MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

Tendercare, Munising
324 West Munising Avenue
Alger County

MDEQ Reference No. AOC-RRD-05-006

ADMINISTRATIVE ORDER BY CONSENT
FOR PAYMENT OF PAST COSTS

A. This Administrative Order by Consent for Payment of Past Costs (Order) is entered into voluntarily by and between the Michigan Department of Environmental Quality (MDEQ) and the Attorney General for the State of Michigan (collectively, the State) and the Alger County Road Commission (ACRC), pursuant to the authority vested in the State by Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL324.20101 *et seq*. All terms used in this Order, that are defined in Part 201 or the Part 201 Administrative Rules, 2002 AACS R 299.5101 *et seq*. (Part 201 Rules), shall have the same meaning in this Order as in Part 201 and the Part 201 Rules.

B. This Order concerns the settlement between the State and the ACRC for the State's past response activity costs that were incurred by the State in responding to the release or threat of release of hazardous substances that emanated from the ACRC property located at 324 West Munising Avenue (Original Plat of the Town of Munising, Lots 1, 2, 3, 4, 5, 6, and W ½ of Lot 7, Block 1) and the adjacent former railroad property subject to the February 19, 1952, lease between the Alger County Road Commission of Munising and the Lake Superior & Ishpeming Railroad (collectively, the Property). The Property and any associated area, place, or property where concentrations of hazardous substances exceed the residential cleanup criteria of Section 20120a(1)(a) and (17) of the NREPA, MCL324.20120a(1)(a) and (17), (the

Facility), as further defined in the Part 201 Rules, constitutes a facility and is subject to regulation under Part 201.

C. Pursuant to Part 201, the State incurred costs in responding to the release or threat of a release of hazardous substances at the Facility. Pursuant to Section 20126a(1)(a) of the NREPA, MCL324.20126a(1)(a), a person who is liable under Section 20126 of the NREPA, MCL324.20126, is liable for all response activity costs lawfully incurred by the State. The parties to this Order desire to resolve all claims for past response activity costs that the State has incurred and paid. Settlement of this claim is in the public interest and will minimize litigation.

D. The execution of this Order by the ACRC 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 ACRC and its successors and assigns. No change or changes in the ownership or corporate status of the ACRC shall alter in any way the ACRC's obligations under this Order. 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 THE ACRC HEREBY AGREES TO THE FOLLOWING:

1. To resolve all claims for past response activity costs incurred by the State at the Facility, the ACRC shall pay to the State Ninety-Five Thousand Dollars ($95,000) in the manner provided in Subparagraphs 1b and 1c herein. For the purposes of this Order, the term "past response activity costs" means costs that the State has incurred for response activities at the Facility and paid prior to and during the time periods set forth in the attached Final Summary Report, Attachment A.

a. Within fourteen (14) days of the Effective Date of this Order, the MDEQ will send a Lien Release to the Alger County Register of Deeds (RoD) for recording. The MDEQ will provide the ACRC with a copy of the recorded Lien Release within two weeks after the recorded Lien Release is received by the MDEQ from the RoD.

b. Within ten (10) days of the transfer of title of the Property, or by March 10, 2006, whichever comes first, the ACRC shall make an initial payment in the amount of Fifty-Five Thousand Dollars ($55,000).

c. The remaining Forty Thousand Dollars ($40,000) shall be paid in four (4) equal annual payments of Ten Thousand Dollars ($10,000). The first annual payment shall be due on the one-year anniversary of the Effective Date of this Order, and subsequent payments shall be due annually thereafter.

d. Payments are to 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, MI 48909-8157

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, MI 48933-2125

To ensure proper credit, payments made pursuant to this Order must be made by certified check referencing Tendercare, Munising,

the MDEQ Reference No. AOC- RRD-05-006, and the Remediation and Redevelopment Division Account No. RRD2204. A copy of both the transmittal letter and the certified check shall be provided simultaneously to:

Steven Harrington, Project Coordinator
Upper Peninsula District
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
420 5th Street
Gwinn, MI 49841
Telephone: 906-346-8507
Fax: 906-346-4480

and to:

S. Peter Manning
Acting Assistant in Charge
Environment, Natural Resources, and Agriculture Division
Michigan Department of Attorney General
G. Mennen Williams Building, 6th Floor
525 West Ottawa Street
Lansing, MI 48933

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, MCL324.20108(3).

2. If the ACRC fails to pay the amount indicated in Paragraph 1 pursuant to the schedule set forth in Subparagraphs 1b and 1c, the ACRC shall also pay the State interest on the balance not paid at the rate provided in Section 20126a(3) of the NREPA, MCL324.20126a(3). If any of the ACRC's payments are more than thirty (30) days past due, the ACRC shall also pay the State stipulated penalties of One Hundred Dollars ($100) per day for every day of its noncompliance with Paragraph 1.

3. In consideration of the payments to be made by the ACRC 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 ACRC for the past response activity

costs addressed in Paragraph 1. With respect to the ACRC's liability for past response activity costs, the State's covenant not to sue shall take effect upon the MDEQ's receipt of full payment from the ACRC for the amounts specified in Paragraph 1 and any associated interest and penalties that may have accrued pursuant to Paragraph 2. The covenant not to sue applies only to past response activity costs and shall not be construed as a covenant not to sue for any other liability that the ACRC may have to the State for the Facility. The covenant not to sue shall extend only to the ACRC and does not extend to any other person.

4. Nothing in this Order shall be construed as releasing or discharging any liability of any person to the ACRC and the ACRC specifically reserves its rights against such persons.

5. The ACRC agrees that all applicable statutes of limitation are tolled until the ACRC has complied with the terms of this Order.

6. The State reserves all of its rights under state and federal law to perform response activities and to take enforcement action, including action to seek injunctive relief, the recovery of response activity costs not addressed by this Order, 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. The State expressly reserves all of its rights and defenses pursuant to any available legal authority to enforce this Order.

7. 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, MCL324.20132(8), 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.

8. Pursuant to Section 20129(5) of the NREPA, MCL324.20129(5), and to the extent provided in Paragraph 3, the ACRC shall not be liable for claims for contribution

for the 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, MCL324.20126; or Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act, 1980 PL 96-510, as amended, 42 USC Sections 9607 and 9613, to the extent allowable by law. Pursuant to Section 20129(9) of the NREPA, MCL324.20129(9), any action by the ACRC for contribution 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 or other applicable federal or state laws.

9. This Order may be modified upon written agreement by the State and the ACRC.

10. This Order shall become effective on the date that the State signs 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 TO AND ORDERED BY:

Andrew W. Hogarth, Chief
Remediation and Redevelopment Division
Michigan Department of Environmental Quality

2/7/06
Date

James L. Stropkai (P24588)
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division
Michigan Department of Attorney General

2/7/06
Date

IT IS SO AGREED BY:

The Alger County Road Commission
E9264 M-28
Munising, Michigan 49862

Robert L. Lindbeck
Engineer/Manager

2-2-06
Date

ATTACHMENT A

Site Name Tendercare Munising

County Alger

Site ID Number 02000046

Project Number 455874

COMPUTER GENERATED REPORT Original & Update #1

Employee Salaries and Wages Expenses Period Covered: 9/30/02 - 11/5/05	$	98,686.43
Indirect Dollars	$	18,651.51
Employee Travel Expenses Period Covered: 10/25/02 - 9/15/05	$	8,809.34
Contractual Expenses Period Covered: 5/1/03 - 9/30/05	$	243,813.60
Miscellaneous Expenses Period Covered: 10/24/02 - 7/22/05	$	7,240.88
DEQ Lab Expense Period Covered: 10/29/03 - 4/1/04	$	6,653.53
Attorney General Expenses Period Covered:	$	-
Total Combined Expenses for Site	**$**	**383,855.29**

Run Date: 11/22/05