

WEST DEPTFORD TOWNSHIP

RESOLUTION 2016- 58

**RESOLUTION OF THE TOWNSHIP OF WEST DEPTFORD AUTHORIZING
EXECUTION OF AN ADMINISTRATIVE CONSENT ORDER (“ACO”) BETWEEN THE
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND THE
TOWNSHIP OF WEST DEPTFORD
(ACO EA ID#: NEA160001-5954)**

WHEREAS, the Township of West Deptford (hereinafter referred to as “Township”) owns and operates a facility located at 962 Kings Highway, West Deptford, New Jersey; and

WHEREAS, as the result of compliance evaluations conducted at that facility on October 5, 2015 and December 17, 2015, the New Jersey Department of Environmental Protection (hereinafter referred to as “NJDEP”), NJDEP determined that the Township had failed to comply with applicable State requirements; and

WHEREAS, in order to resolve this matter without trial or adjudication, the Township and the NJDEP have agreed to the entry of an Administrative Consent Order; and

WHEREAS, the attached Administrative Consent Order has been prepared by the NJDEP and reviewed by the Township Solicitor.

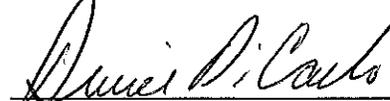
NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of West Deptford, County of Gloucester, and State of New Jersey as follows:

1. That the Township Committee does hereby authorize and approve the execution of the attached Administrative Consent Order with NJDEP to address the failure to comply with applicable State requirements regarding the Township Facility located at 962 Kings Highway, West Deptford, New Jersey and to resolve this matter without trial or adjudication.

2. That the Mayor and/or Township Administrator be and is hereby authorized to execute said Administrative Consent Order (ACO EA ID#: NEA160001-5954) on behalf of the Township of West Deptford.

ADOPTED at the meeting of the Township Committee of the Township of West Deptford held on February 3, 2016.

TOWNSHIP OF WEST DEPTFORD



DENICE DICARLO, Mayor

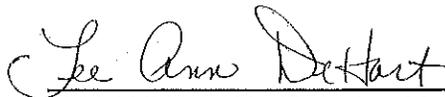
ATTEST:



LEE ANN DEHART, Acting Municipal Clerk

CERTIFICATION

I, Lee Ann DeHart, Acting Municipal Clerk, of the Township of West Deptford, in the County of Gloucester, do hereby certify that the foregoing Resolution was presented and duly adopted by the Township Committee at a meeting of the Township of West Deptford held on February 3, 2016.



LEE ANN DEHART, Acting Municipal Clerk



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

Bureau of Release Prevention
PO Box 420, Mail Code 22-03D
Trenton, NJ 08625-0420
Tel: (609) 633-0610 Fax: (609) 633-7031

BOB MARTIN
Commissioner

CERTIFIED MAIL
7013 1710 0000 8067 8380

IN THE MATTER OF

ADMINISTRATIVE
CONSENT ORDER

WEST DEPTFORD TWP
400 Crown Point Rd
P.O. Box 89
West Deptford Twp, NJ 08086

EA ID # NEA160001 - 5954

This Administrative Consent Order (ACO) is entered into pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter NJDEP or the Department) by N.J.S.A. 13:1D-1 et seq., the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., and the Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-19 et seq. (the "Act" or "TCPA"), and duly delegated to the Chief, Bureau of Release Prevention, pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. WEST DEPTFORD TWP owns and/or operates a facility at 962 Kings Hwy, West Deptford Twp, Gloucester County, New Jersey (ID# 5954).
2. As the result of a compliance evaluations conducted on October 5, 2015 and December 17, 2015, the Department has determined that WEST DEPTFORD TWP failed to comply with applicable requirements as follows:

A. Requirement: Pursuant to 40 CFR 68.150(b)(3), as incorporated with changes at N.J.A.C. 7:31-7.1(c)7, the owner or operator shall submit the first Risk Management Plan (RMP) no later than the date on which a regulated substance is first present at or above a threshold quantity at the facility.

Description of Noncompliance: West Deptford Township failed to submit the first RMP on or before the date on which a regulated substance was first present at or above a threshold quantity at the facility. West Deptford Township used, handled,

stored, or generated chlorine, an Extraordinarily Hazardous Substance, in an amount at or above the threshold quantity specified at N.J.A.C. 7:31-6.3.

3. Based on the facts set forth in these FINDINGS, the Department has determined that WEST DEPTFORD TWP has violated N.J.S.A. 13:1D-1 et seq., the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., and/or the Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-19 et seq. (the "Act" or "TCPA"), and the regulations promulgated pursuant thereto, specifically, 40 CFR 68.150(b)(3) incorporated by reference with changes at N.J.A.C. 7:31-7.1(c)7.
4. Therefore, the Department has determined that WEST DEPTFORD TWP is liable for a civil administrative penalty totaling \$17,944.39 for the above referenced violation.
5. In order to resolve this matter without trial or adjudication, WEST DEPTFORD TWP has agreed to entry of this ACO and to be bound by its terms and conditions.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

A. COMPLIANCE SCHEDULE

6. WEST DEPTFORD TWP shall take whatever actions are necessary to achieve and maintain compliance with N.J.A.C. 7:31 on or before the schedule specified below including but not limited to the following:
 - A. Submit a Risk Management Plan within 30 days of the effective date of this document to register the regulated substance(s) present at or above a threshold quantity at the facility. Alternatively, implement procedures to maintain the inventory of all regulated substances below the threshold quantity.
7. WEST DEPTFORD TWP shall satisfactorily complete the Supplemental Environmental Project (SEP) described in Appendix A of this document.
8. By signing this order WEST DEPTFORD TWP certifies that the SEP is not required by any federal, state, or local law or regulation, nor is it required by any other agreement, grant or as injunctive relief in this or any other case.
9. WEST DEPTFORD TWP acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by WEST DEPTFORD TWP to a third party, shall not relieve WEST DEPTFORD TWP of its responsibility to complete the SEP as described in this Order.
10. In the event WEST DEPTFORD TWP publicizes the SEP or the SEP results, WEST

DEPTFORD TWP shall state in a prominent manner that the project is part of a settlement of an enforcement action.

11. In the event that WEST DEPTFORD TWP fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described in Appendix A and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Appendix A, WEST DEPTFORD TWP shall be liable for stipulated penalties according to the provisions set forth below:

- (i) Except as provided in subparagraph (ii) immediately below, for a SEP which has not been completed satisfactorily pursuant to this Administrative Consent Order, the Department may assess the greater of either stipulated daily penalties or the remainder of the SEP value plus 25% of the estimated SEP cost.

- (ii) If the SEP is not completed in accordance with the above paragraphs and Appendix A, but the Department determines that the WEST DEPTFORD TWP a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 95 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.

- (iii) If the SEP is completed in accordance with the provisions outlined above and in the Appendix, but the WEST DEPTFORD TWP spent less than 95 percent of the amount of money required to be spent for the project, Respondent shall pay the difference to the Treasurer, State of New Jersey or propose an additional SEP to expend the remaining funds.

- (iv) If the SEP is completed in accordance outlined above and in the Appendix, and the WEST DEPTFORD TWP spent at least 95 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty.

12. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of DEP.
13. If WEST DEPTFORD TWP is not able to achieve compliance by taking the above actions, WEST DEPTFORD TWP is responsible for taking whatever additional actions are necessary in order to comply with all applicable federal, state and local permits as well as all applicable statutes, codes, rules, regulations and orders, including but not limited to the statutes and regulations cited herein.

B. PENALTY

14. In settlement of the violations cited in the above findings, WEST DEPTFORD TWP shall pay a penalty of \$3,588.88 by check payable to Treasurer, State of New Jersey and remitted to the Division of Revenue at the address stated and on or before the date specified in the enclosed invoice.
15. WEST DEPTFORD TWP shall satisfy \$10,766.63 of the civil charge by satisfactorily completing the SEP described in Appendix A of this document.
16. If any payment set forth in the paragraph 14 is not properly and timely received by the Division of Revenue, a default shall have occurred. If the default is not cured within five days of receipt by WEST DEPTFORD TWP of written notice of such default, the Department, in its sole discretion, may declare the entire sum of \$17,944.39, plus interest, less any payment previously made hereunder, immediately due and owing, and may take any action authorized by law or this ACO, without further notice to WEST DEPTFORD TWP.

C. STIPULATED PENALTIES

17. WEST DEPTFORD TWP shall pay stipulated penalties to the Department, as set forth below, for failure to comply with the provisions of this ACO upon written demand as specified in paragraph 18 below.

<u>Calendar Days After Due Date</u>	<u>Per Calendar Day</u>
1-7	\$50
8-14	\$100
15 or more	\$250

18. Within 45 calendar days after WEST DEPTFORD TWP's receipt of a written demand from the Department for stipulated penalties, WEST DEPTFORD TWP shall submit a check to the Department as outlined in paragraph 14 above.
19. If WEST DEPTFORD TWP fails to pay stipulated penalties pursuant to the preceding paragraphs, the Department may take action to collect same, including, but not limited to, instituting civil proceedings to collect such penalties pursuant to R. 4:67 and R. 4:70 or assess civil administrative penalties for violations of this ACO.
20. The payment of stipulated penalties does not alter WEST DEPTFORD TWP's responsibility to complete all requirements of this ACO.

GENERAL PROVISIONS

21. Neither the entry into this ACO nor the payment of the associated penalty shall constitute an admission of liability by WEST DEPTFORD TWP for any of the violations listed herein.
22. Nothing contained in this ACO restricts the ability of the Department to raise the above Findings in any other proceeding.
23. This ACO shall be binding on WEST DEPTFORD TWP, its respective agents, successors, assigns, and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity.
24. This ACO shall be fully enforceable as a final Administrative Order in the New Jersey Superior Court.
25. WEST DEPTFORD TWP agrees not to contest the terms or conditions of this ACO except that WEST DEPTFORD TWP may contest the Department's interpretation or application of such terms or conditions in any action brought by the Department to enforce this ACO's provisions.
26. This ACO shall not relieve WEST DEPTFORD TWP from obtaining and complying with all applicable federal, state and local permits as well as all applicable statutes, codes, rule, regulations and orders, including but not limited to the statutes and regulations cited herein.
27. No modification or waiver of this ACO shall be valid except by written amendment duly executed by WEST DEPTFORD TWP and the Department.
28. Unless otherwise specifically provided herein, WEST DEPTFORD TWP shall submit all documents required by this ACO, except penalty payments, to the Department by certified mail, return receipt requested or by hand delivery with an acknowledgment of receipt form for the Department's signature to:

Iclal Atay, Ph.D., Chief
Bureau of Release Prevention
401 E. State St.
PO Box 420, Mail Code 22-03D
Trenton, NJ 08625-0420

The date the Department receives the certified mail or executes the acknowledgment will be the date the Department uses to determine WEST DEPTFORD TWP's compliance with this ACO.

29. Unless otherwise specifically provided herein, any communication made by the Department to WEST DEPTFORD TWP pursuant to this ACO shall be sent to

WEST DEPTFORD TWP
400 Crown Point Rd
P.O. Box89
West Deptford Twp, NJ 08086

30. WEST DEPTFORD TWP shall not construe any unwritten or informal advice, guidance, suggestions, or comments by the Department, or by persons acting on behalf of the Department, as relieving WEST DEPTFORD TWP of its obligations under this ACO, the Act, and/or the regulations promulgated pursuant to the Act.
31. In addition to the Department's statutory and regulatory rights to enter and inspect, WEST DEPTFORD TWP shall allow the Department and its authorized representatives access to the site at all times for the purpose of determining compliance with this ACO.
32. Nothing in this ACO shall preclude the Department from taking enforcement action against WEST DEPTFORD TWP for matters not set forth in the findings of this ACO.
33. No obligations or penalties imposed by this ACO are intended to constitute debt(s) which may be limited or discharged in a bankruptcy proceeding. All obligations and penalties are imposed pursuant to the police powers of the State of New Jersey for the enforcement of the law and the protection of public health, safety, welfare and the environment.
34. WEST DEPTFORD TWP shall give written notice of this ACO to any successor in interest thirty (30) calendar days prior to transfer of ownership or control of the facility or facilities which are the subject of this ACO and shall simultaneously notify the Department that such notice has been given. This requirement shall be in addition to any other statutory or regulatory requirements arising from the transfer of ownership or control of WEST DEPTFORD TWP's facility. In addition, the parties agree that any contract, lease, deed or any other agreement that WEST DEPTFORD TWP enters into to convey the property/facility that is the subject of this ACO shall include a provision which states that the successor, assignee, tenant or purchaser has agreed to assume the obligations imposed by this ACO.
35. The Department reserves all statutory and common law rights to require WEST DEPTFORD TWP to take additional action(s) if the Department determines that such actions are necessary to protect public health, safety, welfare and the environment. Nothing in this ACO shall constitute a waiver of any statutory or common law right of the Department to require such additional measures should the Department determine that such measures are necessary.
36. This ACO shall be governed and interpreted under the laws of the State of New Jersey.
37. If any provision of this ACO is found invalid or unenforceable, the remainder of this ACO shall

not be affected thereby and each provision shall be valid and enforced to the fullest extent permitted by law. The Department does, however, retain the right to terminate the remainder of this ACO if, after such finding, it determines that the remaining ACO does not serve the purpose for which it was intended.

38. This ACO represents the entire integrated agreement between the Department and WEST DEPTFORD TWP on the matters contained herein.
39. The Department reserves the right to unilaterally terminate this ACO in the event WEST DEPTFORD TWP violates its terms and to take any additional enforcement action it deems necessary.
40. This ACO shall terminate upon receipt by WEST DEPTFORD TWP of written notice from the Department that all the requirements of this ACO have been satisfied.
41. This ACO shall become effective upon the execution hereof by all parties, subject to completion of any required public participation process.

WEST DEPTFORD TWP

DATED:

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BY:

Denise D. Carlo

NAME:

Denise D. Carlo

TITLE:

Mayor

By this signature, I certify that I have full authority to execute this document on behalf of WEST DEPTFORD TWP.

NJDEP

DATED:

BY:

NAME: Iclal Atay, Ph.D.

TITLE: Chief, Bureau of Release Prevention

By this signature, I certify that I have full authority to execute this document on behalf of NJDEP.

APPENDIX A

WEST DEPTFORD TWP shall perform the Supplemental Environment Project (SEP) identified below in the manner specified in this Appendix.

1. The SEP to be performed by WEST DEPTFORD TWP is implementing the following safety improvements at wells #4 – 112 Parkville Rd., #5 – 962 Kings Highway , #6 – 840 West Red Bank Ave., #7 -621 Academy Ave., & #8 – 215 Parkville Rd.:

- Install chlorine gas detector alarms in each well house chlorine room. The units will have audio and visual alarms and will send a signal when activated to a remote area that will be able to respond to any chlorine release 24 hours per day.
- All chlorine detectors will be maintained in working order.
- For all well sites, repair fencing, secure and lock all doors, insert all chlorine vents inside the building and seal all holes, trim the trees and shrubs to prevent a fire hazard, and bring the well buildings up to general electrical and building codes.
- Well #3 will not contain any chlorine inventory.

2. Funds dedicated for the SEP shall not be used to pay for consultant oversight costs. If WEST DEPTFORD TWP requires the assistance of a consultant, it shall provide funds directly to the consultant in addition to the funds dedicated to the SEP.

3. The amount specified in paragraph 15 of the ACO shall represent civil penalties assessed by DEP and the respondent hereby agrees not to represent otherwise to any taxing authority or other governmental entity.

4. The SEP shall be completed by January 31, 2016, for wells 5 & 6 and December 31, 2016, for wells 4, 7, and 8.

5. WEST DEPTFORD TWP shall submit progress reports on the SEP on a quarterly basis, due on the following dates: April 10, 2016; July 10, 2016; October 10, 2016; and January 10, 2017. The progress reports shall state what is required to be performed for each well and the status of work.

6. WEST DEPTFORD TWP shall submit a written final report on the SEP, verifying that the SEP has been completed in accordance with the terms of this Administrative Consent Order, and certified either by a Certified Public Accountant or by a responsible corporate officer or owner. WEST DEPTFORD TWP shall submit the final report and certification to the Department within 30 days from the completion of the SEP.

7. The SEP Completion Report shall contain the following information:
(i) A detailed description of the SEP as implemented;

- (ii) A description of any operating problems encountered and the solutions thereto;
- (iii) Itemized costs;
- (iv) Certification that the SEP has been fully implemented pursuant to the provisions of this Administrative Consent Order; and
- (v) A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

8. Unexpected issues related to the successful completion of the SEP must be brought to the attention of the Department. If the SEP has not or cannot be completed as described in the Administrative Consent Order, WEST DEPTFORD TWP shall notify DEP in writing no later than April 1, 2016. Such notification shall include:

- a. an alternate SEP proposal, or
 - b. payment of the amount specified in paragraph 15 of the ACO.
- It is the Department's sole discretion to approve an alternate SEP proposal.

9. WEST DEPTFORD TWP hereby consents to reasonable access by DEP or its staff to property or documents under the party's control, for verifying progress or completion of the SEP. The Department may demand at any time, and WEST DEPTFORD TWP shall forthwith provide, any documents relating in any way to the SEP, including but not limited to its implementation, progress, and completion.

10. SEP documents to be submitted to the Department shall be sent to:

Iclal Atay, Ph.D., Chief
Bureau of Release Prevention
401 E. State St.
PO Box 420, Mail Code 22-03D
Trenton, NJ 08625-0420