

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

In the matter of:

ACO-000023

Date Entered: 10-27-09

City of Big Rapids Wastewater Treatment Plant (WWTP)  
500 River Street  
Big Rapids, Michigan 49307

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**ADMINISTRATIVE CONSENT ORDER**

This document results from allegations by the Department of Environmental Quality (DEQ), Water Bureau (WB). The DEQ alleges that the City of Big Rapids (City), with a wastewater treatment plant (WWTP) located at 500 River Street, Big Rapids, Michigan, Mecosta 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., (Part 31) and Part 41, Sewerage Systems, of the NREPA, MCL 324.4101 et seq. (Part 41). The City is a municipality and a person, as defined by Section 301 of the NREPA. The City and the DEQ agree to resolve the violations set forth herein through entry of an Administrative Consent Order (Consent Order).

**I. STIPULATIONS**

The City 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, 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 City 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 City 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 chief of the WB, delegate of the director, pursuant to Section 301(b) of the NREPA.
- 1.5 The City and the DEQ agree that the signing of this Consent Order is for settlement purposes only and does not constitute an admission by the City that the law has been violated.
- 1.6 The Signatory to this Consent Order on behalf of the City agrees and attests that he is fully authorized to assure that the City will comply with all requirements under this Consent Order.
- 1.7 The City 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 City has discharged untreated or partially treated sewage from its sewer system onto land or into the waters of the state on March 13, 2006, and February 3, 2007, March 29, 2008, September 29, 2008, April 30, 2009, and June 23, 2009, in violation of Section 324.3109 (Section 3109) of Part 31.
- 2.2 On March 13, 2006, and September 29, 2008, the City failed to immediately, but not more than 24 hours after each discharge (of sewage) begins, notify the DEQ, the local health department and a daily newspaper of general circulation in violation of Section 324.3112a of Part 31.

- 2.5 The City has experienced approximately 174 NPDES permit effluent limit violations from December 1, 2005, through December 31, 2008, in violation of NPDES Permit No. MI0022381 and Part 31.
- 2.6 The City failed to submit its Pollutant Minimization Program (PMP) annual status reports for 2005 and 2007 that were due on or before March 31 each year (in 2007 and 2008), following the DEQ approval of its PMP. The 2005 annual status report was submitted June 1, 2006, being two months late and the 2007 annual report was submitted on April 4, 2008, being four days late. The City's late submittals of the PMP's are violations of its NPDES permit and Part 31.
- 2.7 The City failed to complete its Storm Water Pollution Prevention Plan (SWPPP) by the February 1, 2004, deadline in its NPDES Permit No. MI0022381, in violation of the City's NPDES permit and Part 31. The City submitted the SWPPP to the DEQ in July 2007.
- 2.8 Beginning in December 2005, through April 2007, the City intermittently used chlorine for disinfection, thereby adding chlorine to the WWTP waste stream, without prior DEQ approval, in violation of the City's NPDES permit and Part 31. Additionally, the City failed to use an approved test method for testing compliance with the total residual chlorine (TRC) permit limit, in violation of the City's NPDES permit.
- 2.9 The City failed to properly operate and maintain its ultra violet (UV) disinfection and backup chlorination systems in a manner to achieve compliance with the fecal coliform limitations of the City's NPDES permit. The City's failure is in violation of its NPDES permit, Part 31 and 1979 AC R 299.2955 (Rule 55) promulgated pursuant to Part 41.
- 2.10 On January 15, 2009, the DEQ observed, during a routine biosolids site inspection, that the City's contractor failed to incorporate the biosolids from the City's WWTP into the soil, in violation of the City's NPDES permit and 1979 AC R323.2401 et seq. (Part 24 Rules).

2.11 On February 12, 2009, the DEQ conducted a Compliance Evaluation Inspection (CEI) at the WWTP. The following violations were identified in a letter dated February 17, 2009, that was sent to the City by the DEQ:

- a. The City is not using flow proportioned composite sampling required by and in violation of the City's NPDES Permit.
- b. The City failed to conduct the SWPPP review and update by February 1, 2009, required by and in violation of the City's NPDES Permit.
- c. The City's WWTP is in disrepair. Concrete on the aeration basins is crumbling; the hand railings are at risk of falling off; the ground around the east gravity thickener is riddled with animal holes, creating unsafe conditions for walking; ivy is growing uncontrolled on the outside and over the top of the edge of the thickener; and the digester has a black, odorous sludge covering a width of about five feet of the outer edges of the cover, with a depth of about one foot at the outer edges, in violation of the City's NPDES permit.
- d. The quality assurance/quality control (QA/QC) manual and the written laboratory procedures are outdated and do not reflect the current test methods, procedures, and equipment.

2.12 In July 2008 the City failed to monitor for total copper, as required by, and in violation of its NPDES Permit that expired on July 31, 2008.

### **III. COMPLIANCE PROGRAM**

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

- 3.1 Upon entry of this Consent Order and thereafter, the City agrees that it shall comply with its NPDES Permit No. MI0022381, Part 31, and Part 41.
- 3.2 Not later than 60 days past entry of this Consent Order, the City shall submit to the address in paragraph 3.13 of this Consent Order an updated QA/QC manual and written laboratory procedures for the City's WWTP laboratory.

- 3.3 Not later than 30 days from entry of this Consent Order, the City shall begin the investigation of the SSO's occurring at manhole 204, located adjacent to Mitchell Creek. The investigation shall assess the hydraulic capacity of the collection system tributary to manhole number 204, located adjacent to Mitchell Creek, to ensure that the City can transport and treat all sewage without discharging raw or partially treated sewage to the waters of the state or on the ground. The City shall complete the investigation and assessment not later than November 1, 2009, and shall submit a summary of the findings to the address in paragraph 3.13 of this Consent Order not later than November 13, 2009.
- 3.4 Not later than 30 days past entry of this Consent Order, the City shall develop and submit for review to the address in paragraph 3.13 of this Consent Order, the maintenance schedule and an operator maintenance log template for the UV disinfection system. When developing the maintenance schedule and operator maintenance log, the City shall incorporate the recommendations made by the manufacturer of the UV disinfection system (Trojan) in the "2005 Trojan Operations and Maintenance Manual."
- 3.5 The City agrees that it shall comply with the UV disinfection system maintenance schedule required by paragraph 3.3 of this Consent Order.
- 3.6 The City agrees that it shall submit on a monthly basis, the completed UV disinfection system operator maintenance logs with the City's monthly operational reports that are required by the Rule 53 of Part 41 (R 299.2953).
- 3.7 The City shall implement and complete the construction of the WWTP, in accordance with the approved construction schedule developed October 2008 for State Revolving Loan Fund (SRF) Project Number 5264-01. The approved construction schedule is attached to this Consent Order as Attachment A; and is enforceable hereunder regardless of the City's ability to obtain money from the DEQ's Office of Pollution Prevention and Compliance Assistance (OPPCA) through SRF Project Number 5264-01, or any other means. If the City needs an extension of any date on Attachment A, it shall request an

extension to the address in paragraph 3.13 of this Consent Order in accordance with Section V of this Consent Order.

- 3.8 The City began the implementation of Phase I of the WWTP construction in March 2009. The City shall achieve "substantial completion" of Phase I, as specified in Attachment A to this Consent Order, not later than January 1, 2010.
- 3.9 Not later than July 1, 2010, and in accordance with Attachment A to this Consent Order, the City shall achieve "substantial completion" of Phase II of the WWTP construction.
- 3.10 The City shall achieve "substantial completion" of Phase III of the WWTP construction, and the completed upgraded WWTP shall be operational not later than November 1, 2010.
- 3.11 The City was issued a Part 41 Permit No. 1005328 on November 25, 2008, to conduct the construction on the WWTP in accordance with SRF Project Number 5264-01. The City shall complete the projects authorized by the Part 41 construction permit, and shall comply with the terms of the permit and Part 41 and the rules promulgated thereunder. If the City needs to revise its construction projects under SRF Project Number 5264-01, and Part 41 Permit No. 1005328, the City shall submit a proper application to the DEQ for a new Part 41 Permit, or a revision to the existing Part 41 Permit in accordance with Section 4105 of Part 41.
- 3.12 Not later than September 1, 2010, the City shall submit an Operation and Maintenance manual for the upgraded WWTP, in accordance with R299.2957 (Rule 57) of Part 41 Rules.
- 3.13 The City shall submit all reports, work plans, specifications, schedules, or any other writing required by this section to the Grand Rapids District Supervisor, WB, DEQ, 350 Ottawa Avenue Northwest, Unit 10, Grand Rapids, Michigan 49503. 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 city, 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 city, in writing, specifying the reasons for such disapproval. The city 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 city 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 city, 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 city 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 city 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 city 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 city 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 city's failure to submit an approvable work plan, proposal, or other document when due shall in no way affect or alter the city'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 city will be construed as relieving the city of its obligation to obtain written approval, if and when required by this Consent Order.

#### **V. EXTENSIONS**

- 5.1 The city and the DEQ agree that the DEQ may grant the city 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 Grand Rapids District Supervisor at the address in paragraph 3.13, 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 city from meeting the deadline(s).
  - c. A description of the measures the city 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 city shall verbally report any violation(s) of the terms and conditions of this Consent Order to the Grand Rapids 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 city 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 city 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 city 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 City 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 City agrees to pay to the State of Michigan **\$5,370** 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 City agrees to pay a civil fine of **\$97,500** 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 a specific deadline contained in paragraphs 3.1 through 3.11, or Section IV of this Consent Order, the City shall pay stipulated penalties of **\$5,000**. If, after 30 days from the original deadline, the City has not fully corrected the violation, stipulated penalties shall begin to accrue in accordance with paragraph 9.4 of this Consent Order.
- 9.4 Except as provided for in paragraph 9.3, for each failure to comply with a provision of Section III or IV of this Consent Order, the City shall pay stipulated penalties of **\$200** per violation per day for 1 to 7 days of violation, **\$300** per violation per day for 8 to 14 days of violation, and **\$500** per violation per day for each day of violation thereafter.
- 9.5 For each failure to comply with a provision of Section VI, VII, or VIII of this Consent Order, or any other requirement of this Consent Order, the City shall pay stipulated penalties of **\$200** per violation per day for each day of violation.
- 9.6 To ensure timely payment of the above civil fine, costs, and stipulated penalties, the City 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 City 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 3113**.
- 9.8 The City agrees not to contest the legality of the civil fine or costs paid pursuant to paragraphs 9.1, and 9.2, above. The City 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 City 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 City'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 city, 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 city'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 City's actions or omissions.
- 10.3 The City 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 City to prevent or minimize the delay, and the timetable by which those measures shall be implemented. The City shall adopt all reasonable measures to avoid or minimize any such delay.

- 10.4 Failure of the City 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 City, 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 City, and that all the requirements of this Section X have been met by the City, rests with the City.
- 10.6 An extension of one compliance date based upon a particular incident does not necessarily mean that the City 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 City to comply with the requirements of the NREPA and its rules.

- 11.2 The DEQ and the City 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 City'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 City may have for natural resource damages caused by the City'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 City 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 city shall also notify the WB Grand Rapids 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 Grand Rapids 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 City shall submit a request consisting of a written certification that the City 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:

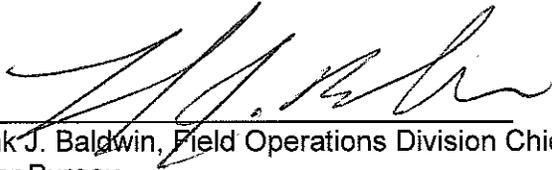
- a. The date of compliance with each provision of the compliance program in Section III, and the date any fines or penalties were paid.
- b. A statement that all required information has been reported to the district supervisor.
- c. Confirmation that all records required to be maintained pursuant to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

10/27/09  
Date

**City of Big Rapids**

  
\_\_\_\_\_  
By: Mr. Stephen Sobers

City Manager  
Title: City Manager  
10/20/09  
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  
10/22/09  
Date