

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

ADMINISTRATIVE CONSENT ORDER

In the matter of: **Haviland Enterprises Incorporated**
Compliance / Enforcement Action No. 96E720F8-CFFC
Date Entered: 12-3-2015

SECTION I

FACILITY OWNER OR MUNICIPALITY

FULL LEGAL NAME OF FACILITY OR MUNICIPALITY: Haviland Enterprises Incorporated		
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS IDENTIFICATION NO.: 126836		
ADDRESS: 421 Ann Street NW		
CITY: Grand Rapids	STATE: Michigan	ZIP: 49504
AUTHORIZED SIGNATORY: E. Bernard Haviland, Chief Executive Officer		FACILITY OWNER PHONE NO.: 616-361-2929

FACILITY NAME AND LOCATION

FACILITY NAME: Haviland Enterprises Incorporated		
FACILITY ADDRESS: 421 Ann Street NW		
CITY: Grand Rapids	STATE: Michigan	ZIP: 49504
COUNTY: Kent		
FACILITY CONTACT NAME: Josh Mueller, Environmental, Health, and Safety Manager		FACILITY CONTACT PHONE NO.: 616-405-2311

This document results from allegations by the Department of Environmental Quality (DEQ), Water Resources Division (WRD). The DEQ alleges that the above-referenced Facility Owner (Owner) is in violation of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), the administrative rules promulgated under this statute, and applicable permits issued to the Owner, as identified below.

STATUTE		PERMIT(S)
Part 31, Water Resources Protection, MCL 324.3101 <i>et seq.</i>	<input checked="" type="checkbox"/>	Certificate of Coverage (COC) No. MIS110571 under National Pollutant Discharge Elimination System (NPDES) General Permit No. MIS110000

Specific violations are referenced in DEQ letters attached to this Administrative Consent Order (Consent Order) as Exhibit A. The Owner and the DEQ agree to resolve the violations set forth herein through entry of this Consent Order. The Owner further agrees to resolve all compliance

issues set forth in Exhibit A in accordance with the requirements contained in this Consent Order. This Consent Order, in its entirety, shall consist of Section I, the attached Sections II, III, and IV, Exhibit A, and any other referenced attachments, exhibits, or appendices. This Consent Order shall be considered null and void if it does not include, at a minimum, Sections I, II, III, and IV, and Exhibit A.

The Owner agrees to pay a civil fine of **\$7250.00** for the violations specified in Exhibit A of this Consent Order. Payment of the civil fine shall be made in accordance with the invoice that will be mailed to the Owner after the execution of this Consent Order, but not later than January 15, 2016. Failure to make timely payment constitutes a violation of this Consent Order. The Owner 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 W. Ottawa St., Lansing, Michigan 48933. To ensure proper credit, all payments made pursuant to this Consent Order must include the **Payment Identification No. WRD40112**. The Owner agrees not to contest the legality of the civil fine.

Signatories

DEPARTMENT OF ENVIRONMENTAL QUALITY



William Creal, Chief
Water Resources Division

12/3/15
Date

HAVILAND ENTERPRISES INCORPORATED

I undersigned CERTIFY that I am fully authorized by the party identified above to enter into this Consent Order to comply by consent and to EXECUTE and LEGALLY BIND that party to it. I further attest that all information provided herein is accurate and true.



By: E. Bernard Haviland
Title: Chief Executive Officer

11/24/15
Date

SECTION II - COMPLIANCE SCHEDULE

IT IS THEREFORE AGREED AND ORDERED THAT Owner shall take the following actions to comply with and to prevent further violations of Part 31 of the NREPA.

1. The Owner agrees to comply with Part 31 of the NREPA and NPDES General Permit No. MIS110000.
2. Not later than 30 days after the effective date of this Consent Order, the Owner shall submit a written report to the DEQ describing the actions implemented to prevent a similar release of Sodium Hydroxide in the future.
3. Not later than 30 days after the effective date of this Consent Order, the Owner shall submit to the DEQ for review and approval a Storm Water Pollution Prevention Plan (SWPPP) which describes the nonstructural and structural controls that are implemented to maintain compliance with the terms and conditions of NPDES General Permit No. MIS110000.
4. Not later than 30 days of receiving comment from the DEQ on the SWPPP, the Owner shall incorporate the DEQ's comments into the SWPPP, and shall then fully implement the SWPPP.
5. The Owner shall submit all reports, work plans, specifications, schedules, or any other writing required by this section to the Grand Rapids District Supervisor, WRD, DEQ, Grand Rapids District Office, 350 Ottawa Avenue NW, Unit 10, Grand Rapids, Michigan 49503-2341. The cover letter with each submittal shall identify the specific paragraph and requirement of this Consent Order that the submittal is intended to satisfy.

Sections III and IV of this Consent Order shall not be altered 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 changes to this document without written approval from the DEQ renders the Consent Order null and void.

SECTION III - STIPULATIONS

The Owner and the DEQ stipulate as follows:

1. The DEQ reserves all rights afforded to it under the law or laws under which this Consent Order is being entered. The DEQ is authorized to enter this Consent Order to comply with state law under Section 3112(4) of Part 31 of the NREPA.
2. The Owner 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 the appropriate provisions of state law identified in Section I this Consent Order. The Owner 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.
3. The Owner and the DEQ agree that the signing of this Consent Order is for settlement purposes only and does not constitute an admission by the Owner that the law has been violated.
4. The Signatory to this Consent Order on behalf of the Owner agrees and attests that it is fully authorized to assure that the Owner will comply with all requirements under this Consent Order.
5. The Owner shall achieve compliance with the aforementioned regulations in accordance with the requirements contained in Section II of this Consent Order.

SECTION IV - GENERAL PROVISIONS

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 Owner to comply with the requirements of the NREPA and its rules. 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 pursue the Owner for injunctive relief and costs associated with overseeing and conducting these remedial actions.
2. 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 the provisions of the NREPA, as amended.
3. This Consent Order in no way affects the Owner responsibility to comply with any other applicable state, federal, or local laws or regulations.

4. The WRD reserves its right to pursue appropriate action, including injunctive relief to enforce the provisions of this Consent Order, and applicable statutory fines for any violation of this Consent Order.
5. Nothing in this Consent Order is or shall be considered to affect any liability the Owner may have for natural resource damages caused by the Owner acts or omissions. The State of Michigan does not waive any rights to bring an appropriate action to recover such damages to the natural resources.
6. In the event the Owner 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 Owner shall also notify the WRD 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 District Supervisor within 30 days of assuming the obligations of this Consent Order.
7. The provisions of this Consent Order shall apply to and be binding upon the parties to this action, and their successors and assigns.
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.

9. REPORTING

The Owner shall verbally report any violation(s) of the terms and conditions of this Consent Order to the 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 Owner shall report any anticipated violation(s) of this Consent Order to the above-referenced individual in advance of the relevant deadlines whenever possible.

10. RETENTION OF RECORDS

Upon request by an authorized representative of the DEQ, the Owner shall make available to the DEQ all records, plans, logs, and other documents required to be maintained under this Consent Order or pursuant to applicable laws or rules. All such documents shall be retained by the Owner 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 the applicable law or its rules.

11. RIGHT OF ENTRY

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.

12. DEQ APPROVAL OF SUBMITTALS

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 Owner, the following process and terms of approval shall apply:

- a. 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.
- b. In the event the DEQ disapproves a work plan, proposal, or other document, it will notify the Owner, in writing, specifying the reasons for such disapproval. The Owner 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 Owner of this disapproval.
- c. In the event the DEQ approves with specific modifications, a work plan, proposal, or other document, it will notify the Owner, 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 Owner 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 Owner of this disapproval.
- d. 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.
- e. Failure by the Owner 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 Owner to the enforcement provisions of this Consent Order.

- f. Any delays caused by the Owner's failure to submit an approvable work plan, proposal, or other document when due shall in no way affect or alter the Owner's responsibility to comply with any other deadline(s) specified in this Consent Order.
- g. No informal advice, guidance, suggestions, or comments by the DEQ regarding reports, work plans, plans, specifications, schedules or any other writing submitted by the Owner will be construed as relieving the Owner of its obligation to obtain written approval, if and when required by this Consent Order.

13. EXTENSIONS

The Owner and the DEQ agree that the DEQ may grant the Owner a reasonable extension of the specified deadlines set forth in this Consent Order. Any extension shall be preceded by a written request to the District Supervisor 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 Owner from meeting the deadline(s).
- c. A description of the measures the Owner 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.

No change or modification to this Consent Order shall be valid unless in writing from the DEQ, and if applicable, signed by both parties.

14. TERMINATION

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 Owner shall submit a request consisting of a written certification that the Owner 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 II, 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.

In the matter of:
Administrative Consent Order
Compliance / Enforcement Action No. 96E720F8-CFFC
Page 8 of 8

Exhibit A
Administrative Consent Order

<u>Enforcement Type</u>	<u>Issued Date</u>
VIOLATION AND ENFORCEMENT NOTICE	November 18, 2015



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
GRAND RAPIDS DISTRICT OFFICE



DAN WYANT
DIRECTOR

November 18, 2015

CERTIFIED MAIL
RETURN RECEIPT

Mr. E. Bernard Haviland, Chief Executive Officer
Haviland Enterprises Incorporated
421 Ann Street NW
Grand Rapids, Michigan 49504

**VIOLATION & ENFORCEMENT
NOTICE
COMPLIANCE /
ENFORCEMENT ACTION No.
96E720F8-CFFC**

Dear Mr. Haviland:

SUBJECT: Violation and Enforcement Notice
National Pollutant Discharge Elimination System (NPDES)
Certificate of Coverage (COC) No. MIS110571
Designated Name: Haviland Enterprises Incorporated

The Department of Environmental Quality (DEQ), Water Resources Division (WRD), Grand Rapids District Office, is pursuing an escalated enforcement action for violations of law by the Haviland Enterprises Incorporated (hereinafter "facility") as set forth herein.

On August 11, 2015, 173 gallons of 50% Sodium Hydroxide was released to the City of Grand Rapids' separate storm sewer system. The release entered the separate storm sewer catch basin located at the southeast corner of Edwin Street NW and Sterling Avenue NW in Grand Rapids. The separate storm sewer system discharges to the waters of the state being Indian Mill Creek. The facility reported that 78 gallons of Sodium Hydroxide was released to Indian Mill Creek and 95 gallons was recovered from the storm sewer system. The release of Sodium Hydroxide to waters of the state is considered an unauthorized discharge.

The unauthorized discharge of Sodium Hydroxide to waters of the state 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 Section 324.3109 (1) which states:

- 324.3109 (1) A person shall not directly or indirectly discharge into the waters of the state a substance that is or may become injurious to any of the following:*
- a. To the public health, safety, or welfare.*
 - b. To domestic, commercial, industrial, agricultural, recreational, or other uses that are being made or may be made of such waters.*
 - c. To the value or utility of riparian lands.*

- d. *To livestock, wild animals, birds, fish, aquatic life, or plants or to their growth or propagation.*
- e. *To the value of fish and game.*

On September 1, 2015, DEQ, WRD staff performed a storm water permit compliance inspection at the facility. Observations and information obtained during the inspection identified that the facility has been operating in violation of General Permit No. MIS110000 for at least the last three (3) years. The Storm Water Pollution Prevention Plan (SWPPP) did not meet all the conditions of General Permit No. MIS110000 Part 1, Section C and the required records identified in General Permit No. MIS110000 Part 1, Section D.1 could not be provided.

The facility is hereby notified that the violations identified in this Violation and Enforcement Notice are violations of Part 31 of NREPA, General Permit No. MIS110000. The facility is requested to immediately undertake all actions necessary to resolve all violations identified in this Notice.

On August 14, 2015, DEQ, WRD staff received a DEQ, Spill or Release Report form from the facility which described the incident and the actions the facility took to respond, control, and address the situation.

The facility shall take the following actions to prevent further violations of Part 31 of NREPA:

1. Not later than 30 days after the issuance date of this Violation and Enforcement Notice, the facility shall submit a written report to the DEQ describing the actions implemented to prevent a similar release of Sodium Hydroxide in the future.
2. Not later than 30 days after the issuance date of this Violation and Enforcement Notice, the facility shall submit to the DEQ for review and approval a Storm Water Pollution Prevention Plan (SWPPP) which describes the nonstructural and structural controls that are implemented to maintain compliance with the terms and conditions of NPDES General Permit No. MIS110000.
3. Not later than 30 days of receiving comment from the DEQ on the SWPPP, the facility shall incorporate the DEQ's comments into the SWPPP, and shall then fully implement the SWPPP.

The written report and SWPPP shall be submitted to the DEQ, WRD Grand Rapids District Supervisor, at the address specified below.

The violations identified herein, as well as, any additional violations discovered hereafter must be formally resolved through entry of an administrative consent order (ACO). The ACO will include an agreed-upon compliance program to resolve the WRD's allegations, any additional requirements, and a civil fine. Negotiations to resolve this matter through an ACO shall not exceed 90 days.

Enclosed please find two (2) copies of a proposed ACO that specifies the requirements necessary to resolve violations of Part 31 of NREPA.

In light of the nature of the violations, the DEQ proposes entry of the enclosed ACO as an appropriate and expeditious means of resolving these issues. Failure to resolve this matter by entry of the ACO within 90 days of receipt of this letter may result in escalation for additional enforcement. **If this ACO is acceptable to the facility please sign and return both (two) original documents to the DEQ, WRD Grand Rapids District Supervisor, not later than 10 days after receipt of this letter.** Upon receipt of the signed documents, the DEQ will secure the other signatures and return one fully executed original document to the facility. The ACO becomes effective on the date that it is signed by the DEQ, WRD Chief, and the civil fine must be paid not later than 30 days after that date.

Alternatively, the facility is offered an opportunity to meet with the DEQ regarding the Violation and Enforcement Notice and proposed ACO on **Monday, November 30, 2015, from 1:00pm to 2:00pm**, at the DEQ, Grand Rapids District Office, located at State Office Building, Fifth Floor, 350 Ottawa Avenue N.W., Unit 10, Grand Rapids, Michigan 49503-2341.

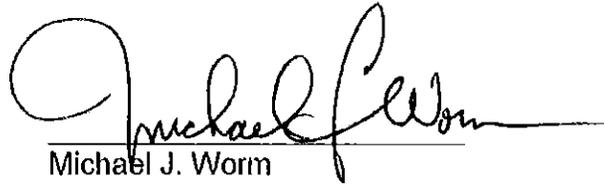
The facility may also submit a written response to this Violation and Enforcement Notice and proposed ACO at any time prior to, during, or in lieu of, the scheduled conference. The written response should state whether representatives of the facility are planning to attend the conference or if the submittal is being made in lieu of the conference. If a written response to this letter is not received from the facility by the date of the conference, or if the facility does not attend the conference, the DEQ may initiate further enforcement actions.

The DEQ reserves its right to take all necessary and appropriate enforcement actions for all violations of Part 31 of NREPA that have occurred to date and any violations of Part 31 of NREPA that may occur in the future. These actions may include, but are not limited to, seeking civil fines, injunctive relief, natural resources damages, all costs associated with this enforcement action, including attorney costs, and any other relief available to the DEQ.

The facility's continuing failure to comply with the terms of Part 31 of NREPA, any other requirements set forth in this Notice, or failure to resolve these violations through entry of an ACO within the 90 day time frame, may result in additional fines, penalties or other actions.

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER RESOURCES DIVISION

Date Issued: 11/18/15



Michael J. Worm
District Supervisor
Grand Rapids District Office
Water Resources Division – DEQ

ADDRESS FOR FURTHER CORRESPONDENCE:

Michael J. Worm
District Supervisor
Grand Rapids District Office
Water Resources Division – DEQ
State Office Building, Fifth Floor
Grand Rapids, Michigan 49503-2341

mjw/rg/ljr

Enclosures

cc/enc: Mr. Josh Mueller, Haviland Enterprises, Inc.
Mr. Michael Masterson, Field Operations Section, WRD – DEQ (via email)
Mr. Barry Selden, Enforcement Unit, WRD – DEQ (via email)