

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

Van Deilen Industries Facility  
162 E. Walnut Street  
Petersburg, Monroe County, Michigan

MDEQ Reference No. AOC-RRD-04-001

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ADMINISTRATIVE ORDER BY CONSENT  
FOR PAYMENT OF PAST RESPONSE ACTIVITY COSTS

A. This Administrative Order by Consent (“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 Menlo Worldwide Forwarding, Inc. (“Menlo”), 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”), MCL 324.20101, *et seq.* and the Comprehensive Environmental Response, Compensation and Liability Act, as amended (“CERCLA”), 42 U.S.C § 9601 *et seq.* All terms used in this Order, which are defined in Part 201 of the NREPA 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 of the NREPA and the Part 201 Rules. All terms used in this Order, which are defined in the CERCLA, 42 U.S.C. § 9601, *et seq.*, shall have the same meaning in this Order as in the CERCLA.

B. This Order concerns the settlement between the State and Menlo, of the State's past response activity costs, which were incurred by the State in responding to the release or threat of release of hazardous substances at and emanating from the Van Deilen Industries Facility property (the "Property") located in Petersburg, Monroe County, Michigan. Any area of the Property where a hazardous substance, in concentrations that exceed the requirements of Section 20120a(1)(a) or (17), MCL 324.20120a(1)(a) or (17), of the NREPA or the cleanup criteria for unrestricted residential use under Part 213, Leaking Underground Storage Tanks, of the NREPA, has been released, deposited or disposed of, or otherwise comes to be located; and any other area, place, or property where a hazardous substance, in concentrations that exceed these requirements or criteria, has come to be located as a result of the migration of the hazardous substance from the Property (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 has incurred response activity 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, a person who is liable under Section 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 and all interest and penalties that may be applicable to those costs which the State has incurred through the effective date of this Order. Settlement of this claim is in the public interest and will minimize litigation. This Order will not prohibit or in any way prevent the State from making future demands for reimbursement of response activity costs incurred after the effective date of this Order.

D. The execution of this Order by Menlo 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 Menlo and its successors and assigns. No change or changes in the ownership or corporate status of Menlo shall

alter in any way Menlo'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 MENLO HEREBY AGREES, TO THE FOLLOWING:

1. Within thirty (30) days of the effective date of this Order, Menlo shall pay to the State one hundred and eighty five thousand dollars (\$185,000.00) to resolve all claims for past response activity costs for the Facility. For purposes of this Order, the term "past response activity costs" means costs that the State has incurred for response activities at or in connection with the Facility prior to the effective date of this Order.

Payment is to be made by 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, Michigan 48909-8157

Via Courier:  
Constitution Hall, 5<sup>th</sup> Floor, South Tower  
525 West Allegan Street  
Lansing, MI 48933

To ensure proper credit, payments made pursuant to this Order must be made by check referencing the Van Deilen Industries Facility, the MDEQ Reference No. AOC-RRD-04-001, and Remediation and Redevelopment Division Account Number 2183 (RRD No. 2183). A copy of the transmittal letter and the check shall be provided simultaneously to:

The MDEQ Project Coordinator:  
Ms. Sybil Kolon  
Jackson District Office  
Remediation and Redevelopment Division  
Michigan Department of Environmental Quality  
301 E. Louis Glick Highway  
Jackson, MI 49201  
Telephone No.: 517-780-7937  
Fax No: 517-780-7855

and to:

Assistant Attorney General in Charge  
Environment, Natural Resources, and Agriculture Division  
Department of Attorney General  
Constitution Hall, 5<sup>th</sup> Floor, South Tower  
525 West Allegan Street  
Lansing, Michigan 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.

2. If Menlo fails to pay the amount indicated in Paragraph 1 pursuant to the schedule set forth therein, Menlo shall also pay the State interest on the balance not paid at the rate provided in Section 20126a(3) of the NREPA. If Menlo's payment is more than thirty (30) days past due, Menlo shall also pay the State stipulated penalties of \$500.00 per day for every day of its noncompliance with Paragraph 1.

3. In consideration of the payments to be made by Menlo 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 Menlo for the past response activity costs addressed in Paragraph 1. With respect to Menlo'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 Menlo for the amount 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 Menlo may have to the State for the

Facility. The covenant not to sue shall extend only to Menlo, its parent companies, subsidiaries, affiliates, successors, and assigns, 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 Menlo and Menlo specifically reserves its rights against such persons.

5. Menlo agrees that all applicable statutes of limitation are tolled until Menlo 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, 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, and to the extent provided in Paragraph 3, Menlo shall not be liable for claims for contribution for the matters addressed in this Order. Execution 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 Menlo under Section 20129

of the NREPA 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 of the NREPA or other applicable federal or state law.

9. 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 AND ORDERED BY:

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

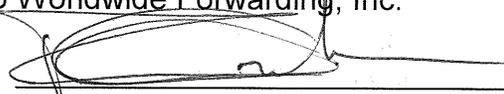
2/6/04  
\_\_\_\_\_  
Date

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

2/6/04  
\_\_\_\_\_  
Date

IT IS SO AGREED BY:

Menlo Worldwide Forwarding, Inc.

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

December 31, 2003  
\_\_\_\_\_  
Date

Title: Robert C. Conlon  
Vice President and Corporate Counsel  
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