

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

In the matter of:

ACO-000311

Date Entered: 5-10-16

Mr. Greg Sirna
402 North Nottawa Street
Centreville, Michigan 49032

ADMINISTRATIVE CONSENT ORDER

This document results from allegations by the Department of Environmental Quality (DEQ), Water Resources Division (WRD). The DEQ alleges that Mr. Greg Sirna, of 402 North Nottawa Street, Centreville, Michigan, is the owner and operator of the Centreville Dam, which is located at Latitude 41.921667, Longitude -85.508333, T06N R10W, Section 30 in Centreville, St. Joseph County, Michigan. The DEQ also alleges that Mr. Sirna is in violation of Part 301, Inland Lakes and Streams, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.30101 et seq. (Part 301), Part 315, Dam Safety, of the NREPA, MCL 324.31501 et seq. (Part 315), and Part 435, Hunting and Fishing Licensing, of the NREPA, MCL 324.43501 et seq. (Part 435), and the administrative rules promulgated pursuant to Part 301, Part 315, and Part 435. Mr. Sirna is a person, as defined by Section 301 of NREPA, MCL 324.301. Mr. Sirna and the DEQ agree to resolve the violations set forth herein through entry of this Administrative Consent Order (Consent Order).

I. STIPULATIONS

Mr. Sirna and the DEQ stipulate as follows:

- 1.1 The NREPA is an act to protect the environment and natural resources in the state.
- 1.2 Part 301 of the NREPA (Part 301) and the rules promulgated thereto, provides in part that a person shall not fill bottomland, diminish, or structurally interfere with the natural flow of an inland lake or stream without obtaining a permit from the department.

- 1.3 Part 315 of the NREPA and the rules promulgated pursuant thereto provide, in part, that a person shall not construct, repair, alter, or remove a dam without a permit from the DEQ.
- 1.4 The Centreville Dam is a dam by definition and is regulated under Part 315.
- 1.5 The DEQ is authorized by Section 30112(1) of Part 301 of the NREPA, MCL 324.30112(1), and Section 31524 of Part 315 of the NREPA, MCL 324.31524, to enter orders requiring persons to cease or correct activities in violation of a specific part. The director of the DEQ may delegate this authority to a designee under Section 301(b) of the NREPA, MCL 324.301(b).
- 1.6 Mr. Sirna consents to the issuance and entry of this Consent Order and stipulates that the entry of this Consent Order is enforceable as such under Section 30112 of Part 301. Mr. Sirna 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 WRD, delegate of the director, pursuant to Section 301(b) of the NREPA.
- 1.7 Mr. Sirna and the DEQ agree that the signing of this Consent Order is for settlement purposes only and does not constitute an admission by Mr. Sirna that the law has been violated.
- 1.8 Mr. Sirna certifies that he is voluntarily entering into this Consent Order. Mr. Sirna hereby agrees to comply with all requirements under this Consent Order to resolve the violations stated in Section II of this Consent Order and agrees to achieve compliance with Part 301, Part 315, and Part 435 by fulfilling the terms of Section III of this Consent Order.

II. FINDINGS

- 2.1 The DEQ recognizes the historically established maximum elevation of the impoundment of the Prairie River created by the Centreville Dam (Mill Pond) at 820.9 feet above Mean Sea Level as set by the St. Joseph County Circuit Court in 1922. Mr. Sirna, owner and operator of the dam, currently holds no license from the Federal Energy Regulatory Commission to generate electricity for the purposes of consumption on the public grid, but has held such a license in the past, and may submit an application for such a license in the future.
- 2.2 The DEQ maintains that the Prairie River, the Mill Pond, and the mill race of the former mill (Mill Race) all meet the definition of an “inland lake or stream” as defined by Section 30101(i) of Part 301, MCL 324.30101(i), and are regulated under Part 301. Mr. Sirna disputes whether the Mill Race meets the definition of a stream.
- 2.3 The flow of the Prairie River upstream of the Centreville Dam can periodically be subject to “adverse flow conditions” outside of Mr. Sirna’s control. These “adverse flow conditions” include, but are not necessarily limited to: low flow in the Prairie River due to irrigation pumping; fluctuating flows from operation of the upstream Lake Templene Dam; increased sediment load and bank erosion from adjacent agricultural and recreational uses; and increased aquatic vegetation/debris loads from upstream sources.
- 2.4 On September 5, 2014, the WRD Kalamazoo District Office issued a Violation Notice regarding the drawdown of the Mill Pond to a water surface elevation of 818.2 feet National Geodetic Vertical Datum of 1929 (NGVD 29), below the normal pool elevation for the Mill Pond. A Part 301 permit for the drawdown of the Mill Pond had not been issued.
- 2.5 On September 14, 2014, a citizen contacted the DEQ by email stating a number of fish had been found in the Mill Race.

- 2.6 On September 16, 2014, Michigan Department of Natural Resources staff reported 1,140 dead fish representing 11 species in the Mill Race, appearing to have been killed as a result of the dewatering of the Mill Race. The taking of fish without a license is a violation of Part 435.
- 2.7 The Centreville Dam has not been inspected in the past five years by a professional engineer, as required by Part 315.

III. COMPLIANCE PROGRAM

IT IS THEREFORE AGREED AND ORDERED THAT Mr. Sirna shall take the following actions to prevent future violations of Part 301, Part 315, and Part 435.

- 3.1 On the effective date of this Consent Order and each day thereafter, Mr. Sirna shall comply with and implement the provisions set forth in this Consent Order.
- 3.2 Under normal flow conditions, Mr. Sirna shall operate the principal spillway flood gates, canal head gates, and powerhouse gates of the Centreville Dam in such a manner that flow is present in both the Mill Race and Prairie River and a normal water surface elevation of approximately 820.0 +/- feet NGVD 29 is maintained in the Mill Pond. Under flooding conditions, Mr. Sirna shall operate the gates as necessary in order to prevent overtopping the earthen embankments and to maintain the court-ordered maximum Mill Pond elevation of 820.9 feet NGVD 29, if possible. As flood flows return to normal, Mr. Sirna shall close the gates as appropriate to prevent the water surface elevation in the Mill Pond from falling below the principal overflow spillway notch elevation, or 819.5 +/- feet NGVD 29, unless under drought conditions, under adverse flow conditions (as defined above), or unless otherwise authorized by DEQ permit. The level of the Mill Pond shall not exceed 820.9 feet NGVD 29 or fall below 819.5 feet NGVD 29 without a permit from the DEQ.
- 3.3 Mr. Sirna shall apply for and obtain a permit from the DEQ for any proposed project that may cause an increase or diminishment in the flow in the Mill Race or Prairie River or

that may increase or diminish the elevation of the Mill Pond outside of the range listed in paragraph 3.2.

- 3.4 Unless specifically exempt under Part 315 or Part 301, Mr. Sirna shall not dredge, fill, or place a structure on the bottomlands of the Mill Race, the Prairie River or the Mill Pond, without first receiving a permit from the DEQ.
- 3.5 Mr. Sirna shall complete and submit a dam safety inspection report, prepared by a professional engineer licensed in the State of Michigan as outlined in Rule 10 of the Part 315 administrative rules, Michigan Administrative Code, R 281.1310, to the DEQ once every five years with the first report completed no later than May 30, 2016.
- 3.6 Unless specifically exempt by Parts 301 or 315, Mr. Sirna shall apply for and obtain a permit, for future structural changes to the dam.
- 3.7 Mr. Sirna shall submit all reports, work plans, specifications, schedules, or any other writing required by this section to the Kalamazoo District Supervisor, WRD, DEQ, 7953 Adobe Road, Kalamazoo Michigan, 49009-5025. The cover letter with each submittal shall identify the specific paragraph and requirement of this Consent Order that the submittal is intended to satisfy.
- 3.8 The WRD agrees to provide to Mr. Sirna copies of public notices and permits for any future drawdown of or adjustment to the level of Lake Templene.

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 Mr. Sirna, 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 Mr. Sirna, in writing, specifying the reasons for such disapproval. Mr. Sirna 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 Mr. Sirna of this disapproval.
- 4.4 In the event the DEQ approves a work plan, proposal, or other document, submitted by Mr. Sirna, either in its original form or with specific modifications, it will notify Mr. Sirna, in writing, specifying all 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 Mr. Sirna 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 not acceptable to the DEQ, the DEQ will notify Mr. Sirna 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 Mr. Sirna to submit the required dam safety inspection report within the applicable time period specified above constitutes a violation of this Consent Order and shall subject Mr. Sirna to the enforcement provisions of this Consent Order, including the stipulated penalty provisions specified in paragraph 8.3.
- 4.7 Any delays caused by Mr. Sirna's failure to submit the dam safety inspection report when due shall in no way affect or alter Mr. Sirna'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 the dam safety inspection report or any other writing submitted by Mr. Sirna will be construed as relieving Mr. Sirna of its obligation to obtain written approval, if and when required by this Consent Order.

V. EXTENSIONS

- 5.1 Mr. Sirna and the DEQ agree that the DEQ may grant Mr. Sirna 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, WRD, Enforcement Unit Chief, P.O. Box 30458, Lansing, Michigan 48909-7958, and the Kalamazoo District Supervisor at the address in paragraph 3.2, no later than ten business days prior to the pertinent deadline; such a request 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 Mr. Sirna from meeting the deadline(s).
 - c. A description of the measures Mr. Sirna has taken and/or intends to take to meet the required deadline.
 - d. The length of the extension requested and the specific date by which the obligation will be met.

The district supervisor, in consultation with the Enforcement Unit Chief, shall respond in writing to such requests within a reasonable time. 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 Mr. Sirna shall verbally report any violation(s) of the terms and conditions of this Consent Order to the Kalamazoo District Supervisor by no later than the close of the next business day following his detection of such violation(s) and shall follow such notification with submission of a written report to the Kalamazoo District Office 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). Mr. Sirna shall report any anticipated violation(s) of this Consent Order to the above-referenced individual in advance of the relevant deadlines whenever possible.

VII. RIGHT OF ENTRY

- 7.1 Mr. Sirna shall allow any authorized representative of or contractor designated by 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 with applicable law. This paragraph in no way expands or 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.

VIII. PENALTIES

- 8.1 Mr. Sirna agrees to pay a penalty of **\$372.80 DOLLARS** for the taking of fish without a license as 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 8.6.
- 8.2 For each failure to comply with a specific deadline contained in paragraph 3.5 or Section IV of this Consent Order (or an extended deadline under Section V), Mr. Sirna shall pay stipulated penalties of **\$500**. If, after 30 days from the original (or extended) deadline, Mr. Sirna has not fully corrected the violation, stipulated penalties shall begin to accrue in accordance with paragraph 8.4 of this Consent Order.

- 8.3 Except as provided for in paragraph 8.2, for each failure to comply with a provision of Section III or IV of this Consent Order, Mr. Sirna 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.
- 8.4 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, Mr. Sirna shall pay stipulated penalties of \$200 per violation per day for each day of violation.
- 8.5 To ensure timely payment of the above civil fine, costs, and stipulated penalties, Mr. Sirna 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.
- 8.6 Mr. Sirna agrees to pay all funds due pursuant to this agreement by check made payable to the State of Michigan and delivered to the Accounting Services Division, Cashier's Office for DEQ, P.O. Box 30657, Lansing, Michigan 48909-8157, or hand delivered to the Accounting Services Division, Cashier's Office for DEQ, 425 West Ottawa Street, Lansing, Michigan 48933. To ensure proper credit, all payments made pursuant to this Consent Order must include the **Payment Identification No. WRD90008**.
- 8.7 Mr. Sirna agrees not to contest the legality of the penalty paid pursuant to paragraph 8.1, above. Mr. Sirna further agrees not to contest the legality of any stipulated penalties or interest penalties assessed pursuant to paragraphs 8.2, 8.3, 8.4, and 8.5, 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.

IX. FORCE MAJEURE

- 9.1 Mr. Sirna 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 Mr. Sirna's obligations under this Consent Order in accordance with this section.
- 9.2 For the purpose of this Consent Order, "Force Majeure" means an occurrence or nonoccurrence arising from causes not foreseeable, beyond the control of, and/or outside the fault of Mr. Sirna such as: an Act of God, untimely review of permit applications or submissions by the DEQ or other applicable authority, and acts by or omissions of third parties that (a) could not be avoided or overcome by Mr. Sirna's diligence and that (b) 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 Mr. Sirna's actions or omissions.
- 9.3 Mr. Sirna 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 Mr. Sirna to prevent or minimize the delay, and the timetable by which those measures shall be implemented. Mr. Sirna shall adopt all reasonable measures to avoid or minimize any such delay.
- 9.4 Failure of Mr. Sirna to comply with the notice requirements and time provisions under paragraph 9.3 shall render this Section IX 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 9.3, above.

- 9.5 If the parties agree that the delay or anticipated delay was beyond the control of Mr. Sirna this may be so stipulated, and the parties to this Consent Order may agree upon an appropriate modification of this Consent Order. However, outside of the specifically defined terms set forth above, 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 such a force majeure claim is not subject to judicial review. The burden of proving that any delay was beyond the reasonable control of Mr. Sirna, and that all the requirements of this Section IX have been met by Mr. Sirna, rests with Mr. Sirna.
- 9.6 An extension of one compliance date based upon a particular incident does not necessarily mean that Mr. Sirna 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.

X. GENERAL PROVISIONS

- 10.1 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 Mr. Sirna to comply with the requirements of the NREPA and its rules.
- 10.2 The DEQ and Mr. Sirna consent to enforcement of this Consent Order in the same manner and by the same procedures for all final orders entered pursuant to Part 17, Michigan Environmental Protection Act, of the NREPA, MCL 324.1701 *et seq.*
- 10.3 This Consent Order in no way affects Mr. Sirna's responsibility to comply with any other applicable state, federal, or local laws or regulations.
- 10.4 The WRD reserves its right to pursue appropriate action regarding future incidents or the enforcement of this agreement, 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 WRD is precluded from seeking both a stipulated fine under this Consent Order and a statutory fine for the same violation.

- 10.5 Nothing in this Consent Order is or shall be considered to create or affect any liability Mr. Sirna may have for natural resource damages caused by Mr. Sirna'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.
- 10.6 Mr. Sirna has no plans to sell or transfer ownership of the facility during the period that this Consent Order is in effect. In the event Mr. Sirna sells or transfers the facility while this consent order is in effect, Mr. Sirna shall advise any purchaser or transferee of the existence of this Consent Order in connection with such sale or transfer. Within 30 calendar days, Mr. Sirna shall also notify the WRD Kalamazoo 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 WRD Kalamazoo District Supervisor within 30 days of assuming the obligations of this Consent Order.
- 10.7 The provisions of this Consent Order shall apply to and be binding upon the parties to this action, and their successors and assigns.
- 10.8 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.

XI. TERMINATION

- 11.1 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, Mr. Sirna shall submit a request consisting of a written certification that Mr. Sirna 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.
- d. Confirmation that two dam safety inspection reports have been submitted pursuant to paragraph 3.5 by May 30, 2016 and May 30, 2021.

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.

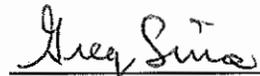
DEPARTMENT OF ENVIRONMENTAL QUALITY



Peter Ostlund, Acting Chief
Water Resources Division

5/10/2016
Date

GREG SIRNA



By: Greg Sirna

5/5/2016
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

May 9, 2016
Date