

**STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER RESOURCES DIVISION**

In the matter of:

General ACO-UD12-100

Unpermitted Discharge(s)
_____ /

Date Entered: 3-7-2013

GENERAL ADMINISTRATIVE CONSENT ORDER FOR UNPERMITTED DISCHARGES

This document results from allegations by the Department of Environmental Quality (DEQ), Water Resources Division (WRD). The DEQ alleges that the owner of the facility (Owner) entering into this General Administrative Consent Order for Unpermitted Discharges, ACO-UD12-100 (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 is discharging storm water to the waters of the state without a valid permit, contrary to Section 3112(1) of the NREPA, MCL 324.3112(1). The Owner and the DEQ agree to resolve the violations set forth in the Findings section of this Consent Order through the Owner's submittal, and the DEQ's acceptance, of a Notice of Intent for coverage under the National Pollutant Discharge Elimination System (NPDES) for storm water discharges associated with industrial activity and a Certificate of Entry of this Consent Order, the Application. The Notice of Intent and Certificate of Entry are referred to collectively herein as the "Application." By submitting to the DEQ a completed Application signed by the Owner or the Owner's legally authorized representative, the Owner agrees to be bound by the terms and conditions contained within this Consent Order.

Facilities Owners that are eligible for this Consent Order include those from which a discharge is occurring, but have never held a discharge permit issued by the state of Michigan for it. Entry of this Consent Order is not available to facilities with expired discharge 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 Part 31 requires that all discharges of waste or waste effluent to waters of the state be properly permitted by the DEQ. MCL 324.3112(1). Further, the Legislature has provided a structure for the payment of permit fees within Part 31, MCL 324.3118 to 324.3124.
- 1.4 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.
- 1.5 Part 31 provides that violations of the part may result in fines up to \$25,000 per day of violation, MCL 324.3115(1).
- 1.6 The Owner stipulates that the resolution of this matter by entry of this Consent Order is appropriate and acceptable. The Owner further agrees not to contest this Consent Order or associated Application. This Consent Order, thus, shall be considered a final order of the DEQ and shall become effective with respect to a particular owner on the date the Application is received by the DEQ.
- 1.7 The Owner and the DEQ agree that this Consent Order and associated Application is for settlement purposes only and does not constitute an admission by the Owner that the law has been violated.
- 1.8 The Owner shall achieve compliance with the aforementioned provisions of Part 31 in accordance with the requirements contained in Section III, Compliance Program, of this Consent Order.

1.9 The Owner, by submitting to the DEQ the Application, including the fee amount identified in the Application, agrees and attests that the signatory to the Application is fully authorized to bind the Owner to the terms and conditions set forth herein and assure the compliance with all requirements under the Consent Order. The Application must contain an original signature by an authorized agent of the Owner 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.

1.10 The signatory to this Consent Order agrees and attests that he or she has not altered the Application or this Consent Order 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. Any alteration of the Application or Consent Order by the Owner or the Owner's representative invalidates the Application and coverage under this Consent Order.

1.11 This Consent Order is effective on the date the DEQ, WRD, Permits Section receives the Application provided it is fully executed by a duly authorized representative of the Owner, and meets all conditions and eligibility requirements under this Consent Order and associated Application. The DEQ reserves its right to vacate the Application at any time if it determines that any conditions, eligibility requirements, or any terms of this Consent Order are not satisfied.

II. FINDINGS

- 2.1 The Owner 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 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. In addition, Rule 2161 of the Part 21 administrative rules, Wastewater Discharge Permits, 2003 AACS, R 323.2161, as amended, promulgated pursuant to Part 31 of the NREPA, further provides that, "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..."
- 2.3 The Owner failed to apply for and obtain an appropriate permit from the DEQ prior to discharging to the waters of the state.

III. COMPLIANCE PROGRAM

IT IS THEREFORE AGREED AND ORDERED THAT the Owner shall take the following actions to prevent further violations of Section 3112(1) of Part 31:

- 3.1 The Owner shall sign the Application in accordance with Paragraph 1.9 and shall submit the signed Application, including the fee amount identified in the Application, to the DEQ. By signing the Application, the Owner certifies information provided is accurate and that the Owner's facility qualifies for the specific Application because it has a regulated storm water discharge associated with industrial activity and that the Owner has never obtained a permit from the DEQ for this discharge.
- 3.2 The Owner shall pay the applicable discharge permit fee authorized by Part 31 as set forth in this paragraph.

- a. The Owner shall forward the signed Application along with a check made payable to the State of Michigan for the full fee amount identified in the Application. The check shall be mailed to the address listed on the Application.

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. GENERAL PROVISIONS

- 5.1 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, including the fee amount identified in the 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 provide the certification required by paragraph 3.1, the DEQ reserves the right to pursue additional enforcement activities, including commencing a civil action pursuant to MCL 324.3115, for the Owner's violations of MCL 324.3112(1).
- 5.2 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 all applicable rules and statutes. Entry of this Consent Order does not relieve the Owner from future liability for the potential need to conduct remedial actions if contaminants originating from the discharge are discovered at limits that exceed the criteria under applicable law. The DEQ further expressly reserves the right to commence a civil action for injunctive relief and costs associated with overseeing or conducting these remedial actions.

- 5.3 The DEQ reserves the right to invalidate this Consent Order after its effective date in the event the DEQ discovers that the Owner misrepresented a fact or omitted a fact that had a bearing on the DEQ's determination that this Consent Order would appropriately resolve the violation of MCL 324.3112(1) at the Owner's facility. The DEQ may also invalidate this Consent Order if the discharge is found to have caused contamination, erosion, or other problems for which the Owner may be liable. The DEQ may also invalidate this Consent Order if the Owner fails to fulfill any requirement of this Consent Order. Notwithstanding any provision in this Consent Order, in the event that the DEQ determines that a discharge cannot be permitted, the DEQ reserves the right to invalidate this Consent Order. The invalidation of this Consent Order is at the sole discretion of the DEQ.
- 5.4 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.
- 5.5 This Consent Order in no way affects the Owner's responsibility to comply with any other applicable state, federal, or local laws or regulations.
- 5.6 The WRD, at its discretion, may seek statutory fines for any violation of this Consent Order.
- 5.7 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.
- 5.8 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 of a proposed sale or transfer, the Owner shall also notify the appropriate WRD District Supervisor, in writing, of such impending sale or transfer, provide the identity and address of the prospective purchaser or transferee, and

confirm the fact that notice of this Consent Order has been given to the prospective purchaser and/or transferee. The purchaser and/or transferee of the facility must agree, in writing, to assume all of the obligations of this Consent Order. A copy of the purchase agreement or other documents verifying the conveyance, along with the purchaser and/or transferee's written acceptance of this Consent Order shall be forwarded to the appropriate WRD District Supervisor within 30 days of the purchaser and/or transferee assuming the obligations of the Consent Order.

- 5.9 The provisions of this Consent Order shall apply to and be binding upon the parties to this action, and their successors and assigns.
- 5.10 This Consent Order constitutes a civil settlement and satisfaction as to the resolution of the violations specifically addressed herein. This Consent Order does not resolve any criminal action that may result from these same violations.

VI. TERMINATION

- 6.1 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 WRD will not issue a decision on the Application until the Owner pays in full any permit fees due in accordance with paragraph 3.2.

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

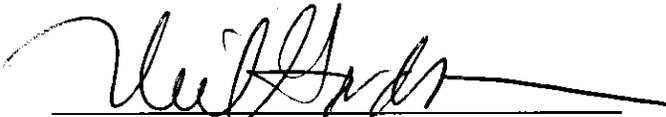


William Creal, Chief
Water Resources Division

March 7, 2013

Date

APPROVED AS TO FORM:



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

February 25, 2013
Date