

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

Florida Gas Site
Village of Laurium, Houghton County, Michigan
Site ID No. 31000023

MDEQ Reference No.: AOC-RRD-03-004

**ADMINISTRATIVE ORDER BY CONSENT
FOR PAYMENT OF PAST AND FUTURE RESPONSE ACTIVITY COSTS**

1. This Administrative Order by Consent (Order) is entered into voluntarily by and between the Michigan Department of Environmental Quality (MDEQ) and Michael A. Cox, Attorney General for the State of Michigan (collectively, the State), and Peninsular Gas Company (Peninsular), 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.*

2. This Order concerns the settlement between the State and Peninsular of the State's claims for Past and Future Response Activity Costs that have been incurred or will be incurred in responding to releases or threats of releases of hazardous substances at and emanating from Peninsular's property located at Franklin Street and Lake Linden Avenue (M-26), Village of Laurium, Houghton County, Michigan (the Property), identified in Attachment A, that occurred prior to the Effective Date of this Order. Any area of the Property where a hazardous substance, in concentrations that exceed the requirements of Section 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.

3. The State has incurred costs under Part 201 in responding to releases or threats of releases 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.

4. Peninsular desires to resolve any liability it may have to the State under Part 31, Water Resources Protection, of the NREPA, Part 201, and the Comprehensive Environmental Response, Compensation, and Liability Act, 1980 PL 96-510, as amended (CERCLA), 42 USC Section 9601 *et seq.*, for Covered Matters as defined in Paragraph 9 of this Order and has provided documentation to the MDEQ concerning its financial status. Settlement of Peninsular's liability under Part 31, Part 201, and the CERCLA for Covered Matters is in the public interest and will minimize litigation.

5. This Order shall apply to and be binding upon the State and Peninsular and their successors and assigns. Any change or changes in the ownership, corporate status, or legal status of Peninsular including, but not limited to, any transfer of assets or of real property shall in no way alter Peninsular's obligations or benefits under this Order.

6. The execution of this Order by Peninsular 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.

7. Unless otherwise stated herein, all terms used in this Order which are defined in Part 201 or the Part 201 Administrative Rules (Part 201 Rules) shall have the same meaning in this Order as in Part 201 and the Part 201 Rules.

a. "Day" means a calendar day unless otherwise noted.

b. "Effective Date" means the date this Order is signed by the Chief of the Remediation and Redevelopment Division, MDEQ. All dates for the performance of obligations under this Order shall be calculated from the Effective Date of this Order.

c. "Past and Future Response Activity Costs" means response activity costs that have been or will be incurred by the State in conducting response activities at the Facility to address releases or threats of releases of hazardous substances that occurred at the Facility prior to the Effective Date of this Order and releases that initially occurred prior to the Effective Date of this Order and are continuing to occur after the Effective Date of this Order.

8. 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 PENINSULAR HEREBY AGREES, TO THE FOLLOWING:

9. To resolve all claims by the State against Peninsular under Part 31, Part 201, and the CERCLA for Covered Matters, Peninsular shall fulfill the requirements of this Order, including payment to the MDEQ, in the manner provided in Subparagraphs 9a and 9b herein and Paragraph 14 of this Order, in the sum of Nine Hundred Twenty-five Thousand Dollars (\$925,000). For purposes of this Order, "Covered Matters" shall mean any liability that Peninsular may have to the State for the State's Past and Future Response Activity Costs, including interest claims; the performance of response activities; and natural resource damages under Part 31, Part 201, and the CERCLA that are related to releases and threats of releases of hazardous substances that occurred at the Facility prior to the Effective Date of this Order or releases that initially occurred prior to the Effective Date of this Order and are continuing to occur after the Effective Date of this Order.

a. Within thirty (30) days of the Effective Date of this Order, Peninsular shall pay One Hundred Thousand Dollars (\$100,000).

b. The remaining Eight Hundred Twenty-five Thousand Dollars (\$825,000) shall be paid in ten (10) equal, annual payments of Eighty-two Thousand Five Hundred Dollars (\$82,500). 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.

10. Peninsular covenants that all costs incurred by Peninsular pursuant to this Order including, but not limited to, all monies paid or to be paid to the State pursuant to this Order shall not be treated as operating expenses for the purposes of rate-making and that Peninsular waives any and all rights that it may have to recover said costs and monies from its customers.

11. Pursuant to this Order, Peninsular hereby assigns to the MDEQ, its successor entities, and those persons or entities acting on its behalf all of Peninsular's interests and rights to damages, indemnification, or any other payments resulting from environmental cleanup expense claims or recovery actions that may be available under any insurance policies, whether known or unknown, which were held on Peninsular's business or real property. For the purposes of this Order, known insurance policies shall include, but are not necessarily limited to, the following policies: Aetna, Policy No. 36CA83410CCA; Hartford Financial Services and Insurance Group, Policy No. 86F8-173115; United States Fidelity and Guaranty Policy No. F208022; and Underwriters at Lloyds of London, Policy No. "not identified"). If any insurance policy, known or unknown, requires advance notice of an intent to assign or contains other conditions precedent before an assignment can take effect, the assignment provided in this paragraph shall not be deemed to be effective until such notices or other precedent conditions have been satisfied. Peninsular agrees, on reasonable notice from the State, to take all reasonable steps necessary to complete the assignment of any policy.

12. If, after the Effective Date of this Order, Peninsular desires to dissolve the corporation, Peninsular shall provide written notification to the MDEQ of Peninsular's intent to dissolve at least ninety (90) days prior to dissolving. Within sixty (60) days of receipt of Peninsular's notice of intent to dissolve, the MDEQ shall provide written notification to Peninsular as to the status of the State's actions as Peninsular's assignee to the assigned insurance policies. In the event the State has not exhausted its rights as the assignee of

Peninsular's insurance policies, Peninsular shall form, in accordance with applicable state and federal laws and regulations, a Successor Trust or other successor legal entity for the purpose of serving as the legal successor under the assigned insurance policies. Peninsular shall appoint the State as the Trustee of such Successor Trust or an authorized agent of such other legal entity (collectively, "Authorized Agent"). The State, as Authorized Agent, shall have the right, to the full extent permitted by applicable state and federal laws and regulations, to exercise any rights that Peninsular may have under the assigned insurance policies as the policy holder.

13. Peninsular shall comply with all applicable provisions of Part 201 and the Part 201 Rules including, but not limited to, Section 20107a of the NREPA, Part 10 of the Part 201 Rules, and all other applicable federal, state, and local environmental laws and regulations.

14. All payments required to be made pursuant to Paragraph 9 of this Order shall 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:

Revenue Control Unit
Financial and Business Services Division
Michigan Department of Environmental Quality
Constitution Hall, 5th Floor, South Tower
525 West Allegan Street
Lansing, Michigan 48933-2125

To ensure proper credit, payments made pursuant to this Order must be made by check referencing the Peninsular Gas Company Facility, Laurium, Michigan, Site ID No. 31000023, the MDEQ Reference No. AOC-RRD-03-004, and the Remediation and Redevelopment Division Account No. RRD 2175. A copy of the transmittal letter and the check shall be provided simultaneously to:

Amy Keranen, Project Coordinator
Baraga Field Office, Upper Peninsula District Office
Remediation and Redevelopment Division
Michigan Department of Environmental Quality
427 U.S. 41 North
Baraga, Michigan 49908

and to:

A. Michael Leffler, Assistant in Charge
Environment, Natural Resources, and Agriculture Division
Michigan Department of Attorney General
Constitution Hall, 5th Floor, South Tower
525 West Allegan Street
Lansing, Michigan 48933

Payments made pursuant to this Order shall be deposited in the Environmental Response Fund in accordance with the provisions of Section 20108(3) of the NREPA.

15. If Peninsular fails to pay the amount indicated in Paragraph 9 of this Order pursuant to the schedule set forth therein, Peninsular shall also pay the State interest on those delinquent payments at the rate provided in Section 20126a(3) of the NREPA. If any of Peninsular's payments are more than ninety (90) days past due, Peninsular shall also pay the State stipulated penalties of One Hundred Dollars (\$100) per day for every day of its noncompliance with Paragraph 9 of this Order.

16. In consideration of the payments to be made by Peninsular under Paragraph 9 and other valuable consideration under Paragraphs 10 and 11 of this Order and except as otherwise provided in this Order, the State covenants not to sue or to take further administrative action against Peninsular or Peninsular's successors and assigns for Covered Matters. The State's covenant not to sue for Covered Matters shall take effect as provided herein:

a. With respect to the State's covenant not to sue concerning the performance of response activities and natural resource damages, the covenant not to sue shall take effect upon the Effective Date of this Order.

b. With respect to the State's covenant not to sue concerning the State's Past and Future Response Activity Costs, the covenant not to sue shall take effect upon the MDEQ's receipt of payments for those costs and any associated interest and penalties that have accrued pursuant to Paragraph 15 of this Order.

c. The State's covenant not to sue shall not apply to any liability related to Covered Matters that is recoverable under any insurance policies assigned to the State pursuant to this Order until such time as the State, as Peninsular's Authorized Agent, has received payment of the insurance settlement or has otherwise exhausted Peninsular's legal rights with respect to the insurance claim. For purposes of implementing this Order, the State agrees to direct future enforcement actions concerning liability related to Covered Matters recoverable under any past or present insurance policies against the carriers of the policies assigned pursuant to Paragraph 11 of this Order.

17. Notwithstanding any other provision of this Order, the State reserves its rights, and this Order is without prejudice to any right the State may have, to institute administrative action or proceedings in this action or in a new civil action pursuant to the State's authorities under applicable laws with respect to all other matters including, but not limited to:

a. Actions against Peninsular's past and present insurance carriers to secure the recovery of insurance proceeds under the insurance policies described in Paragraph 12 of this Order.

b. Actions against Peninsular to compel Peninsular to undertake response activities or reimburse the State's response activity costs lawfully incurred to address releases or threats of releases of hazardous substances that occur subsequent to entry of this Order and are not a Covered Matter as defined in Paragraph 9 of this Order.

18. The State has concluded that this settlement is appropriate based, in part, on the representations, information, and documentation provided by Peninsular relating to its financial status. If the financial information or documentation provided by Peninsular is determined to

have been substantially inaccurate in the portrayal of Peninsular's financial status, the State's covenant not to sue provided under Paragraph 16 of this Order shall be automatically null and void.

19. The State reserves all of its rights under state and federal laws to: perform response activities; seek recovery of response activity costs and natural resource damages not addressed by this Order, including the costs incurred to assess such natural resource damages; assess and recover monetary penalties and punitive damages for any violation of law or this Order; and pursue Peninsular's liability for criminal acts. The State expressly reserves all of its rights and defenses pursuant to any available legal authority to enforce this Order.

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

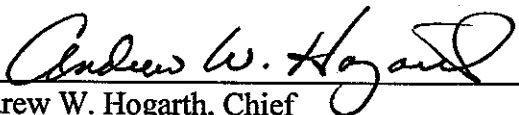
21. Except as provided under Paragraphs 16 and 17 of this Order, nothing in this Order shall limit the power and authority of the MDEQ or the State of Michigan, pursuant to Section 20132(8) of the NREPA, to direct or order all appropriate action necessary to protect the public health, safety, or welfare, 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.

22. Pursuant to Section 20129(5) of the NREPA, and to the extent provided in Paragraph 15 of this Order, Peninsular and Peninsular's successors and assigns shall not be liable for claims for contribution for Covered Matters as defined in Paragraph 9 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 to the extent allowable by law. Pursuant to Section 20129(9) of the NREPA, any action by Peninsular 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.

23. This Order shall be executed in two or more duplicate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IT IS SO AGREED AND ORDERED BY:

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY




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

2/6/04

Date

MICHIGAN DEPARTMENT OF ATTORNEY GENERAL



Sharon L. Feldman (P40565)
Assistant Attorney General
Environment, Natural Resources, and Agriculture Division
Michigan Department of Attorney General

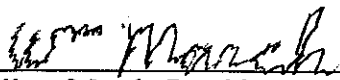
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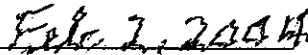
In the Matter of:

Peninsular Gas Company Facility
Village of Laurium, Houghton County, Michigan
Site ID No. 31000023

IT IS SO AGREED BY PENINSULAR GAS COMPANY:



William March, President
Peninsular Gas Company



Date

ATTACHMENT A

Legal Description of the Property

Lots One (1) to Nine (9) inclusive, being entire lots in Block 18, in Florida Addition to the Village of Calumet (now Village of Laurium), Calumet Township, Houghton County, Michigan, being a triangular parcel with Two Hundred feet (200') of frontage on Lake Linden Avenue, Four Hundred Forty and Five-Tenths feet (440.5') of frontage on Franklin Avenue and Four Hundred Ninety Three feet (493') running Easterly and Westerly from Lake Linden Avenue to Franklin Avenue.