

**STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY**

In the Matter of

ABATEMENT OF WATER POLLUTION

ACO-SW00-002

Date Entered: March 3, 2000

Township of Clinton

40700 Romeo Plank Road

Clinton Township, Michigan 48038

ADMINISTRATIVE CONSENT ORDER

The UNDERSIGNED PARTIES HEREBY CONSENT AND AGREE TO THE FOLLOWING:

STATUTORY PROVISIONS

1. Section 3109 (1) of Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 451 of the Public Acts of 1994 (NREPA), being Sections 324.3101 to 3119 of the Michigan Compiled Laws Annotated, states: "A person shall not directly or indirectly discharge into the waters of the state a substance that is or may become injurious to any of the following:
 - a. To the public health, safety, or welfare.
 - b. To domestic, commercial, industrial, agricultural, recreational, or other uses that are being made or may be made of such waters.
 - c. To the value or utility of riparian lands.
 - d. To livestock, wild animals, birds, fish, aquatic life, or plants or to the growth or propagation, or the growth or propagation thereof be prevented or injuriously affected; or whereby the value of fish and game is or may be destroyed or impaired.'
2. Section 3112 (1) of NREPA states: 'A person shall not discharge any waste or waste effluent into the waters of this state unless that person is in possession of a valid permit from the Department.'
3. Section 3112 (2) of NREPA states: if the Department determines that a person is causing or is about to cause unlawful pollution of the waters of this state, the Department may notify the alleged offender of its determination and enter an order requiring the person to abate the pollution or refer the matter to the attorney general for legal action, or both.'
4. Section 4105 (1) of Part 41, Sewerage Systems, of NREPA, being Sections 324.4101 to 4111 of the Michigan Compiled Laws Annotated, states: "Before constructing a sewerage system, filtration or other purification plant, or treatment works or any alteration, addition, or improvement to the system or plant; the mayor of each city, the president of each village, and the responsible official of all other governmental agencies. This is a violation of Sections 3109 and 3112 of Part 31, Water Resources Protection of NREPA

ORDER

IT IS THEREFORE AGREED AND ORDERED THAT

10. On or before January 31, 2000, the Township shall implement a notification procedure through which the Surface Water Quality Division (SWQD), Southeast Michigan District Office (SEMDO) of the Department, the Macomb County Health Department and affected communities downstream are notified

as soon as possible but no later than 24 hours from the time the Township becomes aware of the circumstances of raw sewage discharges to the Clinton River in accordance with a plan submitted to the Department.

11. On or before January 31, 2000, the Township shall submit to the Department for approval, their revised wastewater flow monitoring work plan for all sewer areas that contribute wastewater flows to all sanitary sewer overflow locations
12. On or before April 1, 2000, the Township shall initiate their wastewater flow monitoring program for all sewer areas that contribute wastewater flows to all sanitary sewer overflow locations. The Township shall notify the Department, in writing, of compliance with this requirement by April 15, 2000
13. On or before August 15, 2000, the Township shall submit to the Department for approval, a final report for their wastewater flow monitoring program.
14. On or before September 1, 2000, the Township shall submit to the Department for approval, their Sanitary Sewer Evaluation Survey work plan for all sewer areas that contribute wastewater flows to all sanitary sewer overflow locations.
15. On or before October 1, 2000, the Township shall initiate their Sanitary Sewer Evaluation Survey in accordance with the approved work plan. The Township shall notify the Department, in writing, of compliance with this requirement by October 15, 2000.
16. On or before October 1, 2001, the Township shall submit to the Department for approval, their Sanitary Sewer Evaluation Survey Report for all sewer areas that contribute wastewater flows to all sanitary sewer overflow locations.
17. On or before December 1, 2001, the Township shall submit to the Department for approval, a detailed basis of design for the elimination of raw sewage bypasses from the sanitary sewer overflow locations.
18. On or before April 29, 2002, the Township shall submit to the Department for approval, plans and specifications that detail the complete work necessary to eliminate untreated sanitary sewer overflows.
19. On or before November 1, 2002, the Township shall commence construction of the sanitary sewer system in accordance with the approved plans and specifications. The Township shall notify the Department, in writing, of compliance with this requirement by November 15, 2002.
20. On or before November 1, 2003, the Township shall complete construction of the sanitary sewer system improvements in accordance with the approved plans and specifications. The Township shall notify the Department, in writing, of compliance with this requirement by November 15, 2003.
21. On or before November 15, 2003, all untreated sewage bypasses from the sanitary sewer overflow locations shall be eliminated and are hereby prohibited
22. On or before July 1, 2003, the Township shall submit to the Department for approval, a work plan for conducting a Sanitary Sewer System Project Performance Certification Program to certify the basis of design flow criteria.
23. On or before November 15, 2003, the Township shall have initiated the Sanitary Sewer System Project Performance Certification Program in accordance with the approved work plan: The Township shall notify the Department, in writing, of compliance with this requirement by December 1, 2003.
24. On or before October 1, 2004, the Township shall complete the Sanitary Sewer System Project Performance Certification Program and submit to the Department for approval, a project certification letter and evaluation report
25. If the Township is unable to certify that the project meets the performance requirements as identified above, then by November 1, 2004, the Township shall submit to the Department for approval, an Evaluation/Corrective Action Report. Following completion of the corrective action and a determination that the project is acceptable for certification, the Township shall submit a certification letter.

PENALTIES

26. The Township agrees to pay to the State of Michigan TWENTY-FIVE HUNDRED (\$2,500) DOLLARS as

partial compensation for the cost of investigations and enforcement activities arising from the illegal discharge of untreated sanitary sewage to waters of the State. This compensation shall be paid within 30 days of the entry of this Administrative Consent Order (Order) according to the procedure described in Paragraph 30.

27. The Township agrees to pay TWO HUNDRED FIFTY THOUSAND (\$250,000) DOLLARS for the illegal discharge of untreated sanitary sewage to waters of the State. Of this amount, the Township agrees to pay TWO HUNDRED THOUSAND (\$200,000) DOLLARS to the general fund of the State of Michigan in four payments according to the following schedule and mailed to the address in Paragraph 30:
 - a. \$50,000 shall be paid on or before March 1, 2000
 - b. \$50,000 shall be paid on or before March 1, 2001
 - c. \$50,000 shall be paid on or before March 1, 2002
 - d. \$50,000 shall be paid on or before March 1, 2003
28. The Township agrees to allocate the remaining FIFTY THOUSAND (\$50,000) DOLLARS for the following Supplemental Environmental Projects (SEPs):
 - a. A donation of \$45,000 paid to the Macomb County Health Department for the offshore water and sediment testing program. The Township shall submit a plan for the offshore water and sediment testing program conducted by the Macomb County Health Department to the Department as part of this SEP.
 - b. A donation of \$2,500 paid to the Clinton River Watershed Council.
 - c. A donation of \$2,500 paid to the St. Clair Channel Keeper, Inc.

The Township shall provide the Department with documentation to confirm the completion of the SEPs and the payment of funds to the Macomb County Health Department, Clinton River Watershed Council, and St. Clair Channel Keeper, Inc. within 60 days of entry of this Order. In the event that the Township expends less than \$50,000 for the agreed upon SEPs, the Township shall pay the difference to the general fund of the State of Michigan, according to the procedure described in Paragraph 30.

29. The Township agrees to pay stipulated penalties of ONE THOUSAND FIVE HUNDRED (\$1,500) DOLLARS per day for each failure to meet the requirements or dates of any items listed in Paragraphs 10 through 25 and Paragraph 28 above. The Township shall pay accrued stipulated penalties by check made payable to the State of Michigan and delivered to the address in Paragraph 30 no later than 10 days after the end of the month in which violations occurred and without request from the Department.
30. The Township shall pay all funds due pursuant to this Order by check made payable to the State of Michigan and delivered to the Michigan Department of Environmental Quality, Cashier's Office, P.O. Box 30657, 300 S. Washington Square, Suite 457, Lansing, Michigan 48909-8157 To ensure proper credit, all payments made pursuant to this Order must include the Payment Identification Number SWQ3041.
31. The Department reserves the right to seek natural resource damages for any past and/or future violation stated herein.

SUBMITTALS

32. All notices, letters, plans or other documents required to be submitted by this Order shall be submitted in duplicate to:

Mr Roy Schrameck, District Supervisor
Southeast Michigan District Office
Surface Water Quality Division
38980 Seven Mile Road

Mr. Thomas K. Rohrer,
Chief Enforcement Unit
Surface Water Quality Division
P.O. Box 30273

GENERAL CONDITIONS

33. The Township agrees to comply with all of requirements of this Order and not to contest the issuance of this Order.
34. The Township is put on notice that compliance with the requirements of this Order does not constitute a release or waiver of liability for other past or continuing violations of any statutes, rules, or regulations of the State of Michigan. The Department retains jurisdiction to enter further Orders and to take such other actions as the Department deems necessary or as the facts and circumstances warrant. This Order shall expire on November 1, 2004, providing that all of the elements of the Order have been completed, and that the Township has certified that they have met the performance requirements.
35. This Order shall be binding upon the Department and the Township, their agents, successors and assigns.

FORCE MAJEURE

A "force majeure" event is defined for the purposes of this Order as an occurrence or nonoccurrence arising from cause or causes not foreseeable and without the fault of the Township and which could not be avoided or overcome by due diligence of the Township and any entity controlled by the Township performing work under this Order, such as the Township's employees, contractors, subcontractors, including but not limited to:

1. an act of God,
2. labor strikes or work stoppages over which the Township has no control;
3. acts or omissions of third parties for which the Township is not responsible; and
4. untimely review of permit applications or submissions by the Department or other applicable authority.

Force majeure does not include unanticipated or increased costs; changed financial circumstances, or failure to obtain a permit or license in a timely fashion as a result of the Township's acts or omissions.

To establish a claim of a force majeure event, the Township shall retain the burden of proving that such an event did occur according to the conditions listed above. Furthermore, the Township shall notify the Department by certified mail within fifteen (15) days of becoming aware of any event that they allege meets the definition of a force majeure event. Failure to notify the Department within this time period shall constitute a waiver of any such claim. The final decision of whether or not to accept a claim of a force majeure event as a valid reason for delay rests solely with the Department. Should the Township feel aggrieved by any such decision of the Department, the Township may request a court of competent jurisdiction to review the matter and evaluate the merits of the Township's claim.

To the extent that any such force majeure event results in noncompliance with the terms of this Order, the Township shall not be liable for any stipulated penalties set forth in this Order and the time for performance or compliance with the terms of this Order shall be extended by the Department to the extent appropriate. An extension of one compliance date due to a particular force majeure event will not necessarily result in an extension of a subsequent compliance date or other unrelated compliance date or dates.

THE UNDERSIGNED PARTIES HEREBY CERTIFY THAT THEY HAVE FULL AND APPROPRIATE AUTHORITY TO BIND THE PARTIES TO THE TERMS OF THIS ORDER (ACO-SW00-002)

DEPARTMENT OF ENVIRONMENTAL QUALITY

David Hamilton, Chief Surface
Water Quality Division

CLINTON TOWNSHIP
James R. Sinnamon
Township Supervisor

APPROVED AS TO FORM:

By: Neil D. Gordon, Assistant Attorney General For
A. Michael Leffler,
Assistant Attorney General in Charge
Natural Resource Division
Michigan Department of Attorney General