

**STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY**

In the Matter of

ABATEMENT OF WATER POLLUTION

AFO-SW02-001

Date Entered: Township of Clinton

40700 Romeo Plank Road

Clinton Township, Michigan 48038

AMENDED 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, associations, private corporations, and partnerships or individuals shall submit the plans and specifications to the department and secure from the department a permit for construction. The department may promulgate and enforce rules regarding the preparation and submission of plans and specifications and for the issuance and period of validity of construction permits for the work. A contractor, builder, governmental agency, corporation, association, partnership, or individual shall not engage in or commence the construction of a sewerage system, filtration or other purification plant, or treatment works or an alteration, addition, or improvement until a valid permit for the construction is secured from the department.'
5. Section 4105(2) of NREPA states. 'A municipal officer ..who permits or allows construction to proceed on a sewerage works without a valid permit, or in a manner not in accordance with the plans and specifications approved by the department, is guilty of a misdemeanor.'
6. Rule 299.2933(1), Submittal of plans and specifications, of the Michigan Compiled Laws, states: "Before the construction or alteration of a sewerage system or portions thereof, plans and specifications therefore shall be submitted to the department for review and issuance of a construction permit."

FINDINGS

7. On March 3, 2000, Clinton Township (Township) and the Michigan Department of Environmental Quality (Department), entered into an Administrative Consent Order (Order) ACO-SW00-002 requiring the Township, to eliminate untreated sewage bypasses from several sanitary sewer overflow (SSO) locations within the Township. ACO-SW00-002 was entered after the Township discovered and voluntarily disclosed the existence of nine SSO pumps. The purpose of this Amended Administrative Consent Order (Amended Order) is to revise the corrective program schedule of the original Order.
8. On May 10, 2000, the Department issued its "Strategy for the Regulatory Control and Correction of Illegal Overflows from Separate Sanitary Sewer Systems in Michigan." Under the Strategy, the Department required Michigan municipalities to report all known SSOs that have occurred in the past five years, and requested that the communities promptly report all future SSOs. In addition, under the Strategy, a municipality could avoid significant penalties and sanctions for SSO discharges if it disclosed the existence of all known SSOs, and voluntarily proposed an SSO corrective program.
9. As required by ACO-SW00-002. on or before January 31, 2000, the Township implemented a notification procedure through which the Surface Water Quality Division (SWOD), 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
10. As required by ACO-SW00-002. on or before January 31, 2000, the Township submitted to the Department for approval, then revised wastewater flow monitoring work plan for all sewered areas that contribute wastewater flows to all SSO locations. The Department approved this work plan on March 27, 2000.
11. As required by ACO-SW00-002, on or before April 1, 2000, the Township initiated their wastewater flow monitoring program for all sewered areas that contribute wastewater flows to all SSO locations The Township notified the Department, in writing, of compliance with this requirement on or before April 15, 2000.
12. As required by ACO-SW00-002, on or before August 15, 2000, the Township submitted to the Department for approval, a final report for their wastewater flow monitoring program. The Department approved the final report on November 13, 2000.
13. As required by ACO-SW00-002, on or before September 1, 2000, the Township submitted to the Department for approval, their Sanitary Sewer Evaluation Survey (SSES) work plan for all sewered areas that contribute wastewater flows to all SSO locations. The Department approved this work plan on November 13, 2000.
14. As required by ACO-SW00-002, on or before October 1. 2000. the Township initiated their SSES in accordance with the approved work plan. The Township notified the Department, in writing, of compliance with this requirement on or before to October 15, 2000.
15. As required by ACO-SW00-002. on or before October 1, 2001, the Township submitted to the Department for approval, their SSES Report for all sewered areas that contribute wastewater flows to all SSO locations. The report is currently under review.
16. Although not required by ACO-SW00-002, the Township has voluntarily contracted at an approximate cost of \$2.6 million for cured in-place pipe (CIPP) relining of sewer lines in the service area for the SSO pumps. This relining is expected to be completed by December 15, 2001
17. The Detroit Water and Sewerage Department (DWSD) is in the process of completing a Waste Water Master Plan (WWMP) that will include recommendations regarding additional measures to ensure adequate transport and treatment capacity for DWSD's service area The WWMP is currently scheduled to be completed by August 2003. Additionally, the City of Mount Clemens is considering expanding its Wastewater Treatment Plant (WWTP) to accept wastewater from other communities for treatment. These actions, as well as other wastewater treatment alternatives currently under consideration, will have a direct impact on the options available to the Township to comply with Part 31 of NREPA

ORDER

IT IS THEREFORE AGREED AND ORDERED THAT THE SCHEDULE OF ACO-SW00-002 SHALL BE

AMENDED AS FOLLOWS'

18. Paragraphs 19 through 28 of this Amended Order provide a corrective program schedule, which is based on DWSD's timely completion of the WWMP. Because the additional transport and treatment measures DWSD may recommend in the WWMP are as of yet unknown, both the Township and the Department acknowledge that the dates and requirements specified in paragraphs 19 through 28 may require modification upon completion of the WWMP.
19. On or before October 1, 2001, the Township shall complete an SSES Study Report and commence a Manhole Rehabilitation Program which shall be completed on or before September 15, 2002 at an estimated cost of approximately \$1.1 Million.
20. On or before December 31, 2002, the Township shall complete evaluation of the feasibility of a footing drain disconnection pilot project. If the Township determines that the footing drain disconnection pilot project is feasible, the Township shall submit a proposed schedule to the Department on or before February 15, 2003. for implementation of the footing drain disconnection pilot project.
21. On or before February 1, 2004, the Township shall submit to the Department for approval the post-pilot project flow monitoring and data analysis for the footing drain disconnection pilot project.
22. On or before April 1, 2004, if the Township determines it will still exceed contract treatment capacity with the DWSD after completion of the Manhole Rehabilitation program, sewer relining, and footing drain disconnection project, the Township shall use its best efforts to complete negotiations with DWSD to obtain additional treatment capacity from DWSD and/or arrange for an exchange of sewage volume utilizing the Mt. Clemens WWTP. If these negotiations are successful, the Township shall on or before December 31, 2005, have designed and completed construction of any necessary sewer connections and/or implemented any other necessary measures to secure and begin using such additional treatment capacity from the DWSD or the Mount Clemens WWTP.
23. If the Township cannot obtain additional treatment capacity from DWSD or the Mt. Clemens WWTP or  
4 identify another feasible alternative that provides sufficient treatment capacity by October 15, 2003, and the Township determines it will still exceed contract capacity with the DWSD after completion of the Manhole Rehabilitation program, sewer relining, and footing drain disconnection projects, then the Township shall on or before December 31, 2006, or such other date agreed to by the parties in an amendment to this Amended Order, complete the appropriate engineering and structural improvements to its sewer system (provided the appropriate Part 41 permits are obtained for the project as required), to meet all applicable state and federal law pertaining to SSOs.
24. On or before July 1, 2006, the Township shall submit to the Department for approval, a work plan for conducting a Sanitary Sewer System Project Performance Certification (PPC) Program to certify that the engineering and structural improvements the Township has implemented meet all applicable state and federal law pertaining to SSOs.
25. On or before November 30, 2006, the Township shall have initiated the Sanitary Sewer System PPC Program in accordance with the approved work plan. The Township shall notify the Department, in writing, of compliance with this requirement by December 15, 2006. The PPC program shall be conducted for a period of no less than one year.
26. On or before December 31, 2007, the Township shall submit to the Department for approval, the Sanitary Sewer System PPC Program report.
27. If the Township does not certify that the engineering and structural improvements the Township has implemented meet all applicable state and federal law pertaining to SSOs, then the Township shall submit an approvable Corrective Action program work plan to the Department on or before July 31, 2008
28. Progress reports shall be submitted to the Department beginning upon the entry date of this Amended Order on a quarterly basis that shall be due on or before April 15, July 15, October 15 and January 15 of each calendar year.

PENALTIES

29. The Township has paid to the State of Michigan (State) 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 was paid within 30 days of the entry of the original Order. ACO-SW00-002.
30. The Township was assessed a civil penalty of TWO HUNDRED THOUSAND (\$200,000) for the illegal discharge of untreated sanitary sewage to waters of the State per the original Order, ACO-SW00-002. The Township has paid ONE HUNDRED THOUSAND (\$100,000) DOLLARS of this amount to the State per the schedule in the original Order, ACO-SW00-002. The Township agrees to pay the remaining ONE HUNDRED THOUSAND (\$100,000) DOLLARS per this Amended Order to the general fund of the State in two payments according to the following schedule and mailed to the address in Paragraph 33,
  - a. \$50,000 shall be paid on or before March 1, 2002
  - b. \$50,000 shall be paid on or before March 1, 2003
31. The Township has documented that it has spent FIFTY THOUSAND (\$50,000) DOLLARS for several Supplemental Environmental Projects (SEPs) approved by the Department as required by the original Order. ACO-SW00-002
32. The Township agrees to pay stipulated penalties of ONE THOUSAND HUNDRED (\$1,000) DOLLARS per day for each failure to meet the requirements or dates of any items listed in Paragraphs 19 through 27 above of this Amended Order. The Township shall pay accrued stipulated penalties by check made payable to the State and delivered to the address in Paragraph 33 no later than 10 days after the end of the month in which violations occurred and without request from the Department.
33. The Township shall pay all funds due pursuant to this Amended 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 Amended Order must include the Payment Identification Number SWQ3041.
34. The Department reserves the right to seek natural resource damages for any past and/or future violation stated herein.

SUBMITTALS

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

Ms. Teresa Seidel, District Supervisor  
 Southeast Michigan District Office  
 Surface Water Quality Division  
 38980 Seven Mile Road  
 Livonia, MI 48152

Mr. Thomas K. Rohrer, Chief  
 Enforcement Unit  
 Surface Water Quality Division  
 P.O. Box 30273  
 Lansing, Michigan 48909

GENERAL CONDITIONS

36. The Township agrees to comply with all of requirements of this Amended Order and not to contest the issuance of this Amended Order.
37. Except as otherwise provided in paragraph 38. the Township is put on notice that compliance with the requirements of this Amended 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. 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 Amended Order shall expire on July 31, 2008. providing that all of the elements of the Amended Order have been completed, and that the Township has certified that they have met the performance requirements.

38. This Amended Order constitutes a full settlement and satisfaction as to the Township for violations alleged by the Department in agency letters, notices of noncompliance, and/or other correspondence sent to the Township through the effective date of this Amended Order and regarding the alleged untreated sewage bypasses from the nine SSO locations, including but not limited to October 15, 1999, and every other document identified in the original Order and this Amended Order.
39. This Amended Order shall be binding upon the Department and the Township, their agents, successors and assigns
40. This Amended Order supplants in its entirety the original Order. ACO-SW00-002, which upon the effective date of the Amended Order shall become null and void and of no continuing legal effect

#### FORCE MAJEURE

A 'force majeure' event is defined for the purposes of this Amended 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 Amended Order, such as the Townships employees, contractors subcontractors, including but not limited to:

- a) an act of God;
- b) an extreme act of nature,
- c) labor strikes or work stoppages over which the Township has no control;
- d) acts or omissions of third parties for which the Township is not responsible; and
- e) 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 Amended Order, the Township shall not be liable for any stipulated penalties set forth in this Amended Order and the time for performance or compliance with the terms of this Amended 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.