

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
OFFICE OF THE DIRECTOR

In the matter of administrative proceedings  
against **ALPENA PUBLIC SCHOOLS**, a  
public-school district, organized under the  
laws of the State of Michigan with  
administration offices located at 2373  
Gordon Road, in the City of Alpena, County  
of Alpena, State of Michigan

AQD No. 2019-02

SRN/ID: U041704783

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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 Alpena Public Schools (School), a public school district organized under the laws of the State of Michigan with administration offices located at 2373 Gordon Road, City of Alpena, County of Alpena, State of Michigan. The MDEQ alleges that the School has violated 40 CFR Part 61, Subpart M and Mich Admin Code, R 336.1942 (Rule 942). The alleged violations occurred during the asbestos demolition/renovation at Alpena High School located at 3303 South Third Avenue, Alpena, Michigan (SRN/ID: U041704783). Specifically, MDEQ alleges that the School, through the actions of their contractor, failed to obtain approval to perform dry removal and allowed the release of visible emissions, as cited herein and in the Violation Notices dated August 31, 2018 and September 26, 2018. The School 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 School 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. Section 112 of the CAA, provides authority for the Administrator of the United States Environmental Protection Agency (USEPA) to establish emission standards for hazardous air pollutants.

6. The USEPA has promulgated National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations for asbestos, which are set forth in the 40 CFR Part 61, Subpart M, Sections 61.140 through 61.156.

7. The USEPA has delegated authority for administration and enforcement of NESHAP asbestos regulations to MDEQ-AQD. This authority was granted in an April 11, 1988, letter from Valdis Adamkus (USEPA Regional Administrator) to Robert Miller (AQD).

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

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

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

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

#### COMPLIANCE PROGRAM

12. On and after the effective date of this Consent Order, the School shall fully comply with the National Emission Standards for Hazardous Air Pollutants (NESHAP), Title 40 of the Code of Federal Regulations (CFR) Part 61, Subpart M, which is incorporated by reference and made an enforceable part of this Consent Order.

#### GENERAL PROVISIONS

13. 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.

14. Within thirty (30) days after the effective date of this Consent Order, the School shall pay to the General Fund of the State of Michigan, in the form of a check 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 \$500.00, which includes AQD costs for investigation and enforcement. This total settlement amount shall be paid within thirty (30) days of the effective date of this Consent Order. To ensure proper credit, all payments made pursuant to this Consent Order shall include the "Payment Identification Number AQD40206" 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 School by law.

15. On and after the effective date of this Consent Order, if the School fails to comply with paragraph 12 of this Consent Order, the School is subject to stipulated fines of up to \$10,000.00 per violation. 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 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. To ensure proper credit, all payments shall include the "Payment Identification Number AQD40206-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 School's obligation to comply with the terms and conditions of this Consent Order.

16. 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.

17. If the School fails to pay any part of the settlement amount assessed in paragraph 14 or any stipulated fines assessed pursuant to paragraph 15 under this Consent Order by the due

date, the School shall pay a late payment penalty of \$50.00 per day for each day that the settlement amount or stipulated fines are past due.

18. The School agrees not to contest the legal basis for the settlement amount assessed pursuant to paragraph 14. The School also agrees not to contest the legal basis for any stipulated fines assessed pursuant to paragraph 15 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 School 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.

19. This Consent Order shall remain in full force and effect for a period of at least 4 years. Thereafter, this Consent Order may be terminated only upon the issuance of a written notice of termination issued by the AQD Director. Prior to issuance of a written notice of termination, the School 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 School 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; (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.

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 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.

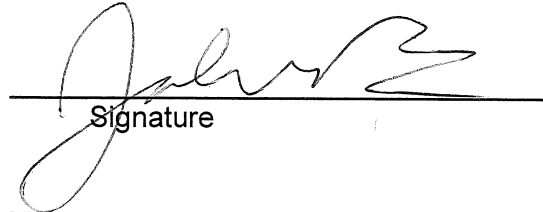
22. The School hereby stipulates that entry of this Consent Order is a result of an action by MDEQ to resolve alleged violations at 3303 South Third Avenue, Alpena, Michigan, State of Michigan (SRN/ID: U041704783). The School further stipulates that it will take all lawful actions

necessary to fully comply with this Consent Order, even if the School files for bankruptcy in the future. The School will not seek discharge of the settlement amount and any stipulated fines imposed hereunder in any future bankruptcy proceedings, and the School will take necessary steps to ensure that the settlement amount and any future stipulated fines are not discharged. The School, 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 School to the extent allowed by applicable bankruptcy law.

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

**ALPENA PUBLIC SCHOOLS**JOHN R. VANWAGONER, SUPERINTENDENT

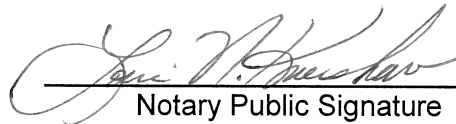
Print Name and Title



Signature

Date: 3-1-19

The above signatory subscribed and sworn to before me this 1 day of MARCH, 2019.



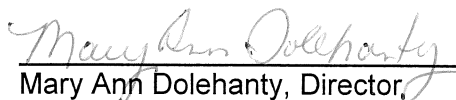
Notary Public Signature

LORIE N. KNEESHAW

Notary Public Printed Name

My Commission Expires: 9/1/23

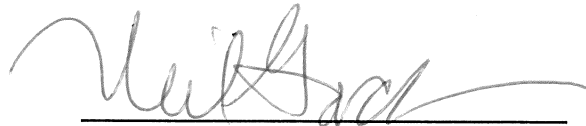
Approved as to Content:



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

Dated: 3/11/19

Approved as to Form:



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

Dated: 3/11/2019

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

  
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Mary Ann Dolehanty, Director  
Air Quality Division

Effective Date: 3/11/19

