

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

In the matter of:

ACO-000234

Date Entered: *7/15/2015*

Michigan Steel Fabricators, Inc.
5225 Energy Drive
Flint, Michigan 48505

ADMINISTRATIVE CONSENT ORDER

This document results from allegations by the Department of Environmental Quality (DEQ), Water Resources Division (WRD). The DEQ alleges Michigan Steel Fabricators, Inc. (Michigan Steel) located at 5225 Energy Drive, Flint, Michigan, Genesee County, is in violation of Part 31, Water Resources Protection, MCL 324.3101 *et seq.*, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA). In addition, the DEQ alleges Michigan Steel has failed to comply with the Part 21 administrative rules for wastewater discharge permits promulgated pursuant to Part 31 of the NREPA. Michigan Steel is a person, as defined by Section 301 of the NREPA, and is registered with the Michigan Department of Licensing and Regulatory Affairs (LARA) as able to conduct business in the State of Michigan under identification number 26865A. Michigan Steel and the DEQ agree to resolve the violations set forth herein through entry of this Administrative Consent Order (Consent Order).

I. STIPULATIONS

The Michigan Steel 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 Part 31, Water Resources Protection, of the NREPA, MCL 324.3101 *et seq.*, and the rules promulgated pursuant thereto, provide 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, 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).
- 1.4 Michigan Steel 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. Michigan Steel 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.
- 1.5 Michigan Steel and the DEQ agree that the signing of this Consent Order is for settlement purposes only and does not constitute an admission by Michigan Steel that the law has been violated.
- 1.6 Mr. Christopher S. Webster, signatory to this Consent Order, certifies that he is fully authorized by Michigan Steel to enter in to the terms and conditions of this Consent Order and to execute and legally bind Michigan Steel to this document. Michigan Steel hereby agrees to comply with the requirements of this Consent Order to resolve the violations stated in Section II of this Consent Order and agrees to achieve compliance with Part 31 of the NREPA and the Part 21 administrative rules for wastewater discharge permits by fulfilling the terms of Section III of this Consent Order.

II. FINDINGS

- 2.1 Facilities that discharge storm water associated with industrial activity are required to obtain permit coverage if there is exposure of materials and/or processes to storm water and if there is point source discharge of storm water from the facility to surface waters of the state.

- 2.2 On April 3, 2013, while conducting inspections at a neighboring facility, DEQ staff made a site visit to Michigan Steel to discuss industrial storm water regulations and provide compliance assistance. At the time of the site visit, Chris Webster, Michigan Steel President, was contacted via telephone and asked to meet with DEQ staff. The meeting was declined by Michigan Steel.
- 2.3 On April 4, 2013, DEQ staff contacted Michigan Steel and offered to make another site visit to discuss storm water requirements. The meeting was again declined by Michigan Steel.
- 2.4 During a follow-up telephone conversation in April of 2013, Michigan Steel indicated that it could not accommodate a site visit by DEQ staff for at least three to four weeks.
- 2.5 Based on the information available, DEQ staff determined that Michigan Steel is a regulated facility under federal and state storm water regulations and that storm water from the Michigan Steel property discharges to surface waters of the state through the Cornwell Drain and ultimately to Mott Lake.
- 2.6 On June 3, 2013, the DEQ mailed a Compliance Communication to Michigan Steel that required Michigan Steel, within 90 days, to either (a) submit an application for a No Exposure Certification (NEC) to exempt Michigan Steel from having to obtain a storm water permit or (b) submit a Notice of Intent (NOI) requesting authorization to discharge to surface waters of the state storm water associated with industrial activity under the National Pollutant Discharge Elimination System (NPDES) General Permit for such discharges and a Certificate of Entry (COE) for the general administrative consent order for unpermitted discharges. No response from Michigan Steel was received by the DEQ.
- 2.7 Messages were left by DEQ staff on September 12, 2013 and October 14, 2013 with Michigan Steel's Office Manager asking for a return call. DEQ did not receive a response from Michigan Steel.

- 2.8 On January 9, 2014, the DEQ issued a Violation Notice (VN-005745) to further notify Michigan Steel of its noncompliance with the industrial storm water requirements. VN-005745 required Michigan Steel to either obtain coverage through submittal of either an NEC application or an NOI/COE application by February 17, 2014.
- 2.9 On February 18, 2014, a response to VN-005745 was received by the DEQ from Michigan Steel. The response from Michigan Steel alleged that no violations had occurred and asked DEQ to submit a written request for a site inspection. The correspondence from Michigan Steel indicated that it may take five to seven weeks to approve and schedule a site inspection.
- 2.10 On March 28, 2014, the DEQ issued an Enforcement Notice (EN-00234) to Michigan Steel advising Michigan Steel of the DEQ's access rights under Section 3105 of Part 31 of the NREPA.
- 2.11 A scheduled site inspection of Michigan Steel was conducted on April 17, 2014 by DEQ staff. The site inspection confirmed that Michigan Steel stores totes, scrap materials and equipment, finished product, and waste materials outside, exposed to storm water. In addition, storm water associated with industrial activity is discharged from the facility through a series of inlets and storm sewers to surface waters of the state.
- 2.12 On, May 1, 2014, the DEQ mailed a follow-up letter to VN-005745 to Michigan Steel explaining options for the facility to come into compliance, including submittal of an NEC application by August 4, 2014 with a scheduled confirmation site inspection on August 12, 2014 or submittal of an NOI/COE application by June 2, 2014. Michigan Steel was required to submit a written response by June 2, 2014. The DEQ did not receive a written response from Michigan Steel.
- 2.13 On June 9, 2014, Michigan Steel sent an email to DEQ staff indicating Michigan Steel's intent to meet the requirements of an NEC by August 4, 2014.

- 2.14 On August 9, 2014, Michigan Steel sent an email to DEQ staff requesting the August 12, 2014 inspection be delayed. In a subsequent email, on August 11, 2014, Michigan Steel indicated to the DEQ staff that the NEC conditions had not been met.

III. COMPLIANCE PROGRAM

It is, therefore, agreed and ordered that Michigan Steel shall take the following actions to prevent further violations of Part 31:

- 3.1 Michigan Steel shall pay \$780 to the State of Michigan for the annual storm water discharge fees of \$260 for 2013, 2014, and 2015 pursuant to Section 3118 of Part 31 of the NREPA. Payment shall be made not later than 30 days after receiving an invoice from the WRD for the 2013 and 2014, 2015 annual storm water discharge delinquent fees. The return address for payment will be stated in the invoice.
- 3.2 Not later than 30 days after the effective date of this Consent Order, Michigan Steel shall submit to the DEQ a copy of the Certified Operator's license issued by the DEQ confirming that Michigan Steel is employing a Certified Industrial Storm Water Operator.
- 3.3 Not later than 30 days after the effective date of this Consent Order, Michigan Steel shall submit to the DEQ a Storm Water Pollution Prevention Plan (SWPPP) that describes the structural and nonstructural controls Michigan Steel has developed to maintain compliance with the terms and conditions of the NPDES General Permit No. MIS510000.
- 3.4 Not later than 30 days after receiving comments from the DEQ on the SWPPP, Michigan Steel shall incorporate the DEQ's comments into the SWPPP, implement the SWPPP, and submit to the DEQ a completed Notice of Intent (NOI) for the purpose of obtaining a Certificate of Coverage authorizing the discharge of storm water to surface waters of the state under the National Pollution Discharge Elimination System (NPDES) General Permit No. MIS510000.

- 3.5 A copy of the completed NOI shall also be sent to the Lansing District Office, District Supervisor, WRD, DEQ, 525 West Allegan Street, P.O. Box 30242, Lansing, Michigan 48909.
- 3.6 Michigan Steel agrees to pay the annual permit fee of \$260 associated with discharging industrial storm water to surface waters of the state for the 2016 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 Michigan Steel each year.
- 3.7 If the DEQ requires additional information or action by Michigan Steel at any point during the permitting process to correct deficiencies in the Notice of Intent, the DEQ will notify Michigan Steel in writing of the deficiencies. Michigan Steel 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.
- 3.8 Michigan Steel shall submit all reports, work plans, specifications, schedules, or any other writing required by this section to the Lansing District Office District Supervisor, WRD, DEQ, 525 West Allegan Street, P.O. Box 30242, Lansing, Michigan 48909. 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 Michigan Steel, 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 Michigan Steel, in writing, specifying the reasons for such disapproval. Michigan Steel 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 Michigan Steel of this disapproval.
- 4.4 In the event the DEQ approves with specific modifications, a work plan, proposal, or other document, it will notify Michigan Steel, 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 Michigan Steel 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 Michigan Steel 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 Michigan Steel 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 Michigan Steel to the enforcement provisions of this Consent Order, including the stipulated penalty provisions specified in paragraph 9.3.
- 4.7 Any delays caused by Michigan Steel's failure to submit an approvable work plan, proposal, or other document when due shall in no way affect or alter Michigan Steel'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 Michigan

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

V. EXTENSIONS

5.1 Michigan Steel and the DEQ agree that the DEQ may grant Michigan Steel 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, Enforcement Unit Chief, Constitution Hall, 525 West Allegan Street, P.O. Box 30458, Lansing, Michigan 48909-7958, and the Lansing District Office District Supervisor at the address in paragraph 3.14, 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 Michigan Steel from meeting the deadline(s).
- c. A description of the measures Michigan Steel 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 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 Michigan Steel shall verbally report any violation(s) of the terms and conditions of this Consent Order to the Lansing District Office 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). Michigan Steel 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, Michigan Steel shall make available to the DEQ all records, plans, logs, and other documents required to be maintained under this Consent Order or pursuant to Part 31 or its rules. All such documents shall be retained by Michigan Steel 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 Part 31 or its rules.

VIII. RIGHT OF ENTRY

- 8.1 Michigan Steel 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 Michigan Steel shall pay to the State of Michigan \$2,930.48 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 in accordance with 9.5.
- 9.2 Michigan Steel shall pay a civil fine of \$6,000.00 for the violations specified in Section II of this Consent Order. Payment shall be made within accordance with paragraph 9.5.

- 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, Michigan Steel shall pay stipulated penalties of \$200 per violation per day for each day of violation.
- 9.4 Except as provided for in paragraph 9.3, for each failure to comply with any other provision of this Consent Order, Michigan Steel 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. Payments shall be made in accordance with paragraph 9.5.
- 9.5 The parties agree to a structured payment for the civil fine and enforcement costs as follows. Michigan Steel shall make eight quarterly payments in the amount of \$1116.31 each. Michigan Steel shall remit the initial quarterly payment not later than July 15, 2015. The second payment shall be due on October 15, 2015. Beginning in 2016 quarterly payments shall be due on January 15, April 15, July 15, and October 15 and so on each quarter on the 15th day until full payment is received by the DEQ. Each payment will be preceded by an invoice from the DEQ setting forth the payment amount due. In the event that a payment deadline is missed, Michigan Steel shall make payment, plus any assessed stipulated penalty for late payment as provided for in Section 9.3 of this Consent Order and demanded in the invoice. In the event that two quarterly payments exceed the payment deadline stated herein, then the DEQ may demand payment of the remaining balance in full and shall be remitted within 30 days from the demand. Michigan Steel 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. WTR 60014**.
- 9.6 Michigan Steel agrees not to contest the legality of the civil fine or costs paid pursuant to paragraphs 9.1, and 9.2, above. Michigan Steel further agrees not to contest the legality of any stipulated penalties or interest penalties assessed pursuant to paragraphs 9.3, 9.4,

and 9.5, 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.

- 9.7 The DEQ reserves its rights to seek interest on any unpaid sums due pursuant to the terms of the Consent Order. Subject to the other provisions of this Section IX, the DEQ 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 Michigan Steel 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 Michigan Steel'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 Michigan Steel, 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 Michigan Steel'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 Michigan Steel's actions or omissions.
- 10.3 Michigan Steel 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 Michigan Steel to prevent or minimize the delay, and the timetable by which those measures shall be implemented. Michigan Steel shall adopt all reasonable measures to avoid or minimize any such delay.

- 10.4 Failure of Michigan Steel 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 Michigan Steel, 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 Michigan Steel, and that all the requirements of this Section X have been met by Michigan Steel, rests with Michigan Steel.
- 10.6 An extension of one compliance date based upon a particular incident does not necessarily mean that Michigan Steel 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 Michigan Steel to comply with the requirements of the NREPA and its rules.

- 11.2 The DEQ and Michigan Steel 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.*
- 11.3 This Consent Order in no way affects Michigan Steel'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 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 Michigan Steel may have for natural resource damages caused by Michigan Steel'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 Michigan Steel 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, Michigan Steel shall also notify the WRD Lansing District Office 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 Lansing District Office District Supervisor within 30 days of assuming the obligations of this Consent Order.

- 11.8 The provisions of this Consent Order shall apply to and be binding upon the parties to this action, 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.
- 11.10 The effective date of this Consent Order is the date it is signed by the WRD Chief.

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, Michigan Steel shall submit a request consisting of a written certification that Michigan Steel 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

7/15/2015
Date

MICHIGAN STEEL FABRICATORS, INC.



By: Chris Webster

PRESIDENT
Title: President

6/29/15
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

7/13/15
Date