

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF THE DIRECTOR

In the matter of administrative proceedings
against **PYRAMID PAVING &
CONTRACTING CO.**, a corporation
organized under the laws of the State of
Michigan and doing business at 1503 Pine
Street, City of Essexville, County of Bay,
State of Michigan

AQD No. 2018-07

SRN: B1485

STIPULATION FOR ENTRY OF FINAL ORDER
BY CONSENT

This proceeding resulted from allegations by the Michigan Department of Environmental Quality (MDEQ) Air Quality Division (AQD) against Pyramid Paving & Contracting, Co. (Company), a corporation organized under the laws of the State of Michigan, doing business at 1503 Pine Street in the City of Essexville, County of Bay, State of Michigan, with State Registration Number (SRN) B1485. The MDEQ alleges that the Company is in violation of Mich Admin Code, R 336.1901 (Rule 901) and Mich Admin Code, R 336.1910 (Rule 910). Specifically, the MDEQ alleges that the Company has caused unreasonable interference with the comfortable enjoyment of life and property and failed to install, maintain and operate an air cleaning device in a satisfactory manner and in accordance with the administrative rules and existing law from the hot mix asphalt process, as cited herein and in the Violation Notices dated May 23, 2016, October 21, 2016, November 14, 2016, June 7, 2017, August 8, 2017, and September 8, 2017, and the Enforcement Notice dated August 14, 2017. The Company and MDEQ stipulate to the termination of this proceeding by entry of a Stipulation for Entry of a Final Order by Consent (Consent Order).

The Company and MDEQ stipulate as follows:

1. The Natural Resources and Environmental Protection Act, 1994 PA 451 (Act 451), MCL 324.101 *et seq.* is an act that controls pollution to protect the environment and natural resources in this State.
2. Article II, Pollution Control, Part 55 of Act 451 (Part 55), MCL 324.5501 *et seq.* provides for air pollution control regulations in this State.

3. The MDEQ was created as a principal department within the Executive Branch of the State of Michigan pursuant to Executive Order 2011-1 and has all statutory authority, powers, duties, functions and responsibilities to administer and enforce all provisions of Part 55.

4. The MDEQ Director has delegated authority to the Director of the AQD (AQD Director) to enter into this Consent Order.

5. The termination of this matter by a Consent Order pursuant to Section 5528 of Part 55 is proper and acceptable.

6. The Company and the MDEQ agree that the signing of this Consent Order is for settlement purposes only and does not constitute an admission by the Company that the law has been violated.

7. This Consent Order becomes effective on the date of execution (effective date of this Consent Order) by the AQD Director.

8. The Company shall achieve compliance with the aforementioned regulations in accordance with the requirements contained in this Consent Order.

COMPLIANCE PROGRAM AND IMPLEMENTATION SCHEDULE

9.A. Rule Compliance

1. On and after the effective date of this Consent Order, the Company shall comply with Rule 901.

9.B. Permit to Install

1. On December 1, 2017, the Company submitted to the AQD, pursuant to the administrative rules of Part 55, an application for a Permit to Install (PTI) for the installation of a Counter-Flow Revolution "D" Dryer and/or other equipment to assure the hot mix asphalt process maintains compliance with Part 55 and the administrative rules promulgated thereunder.

2. Upon issuance of PTI 185-17 and any subsequent permit revision, it shall be attached hereto as Exhibit A of this Consent Order.

3. Upon issuance of the PTI 185-17 and any subsequent permit revision, the Company shall fully comply with its terms and conditions.

9.C. Control Program and Installation Schedule

1. On and after the effective date of this Consent Order, the Company shall maintain and operate the Absolent 5" Hot Oil Tank Vents and the Meeker 4" Asphalt Vapor Condensers in accordance with Part 55 and Rules 336.1901 and 336.1910.

2. Counter-Flow Revolution "D" Dryer

a. Before initiating operation in 2018, the Company shall have completed the installation of the Counter-Flow Revolution "D" Dryer specified in PTI 185-17.

b. Within thirty (30) days of initiating operation in 2018, the Company shall maintain and operate the Counter-Flow Revolution "D" Dryer in accordance with Part 55 and Rules 336.1901 and 336.1910.

3. Load Out Control

a. Before initiating operation in 2019, the Company shall have completed the installation of any load out control specified in PTI 185-17 and any revisions or modifications to the PTI 185-17.

b. Within thirty (30) days of initiating operation in 2019, the Company shall maintain and operate any load out control system in accordance with Part 55 and Rules 336.1901 and 336.1910.

4. The Company will notify the AQD Saginaw Bay District Supervisor in writing of the date of initiation of operation in 2019 within ten (10) days of startup.

GENERAL PROVISIONS

10. This Consent Order in no way affects the Company's responsibility to comply with any other applicable state, federal, or local laws or regulations, including without limitation, any amendments to the federal Clean Air Act, 42 USC 7401 *et seq.*, Act 451, Part 55 or their rules and regulations, or to the State Implementation Plan.

11. This Consent Order constitutes a civil settlement and satisfaction as to the resolution of the violations specifically addressed herein; however, it does not resolve any criminal action that may result from these same violations.

12. The Company shall pay to the General Fund of the State of Michigan, in the form of checks made payable to the "State of Michigan" and mailed to the Michigan Department of Environmental Quality, Accounting Services Division, Cashier's Office, P.O. Box 30657, Lansing, Michigan 48909-8157, a settlement amount of \$30,000.00, which includes AQD costs for investigation and enforcement. The total sum of \$30,000.00 shall be made in two (2) payments as follows: a payment of \$15,000.00 shall be paid within thirty (30) days of the effective date of this Consent Order; a second payment of \$15,000.00 shall be made on or before December 28, 2018. To ensure proper credit, all payments made pursuant to this Consent Order shall include the "Payment Identification Number AQD40189" on the front of the check and/or in the cover letter with the payment. This settlement amount is in addition to any fees, taxes, or other fines that may be imposed on the Company by law.

13. On and after the effective date of this Consent Order, if the Company fails to comply with paragraph 9.A.1 of this Consent Order, the Company is subject to a stipulated fine of up to \$2,500.00 per day. On and after the effective date of this Consent Order, if the Company fails to comply with paragraph 9.C.1, 9.C.2, or 9.C.3 of this Consent Order, the Company is subject to a stipulated fine of up to \$1,000.00 per violation per day. On and after the effective date of this Consent Order, if the Company fails to comply with any other provision of Exhibit A, or this Consent Order, the Company is subject to a stipulated fine of up to \$500.00 per violation per day. Provided the Company timely completes all installation schedules and achieves compliance with Mich Admin Code, R 336.1910 requirements as specified in this Consent Order, the AQD will not seek stipulated fines for Mich Admin Code, R 336.1901 until 30 days after initial start-up of the facility in 2018, or before March 15, 2018, whichever is later. The amount of the stipulated fines imposed pursuant to this paragraph shall be within the discretion of the MDEQ. Stipulated fines submitted under this Consent Order shall be by check, payable to the State of Michigan within thirty (30) days of written demand and shall be mailed to the Michigan Department of Environmental Quality, Accounting Services Division, Cashier's Office, P.O. Box 30657, Lansing, Michigan 48909-8157. To ensure proper credit, all payments shall include the "Payment Identification Number AQD40189-S" on the front of the check and/or in the cover letter with the payment. Payment of stipulated fines shall not alter or modify in any way the Company's obligation to comply with the terms and conditions of this Consent Order.

14. The AQD, at its discretion, may seek stipulated fines or statutory fines for any violation of this Consent Order which is also a violation of any provision of applicable federal and state law, rule, regulation, permit, or MDEQ administrative order. However, the AQD is precluded from seeking both a stipulated fine under this Consent Order and a statutory fine for the same violation.

15. To ensure timely payment of the settlement amount assessed in paragraph 12 and any stipulated fines assessed pursuant to paragraph 13 of this Consent Order, the Company shall pay an interest penalty to the State of Michigan each time it fails to make a complete or timely payment under this Consent Order. The interest payment shall be determined at a rate of interest that is equal to one percent (1%) plus the average interest rate paid at auctions of 5-year United States treasury notes during the six months immediately preceding July 1 and January 1, as certified by the state treasurer, compounded annually, and using the full increment of amount due as principal, calculated from the due date specified in this Consent Order until the date that delinquent payment is finally paid in full. Payment of an interest penalty by the Company shall be made to the State of Michigan in accordance with paragraph 12 of this Consent Order. Interest payments shall be applied first towards the most overdue amount or outstanding interest penalty owed by the Company before any remaining balance is applied to subsequent payment amount or interest penalty.

16. The Company agrees not to contest the legal basis for the settlement amount assessed pursuant to paragraph 12. The Company also agrees not to contest the legal basis for any stipulated fines assessed pursuant to paragraph 13 of this Consent Order but reserves the right to dispute in a court of competent jurisdiction the factual basis upon which a demand by MDEQ of stipulated fines is made. In addition, the Company agrees that said fines have not been assessed by the MDEQ pursuant to Section 5529 of Part 55 and therefore are not reviewable under Section 5529 of Part 55.

17. This compliance program is not a variance subject to the 12-month limitation specified in Section 5538 of Part 55.

18. This Consent Order shall remain in full force and effect for a period of at least five (5) years. Thereafter, this Consent Order shall terminate only upon written notice of termination issued by the AQD Director. Prior to issuance of a written notice of termination, the Company

shall submit a request, to the AQD Director at the Michigan Department of Environmental Quality, Air Quality Division, P.O. Box 30260, Lansing, Michigan 48909-7760, consisting of a written certification that the Company has fully complied with all the requirements of this Consent Order and has made all payments including all stipulated fines required by this Consent Order. Specifically, this certification shall include: (i) the date of compliance with each provision of the compliance program and the date any payments or stipulated fines were paid; (ii) a statement that all required information has been reported to the AQD Saginaw Bay District Supervisor; (iii) confirmation that all records required to be maintained pursuant to this Consent Order are being maintained at the facility; and, (iv) such information as may be requested by the AQD Director.

19. In the event Pyramid Paving & Contracting Co. sells or transfers the facility, with SRN B1485, it shall advise any purchaser or transferee of the existence of this Consent Order in connection with such sale or transfer. Within thirty (30) calendar days, the Company shall also notify the AQD Saginaw Bay District Supervisor, in writing, of such sale or transfer, the identity and address of any purchaser or transferee, and confirm the fact that notice of this Consent Order has been given to the purchaser and/or transferee. As a condition of the sale, Pyramid Paving & Contracting Co. must obtain the consent of the purchaser and/or transferee, in writing, to assume all of the obligations of this Consent Order. A copy of that agreement shall be forwarded to the AQD Saginaw Bay District Supervisor within thirty (30) days of assuming the obligations of this Consent Order.

20. Prior to the effective date of this Consent Order and pursuant to the requirements of Sections 5511 and 5528(3) of Part 55, the public was notified of a 30-day public comment period and was provided the opportunity for a public hearing.

21. Section 5530 of Part 55 may serve as a source of authority but not a limitation under which this Consent Order may be enforced. Further, Part 17 of Act 451 and all other applicable laws and any other legal basis or applicable statute may be used to enforce this Consent Order.

22. The Company hereby stipulates that entry of this Consent Order is a result of an action by MDEQ to resolve alleged violations of its facility located at 1503 Pine Street in the City of Essexville, County of Bay, State of Michigan. The Company further stipulates that it will take all lawful actions necessary to fully comply with this Consent Order, even if the Company files for bankruptcy in the future. The Company will not seek discharge of the settlement amount and any

stipulated fines imposed hereunder in any future bankruptcy proceedings, and the Company will take necessary steps to ensure that the settlement amount and any future stipulated fines are not discharged. The Company, during and after any future bankruptcy proceedings, will ensure that the settlement amount and any future stipulated fines remain an obligation to be paid in full by the Company to the extent allowed by applicable bankruptcy law.

The undersigned certifies that he/she is fully authorized by the Company to enter into this Consent Order and to execute and legally bind the Company to it.

PYRAMID PAVING & CONTRACTING CO.

BRUCE WEISS, PRESIDENT
Print Name and Title

Bruce Weiss Date: 6-21-18
Signature

The above signatory subscribed and sworn to before me this 21st day of JUNE, 2018

Dolores Welchli
Notary Public Signature

DOLORES WELCHLI
Notary Public Printed Name

My Commission Expires: 11-28-18

Approved as to Content:

Approved as to Form:

Mary Ann Dolehanty
Mary Ann Dolehanty, Acting Director
AIR QUALITY DIVISION
DEPARTMENT OF
ENVIRONMENTAL QUALITY

Neil Gordon
Neil Gordon, Section Head
ENVIRONMENTAL REGULATION SECTION
ENVIRONMENT, NATURAL RESOURCES,
AND AGRICULTURE DIVISION
DEPARTMENT OF ATTORNEY GENERAL

Dated: 6/28/18

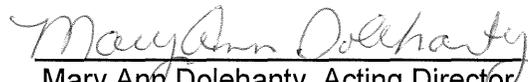
Dated: 6/27/2018

FINAL ORDER

The Director of the Air Quality Division having had opportunity to review this Consent Order and having been delegated authority to enter into Consent Orders by the Director of the Michigan Department of Environmental Quality pursuant to the provisions of Part 55 of Act 451 and otherwise being fully advised on the premises,

HAS HEREBY ORDERED that this Consent Order is approved and shall be entered in the record of the MDEQ as a Final Order.

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY


Mary Ann Dolehanty, Acting Director
Air Quality Division

Effective Date: 6/29/18

Exhibit A

Permit to Install 185-17