

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY  
REMEDIATION AND REDEVELOPMENT DIVISION

In the matter of:

Donald L. Faust and Delores A. Faust

MDEQ Reference No. AOC-RRD-2005-005

ADMINISTRATIVE ORDER BY CONSENT  
FOR PAYMENT OF PAST AND FUTURE 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 (the State), and Mr. Donald L. Faust and Mrs. Delores A. Faust, Husband and Wife, formerly d/b/a Don's Marathon ("Mr. and Mrs. Donald Faust"), under 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.* The State and Mr. and Mrs. Donald Faust are collectively referred to herein as the Parties. All terms used in this Order that are defined in Part 201 or its administrative rules, 2002 AACS R 299.5101 *et seq.* (Part 201 Rules), shall have the same meaning in this Order as in the Part 201 Rules.

B. This Order concerns the settlement between the State and Mr. and Mrs. Donald Faust for the State's past and future response activity costs which have been and will continue to be incurred by the State in responding to the release or threat of release of hazardous substances at and emanating from the property formerly owned by Mr. and Mrs. Donald Faust, commonly referred to as Don's Marathon located at 1945 East Miller Road (M-72), Fairview, Oscoda County, Michigan, known as "Don's Marathon Property" and described as follows:

A Parcel of Land in the Southeast Quarter (SE ¼) of the Southeast Quarter (SE ¼) of Section Fifteen (15), Town Twenty-Seven (27) North, Range Three (3) East, Described

as Bounded by a Line Beginning at a Point on the South Boundary of Said Forty-Acre Tract 749 Feet 9 inches West of Section Corner at Southeast Corner of Said Forty Acre Tract; Thence North 204 Feet; Thence West 100 Feet; South 204 Feet; East 100 Feet to the Point of Beginning.

The Don's Marathon Property and any associated area, place, or other property where concentrations of hazardous substances exceed the residential cleanup criteria under MCL 324.20120a(1)(a) and (17), and as further defined in the Part 201 Rules, are "facilities" as defined in Section 20101 of the NREPA, MCL 324.20101(1)(o), subject to Part 201 regulation.

C. Under Part 201, the State has incurred and will continue to incur costs in responding to the release or threat of a release of hazardous substances at the Don's Marathon Property. Under Section 20126a(1)(a) of the NREPA, MCL 324.20126a(1)(a), a person liable under Section 20126 of the NREPA, MCL 324.20126, is liable for all response activity costs that the State has lawfully incurred. The Parties to this Order intend to resolve claims against Mr. and Mrs. Donald Faust for past and future response activity costs that the State incurred and paid in connection with the Don's Marathon Property. Settling these claims is in the public interest and will avoid litigation.

D. By executing this Order, Mr. and Mrs. Donald Faust do not admit liability with respect to any issue covered under this Order, nor do they admit or deny any findings of fact or legal determinations, whether stated or implied.

E. This Order shall apply to and bind Mr. and Mrs. Donald Faust. Mr. and Mrs. Donald Faust's current ownership or corporate status does not affect Mr. and Mrs. Donald Faust's obligations under this Order. The signatories to this Order certify that they are authorized to sign this Order and legally bind the parties they represent.

BASED UPON THESE FACTS AND DETERMINATIONS, THE MDEQ, THE ATTORNEY GENERAL, AND Mr. and Mrs. Donald Faust AGREE TO THE FOLLOWING:

1. To resolve claims against Mr. and Mrs. Donald Faust associated with the Don's Marathon Property for past and future response activity costs under Part 201:

A. Upon execution of this instrument, Mr. and Mrs. Donald Faust shall pay \$15,000 to the State, in full satisfaction of Mr. and Mrs. Donald Faust's payment obligations under this subparagraph 1A.

For this Order's purposes, "past and future response activity costs" means all costs that the State has incurred for response activities to date or will incur in the future at the Don's Marathon Property resulting from releases of hazardous substances that occurred before this Order's effective date.

2. Payment is 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, Michigan 48909-8157

If via courier:

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

To ensure proper credit, payments made under this Order must be by certified check referencing the "Don's Marathon Property" the MDEQ Reference No. AOC-RRD-2005-005, and

the Remediation and Redevelopment Division Account No. RRD- RRD1009. A copy of the transmittal letter and the certified check shall also be provided to the:

MDEQ Project Coordinator  
Gaylord Field Office  
Remediation and Redevelopment Division  
Michigan Department of Environmental Quality  
2100 West M-32  
Gaylord, Michigan 49732

and:

Assistant Attorney General in Charge  
Environment, Natural Resources, and Agriculture Division  
Department of Attorney General  
P.O. Box 30755  
Lansing, Michigan 48909

Costs recovered under this Order shall be deposited in the Environmental Response Fund in accordance with Section 20108(3) of the NREPA, MCL 324.20108(3).

3. If Mr. and Mrs. Donald Faust fail to make the payment required under subparagraph 1A at the time of execution as set forth in Paragraph 1A, Mr. and Mrs. Donald Faust shall also pay the MDEQ interest on the balance not paid, at the rate provided for in Section 20126(3) of the NREPA, MCL 324.20126a(3).

4. In consideration of the payment that Mr. and Mrs. Donald Faust shall make under this Order, except as otherwise provided in this Order under Section 20134 of the NREPA, MCL 324.20134, the State covenants not to sue or to take further administrative action against Mr. and Mrs. Donald Faust to recover any past and future response activity costs associated with the Don's Marathon Property. The State's Covenant Not To Sue shall not take effect until Mr. and Mrs. Donald Faust have remitted any payments due under subparagraph 1A, along with any interest that may have accrued under Paragraph 3. This Covenant Not To Sue applies only to Mr. and Mrs. Donald Faust, and shall not extend to any release or threat of release of hazardous

substances at the Don's Marathon Property, nor to any exacerbation of contamination, that occurs on or after the effective date of this Order.

5. Mr. and Mrs. Donald Faust hereby covenant not to sue or to take any civil, judicial or administrative action against the State, its agencies or their authorized representatives for any claims or causes of action against the State that arise from this Order, including, but not limited to, any direct or indirect claim for reimbursement from the Cleanup and Redevelopment Fund pursuant to Section 20119(5) of the NREPA or any other provision of law.

6. This Order applies to and binds Mr. and Mrs. Donald Faust. Nothing in this Order shall be construed as releasing or discharging any person's liability to Mr. and Mrs. Donald Faust. Mr. and Mrs. Donald Faust specifically reserve their rights against such person, subject to Paragraph 12.

7. Mr. and Mrs. Donald Faust agree that all applicable statutes of limitation are tolled until Mr. and Mrs. Donald Faust have complied with Paragraph 1.

8. Except as provided in Paragraph 4, the State reserves all of its rights under state and federal law to perform response activities and to take enforcement action, including but not limited to: action to seek injunctive relief; response activity; cost recovery not addressed under this Order; recovering natural resource damages and costs incurred to assess those damages; monetary penalties; punitive damages for any violation of law or this Order; and liability for criminal acts. The State expressly reserves all rights and defenses under any available legal authority to enforce this Order.

9. The State has concluded that this Order's entry is appropriate based in part on Mr. and Mrs. Donald Faust's representations, information, and documentation that Mr. and Mrs. Donald Faust have provided relating to Mr. and Mrs. Donald Faust's financial status. If the MDEQ subsequently determines that financial information or documents that Mr. and Mrs. Donald Faust have provided are substantially inaccurate concerning Mr. and Mrs. Donald Faust's financial status, the Covenant Not to Sue in Paragraph 4 shall be void.

10. Nothing in this Order shall limit the MDEQ's or the State's power and authority under, Section 20132(8) of the NREPA, MCL 324.20132(8) 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 a hazardous substance, pollutant, or contaminant on, at, or from Don's Marathon Property.

11. Under Section 20129(5) of the NREPA, MCL 324.20129(5), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Section 113(f)(2), 42 USC 9613(f)(2), and to the extent provided in Paragraph 4, Mr. and Mrs. Donald Faust shall not be liable for contribution claims for the matters addressed in Paragraph 4. This Order applies only to Mr. and Mrs. Donald Faust, and entering this Order does not discharge any other person's liability under Section 20126 of the NREPA, MCL 324.20126, or the CERCLA, Sections 107 and 113, 42 USC 9607 and 9613, to the extent allowed by law. Under NREPA Section 20129(9), MCL 324.20129(9), any action by Mr. and Mrs. Donald Faust for contribution from any person not a party to this Order shall be subordinated to the State's rights if the State files an action under Part 201 or other applicable state or federal law.

12. This Order shall become effective on the date that the MDEQ signs it. All dates for performing obligations under this Order shall be calculated from this Order's effective date. For this Order's purposes, "day" means a calendar day unless otherwise noted.

**SIGNATORIES**

MR. DONALD L. FAUST and MRS. DELORES A. FAUST,  
d/b/a Don's Marathon.

By: Donald L. Faust  
Donald L. Faust, Owner

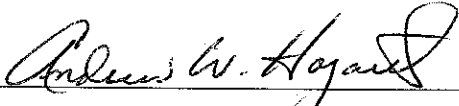
Dated: 4-12-06

By: Delores A. Faust  
Delores A. Faust, Joint Owner

Dated: 4-12-06

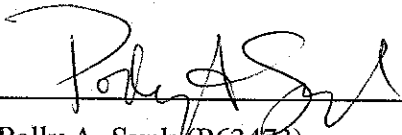
**SIGNATORIES (continued)**

THE MICHIGAN DEPARTMENT OF  
ENVIRONMENTAL QUALITY

By:   
Andrew W. Hogarth, Chief  
Remediation and Redevelopment Division

Dated: 5/2/06

DEPARTMENT OF ATTORNEY GENERAL

By:   
Polly A. Synk (P63473)  
Assistant Attorney General  
Environment, Natural Resources and Agriculture Division  
P.O. Box 30755  
Lansing, Michigan 48909

ATTORNEY FOR MICHIGAN DEPARTMENT  
OF ENVIRONMENTAL QUALITY

Dated: 4-17-06