

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

In the matter of:

ACO-000265

Date Entered:

4/16/15

The Village At Grand Traverse, L.L.C
3805 Edwards Road, Suite 700
Cincinnati, Ohio 45209

ADMINISTRATIVE CONSENT ORDER

This document results from allegations by the Michigan Department of Environmental Quality (MDEQ), Water Resources Division (WRD). The MDEQ alleges The Village At Grand Traverse, L.L.C. (VGT) located at 1651 East Hayes Road, Ithaca, Michigan 48847, is in violation of Part 31, Water Resources Protection, MCL 324.3101 *et seq.* (Part 31); and Part 91, Soil Erosion and Sedimentation Control (SESC), MCL 324.9101 *et seq.* (Part 91), of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), and associated administrative rules. These violations occurred as a result of earth change activities associated with development of the 182-acre commercial development owned by the VGT and Meijer, Inc., located at the southwest corner of M-72 and Lautner Road, Acme Township, Grand Traverse County (Property).

On January 23, 2015, the VGT obtained a construction easement from Meijer, Inc., on property owned by Meijer, Inc. The construction easement establishes an ownership interest allowing the VGT to obtain the necessary permits in its name for the completion of the construction activities on Meijer, Inc.'s property under Part 31 and Part 91 of the NREPA.

The VGT has agreed to the entry of this Administrative Consent Order (Consent Order), which contains specific requirements for the Property to ensure compliance with Part 31 and Part 91 of the NREPA.

The VGT is a person, as defined by Section 301 of the NREPA, MCL 324.301, and is registered with the Michigan Department of Licensing and Regulatory Affairs as able to conduct business in the State of Michigan under Identification No. B3521F. The VGT and the MDEQ agree to resolve the alleged violations set forth herein through entry of this Consent Order. The VGT

and the MDEQ agree that the effluent limits set forth in this Consent Order are considered interim limits for this Property only and shall not apply to any discharges associated with any future development of the Property or any other site in the State of Michigan.

I. STIPULATIONS

The VGT and the MDEQ stipulate as follows:

- 1.1 The NREPA is an act that controls pollution to protect the environment and natural resources in the state.
- 1.2 Part 31 of the NREPA and the rules promulgated pursuant thereto provide for the protection, conservation, and control of pollution of the water resources of the state.
- 1.3 Part 91 of the NREPA and the rules promulgated pursuant thereto provide for the control of soil erosion and sedimentation arising from earth change activities.
- 1.4 The MDEQ is authorized by Section 3112(4) of Part 31 MCL 324.3112(4), and Section 9112(7) of Part 91 MCL 324.9112(7), to enter orders requiring persons to abate pollution, or otherwise cease or correct activities in violation of Part 31 and Part 91 of the NREPA. The director of the MDEQ may delegate this authority to a designee under Section 301(b) of the NREPA, MCL 324.301(b).
- 1.5 The VGT 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 MDEQ and is enforceable as such under Section 3112(4) of Part 31 and Section 9112(7) of Part 91 of the NREPA. The VGT 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 MDEQ, WRD, as delegate of the director of the MDEQ, pursuant to Section 301(b) of the NREPA.

- 1.6 The VGT and the MDEQ agree that the signing of this Consent Order is for settlement purposes only and does not constitute an admission by the VGT that the law has been violated.
- 1.7 The signatory to this Consent Order certifies that it is fully authorized by the VGT to enter into the terms and conditions of this Consent Order and to execute and legally bind the VGT to this document. The signatory also certifies that the VGT agrees to voluntarily enter into this Consent Order. The VGT 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 31 and Part 91 of the NREPA and associated rules by fulfilling the terms of Section III of this Consent Order.

II. FINDINGS

- 2.1 On October 16, 2003, the VGT became fee owner of five parcels that comprise the Property. The parcel identification numbers for the five properties were 28-01-102-005-00, 28-01-102-001-00, 28-01-102-001-00, 28-01-102-009-00, and 28-01-102-017-00.
- 2.2 On October 16, 2003, the five parcels comprising the Property were consolidated into two parcels with two new parcel identification numbers 28-01-102-001-01 (21.56 acres) and 28-01-102-001-02 (160.55 acres).
- 2.3 On July 3, 2012, the Grand Traverse County Enforcing Agency (Grand Traverse CEA) issued to the VGT Permit No. 23049 under Part 91 of the NREPA to conduct an earth change activity on 78 acres of the Property (Construction Site). The expiration date for Permit No. 23049 was June 14, 2014.
- 2.4 On October 4, 2013, Meijer, Inc. purchased parcel identification number 28-01-102-001-01 from the VGT. The VGT remained the owner of parcel 28-01-102-001-02.

- 2.5 On January 31, 2014, the VGT obtained authorization under Part 31 of the NREPA and the Part 21 Rules, Wastewater Discharge Permits, promulgated pursuant to Part 31; 2006 AACS R 323.2101 *et seq.*, as amended, specifically, R 323.2190 (Permit-by-Rule) to discharge storm water from the Property. The expiration date for the authorization under Permit-by-Rule was June 14, 2014.
- 2.6 On June 12, 2014, the Grand Traverse CEA issued the VGT Permit No. 23059 under Part 91 of the NREPA to conduct an earth change activity on 78 acres that span both the Meijer, Inc. and VGT properties and to replace Permit No 23059. The expiration date for the Part 91 Permit No. 23059 is June 14, 2015.
- 2.7 On June 26, 2014, the VGT obtained reauthorization under Part 31 of the NREPA and Permit-by-Rule to discharge storm water from the Property.
- 2.8 In July or August 2014, the VGT started conducting the earth change activities on the Property.
- 2.9 The MDEQ conducted inspections on the following dates and identified violations of Part 31 and Part 91 of the NREPA:
- September 23, 2014
 - October 2, 2014
 - October 3, 2014
 - October 15, 2014
 - November 24, 2014
- 2.10 The MDEQ notified the VGT of the alleged violations of Part 31 and Part 91 of the NREPA in letters dated October 10, 2014; October 21, 2014; and January 28, 2015 (see Attachment A).

- 2.11 The VGT responded to the MDEQ's letters in correspondence date October 31, 2014, and February 13, 2015. The VGT also provided a Corrective Action Plan to the MDEQ with its October 31, 2014, response.

III. COMPLIANCE PROGRAM

IT IS THEREFORE AGREED AND ORDERED THAT the VGT shall take the following actions to comply with and prevent further violations of Part 31 and Part 91 of the NREPA and the associated administrative rules:

- 3.1 The VGT shall comply with all requirements under Part 31 and Part 91 of the NREPA and the associated administrative rules, including obtaining and maintaining all required permits and seeking permit modification as required under law. This Consent Order does not obviate the need to acquire additional state, local, or federal permits as may be required by law.
- 3.2 Not later than 14 days after the effective date of this Consent Order, the VGT shall submit to the Grand Traverse CEA an application for a revised Part 91 permit that includes a revised SESC plan. The application shall seek authorization for only those activities associated with finishing the grading of the Construction Site and installing both temporary and permanent SESC measures. The application shall not include earth change activities associated with the future development of the Property. Once the Grand Traverse CEA modifies or reissues the permit, including the revised SESC plan, to the VGT (2015 SESC Permit), it shall be incorporated by reference and become enforceable under this Consent Order. Within three business days after the VGT receives the modified or reissued permit from Grand Traverse CEA, the VGT shall submit a Notice of Renewal for the Notice of Coverage under Permit-by-Rule to the MDEQ, WRD, Permits Section, as required under Part 31 of the NREPA.
- 3.3 If the SESC measures or SESC plan is determined to be ineffective by the MDEQ or the Grand Traverse CEA, the VGT shall take any and all additional actions necessary to

address the deficiencies as required under Part 31 and Part 91 of the NREPA. Within five days of the determination by the MDEQ or the Grand Traverse CEA that the SESC measures or SESC plan is determined to be ineffective, the VGT shall request a modification of the 2015 SESC Permit and the SESC plan by submitting a narrative describing the basis of the change, description of the proposed modification, and revised plan to the MDEQ, WRD, Cadillac District Office, and the Grand Traverse CEA for review and approval. Within three business days after the Grand Traverse CEA modifies or reissues the permit, the VGT shall submit a Notice of Renewal for the Notice of Coverage under Permit-by-Rule to the MDEQ, WRD, Permits Section, as required under Part 31 of the NREPA.

- 3.4 If any area(s) on the Construction Site are inactive for more than 14 days from May 1, 2015, through October 1, 2015, the VGT shall temporarily seed and mulch or place other temporary or permanent cover over the area(s) until earth change resumes in the area(s). All area(s) that are not permanently stabilized by October 1, 2015, shall be seeded and mulched.
- 3.5 If either of the two basins on the Property is discharging storm water, the VGT shall sample the storm water discharge(s) daily. The sampling sites shall be located where the slow release channel from each basin discharges into the adjacent wetlands (Sample Locations 1 and 2) as detailed on the map in Attachment B. The daily maximum limit for Sample Location 1 is 100 nephelometric turbidity units (NTU). At Sample Location 2 the daily maximum limit is 200 NTU. The daily maximum is the sum of the concentrations of individual samples divided by the number of samples taken during any calendar day. The individual samples used to calculate the daily maximum shall be representative of the discharges occurring on each calendar day from the basin(s). The daily maximum limits are only valid from the effective date of this Consent Order to September 1, 2015. After September 1, 2015, this Consent Order does not allow any discharge of sediments or sediment-laden water.

- 3.6 When there is discharge from the basin(s) or during a rain event that results in storm water discharging from the Property, the VGT shall conduct daily in-stream sampling within Acme Creek at least 100 feet from Sample Location 2, but no farther than the western boundary of the Property as detailed on the map in Attachment B (Sample Location 3). At Sample Location 3, the daily maximum limit is 50 NTU. The individual samples used to calculate the daily maximum shall be representative of the turbidity level in Acme Creek at Sample Location 3. The daily maximum limit is only valid from the effective date of this Consent Order to September 1, 2015.
- 3.7 During 2-year, 5-year, 10-year, and 25-year/24-hour rain events resulting in a discharge of storm water from the basin(s), the VGT shall collect representative samples at Sample Locations 1, 2, and 3, starting from the first 30 minutes of the discharge from the rain event until the peak discharge is expected to occur from the basin(s). Within 14 days of the execution of this Consent Order, the VGT shall provide a sampling plan to the MDEQ for review and approval detailing the number of samples it will collect to calculate the representative sample at each sample location for each rain event. The representative samples for each rain event will count each individual sample as part of the calculations for the daily maximum limit of 100 NTU for Sample Location 1, 200 NTU for Sample Location 2, and 50 NTU for Sample Location 3.
- 3.8 The VGT shall document all of the individual sampling results taken for each sample location and the daily maximum calculated for each of the sample locations. The VGT shall submit to the MDEQ the electronic copies of all sampling results for Sample Locations 1, 2, and 3, by the next business day in accordance with paragraph 3.20 of this Consent Order. If the basin(s) are not discharging storm water, this must be clearly documented in the daily storm water inspection logs.
- 3.9 If the discharge limit of 100 NTU is exceeded at Sample Location 1, or 200 NTU at Sample Location 2, the VGT shall take one or more of the following actions to come into compliance with the NTU discharge limit for sample location(s):

- a. Immediately cease the discharge of storm water from the basin(s) by plugging the outfall of the basin(s) and detaining the storm water until the sediment in the basin(s) settles and the discharge limit of 100 NTU for Sample Location 1, and 200 NTU for Sample Location 2, are met before the basin(s) is allowed to discharge.
 - b. Immediately cease the discharge of storm water from the basin(s) by plugging the outfall; and
 - i. Pump and haul the storm water that enters into the storm water basin(s) on the Property to the location authorized under Groundwater Discharge Permit No. GW11110726; or
 - ii. Pump storm water detained in the basin(s), with or without treatment through the polyacrylamide (PAM) system identified in the 2015 SESC Permit, provided that the discharge limit of 100 NTU for Sample Location 1, and 200 NTU for Sample Location 2, are met at the discharge location(s) and that the discharge occurs through a filter bag in a permanently stabilized area on the Property so as to ensure that the discharge does not cause soil erosion or sedimentation from occurring at the discharge location.
- 3.10 If the daily maximum is calculated to be 200 NTU or greater for Sample Location 1, or 300 NTU for Sample Location 2, the VGT shall immediately cease the discharge of storm water from the basin(s) and do the following:
- a. Pump and haul the storm water that enters into the storm water basin(s) on the Property to the location authorized under Groundwater Discharge Permit No. GW11110726 until the discharge limit of 100 NTU for Sample Location 1, and 200 NTU for Sample Location 2, can be met before discharges can continue;

or

- b. Pump storm water detained in the basin(s), with or without treatment through the polyacrylamide (PAM) system identified in the 2015 SESC Permit, provided that the discharge limit of 100 NTU for Sample Location 1, and 200 NTU for Sample Location 2, are met at the discharge location(s) and that the discharge occurs through a filter bag in a permanently stabilized area on the Property so as to ensure that the discharge does not cause soil erosion or sedimentation from occurring at the discharge location.
- 3.11 If the MDEQ determines that corrective action is required due to sediment and/or sediment-laden water being discharged into waters of the state, the VGT shall be required to take corrective action to restore the affected area. The VGT shall submit to the MDEQ, a corrective action plan within 14 days of the MDEQ's determination detailing the actions the VGT will take to restore the affected areas and shall include a schedule for implementing the plan. In addition, the plan shall ensure that appropriate approvals and permit modification are obtained as required under paragraph 3.3 of this Consent Order. Upon approval by the MDEQ, WRD, the corrective action plan will be incorporated by reference into this Consent Order.
 - 3.12 The VGT shall have the Property inspected by a certified storm water operator for all disturbed areas and storm water discharge points every day that the VGT is actively conducting an earth change on the Property and during all rain events until the Part 31 and Part 91 permits are terminated. If VGT is not actively conducting an earth change activity on the Property and there are no rain events, then VGT shall inspect the site at least once per week. Each inspection shall be documented on a storm water log by the certified storm water operator and maintained on file at the Property by the VGT.
 - 3.13 The VGT shall submit electronic copies of all certified operator inspection logs required under paragraph 3.12 of this Consent Order for the previous month by the 10th day of

each month until a Notice of Termination (NOT) under Part 31 of the NREPA is issued certifying that the Property is permanently stabilized.

- 3.14 The VGT shall conduct weekly meetings with its contractors and staff to discuss the SESC conditions and actions needed on the Property to ensure compliance with Part 31 and Part 91 of the NREPA. The VGT shall document the weekly meetings and include the names of the participants, the date and time the meetings took place, and the topics discussed. The VGT shall submit electronic copies of the weekly meeting logs for the previous month by the 10th day of each month in the same manner as required for the certified operator inspection logs under paragraph 3.13 of this Consent Order.
- 3.15 Not later than five days after the effective date of this Consent Order, the VGT shall provide the MDEQ the name of the person designated as the contact person for the Property who has the oversight authority on ensuring the Property is in compliance with Part 31 and Part 91 of the NREPA. The VGT shall provide the MDEQ the name of any new or additional persons designated a contact person under this paragraph within five days of their designation.
- 3.16 Not later than October 31, 2015, the VGT shall have completed all activities under the 2015 SESC Permit, including permanent stabilization of the Construction Site. The Construction Site is considered permanently stabilized when all permanent control measures have been installed, maintenance for the permanent controls has been arranged, vegetation is well established throughout all areas that were disturbed, and temporary controls have been removed.
- 3.17 The VGT shall schedule a final review with the MDEQ and the Grand Traverse CEA to verify that the Construction Site has been permanently stabilized as required under Part 31 and Part 91 of the NREPA. Once the MDEQ determines the Construction Site is permanently stabilized, the VGT shall submit an NOT as required under the Permit-by-Rule for the storm water coverage to the MDEQ within ten days of the final review.

- 3.18 The VGT agrees not to conduct any additional earth changes for any future development on the Property outside of the Construction Site until the Construction Site is permanently stabilized and the NOT is submitted as required under paragraph 3.17 of this Consent Order.
- 3.19 The restrictions in paragraphs 3.18 of this Consent Order shall not apply to earth changes on the northern and eastern edges of the Property associated with the right-of-way improvements conducted on M-72 and Lautner Road scheduled to be completed in 2015 by the Michigan Department of Transportation. Nothing in this Consent Order is intended to abridge or restrict the ability of the proper parties to secure a permit and complete the road improvement work.
- 3.20 The VGT shall submit all reports, work plans, specifications, schedules, or any other writing required by this section to the MDEQ, WRD, Cadillac District Supervisor, 120 West Chapin Street, Cadillac, Michigan 49601-2158. 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. MDEQ 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 MDEQ by the VGT, the process and terms of approval, below, 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 MDEQ disapproves a work plan, proposal, or other document, it will notify the VGT, in writing, specifying the reasons for such disapproval. The VGT shall

submit, within 30 days of receipt of such disapproval, a revised work plan, proposal, or other document that adequately addresses the reasons for the MDEQ's disapproval. If the revised work plan, proposal, or other document is still not acceptable to the MDEQ, the MDEQ will notify the VGT of this disapproval.

- 4.4 In the event the MDEQ approves with specific modifications a work plan, proposal, or other document, it will notify the VGT, 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 MDEQ may require the VGT 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 that adequately addresses such modifications. If the revised work plan, proposal, or other document is still not acceptable to the MDEQ, the MDEQ will notify the VGT of this disapproval.
- 4.5 Upon MDEQ 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 VGT 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 VGT to the enforcement provisions of this Consent Order, including the stipulated penalty provisions specified in paragraph 9.3 of this Consent Order.
- 4.7 Any delays caused by the VGT's failure to submit an approvable work plan, proposal, or other document when due shall in no way affect or alter the VGT'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 MDEQ regarding reports, work plans, plans, specifications, schedules, or any other writing submitted by

the VGT will be construed as relieving the VGT of its obligation to obtain written approval, if and when required by this Consent Order.

V. EXTENSIONS

- 5.1 The VGT and the MDEQ agree that the MDEQ may grant the VGT 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 MDEQ, WRD, Water Enforcement Unit Chief, P.O. Box 30458, Lansing, Michigan 48909-7958, and the MDEQ, WRD, Cadillac District Supervisor, at the address in paragraph 3.20 of this Consent Order, 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 VGT from meeting the deadline(s).
 - c. A description of the measures the VGT 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 Cadillac District Supervisor or a designee, in consultation with the Water 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 MDEQ and, if applicable, signed by both parties.

VI. REPORTING

- 6.1 The VGT shall verbally report any violation(s) of the terms and conditions of this Consent Order to the MDEQ, WRD, Cadillac 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 VGT 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 MDEQ, the VGT shall make available to the MDEQ all records, plans, logs, and other documents required to be maintained under this Consent Order or pursuant to the NREPA or its rules. All such documents shall be retained by the VGT for at least a period of five years from the date of generation of the record unless a longer period of record retention is required by the NREPA or its rules.

VIII. RIGHT OF ENTRY

- 8.1 The VGT shall allow any authorized representative or contractor of the MDEQ, 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 MDEQ 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 VGT agrees to pay to the State of Michigan **\$20,000** 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 in accordance with paragraph 9.7 of this Consent Order.
- 9.2 The VGT agrees to pay a civil fine of **\$20,000** for the violations specified in Section II of

this Consent Order. Payment shall be made in accordance with paragraph 9.7 of this Consent Order.

- 9.3 Except as provided in paragraphs 9.5 and 9.6, for each failure to comply with a provision of Section III or IV of this Consent Order, the VGT 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. Payment shall be made in accordance with paragraph 9.7 of this Consent Order.
- 9.4 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, the VGT shall pay stipulated penalties of **\$200** per violation per day for each day of violation. Payment shall be made in accordance with paragraph 9.7 of this Consent Order.
- 9.5 For each failure to comply with the daily maximum limit for Sample Locations 1 and 2 as required under paragraph 3.5 and 3.6 of this Consent Order, the VGT shall pay a stipulated penalty of \$5,000 per day according to the following schedule and terms:
- a. The stipulated payment shall accrue and be payable starting on the second day of violation and every consecutive day of violation thereafter if Sample Location 1 exceeds the daily maximum of 100 NTU or Sample Location 2 exceeds the daily maximum of 200 NTU.
 - b. Notwithstanding subparagraph 9.5(a), above, the stipulated payment shall accrue and be payable on the first day of violation and for every consecutive day of violation thereafter if:
 - i. Sample Location 1 exceeds the daily maximum limit of 200 NTU, or
 - ii. Sample Location 2 exceeds the daily maximum limit of 300 NTU, or
 - iii. Sample Location 3 exceeds a daily maximum limit of 50 NTU.
 - c. The stipulated penalties calculated under this paragraph 9.5 are cumulative, but shall not exceed \$10,000 for each day of violation.

d. Payment shall be made in accordance with paragraph 9.7 of this Consent Order.

9.6 If a discharge of sediment-laden and/or turbid water from the Property exceeding the 50 NTU daily maximum limit at Sample Location 3 reaches the Grand Traverse Bay, the MDEQ may demand payment of stipulated penalties and the VGT shall pay stipulated penalties as follows:

- First Discharge - **\$2,500**
- Second Discharge - **\$5,000**
- Third Discharge - **\$10,000**
- Fourth Discharge - **\$15,000**
- Fifth Discharge and Every Discharge Thereafter- **\$20,000**

However, if the MDEQ determines that the discharge from the Property into the Grand Traverse Bay is due to a significant event, the VGT shall be subjected to stipulated penalties of **\$20,000** for each day the sediment-laden and/or turbid water persists in the Bay. In assessing penalties under this provision, MDEQ shall consider mitigating factors such as upstream contributions. Payment shall be made in accordance with paragraph 9.7 of this Consent Order.

9.7 All payments shall be submitted within 30 days of receipt of an invoice from the MDEQ. The VGT 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 the MDEQ, P.O. Box 30657, Lansing, Michigan 48909-8157, or hand delivered to the Accounting Services Division, Cashier's Office for the MDEQ, 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. WRD40095**.

9.8 The VGT agrees not to contest the legality of the civil fine or costs paid pursuant to paragraphs 9.1 and 9.2 of this Consent Order. The VGT further agrees not to contest

the legality of any stipulated penalties assessed pursuant to paragraphs 9.3, 9.4, 9.5, or 9.6 of this Consent Order, but reserves the right to dispute the factual basis upon which a demand by the MDEQ for stipulated penalties is made.

- 9.9 The MDEQ reserves its rights to seek interest on any unpaid sums due pursuant to the terms of this Consent Order. Subject to the other provisions of Section IX of this Consent Order, the MDEQ may waive, in its unreviewable discretion, any portion of stipulated penalties and interest that has accrued pursuant to this Consent Order. 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.

X. FORCE MAJEURE

- 10.1 The VGT 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 VGT'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 VGT, such as: an Act of God, untimely review of permit applications or submissions by the MDEQ or other applicable authority, and acts or omissions of third parties that could not have been avoided or overcome by the VGT'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 VGT's actions or omissions.

- 10.3 The VGT shall notify the MDEQ, by telephone, within 48 hours of discovering any event that may cause 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 VGT to prevent or minimize the delay, and the timetable by which those measures shall be implemented. The VGT shall adopt all reasonable measures to avoid or minimize any such delay. Nothing in this paragraph obviates the need to report violations as required by paragraph 6.1 of this Consent Order.
- 10.4 Failure of the VGT to comply with the notice requirements and time provisions under paragraph 10.3 of this Consent Order shall render Section X of this Consent Order void and of no force and effect as to the particular incident involved. The MDEQ may, at its sole discretion and in appropriate circumstances, waive in writing the notice requirements of paragraph 10.3 of this Consent Order.
- 10.5 If the parties agree that the delay or anticipated delay was beyond the control of the VGT, this may be so stipulated, and the parties to this Consent Order may agree upon an appropriate modification of this Consent Order. However, the MDEQ is the final decision maker on whether or not the matter at issue constitutes a *Force Majeure*. The burden of proving that any delay was beyond the reasonable control of the VGT, and that all the requirements of Section X of this Consent Order have been met by the VGT, rests with the VGT.
- 10.6 An extension of one compliance date based upon a particular incident does not necessarily mean that the VGT 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 MDEQ reserves the right to pursue any other remedies to which it is entitled for any failure on the part of the VGT to comply with the requirements of the NREPA and its rules.
- 11.2 The MDEQ and the VGT 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 and Part 91 of the NREPA.
- 11.3 This Consent Order in no way affects the VGT's responsibility to comply with any other applicable state, federal, or local laws or regulations.
- 11.4 The MDEQ, WRD, 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 MDEQ, WRD, is precluded from seeking both a stipulated fine under this Consent Order and a statutory fine for the same violation.
- 11.5 The parties agree to diligently and in good faith pursue informal negotiations to resolve any disputes arising out of this Consent Order prior to resorting to judicial enforcement. Such negotiations shall proceed in a timely manner.
- 11.6 Nothing in this Consent Order is or shall be considered to affect any liability the VGT may have for natural resource damages caused by the VGT'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.
- 11.7 In the event the VGT proposes to sell or transfer an interest in the Property, in whole or part, it shall provide any purchaser or transferee with a copy of this Consent Order,

including all attachments and any amendments or modifications. The VGT shall also send duplicate written notices to the MDEQ, WRD, Cadillac District Supervisor, at the address in paragraph 3.20 of this Consent Order and to the MDEQ, WRD, Water Enforcement Unit Chief, at the address in paragraph 5.1 of this Consent Order. The written notice shall be provided to the MDEQ no less than 30 calendar days before the sale or transfer closes or actions are taken that conclude the sale or transfer. The written notice shall include the identity, address, and telephone number of any purchaser or transferee, and confirm the fact that notice of this Consent Order has been given to the purchaser or transferee.

The purchaser or transferee of this Consent Order must enter into a written agreement assuming all of the obligations of this Consent Order that the MDEQ determines are appropriate for the area(s) of the Property being sold or transferred prior to closing or other actions that conclude the sale or transfer of all or part of the Property.

Notwithstanding any oral or written agreement between the VGT and a potential or actual purchaser or transferee of the Property, the VGT shall remain bound by this Consent Order until the MDEQ issues a Termination Notice (TN) under Section XII of this Consent Order, including in the following circumstances: (a) if the purchaser or transferee of the Property does not enter into a written agreement with the MDEQ assuming all appropriate obligations of this Consent Order; (b) if the VGT does not actually sell or transfer the Property even if the purchaser or transferee has entered into a written agreement with the MDEQ assuming all appropriate obligations of this Consent Order; or (c) if the VGT retains any legal interest in the Property following the sale or transfer of an interest in the Property.

- 11.8 The provisions of this Consent Order shall apply to and be binding upon the parties to this Consent Order and their successors and assigns.

- 11.9 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 TN issued by the MDEQ. Prior to issuance of a written TN, the VGT shall submit a request consisting of a written certification that the VGT 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. A suggested form for providing the required written certification is appended as Attachment C. Specifically, an acceptable certification shall include:
- a. The date of compliance with each provision of the compliance program in Section III of this Consent Order, and the date any fines or penalties were paid.
 - b. A statement that all required information has been reported to the MDEQ, WRD, Cadillac District Supervisor.
 - c. Confirmation that all records required to be maintained pursuant to this Consent Order are being maintained at the facility.

The MDEQ may also request additional relevant information. The MDEQ 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.

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY



William Creal, Chief
Water Resources Division

4-16-2015
Date

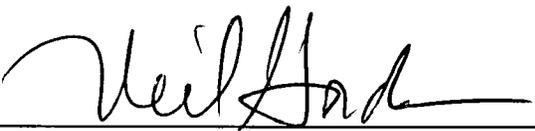
THE VILLAGE AT GRAND TRAVERSE, L.L.C.



By: Member/Manager
Title:

4-14-15
Date

APPROVED AS TO FORM:



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

4/16/15
Date

ATTACHMENT A



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
GAYLORD FIELD OFFICE



DAN WYANT
DIRECTOR

October 10, 2014

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. J.R. Anderson
Village at Grand Traverse LLC
3805 Edwards Road Suite 700
Cincinnati, Ohio 45209

Dear Mr. Anderson:

SUBJECT: Storm Water Construction Inspection
NPDES Permit No. MIR112950
Designated Name: Grand Traverse Town Center-Acme

On October 2, 2014, staff from the Department of Environmental Quality (DEQ), Water Resources Division (WRD) inspected the Grand Traverse Town Center Construction Project (Construction Site), located at M-72 and Lautner Road, Acme, Michigan 49610. The inspection was to determine compliance with Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended, MCL 324.3101 *et seq.*, and the Administrative Rules promulgated there under (Part 31). As well as compliance with Part 91, Soil Erosion and Sedimentation Control (SESC) of the NREPA, 1994 PA 451, as amended, MCL 324.9101 *et seq.*, and the Administrative Rules promulgated there under (Part 91).

Mr. Mark Walters, Construction Storm Water (CSW) Operator/SESC Inspector, and Mr. Steve Folkersma, Project Manager, participated in the inspection. The inspection included an in depth review/walk through of the site to make sure the SESC measures implemented are performing properly to prevent sediment-laden water from leaving the site, as well as a thorough review of the CSW/SESC inspection logs. The Construction site did have some areas of concern, as well as the following violations that were found during the inspection.

1. Following the implementation of several SESC measures and after a site visit conducted on September 23, 2014, there was still a discharge of sediment-laden water to the regulated wetlands at the end of the slow release channels of basin one and two. Although no water entered Acme Creek, this is still a violation of Part 31 and Part 91.
2. During the inspection, sediment laden water was found discharging off the south side of the property into regulated wetlands. This is a violation of Part 31 and Part 91. DEQ staff confirmed on October 9, 2014 that material has eroded into the wetland on the south edge of the project area, beyond the boundary as permitted under DEQ File No. 11-28-0034-P. As discussed during the October 9, 2014, site meeting between Mr. Folkersma, Mr. Terry Boyd, Gourdie-Fraser, and Robyn Schmidt, DEQ, the material that has eroded into the wetland, beyond the permitted boundary must be removed, under the authority of Part 303, Wetlands Protection, of NREPA, 1994 PA 451, as amended (Part 303). To comply with Part 303, Part 31 and Part 91 the following wetland restoration actions are required to resolve this issue:

- a) Remove all eroded fill from the wetland, beyond the permitted boundary, using either a Vac-truck or an excavator.
- b) Restore the wetland to the original grade, as is feasible, without impacting the existing plant roots. The DEQ understands this may require a few inches (less than 4-inches) of material to remain in the wetland area.
- c) Place the material removed from the wetland in an on-site upland location or within the permitted area.
- d) Immediately upon completion of the wetland restoration requirements contact Robyn Schmidt, DEQ, to schedule a follow up inspection.

There were also several areas of concern that the DEQ staff noticed during the inspection that could lead to future violations if not corrected by the Construction Site. Those are as follows.

1. There were several areas where the silt fences were overtopped by storm water and needed to be fixed. It was noted that staff was correcting this during the inspection.
2. The CSW/SESC inspection logs from July 4, 2014 till August 18, 2014 were not on site with the rest of the logs at the time of the inspection. Mr. Walters, Storm Water Inspector, said he has all the logs saved electronically and that he must have forgotten to put them in the book. These will need to be emailed to Justin Bragg, DEQ, upon receiving this letter.
3. There is still a concern with sediment-laden surface water possibly leaving the site. The Polyacrylamides/floc logs (soap on a rope) did not seem to be settling out the sediment picked up during runoff. A bench test should be done to see if the floc logs that are being used will work for the type of sediment on this site.
4. There was an area to the Southwest of the site where the mulch was dislodged and started to wash away. This area should be fixed so future erosion does not take place.
5. Vegetation is not established on the site yet, and these areas will need to be monitored closely, going forward to make sure that no erosion occurs and that no sedimentation leaves the site. The facility should review their SESC measures and research possibilities that could be used to temporarily stabilize the site without vegetation.

Please resolve the soil erosion violations/concerns listed above by **October 24, 2014**. The wetland restoration must be completed not later than **November 10, 2014**. Once these actions are completed by the listed dates, a response needs to be sent to the Gaylord Field Office. At a minimum, the responses shall include:

1. What has been done and/or will be done in the future, with a timeline, to prevent another discharge of any type of sediment-laden water from leaving the site. Please provide photos, if appropriate, to demonstrate the effectiveness of SESC measures that have been implemented as a result of this violation.
2. A complete SESC plan highlighting the new SESC measures put in place that addresses all areas of earth disturbance. Including a revised timing and sequencing plan that includes a detailed projected schedule for the remaining earth change activities through the anticipated final stabilization efforts.

We anticipate and appreciate your cooperation in resolving this matter. Should you require further information regarding this matter or if you would like to arrange a meeting to discuss, please contact me at 989-705-3438; braggj@michigan.gov; or DEQ, WRD, Gaylord Field Office, 2100 W. M-32, Gaylord, Michigan 49735. If you have any question regarding the wetland restoration, please contact Ms. Robyn Schmidt, DEQ, WRD, Cadillac District Office, at 231-876-4444.

Sincerely,



Justin Bragg,
Environmental Quality Analyst
Gaylord Field Office
Water Resources Division

Enclosure

Cc/enc: Mr. Brian Jankowski, DEQ
Mr. Joe Haas, DEQ
Mr. Pete Bruski, Grand Traverse County CEA
Mr. Steve Schooler, Director of Construction
Mr. Terry Boyd, Gourdie Fraser
Mr. Steve Folkersma, Team Elmer's

DEQ-WATER RESOURCES DIVISION
POST INSPECTION REPORT

Gr Traverse Town Center-Acme
Storm Water Construction Inspection
Inspection ID: 57717

FACILITY INFORMATION

Facility Name: Gr Traverse Town Center-Acme
Facility Address:

M-72 and Lautner Road, SW Corner
Acme, Michigan 49610

Facility Phone:
Facility Contact:
Facility Contact Phone:

Permit Reviewed Permit No.: MIR112950

Issued: 6/26/2014
Effective: 6/26/2014
Expires: 6/14/2015
App. Due:

Certified Operator: Blain Scheller
Certified Operator Phone:

Primary Industry:

Nature of Business:

Wastewater Treatment Processes:

Municipal Classification Code: N/A

Major: No

INSPECTION INFORMATION

<u>Insp Start Date</u>	<u>Insp End Date</u>	<u>Transmittal Date</u>
10/02/14	10/02/14	

<u>Sampling Start Date</u>	<u>Sampling End Date</u>
N/A	N/A

<u>DEQ Inspector(s)</u>	<u>Workgroup</u>
Justin Bragg	Cadillac

<u>Inspection Contact(s)</u>		
<u>Name</u>	<u>Working Title</u>	<u>Phone Number</u>

Inspection Summary/Notes

Mr. Mark Walters, the Construction Storm Water (CSW) Operator/SESC Inspector, and Mr. Steve Folkersma the Project Manager, participated in the inspection with Justin Bragg of the DEQ. The inspection included an in depth review/walk through of the site to make sure the SESC measures implemented are performing properly to prevent sediment-laden water from leaving the site, as well as a thorough review of the CSW/SESC inspection logs. The Construction site did have some areas of concern, as well as the following violations that were found during the inspection.

1. Following the implementation of several SESC measures, after a site visit conducted on September 23, 2014, there was still a discharge of sediment-laden water to the regulated wetlands at the end of the slow release channels of basin one and two. Although no water entered Acme Creek this is still a violation of Part 31 and Part 91.
2. During the inspection of the site it was also found that sediment laden water was discharged off the south side of the property and into regulated wetlands. This is a violation of Part 31 and Part 91 as well. For this area we do not recommend cleaning up the sediment deposition in the wetlands until the ground is firm enough to get heavy equipment down there. The side of this hill should be stabilized though in order to prevent future erosion into the wetlands.

**DEQ-WATER RESOURCES DIVISION
POST INSPECTION REPORT**

There were also several areas of concern that the DEQ staff noticed during the inspection that could lead to future violations if not corrected by the Construction Site. Those are as follows.

1. There were several areas where the silt fences were overtopped by storm water and needed to be fixed. It was noted that staff was correcting this during the inspection.
2. The CSW/SESC inspection logs from July 4, 2014 till August 18, 2014 were not on site with the rest of the logs at the time of the inspection. Mr. Walters, the storm water inspector said he has all the logs saved electronically and that he must have forgot to put them in the book. These will need to be emailed to be upon receiving this letter.
3. There is still a concern with sediment-laden surface water possibly leaving the site. The Polyacrylamides/floc logs (soap on a rope) did not seem to be settling out the sediment picked up during runoff. A bench test should be done to see if the floc logs that are being used will work for the type of sediment on this site.
4. There was an area to the Southwest of the site where the mulch was dislodged and started to wash away. This area should be fixed so future erosion does not take place.
5. Vegetation is not established on the site yet, and these areas will need to be monitored closely going forward to make sure that no erosion occurs and that no sedimentation leaves the site. The facility should review their SESC measures and research possibilities that could be used to temporarily stabilize the site without vegetation.

AREAS EVALUATED

Comment

OVERALL SITE RATING Marginal

They need to find a better way to filter out the fine clay particles from the surface storm water runoff. They should consider getting a rain gauge so that their inspection logs accurately match the amount of rain received in site.

PROCEDURES FOLLOWED Satisfactory

SEDIMENT DISCHARGED OFF-SITE Marginal

There is sediment leaving the site, it is going to the regulated wetlands but not to Acme Creek. This needs to be fixed so that sediment-laden storm water is leaving the site. I say marginal because they were working on fixing it with PAMS while I was inspecting.

SEDIMENT DISCHARGE TO WATERS OF STATE Un-Satisfactory

There was some sediment-laden water getting into the surrounding regulated wetlands.

SESC PERMIT COMPLIANCE Marginal

There were a couple inspection logs missing.

SESC PERMIT ON-SITE Satisfactory

SESC PLAN APPROPRIATE Marginal

DEQ-WATER RESOURCES DIVISION
POST INSPECTION REPORT

There are still a couple areas that need to be worked on. The system does not seem to be well designed for fine clay particles.

SESC PLAN COMPLIANCE Marginal

The drainage to the west of Basin #2 is causing a problem. The wetland area to the south of the site needs to be remediated. The slow release basin channels need to be worked on to make sure not fine clay particles are leaving the site.

SESC PLAN ON-SITE Satisfactory

ACCESS ROAD Satisfactory

They are wet but are pretty good overall.

CHECK DAMS Satisfactory

DEWATERING Satisfactory

When dewatering the sediment basins they are pumping the water through a storm klear system and a filter bag that seems to be working well.

EROSION CONTROL BLANKETS Marginal

They are not working to keep the fine clay particles on the site, other temporary measures should be researched and utilized to keep the clay particles on site.

INSPECTION LOGS Marginal

The logs for 7/4/14-8/18/14 were not in the log book. According to the inspector they are saved electronically. These should be sent to me as soon as they receive their compliance letter.

RIPRAP Satisfactory

ROAD/STREAM CROSSING Not Applicable

RUBBISH/CHEMICAL CONTROL Marginal

The Polyacrylamides are not working the way they should be, and a bench test should be completed to make sure that they have the correct floc logs (soap on a rope) for the sediment on site.

SCHEDULING/STAGING Marginal

**DEQ-WATER RESOURCES DIVISION
POST INSPECTION REPORT**

SEDIMENT BASIN(S) Un-Satisfactory

Basin #2 was not online at the time of the inspection. The basins also do not work very well to settle out the fine clay particles of this site.

SILT FENCE Marginal

Silt fences were overtopped in a couple areas, they were being fixed as I was inspecting the facility.

SPOIL PILE(S) Not Applicable

STABILIZED OUTLETS Un-Satisfactory

There are still clay particles in the water coming out of the stabilized outlets of the drainage basins.

STORM SEWER INLETSSatisfactory

The storm sewer inlets that are in place are working well, and protected, but not all the curbing is put in yet.

STORM WATER BASIN(S) Un-Satisfactory

Basin #2 was not online at the time of the inspection. The basins also do not work very well to settle out the fine clay particles of this site.

VEGETATIVE COVER/MULCHING Marginal

There is no vegetative cover, but the mulch and seeding has been applied. The site is still having a problem with fine clay particles.

OTHER Not Evaluated

VIOLATIONS

Effluent Violations

Viol ID	Detection Date	Mon. Point	Mon. Point Descript.	Parameter	Permit Limit	Sample Result	Limit Type	Status
None								

SOC Violations

Viol ID	SOC ID	Program Name	Schedule Name	Due Date	Detection Date	SOC Status	Violation Status

**DEQ-WATER RESOURCES DIVISION
POST INSPECTION REPORT**

DMR/CMR Report Submittal Violations

Viol ID	Report Start Date	Report End Date	Report Due Date	Type	Viol Status

Other Violations

Vio. ID	Detection Date	Violation Category	Violation Type	Violation Status

ENFORCEMENT

Enf. ID	Enf. No.	Enforcement Type	Action Type	Issued Date	Issued By	Enf. Status

FOLLOW-UP ACTION

Item ID	Item Name	Due Date	Received Date	Approved Date	Locked	Item Type

Comments/Notes

Completed by Justin Bragg

Date 10/8/14



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
GAYLORD FIELD OFFICE



DAN WYANT
DIRECTOR

October 21, 2014

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. J.R. Anderson
Village at Grand Traverse LLC
3805 Edwards Road, Suite 700
Cincinnati, Ohio 45209

VN No. VN-005944

Dear Mr. Anderson:

SUBJECT: Violation Notice, Natural Resources and Environmental Protection Act,
Grand Traverse Town Center Construction Project, Acme Township, Michigan

The Department of Environmental Quality (DEQ), Water Resources Division (WRD), has inspected the Grand Traverse Town Center Construction Project (hereafter "site" or "construction site"), located at M-72 and Lautner Road, Acme, Michigan 49610 to determine compliance with Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended, MCL 324.3101 *et seq.*, and the Administrative Rules promulgated there under (hereafter Part 31), as well as compliance with Part 91, Soil Erosion and Sedimentation Control (SESC) of the NREPA, 1994 PA 451, as amended, MCL 324.9101 *et seq.*, and the Administrative Rules promulgated there under (hereafter Part 91), and Rule 323.2190, Permit-By-Rule of the 1979 Administrative Code; and your National Pollutant Discharge Elimination System (NPDES) Notice of Coverage (NOC) No. MIR112950, which was issued on June 26, 2014.

The construction site was initially inspected by WRD staff on September 23, 2014, after heavy rains. Follow up inspections performed by WRD staff occurred on October 2, 2014, October 3, 2014, and October 15, 2014. The inspections were intended to verify if the SESC measures were functioning sufficiently, and to determine if a storm water discharge containing suspended sediment or other pollutants was occurring to any waters of the state, in violation of Part 31, Part 91, and your NOC.

On each of the above noted inspection dates, WRD staff observed the unlawful discharge of soils from the construction site to either wetlands and/or Acme Creek. The purpose of this letter is to identify and provide notice of violations of the above-cited Acts, Permit, and NOC. As a result of these discharges, the receiving water (including wetlands) contained suspended sediment and/or sediment deposits significant enough to result in unnatural quantities of physical properties in those waters, including discernable increases in turbidity and suspended solids, changes in color, and/or deposition, in violation of Part 31 and its associated Administrative Rules.

It is integrally recognized and understood that a discharge of storm water to Acme Creek that contains eroded/suspended soil particles results in a discharge of the same to Grand Traverse Bay, particularly with respect to the minute silt and clay particles that will not readily settle and deposit in Acme Creek. However, even though the apparent, principle concern for the site resides with the mobilized and suspended silt and clay, and their impacts and fate in the receiving waters, migration and deposition of heavier silts and sand particles are also a concern.

Staff also observed that soil erosion control measures were not effective, contributing to the aforementioned discharges to the surface waters of the state. The control measures were ineffective because they were not fully installed and/or were not of a type sufficient to address the clay content of the site's soils, especially given the significant extent of the site that consisted of bare soils. The extent of the site that consisted of exposed soils was a principle contributor to the unlawful discharge. The failure to ensure adequate soil erosion control measures is a violation of Part 91 Section 9116, Section 1702(2) of the Part 91 Administrative Rules, and Section (2)(c) the Permit-by-Rule of Part 31.

Observations of the specific inspection dates follow:

1. The unlawful discharge of water containing suspended sediment (sediment-laden) from the construction site, in violation of Part 31, Part 91, and your NOC, was observed during the September 23, 2014, and October 2, 2014, inspections. These violations were cited in the compliance communication letter that was sent out to you by certified mail, and dated October 10, 2014. The direction and schedules provided in that letter are still in effect. Any direction and schedules provided herein are in addition to those identified in that October 10, 2014, letter.
2. On October 3, 2014 WRD staff inspected the construction site during or immediately following rain that had occurred that day and the previous night, to both assess the effectiveness of the additional SESC control measures the contractor (Team Elmer's) had implemented in previous days, and to determine if storm water containing suspended soils was continuing to unlawfully discharge to wetlands and/or other waters of the state. During the inspection, WRD staff observed sediment-laden water entering both regulated wetlands and Acme Creek from the area on site that is adjacent to "basin one" and its serpentine discharge channel. That evening, WRD staff observed and followed a discharge, originating from the site, of a distinct and very light tan colored water that can be additionally described as opaque, "cloudy" or "milky" (resulting from clay soil particles suspended and dispersed uniformly throughout the storm water). The "milky" water from this area of the construction site was followed into and through a wetland spur to a location at that wetland's confluence with Acme Creek. At the confluence that milky water could be visibly discerned entering the creek, in violation of Part 31, Part 91, and the NOC. Water being pumped through a filter bag was observed as a contributor to this unlawful discharge (WRD staff was able to track this milky water from that specific source to the aforementioned confluence or point of discharge into Acme Creek). Sediment from the site mobilized by prior rain events was also observed to have been deposited in regulated wetlands in violation of Part 303, Wetland Protection, of PA 451, as amended (NREPA). The October 10, 2014 letter, noted-above, contains direction regarding expected restoration activities with respect to Part 303.

The October 3, 2014 inspection also found other areas where opaque water containing suspended soils had reached Acme Creek or surface water features tributary to Acme Creek.

3. During the inspection on October 15, 2014, WRD staff found several violations at the site. Sediment-laden water was observed being pumped across the access drive off of Lautner Road. This same water was witnessed running along the ditch to the south of Lautner Road and leaving the site, constituting a Part 91 violation and a violation of your NOC. When informed of this, Team Elmer's did shut the pump off. Another Part 91 and NOC violation was noted in the northwest corner of the site where silt fence was overtopped with

sediment-laden water that was seen running onto the adjacent property to the west. Water was also observed being pumped through a Storm Klear system on the southwest part of the property. This water was viewed running downhill through a vegetative buffer and entering the Acme Creek wetland corridor, still opaque and diffused throughout with clay soil particles, in violation of Part 31, Part 91, and your NOC.

The Village at Grand Traverse LLC is expected to immediately take all necessary and otherwise lawful actions needed to achieve and maintain compliance with Part 91, Part 31 along with the terms and conditions of the NOC. Please note however, that the Village at Grand Traverse LLC or its authorized agents are expected to obtain any state, local, or federal regulatory approvals and permits applicable to any actions taken to bring the site into compliance, from the appropriate agencies.

Given the nature of the clay soils, the site topography, and large area of disturbed soil, and the present and forthcoming time of year, specific measures have considerably more merit. Measures that provide permanent or temporary cover of the exposed soils, and that shield those soils from rainfall, runoff, or channelized flow, are considered vital and most paramount to bringing the site into compliance. The site has been unable to effectively eliminate the violations of Part 91, Part 31, and the NOC, therefore Village at Grand Traverse, LLC should seek the assistance of a qualified consultant or other resource that specializes in soil erosion and sedimentation control to explore, evaluate, and implement available technologies needed to improve soil cohesion and/or provide protective soil cover, in conjunction with runoff control, to return the site to compliance and to ensure compliance is maintained throughout the duration of the project through final stabilization.

In addition, please submit a written response to this Violation Notice. Please send this response to Mr. Justin Bragg in the Gaylord Field Office, with a copy of the response to Mr. Brian Jankowski in the Cadillac District Office at 120 W. Chapin Street, Cadillac, MI 49601-2158, by October 29, 2014. At a minimum, the response shall include:

- A corrective action plan, with schedules, that identifies steps taken, and/or to be taken to immediately cease the aforementioned violations and to prevent further discharge of soil-laden water from the site to either regulated wetlands or any other waters of the state. This should include a detailed description and compilation of activities undertaken to date, and those planned for future implementation, to prevent another discharge of any type of water carrying soil from leaving the site and entering adjacent properties, wetlands or surface waters. Please provide photos, if appropriate, to demonstrate the placement of or effectiveness of SESC measures that have been implemented subsequent to this violation notice.
- A revised SESC plan highlighting the existing, new, and/or proposed SESC measures intended to address all areas of earth disturbance. Including a revised timing and sequencing plan that includes a detailed projected schedule for the remaining earth change activities through the anticipated final stabilization efforts.

If you have any factual information you would like us to consider regarding the violations identified in this Violation Notice, please provide them with your written response.

Please be advised that compliance with the terms and conditions of this Violation Notice does not constitute a release or waiver of liability for past or continuing violations of Parts 31, 91, or 303, the NOC, or other statutes, if applicable. Please be further advised that the DEQ reserves the right to require additional activities, including restoration activities in Acme Creek and its floodplains, wetlands or Grand Traverse Bay, along with other possible corrective actions as identified by WRD. The DEQ also reserves the right to take additional or escalated enforcement action and levy fines and penalties with regard to past, continuing or future violations.

We anticipate your cooperation in resolving this matter. Should you require further information, or if you would like to arrange a meeting to discuss these matters, please contact me directly at 989-705-3438; braggj@michigan.gov; or DEQ, WRD, Gaylord Field Office, 2100 W. M-32, Gaylord, Michigan 49735.

Sincerely,



Justin Bragg,
Environmental Quality Analyst
Gaylord Field Office
Water Resources Division

cc: Mr. Brian Jankowski, DEQ
Mr. Joe Haas, DEQ
Ms. Robyn Schmidt, DEQ
Mr. Bill Larsen, DEQ
Mr. Barry Selden, DEQ
Mr. Pete Bruski, Grand Traverse County CEA
Mr. Steve Schooler, Director of Construction
Mr. Terry Boyd, Gourdie Fraser
Mr. T. Eric Ritchie, Team Elmer's
Mr. Steve Folkersma, Team Elmer's
Mr. Jay B. Zollinger, Acme Township Supervisor



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
GAYLORD FIELD OFFICE



DAN WYANT
DIRECTOR

January 29, 2014

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. J.R. Anderson
Village at Grand Traverse, LLC
3805 Edwards Road, Suite 700
Cincinnati, Ohio 45209

Violation Notice #VN-005987

Dear Mr. Anderson:

SUBJECT: Violation Notice, Natural Resources and Environmental Protection Act,
Grand Traverse Town Center Construction Project, Acme Township, Michigan

On November 24, 2014, staff from the Department of Environmental Quality (DEQ), Water Resources Division (WRD), conducted a Storm Water Construction Reconnaissance Inspection at the Grand Traverse Town Center Construction Project (hereafter Site), located at M-72 and Lautner Rd, Acme, Michigan 49610. The Purpose of this Inspection was to evaluate the Site's compliance with Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended, MCL 324.3101 *et seq.*, and the Administrative Rules promulgated there under (hereafter Part 31), specifically, R 323.2190, Permit-By-Rule of the 1979 Administrative Code; and your National Pollutant Discharge Elimination System (NPDES) Notice of Coverage (NOC) No. MIR112950, issued on June 26, 2014; and compliance with Part 91, Soil Erosion and Sedimentation Control (SESC) of the NREPA, 1994 PA 451, as amended, MCL 324.9101 *et seq.*, and the Administrative Rules promulgated there under (hereafter Part 91).

Mr. Justin Bragg, WRD, conducted the inspection of the Site with participation from Mr. Mike Potter, Horizon Environmental. The purpose of the inspection was to verify SESC measures were installed according to the approved soil erosion plan, being maintained properly, and if the controls were adequate to prevent discharges of sediment off-site onto adjacent properties and/or into waters of the state. A discharge of sediment-laden storm water off-site and into waters of the state is a violation of Part 31, Part 91, and the Site's NOC. The following violations were found during the inspection:

1. A channelized discharge of sediment-laden storm water was observed entering Acme Creek to the north of the slow release channel of basin two. This is a violation of Part 31, Part 91, and the Site's NOC.
2. There was also a discharge of sediment-laden storm water to an adjacent property owner's storm water pond. The pond is located northwest of the Site, this discharge results in a violation of Part 91.
3. DEQ staff also observed significant track-out from the main entrance of the site on M-72. This is a violation of the Part 31, Part 91, and the Site's NOC.

The Village at Grand Traverse, LLC is expected to immediately take all necessary and otherwise lawful actions needed to achieve and maintain compliance with Part 31, Part 91, and the terms and conditions of the NOC. Please note, however, that the Village at Grand Traverse, LLC or its authorized agents are expected to obtain any state, local, or federal regulatory approvals and permits applicable to any actions taken to bring the site into compliance, from the appropriate agencies.

In addition, please submit a written response to this Violation Notice. Please send this response to Mr. Justin Bragg, Gaylord Field Office, with a copy of the response to Mr. Brian Jankowski, Cadillac District Office, 120 W. Chapin Street, Cadillac, Michigan 49601-2158, by **February 12, 2015**. At a minimum, the response shall include:

- A Corrective Action Plan (CAP), with schedules, that identifies steps taken, and/or to be taken to immediately cease the aforementioned violations and to prevent further discharge of soil-laden water from the site to either regulated wetlands or any other waters of the state. The DEQ understands that an up-to-date CAP was submitted January 22, 2015; however, that CAP did not address all areas of violation noted above. This CAP should include a detailed description and compilation of activities undertaken to date, and those planned for future implementation, to prevent another discharge of any type of soil-laden water, or soil from leaving the site and entering adjacent properties, wetlands or surface waters. Please provide photos, if appropriate, to demonstrate the placement of or effectiveness of SESC measures that have been implemented subsequent to this Violation Notice.

If you have any factual information you would like us to consider regarding the violations identified in this Violation Notice, please provide them with your written response.

Please be advised that compliance with the terms and conditions of this Violation Notice does not constitute a release or waiver of liability for past or continuing violations of Part 31, Part 91, or the Site's NOC, or other statutes, if applicable. Please be further advised that the DEQ reserves the right to require additional activities, including restoration activities in Acme Creek and its floodplains, wetlands or Grand Traverse Bay, along with other possible corrective actions as identified by WRD. The DEQ also reserves the right to take additional or escalated enforcement action and levy fines and penalties with regard to past, continuing or future violations.

We anticipate your cooperation in resolving this matter. Should you require further information, or if you would like to arrange a meeting to discuss these matters, please contact me directly at 989-705-3438; braggj@michigan.gov; or DEQ, WRD, Gaylord Field Office, 2100 W. M-32, Gaylord, Michigan 49735.

Sincerely,



Justin Bragg,
Environmental Quality Analyst
Gaylord Field Office
Water Resources Division

cc: Mr. Mike Masterson, DEQ
Mr. Bill Larsen, DEQ
Mr. Barry Selden, DEQ
Ms. Karen Boase, DEQ
Mr. Joseph Haas, DEQ
Mr. Brian Jankowski, DEQ
Mr. Pete Bruski, Grand Traverse County CEA
Mr. Jay B. Zollinger, Acme Township Supervisor
Mr. Steve Schooler, Director of Construction
Mr. Terry Boyd, Gourdie Fraser
Mr. T. Eric Ritchie, Team Elmer's
Mr. Steve Folkersma, Team Elmer's



IMAGE SOURCE: USGS 2010 .3M ORTHOMAGERY
SCALE APPROXIMATELY 1" = 200'

HORIZON ENVIRONMENTAL

Village at Grand Traverse
Acme Township, Grand Traverse County, Michigan

SAMPLE LOCATION MAP

PROJECT NUMBER:
WNJ-1401

ATTACHMENT

B

APRIL 2015



ATTACHMENT C

Michigan Department of Environmental Quality
Water Resources Division

ADMINISTRATIVE CONSENT ORDER TERMINATION REQUEST

The completion of this form is voluntary and is intended to be used as guidance for persons that are eligible to request the DEQ to issue a Termination Notice of their Administrative Consent Order (ACO). However, it may not be relied upon as being legally sufficient to cover all potential issues related to the specific requirements of the ACO. The DEQ does not assume any liability for the use of this document and encourages the user to seek independent legal advice before using this form to draft its certification and request for Termination of its ACO.

PLEASE TYPE OR PRINT

1.ACO	ADMINISTRATIVE CONSENT ORDER NUMBER:		
2. Facility Owner or Legally Authorized Representative	Facility Owner/Legally Authorized Representative Who Signed the ACO:		
	Address:	Address 2 or P.O. Box:	
	City:	State:	Zip Code:
	Telephone:	Fax:	E-mail address:
3. Compliance Section	<p><i>Summarize each completed requirement in the Compliance Section of the ACO give the completion date. Please use additional sheets if necessary:</i></p>		



Michigan Department of Environmental Quality
Water Resources Division

ADMINISTRATIVE CONSENT ORDER TERMINATION REQUEST

3. Certification	<p>I, enter the name of owner or legally authorized representative, hereby certify that each requirement of the ACO that was entered into with the Department of Environmental Quality (DEQ) on enter the date has been complied with and completed including paying all money required by the ACO including but not limited to costs, civil fines, stipulated fines and fees. I also certify that all information that I am required to report to the DEQ, enter District Office District Office Supervisor has been reported and that all records I am required to maintain pursuant to the ACO are being maintained at the facility (or other location as specified in Section 12 of the ACO). I hereby request that the DEQ issue a Termination Notice, formally terminating the ACO in recognition of the resolution of the matters therein. I certify under penalty of law that this certification is true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of a fine for having knowledge of violations and certifying that there are none.</p> <p>Print Name _____ Title _____</p> <p>Signature _____ Date _____</p>
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Please mail this completed form to the DEQ, Water Resources Division, District Office that is listed in Section III of the ACO the Owner/Legally Responsible Representative entered into with the DEQ. Addresses for the district offices are listed below.

Cadillac District Office
120 West Chapin Street
Cadillac, MI 49601-2158

Kalamazoo District Office
7953 Adobe Road
Kalamazoo, MI 49009-5025

Gaylord Field Office
2100 West M-32
Gaylord, MI 49735-9282

Lansing District Office
P.O. Box 30242
Lansing, MI 48909-7742

Grand Rapids District Office
350 Ottawa Avenue, NW, Unit 10
Grand Rapids, MI 49503-2316

Saginaw Bay District Office
401 Ketchum Street, Suite B
Bay City, MI 48708-5430

Jackson District Office
301 East Louis Glick Highway
Jackson, MI 49201-1556

Southeast Michigan District Office
27700 Donald Court
Warren, MI 48092-2793

Upper Peninsula District Office
1504 West Washington Street
Marquette, MI 49855