

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

In the matter of:

ACO-SW000031

Date Entered: 10-27-09

The Village of Romeo
121 West St. Clair Street
Romeo, Michigan 48065

ADMINISTRATIVE CONSENT ORDER

This document results from allegations by the Department of Environmental Quality (DEQ), Water Bureau (WB). The DEQ alleges the Village of Romeo (Village) that owns and operates the Romeo Wastewater Treatment Plant (WWTP) located at 14787 East 32 Mile Road, Romeo, Michigan, Macomb 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 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 Romeo WWTP located at 14787 East 32 Mile Road, Romeo, Michigan, Macomb County. The Romeo WWTP is authorized by the National Pollution Discharge Elimination System (NPDES) Permit No. MI0021679 to discharge treated municipal wastewater from monitoring point 001A through Outfall 001 that discharges to East Pond Creek.
- 2.2 On April 24, 2006, the DEQ sent the Village Notice Letter No. NL-001622 that outlined a list of required actions the Village was to take to address the violations found during the DEQ Compliance Evaluation Inspection (CEI) conducted at the Romeo WWTP in August and September 2005. The purpose of the CEI was to evaluate the facility's compliance with the NPDES Permit requirements and the Village was directed to respond to the DEQ Notice Letter in writing by August 1, 2006.

- 2.3 On September 28, 2006, the Village responded to concerns outlined in the DEQ's NL-001622. The Village provided detailed responses to each of the DEQ concerns and reassured the DEQ that ongoing plant expansion and operator training efforts will bring the Romeo WWTP resolve existing violations with the NPDES Permit requirements.
- 2.4 On July 25, 2007, the DEQ sent to the Village Notice Letter No. NL-002846 outlining a list of required actions the Village was to take to address the violations found during the June 21-22, 2007, DEQ CEI at the Romeo WWTP. Specifically, the NPDES Permit violations include the failure to submit the 2006 annual update for the Pollutant Minimization Program (PMP) in accordance with Part 1.A.4; failure to have a certified storm water operator in accordance with Part 1.A.6.a, and the failure to have a Storm Water Pollution Prevention Plan (SWPPP) in accordance with Part 1.A.6.a. The Village was directed to immediately attain and maintain compliance with the requirements of the NPDES Permit.
- 2.5 On July 26, 2007, the DEQ sent to the Village the Notice Letter NL-002850 separately outlining violations found during the June 21-22, 2007, CEI conducted to the Romeo WWTP. The NL-002850 reiterates the violations identified in the July 25, 2007, Notice Letter along with reminders of nearing compliance dates and recommended actions the Village should take to prevent violations.
- 2.6 The Village responded to the NL002846 by submitting to the DEQ the required PMP update on August 23, 2007 and the SWPPP on December 29, 2008.
- 2.7 On November 3, 2008, the DEQ sent to the Village the Violation Notice VN-003689 of the failure to comply with requirements of the NPDES Permit. Specifically, the requirements in Part 1.a.6.a, Storm Water Pollution Prevention Plan (SWPPP); Part 1.B.1.b, Schedule of Compliance (SOC), Collection System Analysis and Rehabilitation Program; and Part 1.B.4, Schedule of Compliance, WWTP Rehabilitation and Upgrade Program. The DEQ Violation Notice outlines the revised dates for the SOC as discussed and agreed upon at the August 18, 2008, meeting between the Village and the DEQ. The Village is

requested to provide written confirmation by November 17, 2008, agreeing to the DEQ proposed SOC deadlines for completing the correction programs required in the NPDES Permit.

- 2.8 On November 11, 2008, the Village responded to the DEQ Violation Notice VN-003689 and agreed to the revised SOC completion dates for the Collection System Analysis and Rehabilitation Program and the WWTP Rehabilitation and Upgrade Program required by the NPDES Permit, Part 1.B.1.a, and the SWPPP authorized by the NPDES Permit, Part 1.A.6.a. Additionally, the Village recommended quarterly meetings between the Village and the DEQ to improve communication and to review the progress made by the Village in meeting the revised compliance dates.

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 The Village shall continue to conduct the Collection System Analysis and Rehabilitation Program required by the NPDES Permit, Section B.1.a, for Phase I Rehabilitation for the Rawles Street and Hollister Main Street Repairs as follows:
- 3.1.1 **On or before April 1, 2010**, the Village shall submit to the DEQ-approvable Basis of Design and final plans and specifications for the Rawles Street and Hollister Main Street repairs.
- 3.1.2 **On or before July 1, 2010**, the Village shall commence the Rawles Street and Hollister Main Street construction in accordance with the DEQ-approved final plans and specifications.
- 3.1.3 **On or before November 30, 2010**, the Village shall complete the Rawles Street and Hollister Main Street construction.

3.2 The Village shall continue to conduct the Collection System Analysis and Rehabilitation Program required by the NPDES Permit, Section B.1.a, for Phase II Rehabilitation of the Washington Street repairs as follows:

3.2.1 **On or before November 1, 2010**, the Village shall submit to the DEQ-approvable Basis of Design and final plans and specifications.

3.2.2 **On or before July 1, 2011**, the Village shall commence the Washington Street construction in accordance with the DEQ-approved final plans and specifications.

3.2.3 **On or before November 30, 2011**, the Village shall complete the Washington Street construction.

3.3 The Village shall conduct the Collection System Analysis and Rehabilitation Program required by the NPDES Permit, Section B.1.a, for Phase III Manhole Rehabilitation as follows:

3.3.1 **On or before November 1, 2011**, the Village shall submit to the DEQ-approvable Basis of Design and final plans and specifications.

3.3.2 **On or before July 1, 2012**, the Village shall commence the Manhole Rehabilitation construction in accordance with the DEQ-approved final plans and specifications.

3.3.3 **On or before November 30, 2012**, the Village shall complete the Manhole Rehabilitation construction.

3.4 The Village shall conduct the Collection System Analysis and Rehabilitation Program required by the NPDES Permit, Section B.1.a, for Phase IV Project Performance Certification (PPC) Program as follows:

- 3.4.1 **On or before July 1, 2012**, the Village shall submit to the DEQ an approvable Work Plan for conducting the PPC Program for the Collection System Analysis and Rehabilitation Program.
- 3.4.2 **On or before January 1, 2013**, the Village shall commence the PPC Program in accordance with the DEQ-approved Work Plan.
- 3.4.3 **On or before November 1, 2013**, the Village shall complete the PPC Program.
- 3.4.4 **On or before January 6, 2014**, the Village shall submit an approvable certification of the following items: (1) the Collection System Analysis and Rehabilitation Program was constructed in accordance with the approved Basis of Design criteria and the approved final plans and specifications; (2) all sources of excessive I/I identified by the Sewer System Evaluation Survey (SSES) have been eliminated; and (3) the collection system has adequate capacity to transport peak-hour flows generated by the 10-year, 1-hour storm event to the WWTP without SSOs or occurrences of basement flooding in the sanitary sewer service area.
- 3.4.5 If the Village is unable to certify that the project was constructed in accordance with the design criteria and performance standards identified in Part I.B.1.a.7.d of the NPDES Permit then by **May 1, 2014**, the Village shall submit an approvable Corrective Action Report outlining the corrective action needed and the associated, proposed schedule for bringing the project into conformance with the design criteria and performance standards. Following completion of the corrective action and a determination that the project is acceptable for certification, the Village shall submit a certification letter for approval.
- 3.5 The Village shall conduct the WWTP Rehabilitation and Upgrade Program required by the NPDES Permit, Section B.2.a, as follows:
- 3.5.1 **On or before July 31, 2009**, the Village shall submit **(submitted July 31, 2009)** to the DEQ an approvable certification that (1) the WWTP Rehabilitation and Upgrade was constructed in accordance with the approved Basis of Design criteria and approved final

plans and specifications; (2) the WWTP has adequate treatment capacity and storage volume for flows generated from the 25-year, 24-hour storm event; and (3) the WWTP is meeting NPDES Permit effluent limitations at design flow rate conditions.

- 3.6 The Village shall submit all reports, work plans, specifications, schedules, or any other writing required by this section to the Southeast Michigan District Office District Supervisor, WB, DEQ, 27700 Donald Court, Warren, Michigan 48092-2793. 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 Southeast Michigan 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 Southeast Michigan 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 **\$2,712 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 **\$12,000 DOLLARS** for the violations specified in Section II of this Consent Order. Payment shall be made where \$6,000 shall be submitted to the DEQ within 30 days of the effective date of this Consent Order in accordance with paragraph 9.7 and \$6,000 shall be held in abeyance on the condition that the Village adheres to all specified requirements set forth in Section III of this Consent Order. Failure to adhere to any specified requirement specified in Section III of this Consent Order shall result in immediate demand for the civil fine held in abeyance and the Village shall make payment not later than 30 days from receipt of the demand. If the Village adheres to all requirements specified in Section III of the Consent Order, the civil fine held in abeyance shall be forgiven following the termination of the Consent Order.
- 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 **\$500** 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. WTR3109**.
- 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 Southeast Michigan District Office 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 Southeast Michigan District Office 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



Date

VILLAGE OF ROMEO



Marian McLaughlin, Village Clerk/Administrator



Date

APPROVED AS TO FORM:


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

Date