

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-15-007

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 West Virginia State University including individual employees of the University and the University's Board of Governors (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 Part 3 and Part 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 30th Jud Cir, Ingham Cty) for response activity costs, 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 (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 (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. Section 20126a(1)(a) and Section 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 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 AGREE, TO THE FOLLOWING:

1. On or before October 1, 2015, and annually thereafter for the next 2 years, the Settling Party shall pay \$10,000 for a sum total of \$30,000 (meaning \$10,000.00 on or before October 1, 2015; \$10,000.00 on or before October 1, 2016; and \$10,000.00 on or before October 1, 2017) to the MDEQ to resolve any and all claims against the Settling Party for response activity costs, or associated claims that could have been brought by the MDEQ against the Settling Party in the litigation captioned *Michigan Dept of Environmental Quality v Yale University, et al.*, No. 15-126-CE (Cir Ct for the 30th Jud Cir, Ingham Cty) (hereinafter referred to as "the litigation."). For the purposes of this Order, the term "response activity costs" means those costs that the State incurred prior to or may reasonably 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 prepared by Weston Solutions of Michigan, Inc., 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-15-007, and the Remediation and Redevelopment Division Account Number RRD50071. 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, 6th 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 make full payment to the MDEQ for the response activity costs as specified in Paragraph 1 within thirty (30) days after payment was due, 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 response activity costs relating to Past releases. The State's covenant not to sue shall take effect upon the initial payment from the Settling Party (on or before October 1, 2015) 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 initial payment to be made by Settling Party on or before October 1, 2015 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 in *Michigan Dept of Environmental Quality v Yale University, et al.*, No. 15-126-CE (Cir Ct for the 30th 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 the recovery of natural resource damages and costs incurred to assess natural resource damages, monetary penalties, punitive damages for any violation of law or this Order, and liability for criminal acts except as against the Settling Party as stated herein. 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:



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

8/11/15

Date

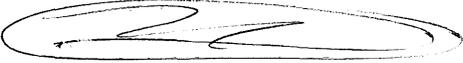


Richard S. Kuhl (P42042)
Assistant Attorney General
Environment, Natural Resources and Agriculture Division
Michigan Department of Attorney General

8/16/15

Date

IT IS SO AGREED BY:



Dr. Brian O. Hemphill
President
West Virginia State University
103 Ferrell Hall
Institute, West Virginia 25112-0399

8/6/15

Date