

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

Mr. Dale Sherwood
Dale's Mini Mart
2323 North Fifth Street
Niles, Michigan 49120
Facility ID No. 0-0036474

MDEQ Reference No. AOC-RRD-07-011

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 Michigan Department of Attorney General (MDAG); and Mr. Dale Sherwood, pursuant to the authority vested in the MDEQ and the MDAG by Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.20101, *et seq.* All terms used in this Order, which are defined in Part 201 or the Part 201 Administrative Rules, 2002 Michigan Register 24, Effective December 21, 2002 (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 of Michigan (State) and Mr. Sherwood, hereinafter, the "Reimbursing Party," of State 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 property of Dale's Mini Mart, Berrien County, Michigan, property (the Property). The Property and any associated area, place, or property where concentrations of hazardous substances exceed the residential cleanup criteria under MCL 324.20120a(1) and (17) and as further defined in

the Part 201 Rules (the Facility), is a "facility" as defined in Section 20101 of the NREPA, MCL 32420101(1)(o), subject to Part 201 regulation.

C. Pursuant to Part 201, the State incurred costs in responding to the release or threat of a release of regulated 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 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 Reimbursing 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 Reimbursing Party and his successors and assigns. No change or changes in the ownership or corporate status of the Reimbursing Party shall alter in any way the obligations of the Reimbursing Party 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 REIMBURSING PARTY HEREBY AGREES, TO THE FOLLOWING:

1. Within thirty (30) days of the effective date of this Order, the Reimbursing Party shall pay to the State Two Hundred Thousand Dollars (\$200,000) to resolve all claims for past response activity costs for the Facility. 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 Summary Report, Attachment A. "Costs incurred" does not include outstanding costs that the State has incurred, but has not yet paid.

Payment is to be made to the "State of Michigan - Dept. Of Environmental Quality" and Environmental Response Fund noted on the check and sent to:

Revenue Control Unit
Financial and Business Services Division
Michigan Department of Environmental Quality
525 West Allegan Street, 5th Floor, South Tower
P.O. Box 30657
Lansing, Michigan 48909-8157

To ensure proper credit, payment made pursuant to this Order must be made by referencing the Dale's Mini Mart, the MDEQ Reference No. AOC-RRD-07-011, the Remediation and Redevelopment Division Project No. 447764, and the settlement identification No. RRD2231. A copy of the transmittal letter and the certified check shall be provided simultaneously to:

The MDEQ Case Coordinator:
Ms. Jaclyn VanOverbeke
Part 213/215 Enforcement Unit
Compliance and Enforcement Section
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
525 West Allegan Street
P.O. Box 30426
Lansing, Michigan 48909-7926

and to:

Division Chief
Environment, Natural Resources, and Agriculture Division
Michigan Department of Attorney General
G. Mennen Williams Building, 6th Floor
525 West Ottawa 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 the Reimbursing Party fails to pay the amount indicated in Paragraph 1 pursuant to the schedule set forth therein, the Reimbursing Party shall also pay the

State interest on the balance not paid at the rate provided in Section 20126a(3) of the NREPA. If the Reimbursing Party payment is more than thirty (30) days past due, the Reimbursing Party shall also pay the State stipulated penalties of Five Hundred Dollars (\$500) per day for every day of his noncompliance with Paragraph 1. If the MDEQ does not receive full payment from the Reimbursing Party, including any accrued interest and penalties, within 30 days after the date specified in Paragraph 1, and the MDEQ has notified the Reimbursing Party of his failure to make such payment, the State, at its complete and unilateral discretion, may void this Order by sending written notification of such to the Reimbursing Party.

3. In consideration of the payment to be made by the Reimbursing 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 Reimbursing Party for the past response activity costs addressed in Paragraph 1 including any monetary penalties that might be assessed for failure to reimburse the State for past response costs prior to the time provided in Paragraph 1, except as otherwise covered in Paragraph 2. With respect to the Reimbursing Party's liability for past response activity costs, the State covenant not to sue shall take effect upon the MDEQ's receipt of full payment from the Reimbursing Party 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 the Reimbursing Party may have to the State for the Facility. The covenant not to sue shall extend only to the Reimbursing Party 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 Reimbursing Party and the Reimbursing Party specifically reserves his rights against such persons.

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

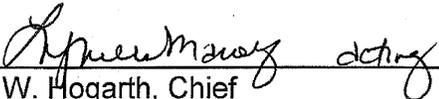
6. The State reserves all of its rights under state and federal law to perform response activities and to take enforcement action, including action to seek injunctive relief, the recovery of response activity costs not addressed by this Order, the recovery of natural resource damages and costs incurred 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 regulated 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, the Reimbursing Party 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, or Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC Sections 9607 and 9613, to the extent allowable by law. Pursuant to Section 20129(9) of the NREPA, any action by the Reimbursing Party 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 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

4/09/08
Date



Kathleen L. Cavanaugh (P38006)
Assistant Attorney General
Environment, Natural Resources, and
Agriculture Division
Michigan Department of Attorney General

4-8-08
Date

IT IS SO AGREED BY:

Mr. Dale Sherwood
2323 North Fifth Street
Niles, Michigan 49120



Dale Sherwood

4-1-08
Date

ATTACHMENT A

Summary Report

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
REMEDIATION AND REDEVELOPMENT DIVISION

SUMMARY REPORT

Site Name Dale's Mini Mart

County Berrien

Site ID Number 11000333

Project Number 454849-00

Computer Generated Report

Total for Employee Salaries and Wages
Period Covered: 10/17/98-12/20/03
Indirect Dollars
Sub-Total

\$7,199.84
\$1,382.78
\$8,582.62

Total for Employee Travel Expenses
Period Covered: 10/27/99-2/28/01

\$344.10

Total for Contractual Expenses
Period Covered: 11/22/99-8/23/02

\$125,215.07

Total for Miscellaneous Expenses
Period Covered: 9/23/99-12/9/99

\$163.10

MDNR/MDEQ Lab
Period Covered: 10/12/99-5/18/00

\$14,949.68

Total for MDPH/Community Health Expenses
Alternate Water Supply
Period Covered: 10/13/99-9/30/03

\$255,155.73

Attorney General Expenses

\$0.00

Total Combined Expenses for Site

\$404,410.30

Run Date 2/4/04