

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

Former Haugen Property Facility
10135 West O Avenue
Kalamazoo County, Michigan
MDEQ Facility ID No. 39000486

MDEQ Reference No.: AOC-RRD-18-001

ADMINISTRATIVE ORDER BY CONSENT

A. This Administrative Order by Consent ("Order") is entered into voluntarily by and between the Michigan Department of Environmental Quality ("MDEQ"), Bill Schuette, Attorney General for the State of Michigan (collectively, the "State"), and Case Western Reserve University and its employees and representatives of the institution (hereinafter, the "Settling Party") 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). All terms used in this Order, which are defined in Part 3 of the NREPA, MCL 324.301, *et seq.*, Part 201 of the NREPA, MCL 324.20101, *et seq.*, or the Part 201 Administrative Rules, shall have the same meaning in this Order as in Parts 3 and 201 of the NREPA and the Part 201 Rules.

B. This Order concerns the settlement between the State and the Settling Party of the State's claims in *Michigan Dept of Environmental Quality v Yale University, et al.*, No. 15-126-CE (Cir Ct for the 30th Jud Cir, Ingham Cty) which relate to the release or threat of release of hazardous substances at and emanating from the Former Haugen Property, 10135 West O Avenue, Kalamazoo County, Michigan (the "Property"). The Property and any associated area, place, or property where concentrations of hazardous substances exceeded the residential cleanup criteria of Section 20120a(1)(a) and (16) of Part 201 (the "Facility") is a facility as defined by Part 201 and is subject to regulation under Part 201.

C. The execution of this Order by the Settling 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.

D. The Settling Party and the MDEQ sought and received the Ingham County Circuit Court's approval of multiple stays in the judicial proceedings to allow the Settling Party to undertake evaluation and response activities at the Facility.

E. Pursuant to Part 201 of the NREPA, the State incurred costs in responding to the release or threat of a release of hazardous substances at the Facility. Sections 20126a(1)(a) and 20137(1)(b) and (d) of the NREPA authorize the State to recover response activity costs that are lawfully incurred by the State. The parties to this Order desire to resolve the State's claims relating to the release or threat of release at the Facility as specified herein. Settlement of this claim is in the public interest and will minimize litigation.

F. This Order shall apply to and be binding upon the Settling Party. 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 SETTLING PARTY HEREBY AGREES, TO THE FOLLOWING:

1. Within ninety (90) days of the effective date of this Order, the Settling Party shall pay \$50,000.00 to the MDEQ to resolve all claims against the Settling Party for past and future response activity costs. For the purposes of this Order, the term "response activity costs" means costs that the State incurred prior to or will incur after the effective date of this Order in responding to Past Releases of hazardous substances at the Facility. "Past Releases" means the release or threatened release of hazardous substances at the Facility as identified in the Remedial Investigation Report dated September 2009 and through entry of this Order.

Payment is to be made by check payable to the "State of Michigan - Environmental Response Fund" and sent to:

Michigan Department of Environmental Quality
Cashier's Office
P.O. Box 30657
Lansing, Michigan 48909-8157

To ensure proper credit, payment made pursuant to this Order must be made by check referencing the Former Haugen Property Facility, the MDEQ Reference No. AOC-RRD-18-001

and the Remediation and Redevelopment Division Account Number RRD50100. A copy of the transmittal letter and the check shall be provided simultaneously to:

Ms. Laura Gnyp
Environment, Natural Resources, and Agriculture Division
Michigan Department of Attorney General
G. Mennen Williams Building, 6th Floor
P.O. Box 30755
Lansing, Michigan 48909
Phone: 517-373-7540
Fax: 517-373-1610

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 Settling Party fails to pay the amount indicated in Paragraph 1 within ninety (90) days of the effective date of this Order, the Settling Party shall also pay the State interest on those unreimbursed costs at the rate provided for in Section 20126a(3) of the NREPA.

3. In consideration of the payment to be made by the Settling Party under the terms of this Order and the response activities performed by the Settling Party at the Property, the State covenants not to bring judicial, civil or administrative action against the Settling Party for response activities taken or response activity costs relating to Past Releases.

4. The State's covenant not to sue shall take effect as follows:

a. With respect to the Settling Party's liability for MDEQ's response activity costs, upon the MDEQ's receipt of full payment from the Settling Party of the amount specified in Paragraph 1 and of any associated interest that may have accrued pursuant to Paragraph 2.

b. With respect to the Settling Party's liability for response activities for Past Releases at the Facility, upon the MDEQ's receipt of full payment from the Settling Party of the amount specified in Paragraph 1 and of any associated interest that may have accrued pursuant to Paragraph 2.

The covenant not to sue shall extend only to the Settling Party and does not extend to any other person.

5. The Settling Party 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 or any other provision of law.

6. Following receipt by MDEQ of the payment to be made by Settling Party under the terms of this Order, the State and Settling Party shall file a stipulation of dismissal agreeing to dismiss with prejudice all claims made by the State against Settling Defendant in *Michigan Dept of Environmental Quality v Yale University, et al.*, No. 15-126-CE (Cir Ct for the 30th Jud Cir, Ingham Cty) in substantially the form set forth at Attachment A.

7. Nothing in this Order shall be construed as releasing or discharging any liability of any person to the Settling Party and the Settling Party specifically reserve(s) its rights against any such person.

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

9. The State reserves all of its rights under state and federal law to seek the recovery of monetary penalties, punitive damages for any violation of 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.

10. 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.

11. Pursuant to Section 20129(5) of the NREPA and Section 113(f)(2) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA), 42 USC § 9613(f)(2), and to the extent provided in Paragraph 3, the Settling Party shall not be liable for claims for contribution regarding 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 CERCLA, 42 USC § 9607 and § 9613, to the extent allowable by law. Pursuant to Section 20129(9) of the NREPA, any action by the Settling Party for contributions 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.

12. This Order shall become effective upon the date that the State and the Settling Party have signed 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.

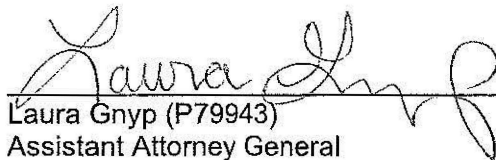
IT IS SO AGREED AND ORDERED BY:

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY


Kathleen Shirey, Acting Director
Remediation and Redevelopment Division
Michigan Department of Environmental Quality

3/20/18
Date

MICHIGAN DEPARTMENT OF ATTORNEY GENERAL

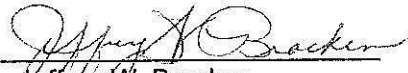

Laura Gnyp (P79943)
Assistant Attorney General
Environment, Natural Resources and Agriculture Division
Michigan Department of Attorney General

3/16/2018
Date

IT IS SO AGREED BY:

Case Western Reserve University

Address: Jeffrey W. Bracken
Partner
Warner Norcross and Judd LLP
One Michigan Avenue Building
120 North Washington Square, Suite 410
Lansing, Michigan 48933

By: 
Jeffrey W. Bracken

Dated: 3/14/18

ATTACHMENT A
STIPULATION OF DISMISSAL

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY,
Plaintiff,

v

YALE UNIVERSITY, CASE WESTERN
RESERVE UNIVERSITY, AUBURN
UNIVERSITY, WEST VIRGINIA STATE
UNIVERSITY, NORTHERN TIOGA
SCHOOL DISTRICT, and UNIVERSITY OF
GEORGIA,
Defendants.

Case No.: 15-126-CE

HON. WILLIAM E. COLLETTE

**STIPULATION AND ORDER
TO DISMISS AS TO
DEFENDANTS YALE
UNIVERSITY AND CASE
WESTERN RESERVE
UNIVERSITY**

Laura Gnyp (P79943)
Assistant Attorney General
Environment, Natural Resources
and Agriculture Division
P.O. Box 30755
Lansing, MI 48909
(517) 373-7540
Attorney for the Plaintiff

John Pirich (P23204)
Honigman Miller Schwartz and
Cohn LLP
222 North Washington Square
Lansing, MI 48933
(517) 377-0712
Attorney for Defendant Yale
University

Dave Monz
Updike, Kelly & Spellacy, PC
One Century Tower
265 Church Street
New Haven, CT 06510
(203) 786-8300
Attorney for Defendant Yale University

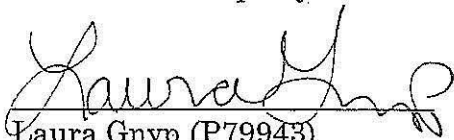
Jeffrey W. Bracken (P25648)
Warner Norcross & Judd LLP
One Michigan Avenue Building
120 North Washington Avenue
Suite 410
Lansing, MI 48933
(517) 679-7400
Attorney for Defendant Case
Western Reserve University

Mike Hardy
Thompson Hine
3900 Key Center
127 Public Square
Cleveland, OH 44114-1291
(216) 566-5500
Attorney for Defendant Case
Western Reserve University

STIPULATION

NOW COMES Plaintiff Michigan Department of Environmental Quality (MDEQ) and Defendants Yale University (Yale) and Case Western Reserve University (CWRU) and stipulate and agree that:

1. MDEQ, Yale, and CWRU have entered into the attached Administrative Orders by Consent. See Exhibits 1 and 2.
2. Yale and CWRU have conducted response activities at the property that is the subject of this lawsuit and have submitted reports to the MDEQ detailing the work on the property.
3. As set forth in the Administrative Orders, Yale and CWRU will pay a portion of MDEQ's past and future response activity costs.
4. Subject to the terms and conditions set forth in the Administrative Orders, MDEQ's claims are resolved and MDEQ agrees to dismiss with prejudice its claims against Yale and CWRU.
5. Each party shall be responsible for its own costs and attorney fees.



Laura Gnyp (P79943)
Attorney for Plaintiff Michigan Department of
Environmental Quality

Dated: March 22, 2018



John Pirich (P23204)
Attorney for Defendant Yale
University

Dated: March __, 2018



Jeffrey W. Bracken (P25648)
Attorney for Defendant Case Western
Reserve University

Dated: March 14, 2018

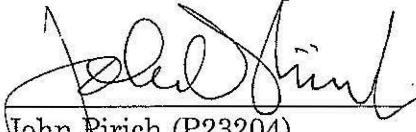
STIPULATION

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5. Each party shall be responsible for its own costs and attorney fees.

Laura Gnyp (P79943)
Attorney for Plaintiff Michigan Department of
Environmental Quality

Dated: March __, 2018



John Pirich (P23204)
Attorney for Defendant Yale
University

Dated: March 7, 2018

Jeffrey W. Bracken (P25648)
Attorney for Defendant Case Western
Reserve University

Dated: March __, 2018

ORDER

At a session of said Court held in the
City of Mason, County of Ingham,
State of Michigan, on the 26 day
of March, 2018

PRESENT: HONORABLE WILLIAM E. COLLETTE
Circuit Court Judge

The court having read the parties' stipulation and based upon the agreement of the parties as set forth in the stipulation and the attached Administrative Order by Consent, it is hereby ordered that Plaintiff Michigan Department of Environmental Quality's claims against Defendants Yale University and Case Western Reserve University in this action are dismissed with prejudice and without costs or attorney fees to any party.

This order resolves the last pending claim and closes this case.

WILLIAM E. COLLETTE

HON. WILLIAM E. COLLETTE
Circuit Court Judge

Date: 03-26-, 2018