

**STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER BUREAU**

In the matter of:

General ACO-GW06-100

Unpermitted Discharge(s)
_____ /

Date Entered: January 6, 2006

GENERAL ADMINISTRATIVE CONSENT ORDER

This document results from allegations by the Water Bureau (WB) of the Department of Environmental Quality (DEQ). The DEQ alleges that the owner of the facility (Owner) entering this General Administrative Consent Order (Consent Order), is in violation of Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.3101 et seq. Specifically, the DEQ alleges that the Owner entering this Consent Order is discharging waste, waste effluent or storm water to the waters of the state without a valid permit, contrary to Section 3112(1) of the NREPA. The Owner and the DEQ agree to resolve the violations set forth in the Findings section of this Consent Order and to resolve this matter by entry of this Consent Order, which will be completed by the Owner or a legally authorized representative, via submission of a notarized Certificate of Entry.

The DEQ's offer to resolve the violations listed herein via entry of this Consent Order expires on September 30, 2006. This opportunity is not available to any facility that has previously received a notice from the DEQ regarding the discharge that has never been permitted. Facilities that are eligible for this opportunity include those that have a discharge, but have never held a discharge permit issued by the state of Michigan for that discharge. Entry of ACO-GW06-100 is not available to facilities with expired permits.

I. STIPULATIONS

The Owner and the DEQ stipulate as follows:

- 1.1 The NREPA, MCL 324.101 et seq., is an act that controls pollution to protect the environment and natural resources in the state.
- 1.2 Pollution Control, Part 31, Water Resources Protection, of the NREPA (Part 31),

MCL 324.3101 et seq., and the rules promulgated pursuant thereto, provide for the protection, conservation, and the control of pollution of the water resources of the state.

- 1.3 The DEQ is authorized by Section 3112(4) of Part 31 to enter orders requiring persons to abate pollution, and the director of the DEQ or his designee is delegated under Section 301(b) of the NREPA, MCL 324.301(b) to enter into this Consent Order with the Owner.
- 1.4 The Owner stipulates to the entry of this Consent Order to comply by consent and stipulates that the resolution of this matter by a final order to be entered as a Consent Order is appropriate and acceptable. The Owner further agrees not to contest the issuance of this Consent Order. This Consent Order, thus, shall be considered a final order of the DEQ and shall become effective on the date the notarized Certificate of Entry is received by the DEQ.
- 1.5 The Owner and the DEQ agree that the signing of this Consent Order is for settlement purposes only and does not constitute an admission by the Owner that the law has been violated.
- 1.6 The Owner shall achieve compliance with the aforementioned regulations in accordance with the requirements contained in Section III, Compliance Program, of this Consent Order.
- 1.7 The signatory to this Consent Order agrees and attests that he or she is fully authorized to bind the facility owner to the terms and conditions set forth herein and assure the compliance of the facility with all requirements under this Consent Order.
- 1.8 The Certificate of Entry must contain an original signature by an authorized agent of the facility as follows:
 - a. For a corporation, the form must be signed by a principal executive officer of at least the level of Vice-President, or his/her designated representative, if the representative is responsible for the overall operation of the facility (appropriate documentation

- must be provided to demonstrate the position and responsibility of the designated representative).
- b. For a partnership, the form must be signed by a general partner.
 - c. For a sole proprietorship, the form must be signed by the proprietor.
 - d. For municipal, state or other public facility, the form must be signed by: a principal executive officer, the mayor, village president, city or village manager or other duly authorized employee.
- 1.9 The signatory to this Consent Order agrees and attests that he or she has not altered the Certificate of Entry in any way, including adding or eliminating any language, striking terms or parts of terms, retyping in whole or in part, or using a different format.
- 1.10 This Consent Order is effective upon receipt of the Certificate of Entry by the DEQ, provided it is fully executed by a duly authorized representative of the facility and a notary public, and is received by September 30, 2006.

II. FINDINGS

- 2.1 The facility operates in the state of Michigan and has a discharge of waste, waste effluent or storm water to the waters of the State.
- 2.2 The Owner failed to apply for and obtain a permit from the State of Michigan, authorizing the discharge. Section 3112(1) of Part 31 states, "A person shall not discharge any waste or waste effluent into the waters of this state unless the person is in possession of a valid permit from the department." Rule 2161 of the Part 21 administrative rules, Wastewater Discharge Permits, 2003 AC R 323.2161, as amended, promulgated pursuant to Part 31 of the NREPA, states, "A person who discharges storm water that is subject to regulation pursuant to the provisions of section 402(p) of the federal act and the corresponding regulations promulgated in 40 C.F.R. §122.26 (2000) shall apply for or obtain a national permit..."

III. COMPLIANCE PROGRAM

IT IS THEREFORE AGREED AND ORDERED THAT the Owner or a legally authorized representative will take the following actions to prevent further violations of Section 3112(1) of Part 31:

- 3.1 Within 60 days of the entry of this Consent Order, the Owner shall submit to the DEQ a discharge permit application (Application), unless an alternate schedule is agreed to in writing by the DEQ.
- 3.2 If the DEQ requires additional information from or action by the Owner at any point during the permitting process to cure deficiencies in the Application, the DEQ will notify the Owner in writing of the deficiencies. The Owner shall cure any deficiencies within 30 days of being notified by the DEQ, unless another date is specified in the notification. The DEQ may require additional information as a basis for issuing a final decision on the Application. Pursuant to 1999 AC R 323.2206, as amended, it is the responsibility of the applicant to provide the information necessary for the DEQ to make a final decision.
- 3.3 The Owner shall pay the applicable annual discharge permit fee authorized by Part 31 as set forth in this paragraph.
 - a. The signatory of the Certificate of Entry shall select the appropriate permit category and associated fee as described in the Guidance Documents, based on the type, volume, constituents, storage and disposal method of the discharge. The appropriate category and fee amount shall be entered in the Certificate of Entry and submitted to the DEQ, along with a check made payable to the state of Michigan for the full fiscal year 2006 fee amount. Questions regarding permit categories may be directed to the individual indicated in the Guidance Documents, which are available at: http://www.michigan.gov/deq/0,1607,7-135-3313_4117_4411-132151--,00.html.
 - b. A confirmation of receipt of the fiscal year 2006 permit fee and the Certificate of Entry of the Consent Order will be mailed to the Owner by the DEQ within 30 days of receipt.

Failure to select the appropriate category and pay the proper fee amount as determined by the DEQ will result in the permit application being placed on hold, and a requirement to pay the outstanding amount, plus a late penalty of 0.75 percent per month or portion of a month the payment remains past due, as indicated on the invoice issued by the DEQ, in the event that the Owner underpaid the fee amount. In the event that the DEQ determines the Owner overpaid the fee amount, the DEQ will refund the difference.

- c. For Fiscal Year 2007 (October 1, 2006 through September 30, 2007) and each fiscal year thereafter until the DEQ issues a final decision on the Owner's Application, the Owner shall pay the annual permit fee in accordance with Part 31.
- d. Upon issuance of a discharge permit by the DEQ, the Owner shall pay annual permit fees based on its permit classification and in accordance with Part 31.

IV. RIGHT OF ENTRY

- 4.1 The Owner shall allow any authorized representative or contractor of the DEQ, upon presentation of proper credentials, to enter upon the premises of the facility at all reasonable times for the purpose of monitoring compliance with the provisions of this Consent Order. This paragraph in no way limits the authority of the DEQ to conduct tests and inspections pursuant to the NREPA and the rules promulgated thereunder, or any other applicable statutory provision.

V. PENALTIES

- 5.1 Failure to submit an administratively complete Application within 60 days of entry of this Consent Order, or the alternate date agreed to in writing by the DEQ, as described in paragraph 3.1, may subject the Owner to the enforcement provisions of MCL 324.3115 of Part 31 of the NREPA.
- 5.2 For each failure to comply with the remaining provisions of Section III of this Consent

Order, the Owner shall pay stipulated penalties of \$100 per violation per day. Failure to perform any of the following requirements shall be considered separate violations of this Consent Order and are subject to stipulated penalties under this paragraph:

- a. Failure to cure deficiencies in the Application within 30 days or the time period specified in the notification by the DEQ, in accordance with Section III; and
- b. Failure to pay the applicable annual discharge permit fee in full, pursuant to paragraphs 3.3(a), 3.3(b), and 3.3(c), by the required date, as set forth in Part 31 and Section III of this Consent Order.

5.3 Stipulated penalties accruing under paragraph 5.2 shall be paid within 30 days after written demand by the DEQ in accordance with paragraph 5.5.

5.4 To ensure timely payment of the stipulated penalties, the Owner shall pay an interest penalty to the State of Michigan each time it fails to make a complete or timely payment. This interest penalty shall be based on the rate set forth at MCL 600.6013(6), using the full increment of amount due as principal, and calculated from the due date for the payment until the delinquent payment is finally made in full.

5.5 The Owner agrees to pay any stipulated penalties and interest penalties assessed pursuant to paragraphs 5.2 and 5.4 by check made payable to the state of Michigan and delivered to the DEQ, Financial and Business Services Division, Revenue Control Unit, P.O. Box 30657, 525 West Allegan Street, 5th Floor, South Tower, Lansing, Michigan 48909-8157.

5.6 The Owner agrees not to contest the legality of any stipulated penalties or interest penalties assessed pursuant to paragraphs 5.2 and 5.4 above, but reserves the right to dispute the factual basis upon which a demand by the DEQ for stipulated penalties or interest penalties is made. The Owner further agrees not to contest the legality of any permit fees assessed pursuant to paragraphs 3.3(a), 3.3(b) and 3.3(c).

VI. GENERAL PROVISIONS

- 6.1 This Consent Order resolves the Owner's violations of MCL 324.3112(1) for discharging without a valid permit until the date the DEQ issues a final decision on the Owner's Application, provided that the Owner submits an administratively complete Application in accordance with paragraph 3.1. If the DEQ is unable to issue a final decision on the Application because the Owner fails to meet the deadline in paragraph 3.1 for submitting the Application or the deadline in paragraph 3.2 for curing deficiencies in the Application, the DEQ reserves the right to pursue enforcement of the Owner's violations of MCL 324.3112(1), beginning on the earliest date it can be shown that the Owner was discharging in violation of the law.
- 6.2 With respect to any violations not specifically addressed and resolved by this Consent Order, the DEQ reserves the right to pursue any other remedies to which it is entitled for any failure on the part of the Owner to comply with the requirements of the NREPA and its rules.
- 6.3 The DEQ reserves the right to invalidate the Certificate of Entry after its effective date in the event the DEQ discovers that the Owner misrepresented a material fact or omitted a material fact that would alter the conditions under which this Consent Order is based. The DEQ may also invalidate the Certificate of Entry if the discharge is found to have caused contamination, erosion or other problems for which the Owner may be liable. The invalidation is not contestable.
- 6.4 The DEQ and the Owner consent to enforcement of this Consent Order in the same manner and by the same procedures for all final orders entered pursuant to Part 31, MCL 324.3101 et seq.; and enforcement pursuant to Part 17, Michigan Environmental Protection Act, of the NREPA, MCL 324.1701 et seq.
- 6.5 This Consent Order in no way affects the Owner's responsibility to comply with any other applicable state, federal, or local laws or regulations.

- 6.6 The WB, at its discretion, may seek stipulated fines or statutory fines for any violation of this Consent Order. However, the WB is precluded from seeking both a stipulated fine under this Consent Order and a statutory fine for the same violation.
- 6.7 Nothing in this Consent Order is or shall be considered to affect any liability that the Owner may have for natural resource damages caused by the ownership and/or operation of the facility. The state of Michigan does not waive any rights to bring an appropriate action to recover such damages to the natural resources.
- 6.8 In the event the Owner sells or transfers the facility, he or she shall advise any purchaser or transferee of the existence of this Consent Order in connection with such sale or transfer. Within 30 calendar days, the Owner shall also notify the appropriate WB 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. The purchaser and/or transferee of this Consent Order must agree, in writing, to assume all of the obligations of this Consent Order. A copy of that agreement shall be forwarded to the appropriate WB District Supervisor within 30 days of assuming the obligations of this Consent Order.
- 6.9 The provisions of this Consent Order shall apply to and be binding upon the parties to this action, and their successors and assigns.
- 6.10 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.

VII. TERMINATION

- 7.1 This Consent Order shall remain in full force and effect until the date the DEQ issues a final decision on the Owner's Application. The WB will not issue a decision on the Application until the Owner pays in full any permit fees assessed under paragraphs 3.3(a), 3.3(b), and 3.3(c) and penalties, if any, assessed under Section V of this Consent Order.

Signatories

The undersigned CERTIFY they are fully authorized by the party they represent to enter into this Consent Order to comply by consent and to EXECUTE and LEGALLY BIND that party to it.

DEPARTMENT OF ENVIRONMENTAL QUALITY



Richard A. Powers, Chief
Water Bureau

1/6/06
Date

The Owner or legally authorized representative will complete, sign and submit the Certificate of Entry of General Administrative Consent Order ACO-GW06-100, along with a check made payable to the **State of Michigan** in the amount of the fiscal year 2006 permit fee, as determined in consultation with the Guidance Documents, which are available at: http://www.michigan.gov/deq/0,1607,7-135-3313_4117_4411-132151--,00.html. The DEQ will assign a Certificate of Entry number, indicate the appropriate WB District Office, and return a copy to the Owner, as confirmation of receipt.

APPROVED AS TO FORM:



By: Alan F. Hoffmann, Assistant Attorney General
For: S. Peter Manning
Assistant In Charge
Environment, Natural Resources, and Agriculture Division
Michigan Department of Attorney General

1/6/06
Date