

**STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY  
WATER RESOURCES DIVISION**

In the matter of:

ACO-EP22-200

Date Entered: 5-3-2022

Expired Permit  
Part 31, Water Resources Protection

**GENERAL ADMINISTRATIVE CONSENT ORDER FOR EXPIRED PERMITS**

This document results from allegations by the Michigan Department of Environment, Great Lakes, and Energy (EGLE), Water Resources Division (WRD). EGLE alleges that the owner or operator of the facility (Owner) entering into this General Administrative Consent Order for Expired Permits ACO-EP22-200 (Consent Order) is in violation of Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act (NREPA), MCL 324.3101 *et seq.*, and the associated administrative rules.

Owners that are eligible for this Consent Order are persons who discharge waste or waste effluent to waters of the state or upon the ground who have allowed a previously issued discharge permit to expire for that discharge and who have no other unresolved violations under Part 31 of the NREPA. Eligibility for this Consent Order also requires that the Owner has submitted an administratively complete application for reissuance of the discharge permit to EGLE.

The Owner and EGLE agree to resolve the violations set forth herein through entry of this Consent Order. By submitting to EGLE a Certificate of Entry (COE) for this Consent Order signed by the Owner or the Owner's legally authorized representative, the Owner agrees to be bound by the terms and conditions contained in this Consent Order. Upon EGLE's receipt of the COE, this Consent Order shall consist of both this document and the associated COE that together constitute the settlement document.

**I. STIPULATIONS**

The Owner and EGLE 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 of the NREPA and the rules promulgated pursuant thereto provide for the

protection, conservation, and control of pollution of the water resources of the state.

- 1.3 Section 3112(1) of Part 31, MCL 324.3112(1), states, “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.” Section 3101(aa) of Part 31, MCL 324.3101(aa), states that “waters of the state” includes groundwaters, lakes, rivers, streams, and the Great Lakes within the jurisdiction of Michigan.
- 1.4 The Legislature has provided for the payment of annual permit fees and interest for payments submitted after their due date in Sections 3118, 3120, 3122, and 3123 of Part 31, MCLs 324.3118, 324.3120, 324.3122, and 324.3123, respectively. Failure to pay the annual permit fee before a discharge permit expires (late annual permit fee), failure to pay the annual permit fee after a discharge permit expires (avoided annual permit fee), and failure to pay the interest are violations of Part 31 of the NREPA.
- 1.5 EGLE is authorized by Section 3112(4) of Part 31, MCL 324.3112(4) to enter orders requiring persons to abate pollution. The director of EGLE may delegate this authority to a designee under Section 301(b) of Part 3, Definitions, of the NREPA, MCL 324.301(b).
- 1.6 The Owner stipulates that the resolution of this matter by entry of this Consent Order is appropriate and acceptable. The Owner further agrees not to contest this Consent Order or associated COE.
- 1.7 The Owner and EGLE agree that this Consent Order and associated COE is for settlement purposes only and does not constitute an admission by the Owner that the law has been violated.
- 1.8 The Owner shall achieve compliance with the aforementioned provisions of Part 31 in accordance with the requirements contained in Section III, Compliance Program, of this Consent Order and any other requirements contained herein.
- 1.9 The Owner, by submitting to EGLE an executed COE, late annual permit fee and/or avoided annual permit fee, and interest due identified on the COE and accompanying invoices, agrees and attests that the signatory to the COE is fully authorized to bind the Owner to the terms and conditions set forth herein and assure the compliance with all

requirements of this Consent Order. The COE shall contain an original signature by the Owner or a legally authorized representative of the Owner as follows:

- a. For a corporation, the form must be signed by a principal executive officer of at least the level of vice president, or his/her designated representative, if the representative is responsible for the overall operation of the facility (appropriate documentation must be provided to demonstrate the position and responsibility of the designated representative).
  - b. For a limited liability company, the form must be signed by a managing member.
  - c. For a limited liability partnership, the form must be signed by a managing partner.
  - d. For a partnership, the form must be signed by a general partner.
  - e. For a sole proprietorship, the form must be signed by the proprietor.
  - f. For municipal, state, or other public facility, the form must be signed by a principal executive officer, mayor, village president, city or village manager, or other duly authorized employee.
- 1.10 This Consent Order shall be considered a final order of EGLE and shall become effective with respect to a particular Owner and facility on the date EGLE receives the COE, late annual permit fee and/or avoided annual permit fee, and interest due identified on the COE, provided the COE is fully executed by the Owner or a duly authorized representative of the Owner, and the Owner meets the eligibility requirements of this Consent Order. EGLE reserves its right to vacate the COE at any time if it determines that any conditions, eligibility requirements, or terms of this Consent Order are not satisfied.

## **II. FINDINGS**

- 2.1 The Owner operates a facility, as identified on the COE, in the State of Michigan and has a regulated discharge of waste, waste effluent, or storm water to the waters of the state.
- 2.2 The Owner's discharge permit has expired. The Owner failed to timely apply for and obtain a discharge permit reissuance prior to the Owner's discharge permit expiring.

- 2.3 The Owner is discharging a waste or waste effluent or storm water to the waters of the state without a valid permit, in violation of Section 3112(1) of Part 31.
- 2.4 EGLE has received an administratively complete discharge permit reissuance application from the Owner after the expiration date of the Owner's discharge permit.

### **III. COMPLIANCE PROGRAM**

IT IS THEREFORE AGREED AND ORDERED THAT the Owner shall take the following actions to prevent further violations of Section 3112(1) of Part 31:

- 3.1 The Owner shall submit to EGLE, in accordance with Paragraph 5.4 of this Consent Order, a signed COE and the avoided annual permit fee and/or late annual permit fee and interest due identified on the COE.
- 3.2 The late annual permit fee and/or avoided annual permit fee and interest due identified on the COE shall be calculated by EGLE, pursuant to MCLs 324.3118, 324.3120, 324.3122, and 324.3123 as applicable.
- 3.3 EGLE shall mail to the Owner a confirmation of receipt of payment and signed COE.
- 3.4 If EGLE requires additional information from or action by the Owner at any point during the permitting process to resolve deficiencies in the discharge permit application, EGLE shall notify the Owner in writing of the deficiencies. The Owner shall resolve any deficiencies not later than 30 days after receiving the notice from EGLE unless another date is specified in the notice.
- 3.5 Upon issuance of a discharge permit by EGLE, the Owner shall pay annual permit fees based on its permit program classification in accordance with Part 31. Any adjustments to the annual permit fee structure approved by the Michigan Legislature will be reflected in the annual invoice issued by EGLE and sent to the Owner. This amount shall be reflected on the bottom of the COE where provided.

#### **IV. RIGHT OF ENTRY**

- 4.1 The Owner shall allow any authorized representative or contractor of EGLE, 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 and Part 31. This paragraph in no way limits the authority of EGLE to conduct tests and inspections pursuant to the NREPA and the rules promulgated thereunder or any other applicable statutory provision.

#### **V. PENALTIES**

- 5.1 For each failure to comply with the provisions of Paragraph 3.4 or 3.5 of this Consent Order, the Owner shall pay a stipulated penalty of \$100 per violation per day.
- 5.2 Stipulated penalties accruing under Paragraph 5.1 of this Consent Order shall be paid within 30 days after written demand by EGLE in accordance with Paragraph 5.4 of this Consent Order.
- 5.3 To ensure timely payment of the stipulated penalties, the Owner shall pay an interest penalty to 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 Section 6013(8) of the Revised Judicature Act, 1961 PA 236, as amended, 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.
- 5.4 The Owner agrees to pay the late annual permit fee and/or avoided annual permit fee and interest due identified on the COE and any stipulated penalties and interest penalties assessed pursuant to Paragraphs 5.2 and 5.3 of this Consent Order by check made payable to the State of Michigan and include **Payment Identification No. WRD40132**, mailed to the Michigan Department of Transportation, Accounting Services Division, Cashier's Office for EGLE, P.O. Box 30657, Lansing, Michigan 48909-8157; or hand delivered to the Michigan Department of Transportation, Accounting Services Division, Cashier's Office for EGLE, 425 West Ottawa Street, Lansing, Michigan 48933.

- 5.5 The Owner agrees not to contest the legality of any stipulated penalties or interest penalties assessed pursuant to Paragraphs 5.1, 5.2, and 5.3 of this Consent Order but reserves the right to dispute the factual basis upon which a demand by EGLE for stipulated penalties or interest penalties is made. The Owner further agrees not to contest the legality of the avoided annual permit fee and/or late annual permit fee or interest due identified on the COE.

## **VI. GENERAL PROVISIONS**

- 6.1 Compliance with this Consent Order resolves the Owner's violations identified herein for discharging to waters of the state without a valid permit. If EGLE is unable to issue a final decision on the Owner's discharge permit application because the Owner fails to cure any and all deficiencies in the Owner's discharge permit application pursuant to Paragraph 3.4 of this Consent Order, EGLE reserves the right to pursue additional enforcement activities, including commencing a civil action pursuant to Section 3115 of Part 31, MCL 324.3115, for the Owner's violations of Section 3112 of Part 31, MCL 324.3112.
- 6.2 With respect to any violations not specifically addressed and resolved by this Consent Order, EGLE reserves the right to pursue any other remedies to which it is entitled for any failure on the part of the Owner to comply with all applicable rules and statutes.
- 6.3 EGLE reserves the right to vacate this Consent Order after its effective date in the event EGLE discovers:
- a. The Owner misrepresented or omitted a fact that had a bearing on EGLE's determination that this Consent Order is applicable.
  - b. The discharge caused contamination, erosion, or other problems for which the Owner may be liable.
  - c. The Owner fails to fulfill any requirement of this Consent Order.
  - d. A discharge cannot be authorized under a permit.

- 6.4 EGLE and the Owner 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.
- 6.5 This Consent Order in no way affects the Owner's responsibility to comply with any other applicable state, federal, or local laws or regulations.
- 6.6 Nothing in this Consent Order is or shall be considered to affect any liability that the Owner may have for natural resource damages caused by the 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.
- 6.7 In the event the Owner sells or transfers the facility, they shall advise any purchaser or transferee of the existence of this Consent Order in connection with such sale or transfer. Within 30 calendar days of a proposed sale or transfer, the Owner shall also notify the appropriate WRD district office supervisor, in writing, of such impending sale or transfer, provide the identity and address of the prospective purchaser and/or transferee, and confirm the fact that notice of this Consent Order has been given to the prospective purchaser and/or transferee. The purchaser and/or transferee of the facility must agree, in writing, to assume all of the obligations of this Consent Order. A copy of the purchase agreement or other documents verifying the conveyance, along with the purchaser's and/or transferee's written acceptance of this Consent Order, shall be forwarded to the appropriate WRD district office supervisor within 30 days of the purchaser and/or transferee assuming the obligations of the Consent Order.
- 6.8 The provisions of this Consent Order shall apply to and be binding upon the parties to this Consent Order and their successors and assigns.
- 6.9 This Consent Order constitutes a civil settlement and satisfaction as to the resolution of the violations specifically addressed herein. This Consent Order does not resolve any criminal action that may result from these same violations.

## **VII. TERMINATION**

- 7.1 This Consent Order shall remain in full force and effect until the date EGLE issues a final decision on the Owner's discharge permit application. EGLE shall not issue a decision on

the discharge permit application until the Owner pays the late annual permit fee and/or avoided annual permit fee and interest due identified on the COE and any stipulated penalties and interest due in accordance with Paragraphs 5.1, 5.2, and 5.3 of this Consent Order.



**Signatories**

The undersigned CERTIFIES they are fully authorized by EGLE to enter into this Consent Order and to EXECUTE and LEGALLY BIND EGLE to it.

**DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY**

Phil Agnew, ACTING DIVISION DIRECTOR  
Teresa Seidel, Director  
Water Resources Division

5.3.22  
Date

**APPROVED AS TO FORM:**

Neil Gordon  
By: Neil D. Gordon, Assistant Attorney General  
For: Robert P. Reichel, Division Chief  
Environment, Natural Resources, and Agriculture Division  
Michigan Department of Attorney General

May 2, 2022  
Date