27/10

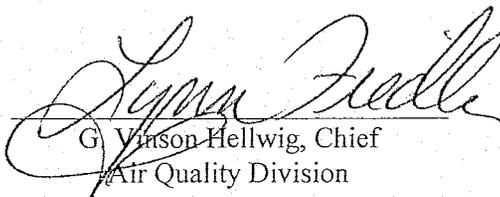
Dated: 5/27/10

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

ACTING

Dated: 5/27/10

