

TOWNSHIP OF MOORESTOWN

RESOLUTION NO. 136-2016

**RESOLUTION AUTHORIZING EXECUTION OF
ADMINISTRATIVE CONSENT ORDER WITH
NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION
(Water Supply Regulatory Issues)**

WHEREAS, the Township of Moorestown and the New Jersey Department of Environmental Protection (“the Department”) executed a Memorandum of Agreement (“MOA”) in April, 2015 in order to establish terms by which the Township could proceed with water service connections for certain development projects, and by which the Township would address certain water allocation and water supply firm capacity regulatory issues by undertaking water system infrastructure improvements and related actions; and

WHEREAS, following the execution of that MOA, the Township and the Department have worked together to address those and other regulatory issues, and more recently the Department proposed that the Township and the Department enter into an Administrative Consent Order (“ACO”) to address all such issues, now and into the future; and

WHEREAS, Department staff and Township staff and professionals have discussed the terms of a mutually-agreeable ACO, a copy of which is attached to this Resolution, and Township staff and professionals have recommended execution of the ACO, and it appears that entry into the ACO is advantageous to the Township;

NOW, THEREFORE, BE IT RESOLVED by the Township Council of the Township of Moorestown, County of Burlington, State of New Jersey, that:

1. Entry into the attached Administrative Consent Order with the New Jersey Department of Environmental Protection be and is hereby approved.
2. A copy of the fully-executed Administrative Consent Order shall be maintained in the Township’s files by the Municipal Clerk.

VOTE:
GARWOOD
DELGADO
JORDAN
NAPOLITANO
PETRIELLO

Certified to be a true and correct copy of a Resolution adopted by the Township Council at its meeting on July 1, 2016

Patricia L. Hunt, RMC
Township Clerk



State of New Jersey

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF THE ASSISTANT COMMISSIONER
Compliance and Enforcement
401 East State Street, P.O. Box 420
Trenton, NJ 08625-0420
Telephone: 609-984-3285

BOB MARTIN
Commissioner

IN THE MATTER OF ADMINISTRATIVE
:
CONSENT ORDER

MOORESTOWN WATER DEPARTMENT:

EA ID # WCP150001 - 0322001

This Administrative Consent Order (“ACO”) is entered into pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (“Department”) by N.J.S.A. 13:1D-1 et seq., and the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., and the regulations implementing these statutes, and duly delegated to the Assistant Commissioner for Compliance and Enforcement pursuant to N.J.S.A.13:1B-4.

FINDINGS

1. The Township of Moorestown (“Moorestown”) owns and operates a public community water system as defined by N.J.A.C. 7:10-1.3, consisting of 7 wells and 3 treatment plants (“the system”). Water from wells 3, 5, and 6 is treated at TP001003, the Kings Highway Treatment Plant (“Kings Highway”), which provides corrosion control, iron removal, particulate removal and disinfection. Water from wells 4 and 8 is treated at TP002008, the Hartford Road Treatment Plant (“Hartford Road”), which provides iron removal, inorganics removal and disinfection. Water from wells 7 and 9 is treated at TP003013, the North Church Street Treatment Plant (“North Church Street”), which provides corrosion control, iron and manganese removal and disinfection. The system serves approximately 20,700 residents (approximately 7300 service connections) of Moorestown Township, Burlington County, New Jersey (ID# 0322001). Moorestown is authorized to divert water under Water Allocation Permit No. 5121 (“WA Permit”) in the amounts of 150 million gallons per month (“mgm”) from all diversion sources, 392.744 million gallons per year (“mgy”) from wells 3, 4, 5, 6 and 8, which are located in the Depleted Zone of Critical Area 2 and 917.603 mgy

from all water sources, including wells 7 and 9. The latter two wells are completed in the Threatened Zone of Critical Area 2.

2. In addition to water provided from the facilities described above, Moorestown purchases water from New Jersey American Water (“NJAW”) under a regional water sales agreement (“Contract”) in the amounts of 0.896 million gallons per day (“mgd”), 27.773 mgm and 327 mgy. Moorestown historically has required, and NJAW has provided, more water than the Contract amounts on a daily and monthly basis to meet peak demand during the summer months and Moorestown is able to purchase enough water from NJAW to meet its full demand if necessary (e.g. during 2014 and 2015 Moorestown purchased 413.37 mgy and 572 mgy, respectively). Moorestown also has emergency interconnections with Maple Shade (1-8”) and Mount Laurel (2-8”).
3. The table below indicates Moorestown’s permitted daily pumping capacity (in gallons per minute (“gpm”) and mgd) and the treatment design capacity for each treatment plant:

Treatment Plant	Well No.	Pump Capacity Limit (gpm)	Pumping Capacity (mgd)	Treatment Design Capacity (mgd)
Hartford Road	Well 4	<=700	1.008	2.016
	Well 8	<=700	1.008	
Kings Highway	Well 3	<=700	1.008	2.268
	Well 5	<=700	1.008	
	Well 6	<=700	1.008	
North Church Street	Well 7*	<=2000	2.880 (for both wells 7 & 9)	2.880
	Well 9*	<=2000		
Total		<=5500	7.92	7.164

*Cannot operate simultaneously

FIRM CAPACITY AND PERMITTED ALLOCATION

4. A review of Department records indicates that applications for Water Main Extension permits (“WME permits”) submitted by Moorestown prior to September 2013 for various development projects in Moorestown were completed using the volumes noted in paragraphs 1, 2 and 3 above when calculating the system’s firm capacity and allocation capacities as required by N.J.A.C. 7:10-11.5(e) and (f). These applications were prepared by the developers’ engineer with a certification by Moorestown that the information was accurate. The Department issued the permits because the applications indicated that the system would have adequate firm capacity to meet peak daily demands.
5. Pursuant to N.J.A.C. 7:10-11.4, firm capacity means a system has adequate pumping equipment and/or treatment capacity (excluding coagulation, flocculation and sedimentation), and/or adequate capacity by supply from another water system pursuant to

contract to meet peak daily demand as determined under N.J.A.C. 7:10-11.5(e)1 when the largest pumping or treatment unit is out of service.

6. Department staff performed periodic routine inspections of the system, Moorestown performed tests at its treatment plants as required by the Department, and Moorestown submitted monthly T-3 reports that itemized the reported flow of each treatment plant, with the Hartford Road plant showing no flow. However, the Department determined that WME permits issued by the Department were based upon inaccurate information supplied by Moorestown. By letter dated September 24, 2013, the Department notified Moorestown that the Department would not accept any additional WME permit applications nor should Moorestown approve any development projects that have a water demand because it had insufficient monthly allocation per the WA Permit for the projects specified without either increasing the contracted volume purchased from NJAW or obtaining an increase to the monthly and possibly yearly WA Permit limits. The letter further notified Moorestown that the Department was evaluating whether firm capacity credit should be given for Hartford Road because the plant had not been operated for many years, as Moorestown reported on its Water Utilization and T-3 reports, and could not be readily operated, if needed. Removal of the Hartford Road volumes would leave Moorestown with a negative firm capacity. Subsequent to the issuance of the Department's aforementioned letter, the Department was notified by Moorestown that in addition to Hartford Road being not readily operable without significant repairs, Kings Highway could only produce approximately 0.6 mgd of treated water, not the 2.268 mgd as designed.
7. Pursuant to N.J.A.C. 7:10-11.10(b)4 and (c), the addition of water connections is precluded if a water system's demands exceed either its firm capacity or water allocation limits (including bulk purchase water agreements with another system). Based upon the decreased treatment capability at Kings Highway and Hartford Road, but with Wells 7 and 9 fully operable at the approved capacity, the Department determined that Moorestown has a firm capacity deficit of 1.368 mgd. Based upon a temporary treatment approval request submitted to the Department by Moorestown (see paragraph 20 below) the firm capacity deficit will increase to 2.808 mgd when the Well 7 and 1 Granular Activated Carbon ("GAC") unit is out of service.
8. Pursuant to N.J.A.C. 7:10-2.5, whenever the Department determines that additional water service connections to any public water system may result in a degradation of service to existing users due to deficiencies in such public water system such as inadequate source, treatment, distribution or storage capacities, or inadequate pressure or volume, the Department may prohibit, by order, such additional connections.
9. On April 30, 2015, the Department entered into a Memorandum of Agreement ("MOA") with Moorestown, pursuant to which the Moorestown and the Department agreed that Moorestown would implement improvements to its water distribution infrastructure in order to address its water supply allocation and its firm capacity, along with schedules for completing a professional evaluation and an asset management plan for the Township's treatment facilities and for any needed upgrades, along with the completion of the design and permitting of those upgrades. In particular, Moorestown agreed to submit an evaluation

and corrective action plan which specified measures to be constructed to enable its North Church Street water treatment plant to produce water in full compliance with primary and secondary drinking water standards, for manganese, trichloroethylene, gross alpha particle activity, and combined radium, at the plant's approved design capacity of 2.880 mgd. The Department agreed that Moorestown could approve water main extensions for certain development projects and the Department would issue WME permits, provided the total peak day water demand does not exceed 40,000 gpd. This provision was conditioned on Moorestown addressing its water allocation and system firm capacity deficits by undertaking infrastructure improvements.

10. Pursuant to the schedule in the MOA, Moorestown submitted an Asset Management Plan ("AMP"), which provides a tool to ensure that annual revenue reserves and reinvestment are sufficient to facilitate long-term viability of the water system. The AMP is currently under review by the Department. Pursuant to the MOA, Moorestown also submitted a major modification application for its WA Permit (which is currently under Department review) to increase the pump capacity of wells 7 and 9 by 300 gpm, and the overall maximum diversion rate and monthly allocation to 5800 gpm and 162 mgm respectively. However, Moorestown did not meet other deadlines in the MOA. Moorestown asserts that it attempted to complete all submission requirements consistent with the MOA schedule.
11. Additionally, the MOA required Moorestown to expand its current water conservation obligations including, but not limited to, adopting a water use restriction ordinance which limits irrigation to a two day per week watering schedule and restricting hours of lawn irrigation. Moorestown currently has a water conservation ordinance requiring lawn watering only on odd/even days when Moorestown declares a water emergency.

GROSS ALPHA MONITORING AND MAXIMUM CONTAMINANT LEVEL COMPLIANCE

12. Pursuant to N.J.A.C. 7:10-5.1, the Department adopted and incorporated by reference, the National Primary Drinking Water Regulations at 40 CFR 141, with certain modifications, as the New Jersey Primary Drinking Water Regulations, which are applicable to all public water systems.
13. Pursuant to the National Primary Drinking Water Regulations at 40 CFR 141.26, public community water systems are required to conduct routine monitoring for Gross Alpha Particle Activity ("Gross Alpha") as specified therein.
14. Pursuant to N.J.S.A. 58:12A-15 and N.J.A.C. 7:10-5.7(a), the owner or operator of a public community water system that has exceeded a Maximum Contaminant Level ("MCL") shall, within one year after receipt of the test results, take any action required to bring the system into compliance with the standard.
15. Moorestown has submitted to the Department Gross Alpha sample results for North Church Street as follows:

Monitoring Period	Gross Alpha	Gross Alpha (RAA) ⁽²⁾	Notice of Non-Compliance
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	Results ⁽¹⁾		Issued Date
3 rd quarter 2014	15.95		
4 th quarter 2014	No Sample ⁽³⁾		
1 st quarter 2015	No Sample ⁽³⁾		
2 nd quarter 2015	16.93 ⁽⁴⁾	16.44⁽⁵⁾	2/22/16 Monitoring ⁽⁶⁾
3 rd quarter 2015	10.3	14.93	
4 th quarter 2015	9.3	13.12	

NOTES:

- (1) All results in picocuries / liter
- (2) RAA = Running Annual Average
- (3) Treatment plant shut down on October 6, 2014 through 1st Quarter 2015 at the Department's recommendation due to the presence of 1, 2, 3 Trichloropropane
- (4) The first count was not initiated until after the 48 hour holding time was past but was conducted within the timeframe for the second required count which is the count used for compliance
- (5) Result in Bold indicates an exceedance of the MCL for Gross Alpha Particle Activity
- (6) The Department issued a Notice of Non-compliance for a monitoring and reporting violation because the first count was not initiated until after the 48 hour holding time was past

16. On February 22, 2016, the Department issued a Notice of Non-Compliance (“NONC”) to Moorestown in response to sample results submitted to the Department that demonstrated that Moorestown failed to properly monitor for Gross Alpha during June 2015 because the sample exceeded the established holding time for the 48 Hour Rapid Gross Alpha Test (“48 Hr. Rule”) required by N.J.A.C. 7:10-5.3. In this situation, the analytical result would have likely been higher if the first count had been initiated within 48 hours. Nevertheless, the count was conducted within the timeframe of the second required count (which is the count used for compliance) and the analyses complied with 40 CFR 141.25. Unique to this matter, the Department has determined to accept the result for compliance purposes. This is consistent with 40 CFR 142(a), which requires a State with primary enforcement responsibility to have drinking water regulations that are no less stringent than the national primary drinking water regulations under 40 CFR Part 141. Since the RAA for Gross Alpha for the period ending the 2nd quarter of 2015 was 16.44 pCi/L, the Department has determined that Moorestown exceeded the MCL for Gross Alpha. Moorestown is required to take action to bring its water to within the MCL and to issue Tier 2 public notification of this MCL exceedance. The NONC is hereby clarified that although the analyses of the June 2015 sample did not comply with the 48 Hr. Rule under N.J.A.C. 7:10-5.3, the Department is nevertheless using the result for compliance purposes.

17. Additionally, Moorestown operated North Church Street for a very short period during October 2014 (6 days), and did not monitor from that treatment plant for radiological contaminants until its return to service in June 2015. The treatment plant was shut down on

October 6, 2014 upon recommendation by the Department. However, Moorestown must still conduct Tier 3 public notification for not monitoring for radiological contaminants during the 4th quarter of 2014, pursuant to 40 CFR 141.201.

UNREGULATED CONTAMINANTS

18. Currently, no MCL has been adopted for 1, 2, 3 Trichloropropane (“TCP”) or 1, 4 Dioxane (“Dioxane”). Moorestown participated in the Federal Unregulated Contaminant Rule (“UCMR”) by sampling during the year 2013 for List 1 contaminants. Results of sample analyses obtained by Moorestown indicate the presence of TCP and Dioxane at the point of entry sample collected from North Church Street (supplied by wells 7 and 9). The Department recommended that Moorestown continue quarterly TCP monitoring and results have exceeded the Department’s Ground Water Quality Criteria of 0.03 ug/L. In addition, the New Jersey Drinking Water Quality Institute recommended the Department adopt a MCL of 0.03 ug/L for TCP. Moorestown did report TCP in its Annual Consumer Confidence Reports (“CCR”). Results from the UCMR sampling for Dioxane did not exceed the Department’s Interim Specific Ground Water Quality Criteria of 0.4 ug/L but was required to be included in the 2013 CCR pursuant to 40 CFR 141.151 and N.J.A.C. 7:10-5.5(b) and was not.
19. Upon recommendation of the Department and as noted in paragraph 15 above, Moorestown shut down wells 7 and 9 and North Church Street on October 6, 2014 and began delivering water from only Kings Highway and NJAW. Moorestown resumed the use of well 7 in June 2015 after sample analysis showed TCP to be undetected in well 7. Well 7 was later shut down on February 18, 2016. Moorestown is currently purchasing its water from NJAW.
20. On March 15, 2016, the Department received a report of Pilot Investigations dated February 29, 2016 and submitted by Tonka Water on behalf of Moorestown, as well as a request to install temporary treatment at North Church Street. The proposed temporary treatment, consists of GAC installed on well 9 and is anticipated to treat both TCP and Trichloroethylene (“TCE”). The latter has been detected in wells 7 and 9 at levels very close to exceeding the MCL.

Public Notification

21. Pursuant to 40 CFR 141.201 et seq., public community water systems are required to conduct Tier 2 public notification when the water system exceeds the monthly MCL for Total Coliforms. Tier 2 public notification must be in a form and manner that is reasonably calculated to reach persons served, in the required time period and must at a minimum be by mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the public water system; and any other method reasonably calculated to reach other persons regularly served by the system, if they would not normally be reached by the notice by direct mail.
22. By Notice of Noncompliance dated February 18, 2015, the Department notified Moorestown that it had exceeded the MCL for Total Coliforms during February 2015.

Moorestown was directed to conduct Tier 2 public notification as required by N.J.A.C. 7:10-5.5(a) and 40 CFR 141.201 within 30 days after the system learns of the violation. Moorestown submitted its Certification of Notification dated February 27, 2015 to the Department which indicated that it conducted the Tier 2 public notification by putting the notice on the Moorestown website. However, the aforementioned certification further indicated that Moorestown did not also issue the public notification by mail or other direct delivery to each customer as noted above in violation of 40 CFR141.201. When the Department became aware of the oversight in February 2016, the Department directed Moorestown to comply with the requirement to mail or directly deliver the public notification to each customer as required by the Federal regulations. Moorestown complied with this directive on February 24, 2016.

23. Based on the facts set forth in these FINDINGS, the Department has determined that Moorestown has violated the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq. and the regulations promulgated pursuant thereto, specifically, N.J.A.C. 7:10-5.1, 5.2(b), 5.5(a) and 11.5(e)1.
24. In order to resolve this matter without trial or adjudication, Moorestown has agreed to entry of this ACO and to be bound by its terms and conditions and to be bound by its terms and conditions, as set forth below.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

COMPLIANCE SCHEDULE

25. The parties hereby agree to terminate the MOA. This ACO shall supersede the MOA.
26. Moorestown shall comply with the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., the regulations implementing these statutes, the WA permit and any subsequent modifications, and any other permits issued under these authorities.
27. The Department agrees Moorestown may proceed to grant any remaining approvals for water main connections or extensions for projects that do not require a permit from the Department pursuant to N.J.A.C. 7:10-11.10(b) and the Department agrees to process WME permit applications submitted in accordance with N.J.A.C. 7:10-11.10(b) up to the 40,000 gpd total peak daily demand originally listed in the MOA. Moorestown may not approve any further water main connections or extensions and the Department will not process any further WME permit applications submitted until Moorestown has sufficient firm capacity, as defined by N.J.A.C. 7:10-11.4, to meet future water demands.

28. Within 30 days from the effective date of this ACO, Moorestown shall: i) conduct Tier 2 public notification in accordance with 40 CFR 141.203(c)(1) for the 2nd quarter 2015 Gross Alpha MCL exceedance (which Moorestown must submit to the Department prior to issuance); and ii) conduct Tier 3 public notification in accordance with 40 CFR 141.204(c) for failing to conduct radiological monitoring during the 4th quarter 2014. Additionally, Moorestown shall include the 2nd quarter Gross Alpha and Dioxane results in its current CCR.
29. No later than 90 days from the effective date of this ACO, Moorestown shall revise its water conservation ordinance noted in paragraph 11 above, to be in effect at all times, not solely when it declares an emergency.
30. Moorestown shall not operate wells 7 and 9 (North Church Street) until it obtains Department approval for treatment on those wells for TCP, TCE and Gross Alpha and installs the approved treatment. If Moorestown does not intend to install treatment, it shall decommission those wells in accordance with N.J.A.C. 7:9D-3. Moorestown shall purchase, pursuant to N.J.A.C. 7:19-8.1 et seq., enough water to meet its demands.
31. Pursuant to N.J.A.C. 7:10-5.4(f), if Moorestown resumes operation of North Church Street with treatment, it shall quarterly monitor TCP, TCE and Gross Alpha and report the results to the Department. Additionally, Moorestown shall monitor and report Dioxane results monthly to the Department.
32. Within 30 days from receipt of written comments from the Department regarding the AMP referenced in paragraph 10 above, Moorestown shall submit any requested information and revise the AMP in accordance with the Department's comments. Once approved by the Department, Moorestown shall implement the AMP in accordance with the AMP's schedule. The approved AMP shall become part of this ACO and shall be fully enforceable.
33. Within 60 days of the execution of this ACO, Moorestown shall submit a plan to comply with firm capacity under N.J.A.C. 7:10-11.6(a). Moorestown shall submit any additional information requested by the Department within 30 days of the request. Once the Department approves the plan, it shall become part of this ACO and shall be fully enforceable.
34. If Moorestown is not able to achieve compliance by taking the above actions, Moorestown 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.

PROGRESS REPORTS

35. Moorestown shall submit monthly progress reports to the Department by 10th day of the month following the month being reported, beginning [insert date]. Each report shall explain the status of Moorestown's compliance with this ACO and shall include, but not be limited to, the following:

- identification of site and reference to this ACO;
- status of permitting and planning approvals and any work at the site and progress to date;
- difficulties or problems encountered during reporting period and actions taken to rectify;
- activities planned for the next reporting period;
- required and actual completion date for each item required by this ACO;
- an explanation of any non-compliance with the compliance schedule;
- evaluation of all corrective measures implemented to date;
- monthly treatment plant operators reports
- performance evaluation of all corrective remedial measures implemented to date;
- copies of all sample results obtained during the reported month and any appropriate public notices issued relating to MCL exceedances; and
- a list of all water main connections or extension approvals granted by Moorestown during the month reported including: the name/location of the project; portions or residence(s); the number of connections; the projected average day and peak day water demand for the project or residence(s); and the basis for the calculation of the water demand in accordance with N.J.A.C. 7:10-11.5(e). Moorestown shall include in its first progress report required in accordance with this ACO, the aforementioned information from May 10, 2016 to the current date.

PENALTY

36. In settlement of the violations cited in the above findings, Moorestown shall pay a penalty of \$3,000 by check made payable to the Treasurer, State of New Jersey, remitted to the Division of Revenue at the address stated on the enclosed invoice(s) within 60 days from the effective date of this ACO.

STIPULATED PENALTIES

37. Moorestown shall pay stipulated penalties to the Department, as set forth below, for failure to comply with the provisions of this ACO unless the Department has notified Moorestown in writing that a stipulated penalty will not be assessed for violations of the compliance schedule pursuant to the force majeure provisions of this ACO.

<u>Calendar Days After Due Date</u>	<u>Per Calendar Day</u>
1-7	\$100
8-14	\$200
15 or more	\$500

For all violations of the progress reports submission deadlines or failure to submit a complete progress report:

<u>Days Past Compliance Date</u>	<u>Stipulated Penalties</u>
each calendar day that Moorestown fails to submit a Progress report	\$50 per calendar day

38. Within 45 calendar days after Moorestown's receipt of a written demand from the Department for stipulated penalties, Moorestown shall submit a check to the Department as outlined in 36 above.
39. If Moorestown 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.
40. The payment of stipulated penalties does not alter Moorestown's responsibility to complete all requirements of this ACO.

E. FORCE MAJEURE

41. If any event occurs which is beyond the control of Moorestown and which Moorestown believes will or may cause delay in the achievement of the compliance schedule provisions of this ACO, Moorestown shall notify the Department in writing within 7 calendar days of becoming aware of the delay or anticipated delay, as appropriate. In the notification, Moorestown shall reference this paragraph, describe the anticipated length of the delay, the precise cause or causes of the delay, and any measures taken or to be taken to minimize the delay. Moorestown shall take all necessary action to prevent or minimize any such delay.
42. The Department may adjust the deadlines in the compliance schedule of this ACO for a period no longer than the delay if the Department finds that:
 - A. Moorestown has complied with the notice requirements of paragraph 41;
 - B. any delay or anticipated delay has been or will be caused by fire, flood, riot, strike, or other circumstances beyond the control of Moorestown, and
 - C. Moorestown has taken all necessary actions to prevent or minimize the delay.
43. If the Department denies Moorestown's force majeure request, Moorestown may be subject to stipulated penalties. The burden of proving that any delay is caused by circumstances beyond the control of Moorestown and the length of any such delay attributable to those circumstances shall rest with Moorestown. Increases in the cost or expenses incurred by Moorestown in fulfilling the requirements of this ACO shall not be a basis for an extension of time. Delay in an interim requirement shall not automatically justify or excuse delay in the attainment of subsequent requirements. Contractor's breach shall not automatically constitute force majeure.

F. GENERAL PROVISIONS

44. Neither the entry into this ACO nor the payment of the associated penalty shall constitute an admission of liability by Moorestown for any of the violations listed herein. Nothing in this ACO shall preclude the Department from considering the violations set forth herein when assessing penalties for any future violations.
45. Nothing contained in this ACO restricts the ability of the Department to raise the above Findings in any other proceeding, specifically including, but not limited to, proceedings pursuant to N.J.S.A. 13:1E-126 et seq., (commonly referred to as A-901).
46. This ACO shall be binding on Moorestown, its respective agents, successors, assigns, and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity.
47. This ACO shall be fully enforceable as a final Administrative Order in the New Jersey Superior Court.
48. Moorestown agrees not to contest the terms or conditions of this ACO except that Moorestown 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.
49. This ACO shall not relieve Moorestown 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.
50. No modification or waiver of this ACO shall be valid except by written amendment duly executed by Moorestown and the Department or by the Departments written modification pursuant to the force majeure provisions herein.
51. Unless otherwise specifically provided herein, Moorestown 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 Departments signature to:

Mary Simpson, Chief
Southern Bureau of
Water Compliance & Enforcement
2 Riverside Drive, Suite 201
Camden, NJ 08103

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

52. Unless otherwise specifically provided herein, any communication made by the Department to Moorestown pursuant to this ACO shall be sent to:

Moorestown

-
-
53. Moorestown 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 Moorestown of its obligations under its permit(s), this ACO, the Safe Drinking Water Act regulations, and/or the NJ Safe Drinking Water Act.
 54. In addition to the Department's statutory and regulatory rights to enter and inspect, Moorestown shall allow the Department and its authorized representatives access to the site at all times for the purpose of determining compliance with this ACO.
 55. Nothing in this ACO shall preclude the Department from taking enforcement action against Moorestown for matters not set forth in the findings of this ACO.
 56. 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.
 57. Moorestown 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 Moorestown's facility. In addition, the parties agree that any contract, lease, deed or any other agreement that Moorestown 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.
 58. The Department reserves all statutory and common law rights to require Moorestown 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.
 59. This ACO shall be governed and interpreted under the laws of the State of New Jersey.
 60. 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.

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

DATED: _____ BY: Moorestown _____

NAME: _____

TITLE: _____

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

DATED: _____ NJDEP
BY: _____

NAME: _____

Moorestown
WCP150001 - 0322001
Page 14 of 8

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