

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

In the matter of:

ACO-SW08-011

Date Entered: 9-12-08

Village of Dexter Wastewater Treatment Plant
8360 Huron Street
Dexter, Michigan 48130

ADMINISTRATIVE CONSENT ORDER

This document results from allegations by the Department of Environmental Quality (DEQ), Water Bureau (WB). The DEQ alleges the Village of Dexter (Village), that owns and operates the Village of Dexter Wastewater Treatment Plant (Dexter WWTP) which is located at 8360 Huron Street, Dexter, Washtenaw County, 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. The Village and the DEQ agree to resolve the violations set forth herein through entry of an Administrative Consent Order (Consent Order).

I. STIPULATIONS

The Village 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, provides 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 of the NREPA to enter orders requiring persons to abate pollution, and the director of the DEQ may delegate this authority to a designee under Section 301(b) of the NREPA, MCL 324.301(b).

- 1.4 The Village consents to the issuance and entry of this Consent Order and stipulates that the entry of this Consent Order constitutes a final order of the DEQ and is enforceable as such under Section 3112(4) of Part 31. The Village agrees not to contest the issuance of this Consent Order, and that the resolution of this matter by the entry of this Consent Order is appropriate and acceptable. It is also agreed that this Consent Order shall become effective on the date it is signed by the Field Operations Division Chief of the WB, delegate of the director, pursuant to Section 301(b) of the NREPA.
- 1.5 The Village and the DEQ agree that the signing of this Consent Order is for settlement purposes only and does not constitute an admission by the Village that the law has been violated.
- 1.6 The Signatory to this Consent Order on behalf of the Village agrees and attests that she is fully authorized to assure that the Village will comply with all requirements under this Consent Order.
- 1.7 The Village shall achieve compliance with the aforementioned regulations in accordance with the requirements contained in Section III, Compliance Program, of this Consent Order.

II. FINDINGS

- 2.1 The Village owns and operates the Dexter WWTP. The Dexter WWTP is authorized by NPDES Permit No. MI0022829 (NPDES Permit) to discharge treated municipal wastewater from Monitoring Point 001A through Outfall 001 to the Mill Creek.
- 2.2 On January 23, 2006, the DEQ sent Notice Letter NL-001671 to the Village outlining NPDES Permit violations following a facility inspection on November 8, 2005. The violations included exceedence of the maximum chorine (TRC) effluent limitation on June 27, 2005, and the failure to report the noncompliance in accordance with the NPDES Permit. The DEQ also noted the Dexter WWTP's inadequate hydraulic capacity during wet weather as evidenced by bottlenecks in the treatment facilities causing sewage

overflows at the top of the screw pump and the bypassing of the Dexter WWTP's treatment facilities sand filters. Specifically, during wet weather, the Village WWTP exceeds hydraulic capacity causing sewage overflows at the top of the screw pumps when the flow is too great. Additionally, hydraulic bottlenecks occur at the sand filters causing approximately one-third of the WWTP flow to bypass the filters. The DEQ advised the Village of facility operation and maintenance concerns, such as cleaning up the spilled sewage debris. The DEQ directed the Village to provide a written response by February 28, 2006.

- 2.3 On February 27, 2006, the Village sent a response letter to the DEQ providing explanations of the issues outlined in NL-001671. The Village acknowledged their awareness that the hydraulic bottlenecks occurred during "heavy wet weather" and stated their intent to aggressively pursue elimination of an excess Infiltration and Inflow (I/I) in the spring of 2006.
- 2.4 The Village conducted a manhole rehabilitation project in November and December of 2006 to reduce the amount of I/I into the collection system. This project consisted of work on seventy-seven manholes throughout the collection system. However, the amount of flow reduced from the project has not resolved the hydraulic capacity issue. The Village conducted a cost effective analysis and determined that an equalization basin will be the most cost effective solution to resolve the hydraulic capacity inadequacies.
- 2.5 On July 30, 2007, the DEQ sent Notice Letter NL-002817 to the Village noting several NPDES Permit effluent limitations exceedences dating from April 2006 to July 2007 (see table in paragraph 2.12). In addition, the DEQ noted inadequate laboratory quality assurance/quality control (QA/QC) practices. Further, the DEQ noted inadequate operation and maintenance practices at the Dexter WWTP and advised the Village to improve its practices. The DEQ directed the Village to provide a written response by September 10, 2007.
- 2.6 On August 29, 2007, the Village sent a response letter to the DEQ outlining actions the Village intended to implement to address the DEQ's stated concerns from NL-002817.

These actions include pursuing a State Revolving Fund loan for design and construction of a flow equalization basin, improvement to operation and maintenance practices, and instruction to lab staff to adhere to proper QA/QC practices.

- 2.7 On November 30, 2007, the DEQ sent Notice Letter NL-003098 advising the Village that, in accordance with Part II.C.9 of the NPDES Permit, intentionally bypassing any portion of the Dexter WWTP treatment facility due to inadequate hydraulic capacity is prohibited and subject to reporting requirements. The DEQ directed the Village to provide written response by January 7, 2008.
- 2.8 On January 7, 2008, the Village sent a response letter to the DEQ whereby the Village made the assertion that "The temporary blending of effluent has resulted in no violations of our permit." and "only done during a heavy rain event" as justification for allowing bypassing the Dexter WWTP treatment facilities sand filters. The Village acknowledged that this practice has occurred on a few occasions throughout the years.
- 2.9 On January 24, 2008, the DEQ sent Notice Letter NL-003178 to the Village identifying NPDES Permit violations including the failure to have a properly certified operator in place; inadequate laboratory equipment; and inadequate operation and maintenance (housekeeping) practices. The DEQ directed the Village to provide a written response by February 29, 2008. The DEQ was informed by the Village on February 13, 2008, that the NPDES Permit requirement for a properly certified operator was met and the inadequate operation and maintenance practices were corrected.
- 2.10 On January 30, 2008, the Village's consultant firm, OHM Engineering Advisors, provided the DEQ with a response to NL-003098 with the assertion that the Dexter WWTP's practice of intentionally bypassing the sand filters was not a violation of the NPDES Permit because the "Village believes the bypassing the sand filters enabled the Village to maintain efficient operation of the plant and the sewage was properly treated through the secondary treatment process" therefore qualified as a bypass exemption.

2.11 On February 13, 2008, the DEQ responded to the Village by re-stating the provisions of Part II.C.9 of the NPDES Permit to reaffirm the Village's regulatory responsibility to comply with this particular provision and that intentionally bypassing the sand filters by the Village constitutes violations to the NPDES Permit and Part 31 of NREPA. The DEQ advised the Village that NPDES Permit Bypass provision, as stated in Part II.C.9., specifically allows for the intentional bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. The DEQ advised the Village that the Village's WWTP inadequate hydraulic capacity does not meet this bypass exemption. Furthermore, in accordance with Part II.C.9., in any circumstance of a bypass, the permittee is required to provide notification of the bypass to the DEQ and at no time did the DEQ receive proper notification from the Village. Lastly, the DEQ does not authorize a blended discharge that has not received full treatment therefore is violation of the NPDES Permit and Part 31 of NREPA.

2.12 Additionally, as reported from the Discharge Monitoring Reports (DMRs) submitted by the Village regarding the Dexter WWTP, the DEQ identify the following NPDES Permit effluent limitation violations dating from January 2005 to July 2007.

Month/Year	Parameter	Permit Limit	Reported Value
January 2005	TRC	0.038 mg/L	0.08 mg/L
June 2005	TRC	0.038 mg/L	0.2 mg/L
April 2006	TSS	30 mg/L (30 day avg.)	36 mg/L
April 2006	TSS	45 mg/L (7 day avg.)	131 mg/L
April 2006	TSS	220 lbs/day (7 day avg.)	310 lbs/day
April 2006	TSS Percent Removal	85% mo. Avg.	79.3%
May 2006	Total Phosphorus	0.9 mg/L	2.01 mg/L
May 2006	TSS	30 mg/L (30 day avg.)	40 mg/L
May 2006	TSS	45 mg/L (7 day avg.)	104 mg/L
May 2006	TSS	150 lbs/day (30 day avg.)	153 lbs/day

May 2006	TSS	220 lbs/day (7 day avg.)	479 lbs/day
May 2006	Dissolved Oxygen	5.0 mg/L minimum	3.7 mg/L
June 2006	Dissolved Oxygen	5.0 mg/L minimum	4.8 mg/L
January 2007	Chlorine	0.038 mg/L	0.04 mg/L
June 2007	TSS	45 mg/L (7 day avg.)	46 mg/L
June 2007	TRC	0.038 mg/L	0.04 mg/L
July 2007	TRC	0.038 mg/L	1.0 mg/L

III. COMPLIANCE PROGRAM

IT IS THEREFORE AGREED AND ORDERED THAT the Village shall take the following actions to prevent further violations of Part 31:

- 3.1 **Not later than December 31, 2008**, the Village shall submit to the DEQ for review and approval an Interim Operational Plan (IOP) designed to optimize performance of the Dexter WWTP's existing sewage collection and treatment system to maintain compliance with the Part II.C.9., Bypass Prohibition and Notification, of the NPDES Permit. The IOP shall include, at a minimum, a plan for further I/I identification and reduction.

- 3.2 **Not later than November 1, 2009**, the Village shall submit to the DEQ for review and approval final plans, specifications, and an implementation schedule for the Dexter WWTP upgrades to address the inadequate hydraulic capacity issue. At a minimum, the WWTP upgrades shall include an equalization basin designed in accordance with the "Recommended Standards for Wastewater Facilities" with a design capacity of not less than 400,000 gallons.

- 3.3 **Not later than December 31, 2011**, the Village shall complete final construction of the Dexter WWTP upgrades.

- 3.4 **Not later than January 31, 2012**, the Village shall provide certification to the DEQ that final construction of the Dexter WWTP upgrade was completed by December 31, 2011.
- 3.5 **Not later than January 31, 2012**, the Village shall submit to the DEQ for review and approval an Operation and Maintenance Plan for the upgraded Dexter WWTP.
- 3.6 The Village shall submit all reports, work plans, specifications, schedules, or any other writing required by this section to the Jackson District Supervisor, WB, DEQ, 301 East Louis Glick Highway, Jackson, Michigan 49201-1556. The cover letter with each submittal shall identify the specific paragraph and requirement of this Consent Order that the submittal is intended to satisfy.

IV. DEQ APPROVAL OF SUBMITTALS

- 4.1 For any work plan, proposal, or other document, excluding applications for permits or licenses, that are required by this Consent Order to be submitted to the DEQ by the Village, the following process and terms of approval shall apply.
- 4.2 All work plans, proposals, and other documents required to be submitted by this Consent Order shall include all of the information required by the applicable statute and/or rule, and all of the information required by the applicable paragraph(s) of this Consent Order.
- 4.3 In the event the DEQ disapproves a work plan, proposal, or other document, it will notify the Village, in writing, specifying the reasons for such disapproval. The Village shall submit, within 30 days of receipt of such disapproval, a revised work plan, proposal, or other document which adequately addresses the reasons for the DEQ's disapproval. If the revised work plan, proposal, or other document is still not acceptable to the DEQ, the DEQ will notify the Village of this disapproval.
- 4.4 In the event the DEQ approves with specific modifications, a work plan, proposal, or other document, it will notify the Village in writing, specifying the modifications required to be made to such work plan, proposal, or other document prior to its implementation and the

specific reasons for such modifications. The DEQ may require the Village to submit, prior to implementation and within 30 days of receipt of such approval with specific modifications, a revised work plan, proposal, or other document which adequately addresses such modifications. If the revised work plan, proposal, or other document is still not acceptable to the DEQ, the DEQ will notify the Village of this disapproval.

- 4.5 Upon DEQ approval, or approval with modifications, of a work plan, proposal, or other document, such work plan, proposal, or other document shall be incorporated by reference into this Consent Order and shall be enforceable in accordance with the provisions of this Consent Order.
- 4.6 Failure by the Village to submit an approvable work plan, proposal, or other document, within the applicable time periods specified above, constitutes a violation of this Consent Order and shall subject the Village to the enforcement provisions of this Consent Order, including the stipulated penalty provisions specified in paragraph 9.3.
- 4.7 Any delays caused by the Village's failure to submit an approvable work plan, proposal, or other document when due shall in no way affect or alter the Village's responsibility to comply with any other deadline(s) specified in this Consent Order.
- 4.8 No informal advice, guidance, suggestions, or comments by the DEQ regarding reports, work plans, plans, specifications, schedules or any other writing submitted by the Village will be construed as relieving the Village of its obligation to obtain written approval, if and when required by this Consent Order.

V. EXTENSIONS

- 5.1 The Village and the DEQ agree that the DEQ may grant the Village a reasonable extension of the specified deadlines set forth in this Consent Order. Any extension shall be preceded by a written request in duplicate to the DEQ, WB, Enforcement Unit Chief, Constitution Hall, 525 West Allegan Street, Lansing, Michigan 48909-7773, and the

Jackson District Office District Supervisor at the address in paragraph 3.6, no later than ten business days prior to the pertinent deadline, and shall include:

- a. Identification of the specific deadline(s) of this Consent Order that will not be met.
- b. A detailed description of the circumstances that will prevent the Village from meeting the deadline(s).
- c. A description of the measures the Village has taken and/or intends to take to meet the required deadline.
- d. The length of the extension requested and the specific date on which the obligation will be met.

The district supervisor, in consultation with the Enforcement Unit Chief, shall respond in writing to such requests. No change or modification to this Consent Order shall be valid unless in writing from the DEQ, and if applicable, signed by both parties.

VI. REPORTING

- 6.1 The Village shall verbally report any violation(s) of the terms and conditions of this Consent Order to the Jackson District Office District Supervisor by no later than the close of the next business day following detection of such violation(s) and shall follow such notification with a written report within five business days following detection of such violation(s). The written report shall include a detailed description of the violation(s), as well as a description of any actions proposed or taken to correct the violation(s). The Village shall report any anticipated violation(s) of this Consent Order to the above-referenced individual in advance of the relevant deadlines whenever possible.

VII. RETENTION OF RECORDS

- 7.1 Upon request by an authorized representative of the DEQ, the Village shall make available to the DEQ all records, plans, logs, and other documents required to be maintained under this Consent Order or pursuant to Part 31 or its rules. All such documents shall be retained by the Village for at least a period of three years from the

date of generation of the record unless a longer period of record retention is required by Part 31 or its rules.

VIII. RIGHT OF ENTRY

- 8.1 The Village 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.

IX. PENALTIES

- 9.1 The Village agrees to pay to the State of Michigan **\$4,600.71 DOLLARS** as partial compensation for the cost of investigations and enforcement activities arising from the violations specified in Section II of this Consent Order. Payment shall be made within 30 days of the effective date of this Consent Order in accordance with paragraph 9.7.
- 9.2 The Village agrees to pay a civil fine of **\$16,000 DOLLARS** for the violations specified in Section II of this Consent Order. Payment shall be made within 30 days of the effective date of this Consent Order in accordance with paragraph 9.7.
- 9.3 For each failure to comply with the provisions of Section III and IV of this Consent Order, the Village shall pay stipulated penalties of **\$100** per violation per day for 1 to 7 days of violation, **\$250** per violation per day for 8 to 14 days of violation, and **\$500** per violation per day for each day of violation thereafter. 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 submit an approvable work plan, proposal, or other document by the required dates in accordance with Section III.

- b. Failure to implement, complete, or comply with any activity or condition required by Section III, including those contained in any approved work plan or other document required to be implemented and completed by Section III.
- c. Failure to submit approvable revised work plans, proposals, or other documents addressing a DEQ disapproval or approval with modifications by the required dates in accordance with paragraphs 4.3 or 4.4.

9.4 For each failure to comply with any other provision of this Consent Order not specified in paragraph 9.3, the Village shall pay stipulated penalties of **\$100** per violation per day for each day of violation. 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 verbally report violations and submit written reports by the required dates in accordance with paragraph 6.1.
- b. Failure to retain records on site in accordance with paragraph 7.1.
- c. Failure to pay civil fines, costs, or stipulated or interest penalties by the required dates in accordance with this section.
- d. Any other requirement of this Consent Order.

9.5 Stipulated penalties accruing under paragraphs 9.3 or 9.4 shall be paid within 30 days after written demand by the DEQ in accordance with paragraph 9.7.

9.6 To ensure timely payment of the above civil fine, costs, and stipulated penalties, the Village shall pay an interest penalty to the General Fund of 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(8), 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.

9.7 The Village agrees to pay all funds due pursuant to this agreement by check made payable to the State of Michigan and delivered to the DEQ, Revenue Control Unit, P.O.

Box 30657, Lansing, Michigan 48909-8157. To ensure proper credit, all payments made pursuant to this Consent Order must include the **Payment Identification No. WTR-3100**

- 9.8 The Village agrees not to contest the legality of the civil fine or costs paid pursuant to paragraphs 9.1, and 9.2, above. The Village further agrees not to contest the legality of any stipulated penalties or interest penalties assessed pursuant to paragraphs 9.3, 9.4, and 9.5, 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.

X. FORCE MAJEURE

- 10.1 The Village shall perform the requirements of this Consent Order within the time limits established herein, unless performance is prevented or delayed by events that constitute a "Force Majeure." Any delay in the performance attributable to a "Force Majeure" shall not be deemed a violation of the Village's obligations under this Consent Order in accordance with this section.
- 10.2 For the purpose of this Consent Order, "Force Majeure" means an occurrence or nonoccurrence arising from causes not foreseeable, beyond the control of, and without the fault of the Village, such as: an Act of God, untimely review of permit applications or submissions by the DEQ or other applicable authority, and acts or omissions of third parties that could not have been avoided or overcome by the Village's diligence and that delay the performance of an obligation under this Consent Order. "Force Majeure" does not include, among other things, unanticipated or increased costs, changed financial circumstances, or failure to obtain a permit or license as a result of the Village's actions or omissions.
- 10.3 The Village shall notify the DEQ, by telephone, within 48 hours of discovering any event that causes a delay in its compliance with any provision of this Consent Order. Verbal notice shall be followed by written notice within ten calendar days and shall describe, in detail, the anticipated length of delay, the precise cause or causes of delay, the measures

taken by the Village to prevent or minimize the delay, and the timetable by which those measures shall be implemented. The Village shall adopt all reasonable measures to avoid or minimize any such delay.

- 10.4 Failure of the Village to comply with the notice requirements and time provisions under paragraph 10.3 shall render this Section X void and of no force and effect as to the particular incident involved. The DEQ may, at its sole discretion and in appropriate circumstances, waive in writing the notice requirements of paragraph 10.3, above.
- 10.5 If the parties agree that the delay or anticipated delay was beyond the control of the Village, this may be so stipulated, and the parties to this Consent Order may agree upon an appropriate modification of this Consent Order. However, the DEQ is the final decision-maker on whether or not the matter at issue constitutes a force majeure. The parties to this Consent Order understand and agree that the final decision by the DEQ regarding a force majeure claim is not subject to judicial review. The burden of proving that any delay was beyond the reasonable control of the Village, and that all the requirements of this Section X have been met by the Village, rests with the Village.
- 10.6 An extension of one compliance date based upon a particular incident does not necessarily mean that the Village qualifies for an extension of a subsequent compliance date without providing proof regarding each incremental step or other requirement for which an extension is sought.

XI. GENERAL PROVISIONS

- 11.1 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 Village to comply with the requirements of the NREPA and its rules.
- 11.2 The DEQ and the Village 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.

- 11.3 This Consent Order in no way affects the Village's responsibility to comply with any other applicable state, federal, or local laws or regulations.
- 11.4 The WB reserves its right to pursue appropriate action, including injunctive relief to enforce the provisions of this Consent Order, and at its discretion, may also 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.
- 11.5 Nothing in this Consent Order is or shall be considered to affect any liability the Village may have for natural resource damages caused by the Village's 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.
- 11.6 In the event the Village sells or transfers the facility, it 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 Village shall also notify the WB Jackson 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 WB Jackson District Supervisor within 30 days of assuming the obligations of this Consent Order.
- 11.7 The provisions of this Consent Order shall apply to and be binding upon the parties to this action, and their successors and assigns.

11.8 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.

XII. TERMINATION

12.1 This Consent Order shall remain in full force and effect until terminated by a written Termination Notice (TN) issued by the DEQ. Prior to issuance of a written TN, the Village shall submit a request consisting of a written certification that the Village has fully complied with the requirements of this Consent Order and has made payment of any fines, including stipulated penalties, required in this Consent Order. Specifically, this certification shall include:

- a. The date of compliance with each provision of the compliance program in Section III, and the date any fines or penalties were paid.
- b. A statement that all required information has been reported to the district supervisor.
- c. Confirmation that all records required to be maintained pursuant to this Consent Order are being maintained at the facility.

The DEQ may also request additional relevant information. The DEQ shall not unreasonably withhold issuance of a TN.

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



Frank J. Baldwin, Field Operations Division Chief
Water Bureau

9/12/08
Date

VILLAGE OF DEXTER

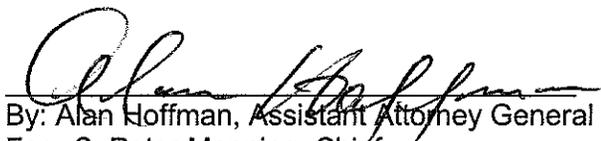


By: Donna Dettling

Title: Village Manager

9/9/2008
Date

APPROVED AS TO FORM:



By: Alan Hoffman, Assistant Attorney General
For: S. Peter Manning, Chief
Environment, Natural Resources, and Agriculture Division
Michigan Department of Attorney General

9/10/08
Date