

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY
OFFICE OF THE DIRECTOR

In the matter of administrative proceedings
against: **MATERIALS TESTING
CONSULTANTS, INC**, a corporation
organized under the laws of the State of
Michigan and doing business at 693
Plymouth Avenue, N.E., City of Grand
Rapids, County of Kent, State of Michigan

AQD No. 2021-20

ID: U482004292

ADMINISTRATIVE FINE ORDER

I. STATUTORY AND REGULATORY AUTHORITY

1.1 This is an administrative action pursuant to the Natural Resources and Environmental Protection Act (NREPA), MCL 324.101 *et seq.*, which is an act that controls pollution to protect the environment and natural resources in this State.

1.2 Article II, Pollution Control, Part 55 of the NREPA (Part 55), MCL 324.5501 *et seq.*, provides for air pollution control regulations in this State.

1.3 Executive Order 2019-06 renamed the Michigan Department of Environmental Quality as the Michigan Department of Environment, Great Lakes, and Energy (EGLE), and EGLE has all statutory authority, powers, duties, functions, and responsibilities to administer and enforce all provisions of Part 55.

1.4 Rule 942 of the Michigan Air Pollution Control Rules, Mich Admin Code, R 336.1942 (Rule 942), was effective on May 20, 2015.

1.5 Rule 902 of the Michigan Air Pollution Control Rules, Mich Admin Code, R 336.1902 (Rule 902), adopts by reference the National Emission Standards for Hazardous Air Pollutants, Title 40 of the Code of Federal Regulations (CFR) Part 61, which includes the NESHAP for Asbestos, 40 CFR Part 61, Subpart M (Asbestos NESHAP).

1.6 Rule 942 states that a person that is subject to the provisions of NESHAP for Asbestos, 40 CFR Part 61, Subpart M, shall comply with those provisions.

1.7 The Director of EGLE has delegated authority to the Director of the Air Quality Division (AQD Director) to issue this Administrative Fine Order.

1.8 Under the delegated authority of the AQD Director, pursuant to Section 5529 of Part 55, MCL 324.5529, EGLE may assess an administrative fine of up to \$10,000.00 for each instance of violation and, if the violation continues, for each day of continued noncompliance, if EGLE, on the basis of available information, finds that the person has violated or is in violation of Part 55 or rule promulgated under Part 55, has failed to obtain a permit required under Part 55, violates an order under Part 55, or has failed to comply with the terms of a permit issued under Part 55. If a single event constitutes an instance of violation of any combination of Part 55, a rule promulgated under Part 55, or a permit issued, or order entered under Part 55, the amount of the administrative fine for that single event shall not exceed \$10,000.00 for that violation. The assessment of an administrative fine may be either a part of a compliance order or a separate order issued by EGLE.

1.9 The authority of EGLE under Section 5529 of Part 55, MCL 324.5529, is limited to matters where the total administrative fine sought does not exceed \$100,000.00 and the first alleged date of violation occurred within twelve (12) months prior to initiation of the administrative action. Except as may otherwise be provided by applicable law, EGLE shall not condition the issuance of a permit on payment of an administrative fine assessed pursuant to Section 5529.

II. ALLEGATIONS

2.1 Materials Testing Consultants, Inc. (Company) is located at 693 Plymouth Avenue, N.E., Grand Rapids, Michigan.

2.2 EGLE alleges that the Company violated the Asbestos NESHAP and Rule 942. The alleged violations occurred during demolition and abatement activities at the former Newberry State Hospital located at 13747 County Road 428 in Newberry, Michigan (SRN/ID: U482004292, U482100455, U482004285, U482003378, U482004132, U482004291, and U482003378). Specifically, EGLE alleges that the Company failed to: thoroughly inspect for asbestos prior to demolition, estimate the amount of regulated asbestos-containing material (RACM), remove RACM, adequately wet RACM, deposit asbestos-containing material as soon as practical, use

required signage during loading, and update the asbestos notification, as specified in two Violation Notices dated June 8, 2021. The Company, however, maintains that the Company is not an "owner or operator of a demolition or renovation activity" at the former Newberry State Hospital and, therefore, is not subject to the Asbestos NESHAP or Rule 942

III. ADMINISTRATIVE FINE

3.1 Based on the alleged violations in this Administrative Fine Order, the seriousness and the duration of the violations alleged, the size of the Company's business, the economic impact of the administrative fine on the business, the Company's full compliance history and good faith efforts to comply, the economic benefit of noncompliance, and other factors, EGLE is assessing an administrative fine of \$8,000.00 for the violations alleged in this Administrative Fine Order.

3.2 Within thirty (30) days after the effective date of this Administrative Fine Order, the Company 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 Environment, Great Lakes, and Energy, Accounting Services Division, Cashier's Office, P.O. Box 30657, Lansing, Michigan 48909-8157, a settlement amount of \$8,000.00, which includes AQD costs for investigation and enforcement. To ensure proper credit, all payments made pursuant to this Administrative Fine Order shall include the Agreement Identification No. AQD40274 on the face of the check. This administrative fine is in addition to any fees, taxes, or other fines that may be imposed on the Company by law.

3.3 Pursuant to Section 5528 of Part 55, MCL 324.5528, the Company has been given an opportunity to resolve the violations alleged in paragraph 2.2 of this Administrative Fine Order through entry of an administrative consent order.

3.4 Upon payment of the administrative fine pursuant to paragraph 3.2 of this Administrative Fine Order, EGLE shall consider the alleged violations as set forth in paragraph 2.2 to be resolved.

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

4.1 Within twenty-eight (28) days after being assessed an administrative fine from EGLE through this Administrative Fine Order, a person may file a petition with EGLE for review of this administrative fine. Review of the fine shall be conducted pursuant to the contested case procedures of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 and 24.287 of the Michigan Compiled Laws.

V. GENERAL PROVISIONS

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

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

5.3 Section 5530 of Part 55, MCL 324.5530, may serve as a source of authority but not a limitation under which this Administrative Fine Order may be enforced. Further, Part 17 of the NREPA, MCL 324.1701 et seq., and all other applicable laws and any other legal basis or applicable statute may be used to enforce this Administrative Fine Order.

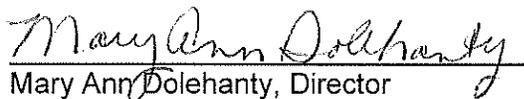
5.4 The termination of this matter by an Administrative Fine Order pursuant to Section 5529 of Part 55, MCL 324.5529, is proper and acceptable.

5.5 Payment of the administrative fine does not constitute an acknowledgement or admission by the Company that the Company is subject to the Asbestos NESHAP for any of the demolition or abatement activities at the former Newberry State Hospital, not that the law has been violated.

5.6 This Administrative Fine Order becomes effective on the date of execution (effective date of this Administrative Fine Order) by the AQD Director.

Approved as to Content:

Approved as to Form:



Mary Ann Dolehanty, Director
AIR QUALITY DIVISION
DEPARTMENT OF
ENVIRONMENT, GREAT LAKES,
AND ENERGY



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

Dated: 11/1/2021

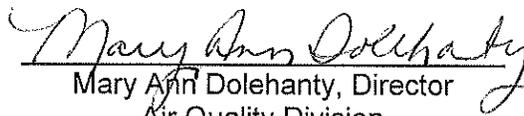
Dated: 10/27/2021

ADMINISTRATIVE FINE ORDER

The Director of the Air Quality Division having had opportunity to review this Administrative Fine Order and having been delegated authority to enter into Administrative Fine Orders by the Director of the Michigan Department of Environment, Great Lakes, and Energy pursuant to the provisions of Part 55 of the NREPA and otherwise being fully advised on the premises,

HAS HEREBY ISSUED the approved Administrative Fine Order and it shall be entered in the record of EGLE as a Final Order.

MICHIGAN DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY


Mary Ann Dolehanty, Director
Air Quality Division

Effective Date: 11/1/2021