

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

**Former Haugen Property Facility  
10135 West O Avenue  
Kalamazoo County, Michigan  
MDEQ Facility ID No. 39000486**

MDEQ Reference No.: AOC-RRD-15-004

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**ADMINISTRATIVE ORDER BY CONSENT  
FOR SETTLEMENT AND PAYMENT  
OF RESPONSE ACTIVITY COSTS**

A. This Administrative Order by Consent for Settlement and Payment of Response Activity Costs ("Order") is entered into voluntarily by and between the Michigan Department of Environmental Quality ("MDEQ"), Bill Schuette, Attorney General for the State of Michigan (collectively, the "State"), and Auburn University (hereinafter, the "Settling Party") pursuant to 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). All terms used in this Order, which are defined in Part 3 of the NREPA, MCL 324.301, *et seq.*, Part 201 of the NREPA, MCL 324.20101, *et seq.*, or the Part 201 Administrative Rules, shall have the same meaning in this Order as in Parts 3 and 201 of the NREPA and the Part 201 Rules.

B. This Order concerns the settlement between the State and the Settling Party of the State's claims in *Michigan Dept of Environmental Quality v Yale University, et al.*, No. 15-126-CE (Cir Ct for the 30<sup>th</sup> Jud Cir, Ingham Cty) for response activity costs, natural resource damages, penalties, and fines, which relate to or were incurred in responding to the release or threat of release of hazardous substances at and emanating from the Former Haugen Property, 10135 West O Avenue, Kalamazoo County, Michigan (the "Property"). The Property and any associated area, place, or property where concentrations of hazardous substances exceeded the residential cleanup criteria of Section 20120a(1)(a) and (16) of Part 201 (the "Facility") is a facility as defined by Part 201 and is subject to regulation under Part 201.

C. Pursuant to Part 201 of the NREPA, the State incurred costs in responding to the release or threat of a release of hazardous substances at the Facility. Sections 20126a(1)(a) and 20137(1)(b) and (d) of the NREPA authorize the State to recover response activity costs that are lawfully incurred by the State. The parties to this Order desire to resolve all claims for assessment of statutory penalties or fines, natural resource damages, and response activity costs incurred or to be incurred relating to the release or threat of release at the Facility. Settlement of this claim is in the public interest and will minimize litigation.

D. The execution of this Order by the Settling Party is neither an admission of liability with respect to any issue covered under this Order nor an admission or denial of any findings of fact or legal determinations stated or implied herein.

E. This Order shall apply to and be binding upon the Settling Party. The signatories to this Order certify that they are authorized to execute this Order and legally bind the parties they represent.

BASED UPON THE FOREGOING FACTS AND DETERMINATIONS, THE MDEQ AND THE ATTORNEY GENERAL HEREBY ORDER, AND SETTLING PARTY HEREBY AGREES, TO THE FOLLOWING:

1. Within thirty (30) days of the effective date of this Order, the Settling Party shall pay \$75,000.00 to the MDEQ to resolve all claims against the Settling Party for assessment of statutory penalties or fines, natural resource damages, and response activity costs. For the purposes of this Order, the term "response activity costs" means costs that the State incurred prior to or will incur after the effective date of this Order in responding to past releases of hazardous substances at the Facility. "Past releases" means the release or threatened release of hazardous substances at the Facility as identified in the Remedial Investigation Report dated September 2009.

Payment is to be made by check payable to the "State of Michigan - Environmental Response Fund" and sent to:

Michigan Department of Environmental Quality  
Cashier's Office  
P.O. Box 30657  
Lansing, MI 48909-8157

To ensure proper credit, payments made pursuant to this Order must be made by check referencing the Former Haugen Property Facility, the MDEQ Reference No. AOC-RRD-15-004, and the Remediation and Redevelopment Division Account Number RRD50065. A copy of the transmittal letter and the check shall be provided simultaneously to:

Mr. Richard S. Kuhl  
Environment, Natural Resources, and Agriculture Division  
Michigan Department of Attorney General  
G. Mennen Williams Building, 6<sup>th</sup> Floor  
P.O. Box 30755  
Lansing, MI 48909  
Phone: 517-373-7540  
Fax: 517-373-1610

Costs recovered pursuant to this Order shall be deposited in the Environmental Response Fund in accordance with the provisions of Section 20108(3) of the NREPA.

2. If the Settling Party fails to pay the amount indicated in Paragraph 1 within thirty (30) days of the effective date of this Order, the Settling Party shall also pay the State interest on those unreimbursed costs at the rate provided for in Section 20126a(3) of the NREPA.

3. In consideration of the payments to be made by the Settling Party under the terms of this Order, except as otherwise provided in this Order, the State covenants not to sue or to take further administrative action against the Settling Party for assessment of statutory penalties or fines, natural resource damages, and response activity costs relating to Past releases. The State's covenant not to sue shall take effect upon the MDEQ's receipt of full payment from the Settling Party of the amount specified in Paragraph 1 and of any associated interest that may have accrued pursuant to Paragraph 2. The covenant not to sue shall extend only to the Settling Party and does not extend to any other person.

4. Following receipt by MDEQ of the payments to made by Settling Party under the terms of this Order, the State and Settling Party shall file a stipulation of dismissal agreeing to dismiss with prejudice all claims made by the State against Settling Defendant in *Michigan Dept of Environmental Quality v Yale University, et al.*, No. 15-126-CE (Cir Ct for the 30<sup>th</sup> Jud Cir, Ingham Cty).

5. Nothing in this Order shall be construed as releasing or discharging any liability of any person to the Settling Party and the Settling Party specifically reserve(s) its rights against any such person.

6. The Settling Party agrees that all applicable statutes of limitation are tolled until the Settling Party has complied with the terms of this Order.

7. The State reserves all of its rights under state and federal law to seek liability for any criminal acts. The State expressly reserves all of its rights and defenses pursuant to any available legal authority to enforce this Order.

8. Nothing in this Order shall limit the power and authority of the MDEQ or the State of Michigan, pursuant to Section 20132(8) of the NREPA, to direct or order all appropriate action to protect the public health, safety, or welfare, or the environment; or to prevent, abate or minimize a release or threatened release of hazardous substances, pollutants or contaminants on, at or from the Facility.

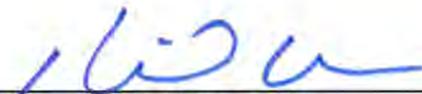
9. Pursuant to Section 20129(5) of the NREPA and Section 113(f)(2) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA), 42 USC § 9613(f)(2), and to the extent provided in Paragraph 3, the Settling Party shall not be liable for claims for contribution regarding matters addressed in this Order. Entry of this Order does not discharge the liability of any other person that may be liable under Section 20126 of the NREPA, or Sections 107 and 113 of the CERCLA, 42 USC § 9607 and § 9613, to the extent allowable by law. Pursuant to Section 20129(9) of the NREPA, any action by the Settling Party for contributions from any person not a party to this Order shall be subordinate to the rights of the State if the State files an action pursuant to Part 201 of the NREPA or other applicable federal or state law.

10. This Order shall become effective upon the date that the State and the Settling Party have signed this Order. All dates for the performance of obligations under this Order shall be calculated from the effective date of this Order. For the purposes of this Order, the term "day" shall mean a calendar day unless otherwise noted.

IT IS SO AGREED AND ORDERED BY:

  
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Bob Wagner, Chief  
Remediation and Redevelopment Division  
Michigan Department of Environmental Quality

6/11/15  
Date

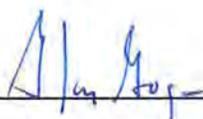
  
\_\_\_\_\_  
Richard S. Kuhl (P42042)  
Assistant Attorney General  
Environment, Natural Resources and Agriculture Division  
Michigan Department of Attorney General

6/11/15  
Date

IT IS SO AGREED BY:

Auburn University

Address: 101 Samford Hall  
Auburn University, Alabama 36849

By:  \_\_\_\_\_

Dated: 5-15-15