

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

**ADMINISTRATIVE CONSENT ORDER**

**In the matter of:**

**ACO-000245**

**Date Entered:** 10-8-14

**SECTION I**

**FACILITY OWNER/OPERATOR**

NAME Modern Industries, Inc.		OWNER <input checked="" type="checkbox"/>	OPERATOR <input type="checkbox"/>
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS IDENTIFICATION NUMBER 014449			
ADDRESS G-3275 West Pasadena Avenue			
CITY Flint	STATE Michigan	ZIP 48504	
CONTACT NAME/TITLE Ronald D. Lammy II, President		PHONE #	

**FACILITY NAME AND LOCATION**

FACILITY NAME Modern Concrete		
FACILITY OWNER IF NOT IDENTIFIED ABOVE		
ADDRESS G-3275 West Pasadena Avenue		
CITY Flint	STATE Michigan	ZIP 48504
COUNTY Genesee		
CONTACT NAME Ronald D. Lammy II	PHONE # 810-767-8525	

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

STATUTE	PERMIT(S)
Part 31, Water Resources Protection, <input checked="" type="checkbox"/> MCL 324.3101 <i>et seq.</i>	National Pollutant Discharge Elimination System (NPDES) Permit No. <u>MIS510000</u> . Certificate of Coverage (COC) No. MIS510403

Specific violations are referenced in DEQ letters attached to this Administrative Consent Order (Consent Order) as Exhibit A. The Owner/Operator and the DEQ agree to resolve the violations set forth herein through entry of this Consent Order. The Owner /Operator further agrees to resolve all compliance issues set forth in Exhibit A in accordance with the requirements contained in this Consent Order. This Consent Order, in its entirety, shall consist of Section I, the attached Sections II, III, and IV, Exhibit A, and any other referenced attachments, exhibits, or appendices. This Consent Order shall be considered null and void if it does not include, at a minimum, Sections I, II, III, and IV, and Exhibit A.

In the matter of:

ACO-000245

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The Owner/Operator agrees to pay a civil fine of **\$3000.00 DOLLARS** for the violations specified in Exhibit A of this Consent Order. Payment shall be made within 30 days of the effective date of this Consent Order. Payment of past due or avoided permit fees shall be made in accordance with the compliance schedule in Section II of this Consent Order. A permit fee invoice will be sent to the Owner/Operator from the WRD after this ACO is fully executed by the WRD Chief. Failure to make timely payment constitutes a violation of this Consent Order. The Owner/Operator 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, MI 48909-8157; or hand delivered to the Accounting Services Division, Cashier's Office for DEQ, 425 W. Ottawa Street, Lansing, MI 48933. To ensure proper credit, all payments made pursuant to this Consent Order must include the **Settlement Identification No. WRD-40075**. The Owner/Operator agrees not to contest the legality of the civil fine and the avoided permit fees.

Signatories

DEPARTMENT OF ENVIRONMENTAL QUALITY



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

10-8-14

Date

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

MODERN INDUSTRIES, INC.



\_\_\_\_\_  
Ronald D. Lammy, II, President  
Modern Industries, Inc.

9-25-14

Date

## SECTION II - COMPLIANCE SCHEDULE

IT IS THEREFORE AGREED AND ORDERED THAT Owner/Operator shall take the following actions to prevent further violations of Part 31 of the NREPA:

1. The Owner/Operator agrees to comply with Part 31 of the NREPA.
2. On or before 60 days after the effective date of this Consent Order the Owner/Operator shall:
  - a) Implement the non-structural and structural control measures identified in the SWPPP;
  - b) Submit a Notice of Intent (NOI) for coverage under the NPDES Storm Water Permit No. MIS510000. The NOI shall be submitted to the DEQ, WRD, Lansing District Supervisor at the address provided in paragraph 8 of this Section.
3. If the DEQ requires additional information or action by Owner/Operator at any point during the permitting process to correct deficiencies in the Notice of Intent, the DEQ will notify Owner/Operator in writing of the deficiencies. The Owner/Operator shall correct all deficiencies and report all requested information not later than 30 days from receipt of notice from the DEQ, unless another date is specified in the notification.
4. The Owner/Operator agrees to pay the applicable annual permit fee of **\$260.00** for each of the 2011, 2012, 2013, and 2014 fiscal years, totaling **\$1040.00** to the State of Michigan in accordance with Section 3118 of Part 31, of the NREPA. Payment shall be made not later than 45 days after receiving a permit fee invoice from the WRD for each of the 2011, 2012, 2013, and 2014 annual discharge permit fees.
5. Upon issuance of the Certificate of Coverage under NPDES Storm Water Permit No. MIS510000 by the DEQ, the Owner/Operator shall pay the annual permit fee of \$260.00 associated with discharging storm water for the 2015 billing period and each billing period thereafter in accordance with Section 3118 of Part 31 of the NREPA and the invoice that will be mailed to the Owner/Operator each year.
6. The Owner/Operator shall submit all reports, work plans, specifications, schedules, or any other writing required by this section to the Lansing District Supervisor, WRD, DEQ at Constitution Hall, 525 West Allegan, 1<sup>st</sup> Floor-South, P.O. Box 30242, Lansing, MI 48909-7742. The cover letter with each submittal shall identify the specific paragraph and requirement of this Consent Order that the submittal is intended to satisfy.

Sections III and IV of this Consent Order shall not be altered in any way, including adding or eliminating any language, striking terms or parts of terms, retyping in whole or in part, or using a different format. Any changes to this document without written approval from the DEQ renders the Consent Order null and void.

## SECTION III - STIPULATIONS

The Owner/Operator and the DEQ stipulate as follows:

1. The DEQ reserves all rights afforded to it under the law or laws under which this Consent Order is being entered. The DEQ is authorized to enter this Consent Order requiring the Owner/Operator to comply with state law under Section 3112(4) of Part 31 of the NREPA.
2. The Owner/Operator consents to the issuance and entry of this Consent Order and stipulates that the entry of this Consent Order constitutes a final order of the DEQ and is enforceable as such under the appropriate provisions of state law identified in this Consent Order. The Owner/Operator agrees not to contest the issuance of this Consent Order, and that the resolution of this matter by the entry of this Consent Order is appropriate and acceptable. It is also agreed that this Consent Order shall become effective on the date it is signed by the chief of the WRD, delegate of the director.
3. The Owner/Operator and the DEQ agree that the signing of this Consent Order is for settlement purposes only and does not constitute an admission by the Owner/Operator that the law has been violated.
4. The Signatory to this Consent Order on behalf of the Owner/Operator agrees and attests that he is fully authorized to assure that the Owner/Operator will comply with all requirements under this Consent Order.
5. The Owner/Operator shall achieve compliance with the aforementioned regulations in accordance with the requirements contained in Section II of this Consent Order.

#### **SECTION IV - GENERAL PROVISIONS**

1. With respect to any violations not specifically addressed and resolved by this Consent Order, the DEQ reserves the right to pursue any other remedies to which it is entitled for any failure on the part of the Owner/Operator to comply with the requirements of the NREPA and its rules. Entry of this Consent Order does not relieve the Owner from future liability for the potential need to conduct remedial actions if contaminants originating from the discharge are discovered at limits that exceed the criteria under applicable law. The DEQ further expressly reserves the right to pursue the Owner for injunctive relief and costs associated with overseeing or conducting these remedial actions.
2. The DEQ and the Owner/Operator consent to enforcement of this Consent Order in the same manner and by the same procedures for all final orders entered pursuant to the provisions of the SDWA and/or the NREPA, as applicable.
3. This Consent Order in no way affects the Owner/Operator's responsibility to comply with any other applicable state, federal, or local laws or regulations.
4. The WRD reserves its right to pursue appropriate action, including injunctive relief to enforce the provisions of this Consent Order, and applicable statutory fines for any violation of this Consent Order.
5. Nothing in this Consent Order is or shall be considered to affect any liability the Owner/Operator may have for natural resource damages caused by the Owner/Operator's acts or omissions at the facility. The State of Michigan does not waive any rights to bring an appropriate action to recover such damages to the natural resources.

6. In the event the Owner/Operator sells or transfers the facility, it shall advise any purchaser or transferee of the existence of this Consent Order in connection with such sale or transfer. Within 30 calendar days, the Owner/Operator shall also notify the WRD District Supervisor, in writing, of such sale or transfer, the identity and address of any purchaser or transferee, and confirm the fact that notice of this Consent Order has been given to the purchaser and/or transferee. The purchaser and/or transferee of this Consent Order must agree, in writing, to assume all of the obligations of this Consent Order. A copy of that agreement shall be forwarded to the WRD District Supervisor within 30 days of assuming the obligations of this Consent Order.
7. The provisions of this Consent Order shall apply to and be binding upon the parties to this action, and their successors and assigns.
8. This Consent Order constitutes a civil settlement and satisfaction as to the resolution of the violations specifically addressed herein; however, it does not resolve any criminal action that may result from these same violations.

9. REPORTING

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

10. RETENTION OF RECORDS

Upon request by an authorized representative of the DEQ, the Owner/Operator shall make available to the DEQ all records, plans, logs, and other documents required to be maintained under this Consent Order or pursuant to applicable laws or rules. All such documents shall be retained by the Owner/Operator for at least a period of three years from the date of generation of the record unless a longer period of record retention is required by the applicable law or its rules.

11. RIGHT OF ENTRY

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

12. DEQ APPROVAL OF SUBMITTALS

- a. For any work plan, proposal, or other document, excluding applications for permits or licenses, that are required by this Consent Order to be submitted to the DEQ by the Owner/Operator, the following process and terms of approval shall apply.
- b. 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.
- c. In the event the DEQ disapproves a work plan, proposal, or other document, it will notify the Owner/Operator, in writing, specifying the reasons for such disapproval. The Owner/Operator shall submit, within 30 days of receipt of such disapproval, a revised work plan, proposal, or other document which adequately addresses the reasons for the DEQ's disapproval. If the revised work plan, proposal, or other document is still not acceptable to the DEQ, the DEQ will notify the Owner/Operator of this disapproval.
- d. In the event the DEQ approves with specific modifications, a work plan, proposal, or other document, it will notify the Owner/Operator, in writing, specifying the modifications required to be made to such work plan, proposal, or other document prior to its implementation and the specific reasons for such modifications. The DEQ may require the Owner/Operator to submit, prior to implementation and within 30 days of receipt of such approval with specific modifications, a revised work plan, proposal, or other document which adequately addresses such modifications. If the revised work plan, proposal, or other document is still not acceptable to the DEQ, the DEQ will notify the Owner/Operator of this disapproval.
- e. 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.
- f. Failure by the Owner/Operator to submit an approvable work plan, proposal, or other document, within the applicable time periods specified above, constitutes a violation of this Consent Order and shall subject the Owner/Operator to the enforcement provisions of this Consent Order.
- g. Any delays caused by the Owner/Operator's failure to submit an approvable work plan, proposal, or other document when due shall in no way affect or alter the Owner/Operator's responsibility to comply with any other deadline(s) specified in this Consent Order.
- h. No informal advice, guidance, suggestions, or comments by the DEQ regarding reports, work plans, plans, specifications, schedules or any other writing submitted by the Owner/Operator will be construed as relieving the Owner/Operator of its obligation to obtain written approval, if and when required by this Consent Order.

### 13. EXTENSIONS

The Owner/Operator and the DEQ agree that the DEQ may grant the Owner/Operator a reasonable extension of the specified deadlines set forth in this Consent Order. Any extension shall be preceded by a written request to the District Supervisor no later than ten business days prior to the pertinent deadline, and shall include:

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

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

### 14. TERMINATION

This Consent Order shall remain in full force and effect until terminated by a written Termination Notice (TN) issued by the DEQ. Prior to issuance of a written TN, the Owner/Operator shall submit a request consisting of a written certification that the Owner/Operator has fully complied with the requirements of this Consent Order and has made payment of any fines, including stipulated penalties, required in this Consent Order. Specifically, this certification shall include:

- a. The date of compliance with each provision of the compliance program in Section II, and the date any fines or penalties were paid.
- b. A statement that all required information has been reported to the district supervisor.
- c. Confirmation that all records required to be maintained pursuant to this Consent Order are being maintained at the facility.

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

Exhibit A  
Administrative Consent Order

<u>Enforcement Type</u>	<u>Enforcement Number</u>	<u>Issued Date</u>
Violation Notice	VN-005814	05-06-2014
Enforcement Notice	EN-000245	08-07-2014



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
LANSING DISTRICT OFFICE



DAN WYANT  
DIRECTOR

May 6, 2014

CERTIFIED MAIL

Mr. Ron Lammy  
G-3275 West Pasadena Avenue  
Flint, Michigan 48504

VN No. VN-005814

Dear Mr. Lammy:

SUBJECT: Violation Notice  
Modern Concrete  
Certificate of Coverage MIS510403 (expired)

The Department of Environmental Quality (DEQ), Water Resources Division (WRD) staff inspected the Modern Concrete facility located at G-3275 W. Pasadena Avenue, Flint, Genesee County on April 17, 2014. The purpose of the inspection was to determine compliance with 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 the Administrative Rules promulgated there under being 2006 ACS R 323.2101 *et seq.*, as amended.

DEQ staff were accompanied by Mr. Martin Kujat, General Manager, during the inspection.

Industrial facilities that are classified under Federal Storm Water Regulations are required to obtain permit coverage if there is exposure of materials and/or processes to storm water, and if there is a point source discharge of storm water from the facility to surface waters of the state.

Modern Concrete formerly had coverage under the General Industrial Storm Water Permit No. MIS510000, but failed to make a timely application for reissuance of the Certificate of Coverage (COC) No. MIS510403 which expired on April 1, 2010. The COC authorized the discharge of storm water associated with industrial activity from the facility to surface waters of the state. Upon expiration of the COC, Modern Concrete was no longer authorized to discharge storm water from areas of industrial activity under the general permit.

In addition, during the site inspection, DEQ staff identified the following violations:

- A SWPPP was available for review at the facility. However, the SWPPP was dated 2008, was in need of updating, and did not meet all of the conditions of the general permit.
- Adequate structural and non-structural controls are not being implemented at the facility to minimize the discharge of contaminants from industrial activities to the storm sewer system and ultimately surface waters of the state.
- The facility does not have a certified industrial storm water operator for the site.

Further details of the SWPPP review and site inspection are provided in the enclosed "Post-Inspection Report" and "Storm Water Pollution Prevention Plan and Permit Evaluation Review Checklist".

Mr. Ron Lammy

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May 6, 2014

Failure to maintain storm water discharge authorization and comply with industrial storm water requirements are violations of Part 31 of NREPA. The violations identified in this Violation Notice are continuing.

Modern Concrete should take immediate action to achieve and maintain compliance with the terms and conditions of Part 31 of NREPA and the General Industrial Storm Water Permit No. MIS510000. Please submit a corrective action plan and schedule to address items A-D identified in the Post-Inspection Report no later than **June 9, 2014**.

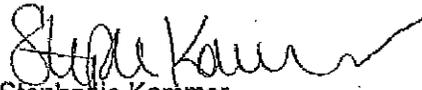
Due to the severity of the noncompliance (unauthorized storm water discharges due to expired COC), the matter has been evaluated for escalated enforcement. A separate enforcement notice will be sent to resolve the violation noted above.

If you have any factual information you would like us to consider regarding the violation identified in this Notice or regarding issues identified/discussed during the site inspection, please provide them in a written response no later than **June 9, 2014**.

The DEQ reserves its right to take all necessary and appropriate enforcement actions for all violations observed to date and any violations that occur in the future. This may include civil action seeking fines, enforcement costs and injunctive relief, and potential criminal prosecution.

We anticipate and appreciate your cooperation in resolving this matter. Should you require further information regarding this Notice or if you would like to arrange a meeting to discuss it, please contact me at 517-897-1597; [kammers@michigan.gov](mailto:kammers@michigan.gov); or Department of Environmental Quality, Constitution Hall, 525 West Allegan, P.O. Box 30242, Lansing, Michigan 48909-7742.

Sincerely,



Stephanie Kammer  
Water Resources Division  
Lansing District Office  
517-897-1597

sk/sb

Enclosures

cc: Ms. Cheryl Bartley, DEQ



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
LANSING DISTRICT OFFICE



DAN WYANT  
DIRECTOR

**NOTICE No. EN-000245**

**CERTIFIED MAIL** 7009 1680 0001 9777 5535

Mr. Ron Lammy  
Modern Concrete  
G-3275 West Pasadena Avenue  
Flint, Michigan 48504

Dear Mr. Lammy:

**SUBJECT: ENFORCEMENT NOTICE**  
Modern Concrete  
G-3275 West Pasadena Avenue  
Flint, Michigan 48504

The Department of Environmental Quality (DEQ), Water Resources Division (WRD), Lansing District Office, is pursuing an escalated enforcement action for violations of law by Modern Concrete (hereinafter "facility") as set forth herein.

Please be advised that the facility has failed to comply with Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 461, as amended (Part 31 of the NREPA), MCL 324.3101, et seq. and the Part 21 Administrative Rules promulgated there under being 2006 AACRS R 323.2101 et seq., as amended.

Specifically, pursuant to Section 3112(1) of Part 31 of the NREPA:

"A person shall not discharge any waste or waste effluent into the waters of this state unless the person is in possession of a valid permit from the department".

Be further advised that the facility located at G-3275 West Pasadena Avenue, Flint, Genesee County was authorized to discharge wastewater to the waters of the state in accordance with National Pollutant Discharge Elimination System (NPDES) Certificate of Coverage No. MIS510403, under General Permit, NPDES No. MIS510000. The Certificate of Coverage (COC) expired on April 1, 2010. The facility has failed to reapply, while continuing to discharge.

The facility is hereby notified that the violations identified in this Enforcement Notice are violations of Part 31 of the NREPA.

The facility is requested to immediately undertake all actions necessary to resolve all violations identified in Violation Notice VN No. VN-005814, issued on May 6, 2014 and this Enforcement Notice.

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

The DEQ proposes entry of the enclosed ACO as an appropriate and expeditious means of resolving these issues. If this ACO is acceptable to the facility, please sign and return both (two) original documents to me, not later than (10) days after receipt of this letter. Upon receipt of the signed documents, I will secure the other signatures and return one fully executed original document to you for your records. The ACO becomes effective on the date that it is signed by the WRD, Chief, and the civil fine must be paid not later than 30 days after that date.

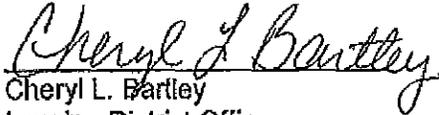
The DEQ reserves its right to take all necessary and appropriate enforcement actions for all violations of Part 31 of the NREPA that have occurred to date and any violations of Part 31 of the NREPA that may occur in the future. These actions may include, but are not limited to, seeking civil fines, injunctive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

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

*Pursuant to Section 1511 of the NREPA, Modern Concrete may request a preliminary meeting with DEQ, WRD staff to discuss the issues detailed in this ENFORCEMENT NOTICE and their proposed resolution. If you would like to participate in such a meeting, please contact Ms. Stephanie Kammer, WRD, at 517-897-1597, NOT LATER than 10 days from your receipt of this ENFORCEMENT NOTICE.*

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
WATER RESOURCES DIVISION

Date Issued: 8/7/2014

  
Cheryl L. Bartley  
Lansing District Office  
Water Resources Division

ADDRESS FOR FURTHER CORRESPONDENCE:

Stephanie Kammer  
Lansing District Office  
Water Resources Division  
Constitution Hall-1<sup>st</sup> floor south  
525 West Allegan  
Lansing, Michigan 48909-7742

cc: Mr. Peter Ostlund, DEQ  
Ms. Stephanie Kammer, DEQ