

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

Martin Marietta Plant Facility
1800 Eastlake Road, Manistee
Manistee County, Michigan

MDEQ Reference No. AOC-RRD-02-006

**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”), Jennifer M. Granholm, Attorney General for the State of Michigan (collectively, the “State”), and Martin Marietta Magnesia Specialties, LLC (“Martin Marietta”), 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, 1990 AACS R 299.5101 *et seq.*, 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 Martin Marietta of the State's past response activity costs which have been incurred by the State in responding to the release or threat of release of hazardous substances originating from the Martin Marietta Plant Facility, Michigan, property (the "Property"). 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. The past response activity costs are those costs which are recoverable by the State pursuant to § 20126a of the NREPA.

C. Martin Marietta is voluntarily undertaking response activities at the Facility and the MDEQ is overseeing those activities.

D. Pursuant to Part 201 of the NREPA, the State has incurred and may continue to incur costs in responding to the release or threat of a release of hazardous substances at the Facility. Section 20137(1) (b) of the NREPA authorizes the State to recover response activity costs that the State has lawfully incurred. The parties to this Order desire to resolve all claims for past response activity costs which the State has incurred through the dates set forth in the attached Summary Report (Attachment 1). 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 dates set forth in Attachment 1.

E. The execution of this Order by Martin Marietta 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.

F. This Order shall apply to and be binding upon Martin Marietta and its successors and assigns. No change or changes in the ownership or corporate status of Martin Marietta shall alter in any way Martin Marietta'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 MARTIN MARIETTA HEREBY AGREES, TO THE FOLLOWING:

1. Within thirty (30) days of the effective date of this Order, Martin Marietta shall pay to the State the sum of \$20, 073.62 to fully resolve all claims for all past response activity costs at 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 or in connection with the Facility and paid prior to the dates set forth in Attachment 1.

2. Payments are 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, MI 48909-8157

(Via courier)
525 West Allegan Street
Constitution Hall
South Tower, 5th Floor
Lansing, MI 48933

To ensure proper credit, payments made pursuant to this Order must be made by check referencing the Martin Marietta Plant Facility, the MDEQ Reference No. AOC-ERD-02-006, and the Remediation and Redevelopment Division (RRD) Account Number 2158. A copy of the transmittal letter and the check shall be provided simultaneously to:

The MDEQ Project Coordinator:
William Duley
Remediation and Redevelopment Division
Cadillac District Office
Michigan Department of Environmental Quality
120 W. Chapin Street
Cadillac, Michigan 49601
Phone No.: 231-775-3960, Extension 6311
Fax No.: 231-775-1511

and to:

Assistant Attorney General in Charge
Department of Attorney General
Natural Resources and Environmental Quality Division
525 West Allegan Street
Constitution Hall
South Tower, 5th Floor
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.

3. If Martin Marietta fails to pay the amounts indicated in Paragraph 1 pursuant to the schedule set forth therein, Martin Marietta also shall pay the MDEQ interest on those unreimbursed costs at the rate provided for in Section 20126a(3) of the NREPA . If the above-described payment in the preceding sentence is more than 30 days past due, Martin Marietta also shall pay the MDEQ stipulated penalties of \$500.00 per day for every day of its noncompliance with Paragraph 1 of this Order.

4. In consideration of the payments to be made by Martin Marietta 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 Martin Marietta for the response activity costs addressed in Paragraph 1. With respect to Martin Marietta's liability for response activity costs, the covenant not to sue shall take effect upon the MDEQ's receipt of full payment from Martin Marietta for those costs and any associated interest and penalties that may have accrued pursuant to Paragraph 3. The covenant not to sue applies only to the response activity costs defined in Paragraph 1 and shall not be construed as a release of any other liability for the Facility that Martin Marietta may have. The covenant not to sue extends only to Martin Marietta and its successors in interest and does not extend to any other person.

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

6. Martin Marietta agrees that all applicable statutes of limitation are tolled until Martin Marietta has complied with Paragraph 1 of this Order.

7. 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 incurred after the dates set forth in Attachment 1, 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.

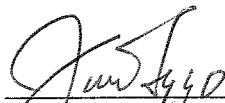
8. Nothing in this Order shall limit the power and authority of the MDEQ or the State of Michigan, pursuant to Section 20132(8) of the NREPA, to direct or order all appropriate action to protect the public health, safety, or welfare, or the environment; or to prevent, abate or minimize a release or threatened 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 CERCLA, U.S.C. § 9613(f)(2), and to the extent provided in Paragraph 4, Martin Marietta shall not be liable for claims for contribution for the matters addressed in Paragraph 4 of 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 U.S.C. § 9607 and § 9613, to the extent allowable by law. Pursuant to Section 20129(9) of the NREPA, any action by Martin Marietta 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.

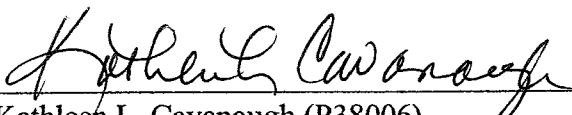
10. This Order is effective on the date it is signed by the RRD Chief. All dates for the performance of obligations under this Order shall be calculated from the effective date of this Order. For the purposes of this Order, the term "day" shall mean a calendar day unless otherwise noted.

IT IS SO AGREED AND ORDERED BY:



Jim Sygo, Chief
Remediation and Redevelopment Division
Michigan Department of Environmental Quality

12/23/02
Date

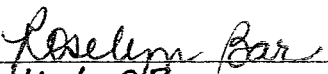


Kathleen L. Cavanaugh (P38006)
Assistant Attorney General
Natural Resources and Environmental Quality Division

12-4-02
Date

IT IS SO AGREED BY:

Martin Marietta Magnesia Specialties, LLC
1800 Eastlake Road
Manistee, Michigan 49660

By: 

Dated: 11-6-02