

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

In the matter of:

ACO-000184

Date Entered: 6-5-2014

Village of Dimondale  
136 North Bridge Street  
Dimondale, Michigan 48821

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**ADMINISTRATIVE CONSENT ORDER**

This document results from allegations by the Department of Environmental Quality (DEQ), Water Resources Division (WRD). The DEQ alleges the Village of Dimondale (Dimondale), a municipality in Michigan, was in violation of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.101 *et seq.*; more specifically, Part 31, Part 41, Part 91, Part 301, and the promulgated rules thereunder, of the NREPA. The DEQ alleges violations occurred during a sewer line construction project beneath the Grand River in October 2012 and during river bank stabilization measures in June 2013. The Village of Dimondale is a person, as defined by Section 301 of the NREPA, MCL 324.301. Dimondale and the DEQ agree to resolve the violations set forth herein through entry of this Administrative Consent Order (Consent Order).

**I. STIPULATIONS**

Dimondale and the DEQ 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, Water Resources Protection, of the NREPA (Part 31), MCL 324.3101 *et seq.*, and the rules promulgated pursuant thereto, governs the protection, conservation, and the control of pollution of the water resources of the state.
- 1.3 Part 41, Sewerage Systems, of the NREPA, MCL 324.4101 *et seq.*, and the rules

promulgated pursuant thereto, governs the oversight of public sanitary sewers.

- 1.4 Part 91, Soil Erosion and Sedimentation Control (SESC), of the NREPA, MCL 324.9101 *et seq.*, and the rules promulgated pursuant thereto, governs the control of erosion and sedimentation during earth changes such as construction activity.
- 1.5 Part 301, Inland Lakes and Streams, of the NREPA, MCL 324.30101 *et seq.*, governs the requirements necessary to protect inland lakes and streams during construction activity.
- 1.6 The DEQ is authorized by Section 3112(4) of Part 31 of the NREPA, MCL 324.3112(4), 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). In addition, the DEQ is authorized to enforce Parts 41, 91 and 301 pursuant to MCL 324.4101 *et seq.*, MCL 324.9101 *et seq.*, and MCL 324.30101 *et seq.*
- 1.7 Dimondale 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. Dimondale 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.
- 1.8 Dimondale and the DEQ agree that the signing of this Consent Order is for settlement purposes only and does not constitute an admission by Dimondale that the law has been violated.

- 1.9 The Signatory to this Consent Order on behalf of Dimondale agrees and attests that he or she is fully authorized to assure that Dimondale will comply with all requirements under this Consent Order.
- 1.10 Dimondale 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 On December 20, 2011, the DEQ issued Dimondale a Part 41 Wastewater Permit for the installation of a replacement sewer line via directional drilling beneath the Grand River. Due to the proximity of the construction to the river, on May 31, 2012, the DEQ issued Dimondale a Part 301, Inland Lakes and Streams Permit (No. 12-23-0004-P) that granted Dimondale the authority to install the sewer line. All work was to be completed according to the permit requirements and the submitted engineered specifications. The engineered plans detailed soil erosion control measures such as (but not limited to) posting and adhering to a SESC permit, installing effective silt fencing, monitoring the effectiveness of the dewatering discharge bed filtration process and monitoring river bank soil erosion control methods. The Part 301 Permit states, "The permittee, in exercising the authority granted by this permit, shall not cause unlawful pollution as defined by Part 31, Water Resources Protection, of the NREPA."
- 2.2 On October 9, 2012, WRD staff received a complaint that Dimondale's construction activities caused discharges of sediment to the river. On October 11, 2012, the complainant submitted photographic evidence depicting turbid water in the Grand River downstream of the construction activity.

- 2.3 On October 11, 2012, WRD staff conducted a complaint inspection. WRD staff observed unnatural color and turbidity in the Grand River resulting from inadequate sedimentation control measures during the removal of a cofferdam. The WRD staff conducted an on-site meeting with representatives from the Village of Dimondale, Eaton County Drain Commissioner, and Dimondale's contractors and consultants from E.T. MacKenzie Company (MacKenzie), Marx Wetlands and Wolverine Engineers & Surveyors (Wolverine Engineers). During this meeting, WRD staff informed Dimondale's representatives that it was in violation of state law, and discussed the following permit violations and inadequate SESC controls:
- a) Dimondale applied for but failed to obtain a final copy of the required Part 91 SESC Permit from the Eaton County Enforcing Agency prior to commencing construction.
  - b) Dimondale failed to install a dewatering operation to filter the pumped water before it was discharged back to the river as required by the Part 301 Permit.
  - c) Dimondale installed a temporary, 220' long, 10-inch diameter, HDPE sanitary sewer pipe suspended above the river, across the flow of the river, and lying on the riverbed; the Part 41 Permit did not authorize this.
  - d) Dimondale failed to request modification of the Part 41 Permit with updated information regarding the change in methodology from directional drilling to open cut.
  - e) Dimondale failed to install and maintain adequate SESC controls. Inadequate SESC controls were observed during the removal of the cofferdam. The driving of heavy equipment in the river was observed with no downstream SESC controls in place. Riverbanks were not adequately protected from erosion. The silt fencing installation was inadequate.
- 2.4 During the October 11, 2012, on-site meeting, Dimondale ceased construction.

The WRD staff and representatives from Dimondale, the Eaton County Drain Commission, MacKenzie, Marx Wetlands and Wolverine Engineers agreed on the following issues:

- a) Construction activity was discontinued until Dimondale submitted revised plans and received an amended Part 301 Permit from the WRD.
- b) Activity was discontinued until Dimondale received the Part 91 SESC Permit from their local County Enforcing Agency.
- c) The dewatering (pumped) water would be filtered prior to its discharge back to the river.
- d) Turbidity curtains would be installed to adequately contain sediment from leaving the construction site and entering the Grand River.
- e) Representatives from Dimondale and Wolverine Engineers agreed with the WRD staff that once construction resumed, the contractors would cease operation to re-evaluate the situation if the above stated SESC measures were inadequate and resulted in sediment discharges to the river.

2.5 On October 16, 2012, the WRD revised the Part 301 Permit requiring, in part, the following measures:

- a) Installation of a temporary concrete barrier and an effective turbidity curtain to completely enclose and isolate the construction area from the river.
- b) Construction of a dewatering discharge filtration bed capable of effectively filtering the water prior to discharging it back to the river.
- c) The cessation of the discharge if the turbidity curtain failed to contain the sediment from the dewatering process.
- d) A valid Part 91 SESC Permit from the Eaton County Enforcing Agency.
- e) Proper removal of the previously unauthorized installation of the temporary, 220' long, 10-inch diameter, HDPE sewer pipe upon

completion of construction.

- 2.6 On October 16, 2012, the Eaton County Enforcing Agency issued the Part 91 SESC Permit to Dimondale.
- 2.7 On October 17, 2012, on behalf of Dimondale, Wolverine Engineers submitted to the WRD a letter detailing the sewer line construction activity not authorized by Dimondale's Part 41 Permit, including, most significantly, the open cut installation method in lieu of the permitted directional drill beneath the riverbed.
- 2.8 On October 18, 2012, WRD staff conducted a second site inspection and observed additional discharges due to inadequate SESC measures. Based on notes and recollection of WRD staff, the following issues were observed and reviewed with Dimondale and its contractors:
  - a) The dewatering discharge filtration bed was inadequate to filter the volume of flow. The filtration bed allowed the discharge of sediment-laden water back into the river.
  - b) Turbidity curtains were undersized and not used effectively. The downstream portion of the curtain was approximately 3' in length from the center of the channel to the bank and allowed sedimentation downstream. The portion of turbidity curtain approximately 5' in length was not in an effective location.
  - c) WRD staff asked if the dewatering rate could be reduced to increase the effectiveness of the dewatering discharge filtration bed. Dimondale asserts that the dewatering rate could not be decreased and maintain effective dewatering.
  - d) WRD staff informed Dimondale's representative of the violations of Part 31 and Part 91.
  - e) Dimondale, in consultation with and with the permission of the Eaton

County Drain Commission, stopped the unauthorized discharge by completing the project within hours of being notified of the violations, contrary to DEQ's permit requirements.

- 2.9 Per Dimondale's response letter (identified in paragraph 2.11 below), Dimondale's contractors installed and covered the sewer line by 5:15 p.m. on October 18, 2012. On October 19, 2012, Dimondale's contractors removed the cofferdams and construction ceased.
- 2.10 On January 30, 2013, the DEQ issued Dimondale Violation Notice VN-005456.
- 2.11 On February 27, 2013, the DEQ received Dimondale's response to VN-005456.
- 2.12 On June 12, 2013, WRD staff determined the site was not adequately stabilized and that Dimondale failed to maintain permit coverage until permanent stabilization was achieved.
- 2.13 On July 5, 2013, the WRD issued Dimondale Violation Notice VN-005629 regarding ineffective SESC measures and sediment discharges into the Grand River. The Violation Notice instructed Dimondale to submit a written response to the WRD by July 31, 2013, requiring the following:
  - a) A restoration plan that culminates with final stabilization.
  - b) The prevention of future discharges of sediment off-site until permanent stabilization occurs.
  - c) A copy of Dimondale's SESC plans approved by Eaton County Enforcing Agency and the associated permit.
- 2.14 On July 30, 2013, WRD staff conducted a site visit and observed effective SESC measures resulting in bank stabilization.

- 2.15 On August 1, 2013, the WRD received a response from Dimondale regarding Violation Notice VN-005629. Dimondale's response indicated final stabilization had been achieved in June 2013, and included a copy of the "Certificate of Completion" from Eaton County Enforcing Agency with field notes and photographs dated July 11, 2013.

### **III. COMPLIANCE PROGRAM**

It is therefore agreed and ordered that the Village of Dimondale shall take the following actions to prevent future violations of the NREPA:

- 3.1 Dimondale shall obtain any permit required by the NREPA before conducting any future earthwork projects. Dimondale shall at all times adhere to the terms, conditions, and requirements of the permits and applicable law.

### **IV. REPORTING**

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

#### V. RETENTION OF RECORDS

- 5.1 Upon request by an authorized representative of the DEQ, Dimondale shall make available to the DEQ all records, plans, logs, and other documents required to be maintained pursuant to the NREPA and its rules. All such documents shall be retained by Dimondale 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 NREPA or its rules.

#### VI. RIGHT OF ENTRY

- 6.1 Dimondale shall allow any authorized representative or contractor of the DEQ, upon presentation of proper credentials, to enter upon premises located within the Village of Dimondale 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.

#### VII. PENALTIES

- 7.1 Dimondale agrees to pay to the State of Michigan **\$3,083.00** 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 within 30 days of the effective date of this Consent Order in accordance with paragraph 7.5.
- 7.2 Dimondale agrees to pay a civil fine of **\$10,000.00** for the violations specified in Section II of this Consent Order. Payment shall be made within 30 days of the

effective date of this Consent Order in accordance with paragraph 7.5.

- 7.3 For each failure to comply with Paragraph 3.1 of this Consent Order, Dimondale shall pay stipulated penalties of **\$100.00** per violation per day for 1 to 7 days of violation, **\$250.00** per violation per day for 8 to 14 days of violation, and **\$500.00** per violation per day for each violation thereafter.
- 7.4 To ensure timely payment of the above costs, civil fine and stipulated penalties, Dimondale 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 in 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.
- 7.5 Dimondale agrees to pay all funds due pursuant to this agreement by check made payable to the State of Michigan and delivered to the DEQ, Accounting Services Division, Cashier's Office for the DEQ, P.O. Box 30657, Lansing, Michigan 48909-8157, or hand delivered to the DEQ, Accounting Services Division, Cashier's Office for the DEQ, 425 W. Ottawa Street, Lansing, Michigan 48933. To ensure proper credit, all payments made pursuant to this Consent Order must include the **Payment Identification No. WRD30010**.
- 7.6 Dimondale agrees not to contest the legality of the civil fine or costs paid pursuant to paragraphs 7.1 and 7.2 above. Dimondale further agrees not to contest the legality of any stipulated penalties or interest penalties assessed pursuant to paragraph 7.3 and 7.4 above, but reserves the right to dispute the factual basis upon which a future demand by the DEQ for stipulated penalties or interest penalties is made.

### VIII. FORCE MAJEURE

- 8.1 Dimondale 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 Dimondale's obligations under this Consent Order in accordance with this section.
- 8.2 For the purpose of this Consent Order, "Force Majeure" means an occurrence of nonoccurrence arising from causes not foreseeable, beyond the control of, and without the fault of Dimondale, 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 Dimondale'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 Dimondale's actions or omissions.
- 8.3 Dimondale 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 Dimondale to prevent or minimize the delay, and the timetable by which those measures shall be implemented. Dimondale shall adopt all reasonable measures to avoid or minimize any such delay.
- 8.4 Failure of Dimondale to comply with the notice requirements and time provisions under paragraph 8.3 shall render this Section IX void and of no force and effect

as to the particular incident involved. The DEQ may, at its sole discretion and in appropriate circumstances, waive in writing the notice requirements of paragraph 8.3, above.

- 8.5 If the parties agree that the delay or anticipated delay was beyond the control of Dimondale, 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 burden of proving that any delay was beyond reasonable control of Dimondale, and that all the requirements of this Section IX have been met by Dimondale, rests with Dimondale.
- 8.6 An extension of one compliance date based upon a particular incident does not necessarily mean that Dimondale qualifies for an extension of subsequent compliance date without providing proof regarding each incremental step or other requirement for which an extension is sought.

#### **IX. GENERAL PROVISIONS**

- 9.1 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 Dimondale to comply with the requirements of NREPA and its rules.
- 9.2 The DEQ and Dimondale 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.*

- 9.3 This Consent Order in no way affects Dimondale's responsibility to comply with any other applicable state, federal, or local laws or regulations.
- 9.4 The DEQ 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 DEQ is precluded from seeking both a stipulated fine under this Consent Order and a statutory fine for the same violation.
- 9.5 Nothing in this Consent Order is or shall be considered to affect any liability Dimondale may have for natural resource damages caused by Dimondale's operations. The State of Michigan does not waive any rights to bring an appropriate action to recover such damages to the natural resources.
- 9.6 The provisions of this Consent Order shall apply to and be binding upon the parties to this action, and their successors and assigns.
- 9.7 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.

#### **X. TERMINATION**

- 10.1 This Consent Order shall remain in full force and effect for a period not less than twelve months from the effective date of this Consent Order and until terminated by a written Termination Notice (TN) issued by the DEQ. Prior to issuance of a written TN, Dimondale shall submit a written request consisting of a written certification that the Dimondale 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:

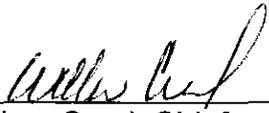
- a. The date of compliance with the provision of the compliance program in Section III, and the date any fines or penalties were paid.
- b. A statement that all required information has been reported to the district supervisor.
- c. Confirmation that all records required to be maintained pursuant to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

6/5/2014

Date

**VILLAGE OF DIMONDALE**

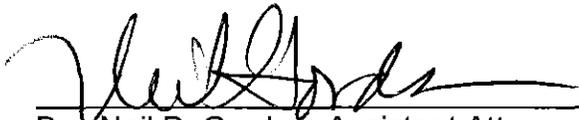


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Mike Chappell, Village President

5/23/2014

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

5/30/2014

Date