

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
WATER RESOURCES DIVISION

In the matter of:

Village of Prescott  
200 North Washington  
Prescott, Michigan 48756

ACO-000223

Date Entered: ~~3/17/15~~  
4-1-2015

ADMINISTRATIVE CONSENT ORDER

This document results from allegations by the Department of Environmental Quality (DEQ), Water Resources Division (WRD). The DEQ alleges that the Village of Prescott, with a wastewater treatment plant (WWTP) located at 4860 Black Road, Prescott, Michigan, Ogemaw County, is in violation of Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.3101 *et seq.* and Part 41, Sewerage Systems, of the NREPA. The Village of Prescott is a person, as defined by Section 301 of the NREPA, MCL 324.301. The Village of Prescott and the DEQ agree to resolve the violations set forth herein through entry of an Administrative Consent Order (Consent Order).

I. STIPULATIONS

The Village of Prescott and the DEQ stipulate as follows:

- 1.1 The NREPA MCL 324.101 *et seq.*, is an act that controls pollution to protect the environment and natural resources in the state.
- 1.2 Pollution Control, Part 31, Water Resources Protection, of the NREPA (Part 31), MCL 324.3101 *et seq.*, and the rules promulgated pursuant thereto, provides for the protection, conservation, and the control of pollution of the water resources of the state.

- 1.3 The DEQ is authorized by Section 3112(4) of Part 31 of the NREPA to enter orders requiring persons to abate pollution, and the director of the DEQ may delegate this authority to a designee under Section 301(b) of the NREPA, MCL 324.301(b).
- 1.4 Part 41 and rules promulgated pursuant thereto, being 1979 AC R 299.2901 *et seq.*, as amended, (Sewerage Systems Rules) provide for the proper planning, construction and operation of sewerage facilities to prevent unlawful pollution of the water resources of the state.
- 1.5 Section 4105(1) of Part 41 states in part: "before constructing a sewerage system, filtration or other purification plant, or treatment works or any alteration, addition, or improvement to the system or plant, the mayor of each city, the president of each village, and the responsible official of all other governmental agencies, associations, private corporations, and partnerships or individuals shall submit the plans and specifications to the department and secure from the department a permit for construction. A contractor, builder, governmental agency, corporation, association, partnership, or individual shall not engage in or commence the construction of a sewerage system, filtration, or other purification plant, or treatment works or an alteration, addition, or improvement until a valid permit for the construction is secured from the department."
- 1.6 The Village of Prescott consents to the issuance and entry of this Consent Order and stipulates that the entry of this Consent Order constitutes a final order of the DEQ and is enforceable as such under Section 3112(4) of Part 31 and Section 4111 of Part 41. The Village of Prescott agrees not to contest the issuance of this Consent Order, and that the resolution of this matter by the entry of this Consent Order is appropriate and acceptable. It is also agreed that this Consent Order shall become effective on the date it is signed by the chief of the WRD, delegate of the director, pursuant to Section 301(b) of the NREPA.
- 1.7 The Village of Prescott and the DEQ agree that the signing of this Consent Order is for settlement purposes only and does not constitute an admission by the Village of Prescott

that the law has been violated.

- 1.8 The Signatory to this Consent Order on behalf of the Village of Prescott agrees and attests that it is fully authorized to assure that the Village of Prescott will comply with all requirements under this Consent Order.
- 1.9 The Village of Prescott shall achieve compliance with the aforementioned regulations in accordance with the requirements contained in Section III, Compliance Program, of this Consent Order.

## **II. FINDINGS**

- 2.1 The Village of Prescott owns and operates a public sewerage system with a WWTP located at 4860 Black Road in Prescott, Michigan. The Village of Prescott was issued National Pollutant Discharge Elimination System Permit (NPDES Permit) No. MI0057529 on August 19, 2004, with the most recent NPDES Permit being reissued to the Village of Prescott on June 16, 2009. By authorization of the NPDES Permit, the Village of Prescott is approved to discharge treated wastewater from the WWTP to the receiving water named Johnson Creek in accordance with the terms of the NPDES Permit. The NPDES Permit also authorizes the Village of Prescott to accept and treat septage waste at the WWTP.
- 2.2 From 2008 to 2013, the Village of Prescott violated the final effluent limitations required by its NPDES Permit at monitoring point number 101540, in violation of Part 31. The violations are listed in detail on Exhibit A of this Consent Order.
- 2.3 In 2008, the Village of Prescott submitted its Septage Receiving Operating Plan to the DEQ. The Operating Plan requires the Village of Prescott to store the dewatered septage resulting in a solids cake (biosolids) to be stored on a concrete pad capable of containment, to prevent runoff and eventually to be applied to agricultural land or disposed of in a landfill.

- 2.4 From at least 2010 to late May, 2013, the Village of Prescott stored the biosolids on the bare ground, resulting in discharges of untreated wastewater from the runoff of the sludge pile to the groundwater of the state during wet weather events. The Village of Prescott was directed by the DEQ during inspections and in letters from the DEQ dated August 25, 2011, October 31, 2012, April 30, 2013, Violation Notice (VN) VN-005573 dated May 9, 2013, and in Enforcement Notice (EN) EN-000001 dated August 22, 2013, to cease storing the biosolids on the bare ground instead of being properly stored in a concrete structure or on an impermeable surface designed to prevent groundwater seepage and storm water runoff. From late May 2013 to the present time, the Village of Prescott now, as an interim measure, stores the biosolids on and under tarps to protect it from precipitation events.
- 2.5 NPDES Permit Number No. MI0057529 was issued to the Village of Prescott on June 16, 2009, and became effective on October 1, 2009. The Village of Prescott was required to submit the Facility Monitoring Program not later than 30 days after the effective date of the NPDES Permit, in accordance with Part 1, Section A.4 of the NPDES Permit. The Village of Prescott failed to submit the Facility Monitoring Program until November 2012.
- 2.6 On May 9, 2013, the DEQ issued VN-005573 to the Village of Prescott for its violations of Parts 31 and 41 and the Rules promulgated pursuant to those parts. Rule 299.2933 of the Sewerage Systems Rules requires that plans and specifications be submitted to the DEQ for review and issuance of a construction permit before the construction or alternation of a sewerage system or portions thereof. The DEQ alleged through the VN that the Village of Prescott relocated a waste sludge line and added a new wet well to the sludge dehydrator which included a different pump than the one in the approved WWTP's basis of design and Part 41 Permit No. 1003128 in violation of Part 41 and the Sewerage System Rules. The VN also alleged that the Village of Prescott is continuing to store biosolids directly on the bare ground in violation of Part 31 and its NPDES Permit.

- 2.7 On August 22, 2013, the DEQ sent the Village of Prescott EN-000001, notifying it that it was in violation of Parts 31 and 41 and its NPDES Permit.

### III. COMPLIANCE PROGRAM

IT IS THEREFORE AGREED AND ORDERED THAT the Village of Prescott shall take the following actions to prevent further violations of Part 31:

- 3.1 The Village of Prescott agrees to comply with Parts 31 and 41 and the Rules promulgated pursuant to those Parts. The Village of Prescott acknowledges and agrees through entry of this Consent Order that it is required to first apply for and be issued a construction permit from the DEQ before it commences any construction activity on the Village of Prescott's sewerage system in accordance with Section 4105 of Part 41, MCL 324.4105 *et seq.* The Village of Prescott also acknowledges and agrees to first obtain authorization from the DEQ in accordance with Section 4105 of Part 41 before it commences any minor modifications to the Village of Prescott's sewerage system.
- 3.2 The Village of Prescott agrees to construct an impervious concrete storage pad with curbing and drainage that is large enough to contain 180 days of accumulated biosolids generated from the WWTP and to prevent any discharge of biosolids and biosolids leachate from being discharged onto the ground or into the ground and surface waters of the state.
- 3.3 Not later than April 30, 2015, the Village of Prescott shall submit to the DEQ an approvable Part 41, Sewerage Systems, construction permit application to construct the concrete storage pad referenced in paragraph 3.2 of this consent order. This submittal shall also include a basis of design with calculations to demonstrate that the sizing of the concrete pad will have adequate capacity to store the volume of dry sludge solids generated in at least 180 days of operation of the WWTP and the septage receiving station. The following parameters shall be used in calculating the proper size of the concrete pad:

- The maximum height used in volume calculations shall be based on the height of the side walls with a minimum of six inches of freeboard.
  - The calculation for the volume of dry sludge solids generated in at least 180 days of operation of the WWTP and septage receiving station shall be completed using data from the current actual weekly average volume of dry sludge solids generated. That data shall then be extrapolated to the WWTP design influent flow for the community service connections and the septage receiving station influent design capacity.
- 3.4 Not later than 60 days after the issuance of the Part 41 construction permit, the Village of Prescott shall commence construction of the concrete storage pad referenced in paragraph 3.2 of this Consent Order in accordance with the approved plans and specifications. The Village of Prescott shall complete construction not later than 90 days after beginning construction.
- 3.5 The Village of Prescott shall continue to place all existing biosolids located near the WWTP and all future biosolids generated on tarp and shall completely cover the biosolids with tarp to prevent any discharge of biosolids and biosolids leachate from being discharged onto the ground or into the ground and surface waters of the state. The Village of Prescott shall continue to completely cover the biosolids with tarp until the Village of Prescott completes the construction of the concrete storage pad referenced in paragraph 3.2 of this Consent Order. After the construction is complete, the Village agrees to discontinue storing the biosolids on and under tarp and shall store all future biosolids on the concrete storage pad.
- 3.6 The Village of Prescott agrees to conduct weekly visual inspections of the biosolids and tarp and agrees to record its inspections on weekly logs that shall be submitted to the DEQ quarterly (January 1, April 1, July 1, and October 1). The Village of Prescott agrees that if, upon inspection of the biosolids and the tarp, the Village of Prescott sees evidence of a discharge of biosolids or leachate from the biosolids onto the ground, it shall immediately, but not later than 24 hours past the inspection, report the discharge to the

DEQ. Each instance of discharge constitutes a violation of Part 31 and is subject to Sections 3109 and 3115 of Part 31.

- 3.7 The Village of Prescott shall submit all reports, work plans, specifications, schedules, or any other writing required by this section to the Saginaw Bay District Supervisor, WRD, DEQ, 401 Ketchum Street, Suite B, Bay City, Michigan 48708. The cover letter with each submittal shall identify the specific paragraph and requirement of this Consent Order that the submittal is intended to satisfy.

#### **IV. DEQ APPROVAL OF SUBMITTALS**

- 4.1 For any work plan, proposal, or other document, excluding applications for permits or licenses, that are required by this Consent Order to be submitted to the DEQ by the Village of Prescott, the following process and terms of approval shall apply.
- 4.2 All work plans, proposals, and other documents required to be submitted by this Consent Order shall include all of the information required by the applicable statute and/or rule, and all of the information required by the applicable paragraph(s) of this Consent Order.
- 4.3 In the event the DEQ disapproves a work plan, proposal, or other document, it will notify the Village of Prescott, in writing, specifying the reasons for such disapproval. The Village of Prescott shall submit, within 30 days of receipt of such disapproval, a revised work plan, proposal, or other document which adequately addresses the reasons for the DEQ's disapproval. If the revised work plan, proposal, or other document is still not acceptable to the DEQ, the DEQ will notify the Village of Prescott of this disapproval.
- 4.4 In the event the DEQ approves with specific modifications, a work plan, proposal, or other document, it will notify the Village of Prescott, in writing, specifying the modifications required to be made to such work plan, proposal, or other document prior to its implementation and the specific reasons for such modifications. The DEQ may require the Village of Prescott to submit, prior to implementation and within 30 days of receipt of

such approval with specific modifications, a revised work plan, proposal, or other document which adequately addresses such modifications. If the revised work plan, proposal, or other document is still not acceptable to the DEQ, the DEQ will notify the Village of Prescott of this disapproval.

- 4.5 Upon DEQ approval, or approval with modifications, of a work plan, proposal, or other document, such work plan, proposal, or other document shall be incorporated by reference into this Consent Order and shall be enforceable in accordance with the provisions of this Consent Order.
- 4.6 Failure by the Village of Prescott to submit an approvable work plan, proposal, or other document, within the applicable time periods specified above, constitutes a violation of this Consent Order and shall subject the Village of Prescott to the enforcement provisions of this Consent Order, including the stipulated penalty provisions specified in paragraph 9.1.
- 4.7 Any delays caused by the Village of Prescott's failure to submit an approvable work plan, proposal, or other document when due shall in no way affect or alter the Village of Prescott's responsibility to comply with any other deadline(s) specified in this Consent Order.
- 4.8 No informal advice, guidance, suggestions, or comments by the DEQ regarding reports, work plans, plans, specifications, schedules or any other writing submitted by the Village of Prescott will be construed as relieving the Village of Prescott of its obligation to obtain written approval, if and when required by this Consent Order.

#### **V. EXTENSIONS**

- 5.1 The Village of Prescott and the DEQ agree that the DEQ may grant the Village of Prescott a reasonable extension of the specified deadlines set forth in this Consent Order. Any extension shall be preceded by a written request in duplicate to the DEQ, WRD, Water

Enforcement Unit Chief, Constitution Hall, 525 West Allegan Street, Lansing, Michigan 48909-7773, and the Saginaw Bay District Supervisor at the address in paragraph 3.7, no later than ten business days prior to the pertinent deadline, and shall include:

- a. Identification of the specific deadline(s) of this Consent Order that will not be met.
- b. A detailed description of the circumstances that will prevent the Village of Prescott from meeting the deadline(s).
- c. A description of the measures the Village of Prescott has taken and/or intends to take to meet the required deadline.
- d. The length of the extension requested and the specific date on which the obligation will be met.

The district supervisor, in consultation with the 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 DEQ, and if applicable, signed by both parties.

#### **VI. REPORTING**

- 6.1 The Village of Prescott shall verbally report any violation(s) of the terms and conditions of this Consent Order to the Saginaw Bay District Supervisor by no later than the close of the next business day following detection of such violation(s) and shall follow such notification with a written report within five business days following detection of such violation(s). The written report shall include a detailed description of the violation(s), as well as a description of any actions proposed or taken to correct the violation(s). The Village of Prescott shall report any anticipated violation(s) of this Consent Order to the above-referenced individual in advance of the relevant deadlines whenever possible.

#### **VII. RETENTION OF RECORDS**

- 7.1 Upon request by an authorized representative of the DEQ, the Village of Prescott shall make available to the DEQ all records, plans, logs, and other documents required to be

maintained under this Consent Order or pursuant to Parts 31 and 41 or their Rules. All such documents shall be retained by the Village of Prescott 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 Parts 31 and 41 or their Rules.

#### **VIII. RIGHT OF ENTRY**

- 8.1 The Village of Prescott shall allow any authorized representative or contractor of the DEQ, upon presentation of proper credentials, to enter upon the premises of the facility at all reasonable times for the purpose of monitoring compliance with the provisions of this Consent Order. This paragraph in no way limits the authority of the DEQ to conduct tests and inspections pursuant to the NREPA and the rules promulgated thereunder, or any other applicable statutory provision.

#### **IX. PENALTIES**

- 9.1 For each failure to comply with a specific deadline contained in paragraph 3.3, or Section IV of this Consent Order, the Village of Prescott shall pay stipulated penalties of **\$5,000**. If, after 30 days from the original deadline, the Village of Prescott has not fully corrected the violation, stipulated penalties shall begin to accrue in accordance with paragraph 9.4 of this Consent Order.
- 9.2 Except as provided for in paragraph 9.1, for each failure to comply with a provision of Section III or IV of this Consent Order, the Village of Prescott 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.
- 9.3 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 Village of Prescott shall pay stipulated penalties of **\$200** per violation per day for each day of violation.

- 9.4 To ensure timely payment of stipulated penalties, the Village of Prescott shall pay an interest penalty to the General Fund of the State of Michigan each time it fails to make a complete or timely payment. This interest penalty shall be based on the rate set forth at MCL 600.6013(8), using the full increment of amount due as principal, and calculated from the due date for the payment until the delinquent payment is finally made in full.
- 9.5 The Village of Prescott agrees to pay all funds due pursuant to this agreement by check made payable to the State of Michigan and delivered to the Accounting Services Division, Cashier's Office for DEQ, P.O. Box 30657, Lansing, Michigan 48909-8157; or hand delivered to the Accounting Services Division, Cashier's Office for DEQ, 425 West Ottawa Street, Lansing, Michigan 48933. To ensure proper credit, all payments made pursuant to this Consent Order must include the **Payment Identification No. WRD40081**.
- 9.6 The Village of Prescott agrees not to contest the legality of any stipulated penalties or interest penalties assessed pursuant to paragraphs 9.1 and 9.2, above, but reserves the right to dispute the factual basis upon which a demand by the DEQ for stipulated penalties or interest penalties is made.

#### **X. FORCE MAJEURE**

- 10.1 The Village of Prescott shall perform the requirements of this Consent Order within the time limits established herein, unless performance is prevented or delayed by events that constitute a "Force Majeure." Any delay in the performance attributable to a "Force Majeure" shall not be deemed a violation of the Village of Prescott's obligations under this Consent Order in accordance with this section.
- 10.2 For the purpose of this Consent Order, "Force Majeure" means an occurrence or nonoccurrence arising from causes not foreseeable, beyond the control of, and without the fault of the Village of Prescott, such as: an Act of God, untimely review of permit applications or submissions by the DEQ or other applicable authority, and acts or

omissions of third parties that could not have been avoided or overcome by the Village of Prescott's diligence and that delay the performance of an obligation under this Consent Order. "Force Majeure" does not include, among other things, unanticipated or increased costs, changed financial circumstances, or failure to obtain a permit or license as a result of the Village of Prescott's actions or omissions.

- 10.3 The Village of Prescott shall notify the DEQ, by telephone, within 48 hours of discovering any event that causes a delay in its compliance with any provision of this Consent Order. Verbal notice shall be followed by written notice within ten calendar days and shall describe, in detail, the anticipated length of delay, the precise cause or causes of delay, the measures taken by the Village of Prescott to prevent or minimize the delay, and the timetable by which those measures shall be implemented. The Village of Prescott shall adopt all reasonable measures to avoid or minimize any such delay.
- 10.4 Failure of the Village of Prescott to comply with the notice requirements and time provisions under paragraph 10.3 shall render this Section X void and of no force and effect as to the particular incident involved. The DEQ may, at its sole discretion and in appropriate circumstances, waive in writing the notice requirements of paragraph 10.3, above.
- 10.5 If the parties agree that the delay or anticipated delay was beyond the control of the Village of Prescott, this may be so stipulated, and the parties to this Consent Order may agree upon an appropriate modification of this Consent Order. However, the DEQ is the final decision-maker on whether or not the matter at issue constitutes a force majeure. The parties to this Consent Order understand and agree that the final decision by the DEQ regarding a force majeure claim is not subject to judicial review. The burden of proving that any delay was beyond the reasonable control of the Village of Prescott, and that all the requirements of this Section X have been met by the Village of Prescott, rests with the Village of Prescott.

10.6 An extension of one compliance date based upon a particular incident does not necessarily mean that the Village of Prescott qualifies for an extension of a subsequent compliance date without providing proof regarding each incremental step or other requirement for which an extension is sought.

## XI. GENERAL PROVISIONS

- 11.1 With respect to any violations not specifically addressed and resolved by this Consent Order, the DEQ reserves the right to pursue any other remedies to which it is entitled for any failure on the part of the Village of Prescott to comply with the requirements of the NREPA and its rules.
- 11.2 The DEQ and the Village of Prescott consent to enforcement of this Consent Order in the same manner and by the same procedures for all final orders entered pursuant to Part 31, MCL 324.3101 *et seq.*; Part 41, MCL 4101 *et seq.*; and enforcement pursuant to Part 17, Michigan Environmental Protection Act, of the NREPA, MCL 324.1701 *et seq.*
- 11.3 This Consent Order in no way affects the Village of Prescott's responsibility to comply with any other applicable state, federal, or local laws or regulations.
- 11.4 The 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 WRD is precluded from seeking both a stipulated fine under this Consent Order and a statutory fine for the same violation.
- 11.5 Nothing in this Consent Order is or shall be considered to affect any liability the Village of Prescott may have for natural resource damages caused by the Village of Prescott's ownership and/or operation of the facility. The State of Michigan does not waive any rights to bring an appropriate action to recover such damages to the natural resources.

- 11.6 In the event the Village of Prescott sells or transfers the facility, it shall advise any purchaser or transferee of the existence of this Consent Order in connection with such sale or transfer. Within 30 calendar days, the Village of Prescott shall also notify the WRD, Saginaw Bay 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, Saginaw Bay District Supervisor within 30 days of assuming the obligations of this Consent Order.
- 11.7 The provisions of this Consent Order shall apply to and be binding upon the parties to this action, and their successors and assigns.
- 11.8 This Consent Order constitutes a civil settlement and satisfaction as to the resolution of the violations specifically addressed herein; however, it does not resolve any criminal action that may result from these same violations.

## **XII. TERMINATION**

- 12.1 This Consent Order shall remain in full force and effect until terminated by a written Termination Notice (TN) issued by the DEQ. Prior to issuance of a written TN, the Village of Prescott shall submit a request consisting of a written certification that the Village of Prescott has fully complied with the requirements of this Consent Order and has made payment of any fines, including stipulated penalties, required in this Consent Order. Specifically, this certification shall include:
- a. The date of compliance with each provision of the compliance program in Section III, and the date any fines or penalties were paid.
  - b. A statement that all required information has been reported to the district supervisor.

- c. Confirmation that all records required to be maintained pursuant to this Consent Order are being maintained at the facility.

The DEQ may also request additional relevant information. The DEQ shall not unreasonably withhold issuance of a TN.

Signatories

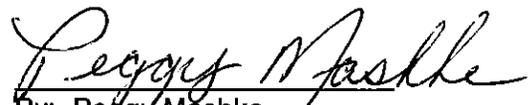
The undersigned CERTIFY they are fully authorized by the party they represent to enter into this Consent Order to comply by consent and to EXECUTE and LEGALLY BIND that party to it.

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

  
\_\_\_\_\_  
William Creal, Chief  
Water Resources Division

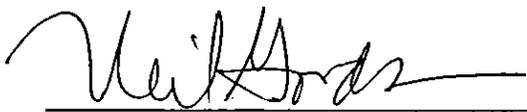
April 1, 2015  
Date

**VILLAGE OF PRESCOTT**

  
\_\_\_\_\_  
By: Peggy Mashke  
Title: Village President

3/17/15  
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

3/27/15  
Date