

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

Consumers Energy Company
Adamczak Tar Facility
Manistee County, Michigan
Site ID No. 51000126

MDEQ Reference No. AOC-RD-10-004

Proceeding under Section 20132 of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended.

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER BY CONSENT

I. JURISDICTION

1.1 This Administrative Settlement Agreement and Order by Consent (Order) is entered into voluntarily by and between the Michigan Department of Environmental Quality (MDEQ) and the Michigan Department of Attorney General (MDAG), collectively referred to as "State," and Consumers Energy Company, a Michigan corporation (Consumers), 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.*

II. DENIAL OF LIABILITY

2.1 The execution of this Order by Consumers 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, allegations, assertions, or legal determinations stated or implied herein, except that Consumers specifically denies allegations that it or its legal predecessors arranged for the disposal or treatment of, or arranged with a transporter for transport for disposal or treatment of, hazardous substances to the Facility, and therefore denies liability under Part 201. Consumers is,

however, willing to enter this Administrative Settlement Agreement and Order By Consent to resolve the disputed claims.

III. PARTIES BOUND

3.1 This Order shall apply to, and be binding upon, the State of Michigan (State) and Consumers and their successors and assigns. No change or changes in the ownership or corporate status of Consumers shall alter in any way Consumers' 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.

IV. STATEMENT OF PURPOSE

4.1 This Order concerns the settlement between the State and Consumers of the State's claims for Response Activity Costs and Consumers' alleged responsibility to address the releases or threats of releases of hazardous substances at the Adamczak Tar Facility located in Filer Township, Manistee County, Michigan.

4.2 Settlement of these claims is in the public interest and will minimize litigation.

V. DEFINITIONS

5.1 "Consumers" means Consumers Energy Company, a Michigan corporation with offices at One Energy Plaza, Jackson, Michigan 49201.

5.2 "Day" shall mean a calendar day unless otherwise specified in this Order.

5.3 "MDEQ" means the Michigan Department of Environmental Quality, its successor entities, and those authorized persons or entities acting on its behalf.

5.4 "Effective Date" means the date this Order is signed by all of the Parties.

5.5 "Facility" or "Adamczak Tar Facility" means any area of the Property identified in Attachment A where a hazardous substance, in excess of the concentrations that satisfy the cleanup criteria for unrestricted residential use has been released, deposited, 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.

5.6 "MDAG" means the Michigan Department of Attorney General, and any successor departments or agencies of the State of Michigan.

5.7 "Part 201" means 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 Part 201 Administrative Rules.

5.8 "Part 201 Rules" means the administrative rules promulgated under Part 201.

5.9 "Parties" shall mean the State and Consumers.

5.10 "Property" means the property located in Filer Township, Manistee County, Michigan, and described in the legal description provided in Attachment A.

5.11 "Response Activity Costs" means all response activity costs associated with the Facility that have been incurred by the State prior to the Effective Date of this Order, including all accrued interest; and all response activity costs that may be incurred by the State after the Effective Date of this Order, including interest, to address releases and threats of releases of hazardous substances at the Facility that occurred prior to the Effective Date of this Order.

5.12 "State" or "State of Michigan" means the MDAG and the MDEQ, and any authorized representatives acting on their behalf.

5.13 Unless otherwise stated herein, all other terms used in this Order, which are defined in Part 3, Definitions, of the NREPA, MCL 324.301; Part 201; or the Part 201 Rules, shall have the same meaning in this Order as in Parts 3 and 201 and the Part 201 Rules.

VI. FINDINGS OF FACT AND DETERMINATIONS

6.1 The Adamczak Tar Facility is located in Filer Township, Manistee County, Michigan.

6.2 Site investigations and assessment activities conducted at the Property by the MDEQ confirmed that waste tar material had been disposed of at the Property and this material, including the soil and groundwater at the Property, contained hazardous substances in excess of the concentrations that satisfy the cleanup criteria for unrestricted residential use. The hazardous substances identified are "hazardous substances" as that term is defined in Section 20101(1)(x) of the NREPA, MCL 324.20101(1)(x) and include, but are not limited to, benzene, toluene, ethylbenzene, xylene(s), 1,2,4-trimethylbenzene, acenaphthylene, phenanthrene, benzo(a)pyrene and other polycyclic aromatic hydrocarbons (PAHs).

6.3 During the fall of 2000, the MDEQ conducted state-funded response activities at the Facility to remove and dispose of approximately 770 tons of waste tar material and contaminated soil from the Property. In addition, groundwater monitoring was performed through 2007 to confirm natural attenuation of the groundwater at the Facility. The groundwater met the generic residential cleanup criteria with the exception of one well, which exceeded the groundwater criteria for Benzo(a)anthracene and Dibenzo(a,h)anthracene, while all other monitoring well results were non-detect.

6.4 The Adamczak Tar Facility is a "facility" as that term is defined in Section 20101(1)(r) of the NREPA.

6.5 Consumers is a "person" as that term is defined in Section 301(h) of Part 3, Definitions, of the NREPA, MCL 324.301(h).

6.6 The State asserts that Consumers and/or its legal predecessors arranged for the disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances to the Facility, and therefore is liable under Part 201 pursuant to Section 20126(1)(d) or (1)(e) of the NREPA, MCL 324.20126(1)(d) or (1)(e)

6.7 Pursuant to Section 20126a(1)(a) of the NREPA, MCL 324.20126a(1)(a), a person who is liable under Section 20126 is liable for all response activity costs lawfully incurred by the State. Further, pursuant to Section 20137(1)(a) of the NREPA, MCL 324.20137(1)(a),

the State may commence an action to compel a liable party to take the necessary response activity to protect public health, safety, or welfare, or the environment, from the release or threat of release of a hazardous substance.

6.8 The State asserts that it has incurred response activity costs as defined by Part 201 relating to the selection and implementation of response activities at the Adamczak Tar Facility of approximately \$779,000.

6.9 By letter dated August 15, 2006, the MDEQ notified Consumers of its assertion that Consumers is a liable person in accordance with Section 20126 of the NREPA, MCL 324.20126. The MDEQ demanded that Consumers commit, in a legally binding agreement, to reimburse the State for past and future costs incurred for responding to the release or threatened release of hazardous substances at the Facility.

BASED UPON THE FOREGOING, THE MDEQ AND THE ATTORNEY GENERAL HEREBY ORDER, AND CONSUMERS HEREBY AGREES TO, THE FOLLOWING:

VII. REIMBURSEMENT OF RESPONSE ACTIVITY COSTS

7.1 Within sixty (60) days of the Effective Date of this Order, Consumers shall pay the MDEQ Two Hundred Fifty Thousand Dollars (\$250,000) to resolve all State claims for Response Activity Costs against Consumers related to the Adamczak Tar Facility, except those reserved by the State in Paragraph 9.1 of Section IX, Reservation of Rights.

7.2 Payment is to be made by certified check made payable to the "State of Michigan – Environmental Response Fund" and shall be sent by First Class Mail to:

Revenue Control Unit
Finance Section
Administration Division
Michigan Department of Environmental Quality
P.O. Box 30657
Lansing, Michigan 48909-8157

Via Courier:

Revenue Control Unit
Finance Section, Administration Division
Michigan Department of Environmental Quality
Constitution Hall, 5th Floor, South Tower
525 West Allegan Street
Lansing, Michigan 48933-2125

7.3 To ensure proper credit, payment made pursuant to this Order must reference the Adamczak Tar Facility, the MDEQ Reference No. AOC-RRD-10-004, and the RD Account Number RD-2265. Copies of the transmittal letter and the certified check shall be provided simultaneously to:

Brian Maturen, Environmental Quality Analyst
Cadillac District Office
Remediation Division
Michigan Department of Environmental Quality
120 West Chapin Street
Cadillac, Michigan
Phone: 231-876-4457
Fax: 231-775-1511

and to:

Kathleen L. Cavanaugh, Assistant Attorney General
Environment, Natural Resources, and Agriculture Division
Michigan Department of Attorney General
G. Mennen Williams Building, 6th Floor
525 West Ottawa Street
P.O. Box 30755
Lansing, Michigan 48909
Phone: 517-373-7540
Fax: 517-373-1610

7.4 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, MCL 324.20108(3).

7.5 If Consumers fails to make full payment to the MDEQ as specified in Paragraph 7.1, Consumers shall also pay interest at the rate specified in Section 20126a(3) of the NREPA, MCL 324.20126a(3). If Consumers' payment is more than thirty (30) days past

due, Consumers shall also pay the MDEQ stipulated penalties of Five Hundred Dollars (\$500) per day for every day of its noncompliance with Paragraph 7.1.

VIII. COVENANTS NOT TO SUE BY THE STATE

8.1 In consideration of the payment to be made by Consumers under the terms of this Order, and except as otherwise provided in this Order, the State covenants not to sue or to take further administrative action against Consumers and its successors for:

- (a) Response Activity Costs; and
- (b) Performance of response activities to address releases and threats of releases of hazardous substances at the Facility that occurred prior to the Effective Date of this Order.

8.2 The State's covenant not to sue shall take effect upon the MDEQ's receipt of full payment from Consumers for the amount specified in Paragraph 7.1, and any associated interest and penalties that may have accrued pursuant to Paragraph 7.5. The covenant not to sue shall extend only to Consumers and its successors and does not extend to any other person.

IX. RESERVATION OF RIGHTS BY THE STATE

9.1 The covenants not to sue apply only to those matters specified in Paragraph 8.1 of Section VIII (Covenants Not to Sue by the State). The State expressly reserves, and this Order is without prejudice to, all rights to take administrative action or to file a new action pursuant to any applicable authority against Consumers with respect to the following:

- (a) Releases or threats of releases of hazardous substances at the Facility that occur after the Effective Date of this Order, for which Consumers is liable under Section 20126 of the NREPA, MCL 324.20126.
- (b) The past, present, or future treatment, handling, disposal, release, or threat of release of hazardous substances that occur outside of the Facility and not attributable

to the Facility for which Consumers is liable under Section 20126 of the NREPA, MCL 324.20126.

(c) Criminal acts.

9.2 The State reserves the right to take action against Consumers if it discovers at any time that any material information provided by Consumers prior to or after entry of this Order was false or misleading.

9.3 The MDEQ and the MDAG expressly reserve all of their rights and defenses pursuant to any available legal authority to enforce this Order.

9.4 Except as provided in Paragraph 8.1 of Section VIII (Covenants Not to Sue by the State), 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, MCL 324.20132(8), 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.

X. COVENANT NOT TO SUE AND RESERVATION OF RIGHTS BY CONSUMERS

10.1 Consumers hereby covenants 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, MCL 324.20119(5), or any other provision of law.

10.2 After the Effective Date of this Order, if the MDAG initiates any administrative or judicial proceeding for injunctive relief, recovery of response activity costs, Response Activity Costs, or other appropriate relief relating to the Facility, Consumers agrees not to assert and shall not maintain any defenses or claims that are based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, or claim-splitting, or that are based upon a

defense that contends any claims raised by the MDEQ or the MDAG in such a proceeding were or should have been brought in this case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section VIII (Covenants Not to Sue by the State) or Consumers' ability to defensively enforce the Covenants Not to Sue by the State.

10.3 Nothing in this Order shall be construed as releasing or discharging any liability of any person not a party to this Order to Consumers, and Consumers specifically reserves its rights against such persons.

XI. TOLLING

11.1 Consumers agrees that the Tolling Agreement dated October 18, 2006, and extensions of the same shall continue in effect until Consumers has fully complied with the terms of this Order.

XII. CONTRIBUTION

12.1 The Parties agree that this Order constitutes an administrative settlement pursuant to Section 20129(5) of the NREPA, MCL 324.20129(5) and Section 113(f)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 1980 PL 96-510, 42 U.S.C. Section 9613, and to the extent provided in Paragraph 8.1, Consumers 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, MCL 24.20126, or Sections 107 and 113 of the CERCLA, 42 U.S.C. Sections 9607 and 9613, to the extent allowable by law. Pursuant to Section 20129(9) of the NREPA, MCL 324.20129(9), any action by Consumers 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.

12.2 The Parties agree that this Order also constitutes an administrative settlement for purposes of Section 20129(8) of the NREPA, MCL 324.20129(8) and Section 113(f)(3)(B) of the CERCLA, 42 U.S.C. Section 9613(f)(3)(B), pursuant to which Consumers has, as of the Effective Date, resolved its liability to the State for the matters addressed in this Order.

12.3 The Parties agree that except as provided in Paragraph 12.1:

(a) Nothing in this Order precludes Consumers from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Order; and,

(b) Nothing in this Order diminishes the right of the State, pursuant to Section 20129(7) of the NREPA, MCL 324.20129(7) and Sections 113(f)(2) and (3) of the CERCLA, 42 Section U.S.C. 9613(f)(2) and (3), to pursue any such person to obtain additional response costs or response action and to enter into settlement agreements that give rise to contribution protection pursuant to Section 20129(8) of the NREPA, MCL 324.20129(8) and Section 113(f)(2) of the CERCLA, 42 U.S.C. Section 9613(f)(2).

XIII. MODIFICATIONS

13.1 Modification of any provision of this Order shall be made only by written agreement between the Parties.

XIV. SEPARATE DOCUMENTS

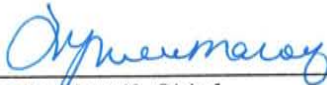
14.1 The Parties may execute this Order in duplicate original form for the primary purpose of obtaining multiple signatures, each of which shall be deemed an original, but all of which together shall constitute the same instrument.

XV. SEVERABILITY

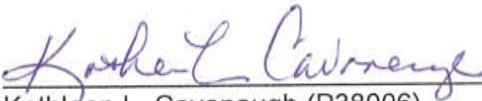
15.1 The provisions of this Order shall be severable. If a court of competent jurisdiction declares that any provision of this Order is inconsistent with state or federal law and

therefore unenforceable, the remaining provisions of this Order shall remain in full force and effect, unless the severance causes this Order to fail in its essential purposes.

IT IS SO AGREED TO AND ORDERED BY:


Lynelle Marolf, Chief
Remediation Division
Michigan Department of Environmental Quality

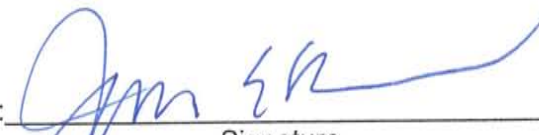
5/25/11
Date


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

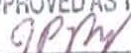
5-20-11
Date

IT IS SO AGREED BY:

Consumers Energy Company

By: 
Signature
Name James E. Brunner
Title Senior Vice President and General Counsel
Address One Energy Plaza, EP12-207
Jackson, MI 49201

5/13/11
Date

APPROVED AS TO FORM
 5/12/2011
CONSUMERS ENERGY COMPANY
LEGAL DEPARTMENT

ATTACHMENT A

Property Description

NE 1/4 NW 1/4, EXC COM SW COR, N 293 FT, E 500 FT, S 293 FT, W 500 FT TO POB, ALSO EXC COM AT NW COR THEREOF FOR POB, TH N 89 DEG 41 MIN 33 SEC E 1348.04 FT, TH S 1 DEG 28 MIN 31 SEC E 40 FT, TH S 89 DEG 41 MIN 33 SEC W 1148.19 FT, TH ALG CRV TO LEFT 201.72 FT (CHRD BEARS & DIST S 80 DEG 13 MIN 08 SEC W 200.8 FT) TH N 2 DEG 20 MIN 31 SEC W 73.1 FT FOR POB. ALSO EXC COM N 1/4 COR OF SD SEC, TH S 40.01 FT TO POB, TH CON'T S 1303.51 FT, TH N 89 DEG 03 MIN 12 SEC W 200.02 FT, TH N 1304.64 FT, TH S 88 DEG 43 MIN 50 SEC E 200.01 FT TO POB. 27.36 A*/M/L SEC 24 T21N R17W

Parcel ID No. 05-06-124-200-01