

**RESOLUTION : 175 - 19**

**RESOLUTION AUTHORIZING EXECUTION OF ADMINISTRATIVE CONSENT ORDER  
BETWEEN THE STATE OF NEW JERSEY, DEPARTMENT OF ENVIRONMENTAL  
PROTECTION AND THE BOROUGH OF CLAYTON FOR THE CLAYTON BOROUGH  
WATER YARD (39 EAST CHESTNUT STREET)**

**WHEREAS**, the Borough of Clayton is the current owner of property located at 39 East Chestnut Street known as the Clayton Borough Water Yard; and

**WHEREAS**, the Borough of Clayton, as owner of the property, is responsible for any hazardous substance discharged at the property; and

**WHEREAS**, the Borough of Clayton agrees to remediate, pursuant to the Administrative Consent Order, all hazardous substances, hazardous wastes and pollutants discharged at the property.

**NOW, THEREFORE, BE IT RESOLVED**, by the Mayor and Council of the Borough of Clayton, County of Gloucester, and State of New Jersey as follows:

1. That the governing body does hereby approve and authorize the execution of the attached Administrative Consent Order between the New Jersey Department of Environmental Protection and the Borough of Clayton for the Clayton Borough Water Yard (39 East Chestnut Street)
2. That the Mayor and/or Borough Administrator be and is hereby authorized to execute said Administrative Consent Order behalf of the Borough of Clayton.

**ADOPTED** at the meeting of the Borough Council of the Borough of Clayton held on August 8, 2019.

**BOROUGH OF CLAYTON**



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THOMAS BIANCO, Mayor

**ATTEST:**



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Christine Newcomb, Borough Clerk

**CERTIFICATION**

I, Christine Newcomb, Borough Clerk, of the Borough of Clayton, in the County of Gloucester, do hereby certify that the foregoing Resolution was presented and duly adopted by the Borough Council at a meeting of the Borough of Clayton held on August 8, 2019.

A handwritten signature in cursive script, reading "Christine Newcomb", written in black ink.

Christine Newcomb, Borough Clerk

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## State of New Jersey

PHILIP D. MURPHY  
Governor

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
Enforcement and Information Support Element  
Bureau of Enforcement and Investigations

CATHERINE R. McCABE  
Commissioner

SHEILA Y. OLIVER  
Lt. Governor

401 East State Street  
401-06U  
Trenton, New Jersey 08625  
Telephone: (609) 633-1480 Fax: (609) 292-1975

**CERTIFIED MAIL**  
**7018 2290 0002 1062 4846**

The Honorable Thomas Bianco, Mayor  
Borough of Clayton  
125 North Delsea Drive  
Clayton, NJ 08312

**JUL 19 2019**

Re: Administrative Consent Order  
Clayton Borough Water Yard  
39 East Chestnut Street, Clayton Borough, Gloucester County  
PI#: 023604

Dear Mr. Bianco:

Enclosed please find two (2) original Administrative Consent Orders regarding the above referenced Site. This Administrative Consent Order is to resolve all enforcement matters associated with the failure to complete a remedial investigation by May 7, 2016 and comply with the direct oversight provisions pursuant to N.J.A.C. 7:26C-14.2(b), at the above referenced Site. Please sign both originals and return them to the New Jersey Department of Environmental Protection (Department) within fifteen (15) days of the receipt of this letter. Failure to return both original executed Administrative Consent Orders within the above timeframe shall cause the Administrative Consent Order to become null and void. Once the Administrative Consent Order is executed, the Department will send one copy of the Administrative Consent Order to you.

Should you have any questions please contact Jacqueline Bobko at (609) 633-1410 or email at Jackie.Bobko@dep.nj.gov.

Sincerely,

Kevin F. Kratina, Assistant Director  
Enforcement and Information Support Element

Enclosure: Administrative Consent Order (2 Originals)

C: Jacqueline Bobko, BEI



## State of New Jersey

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Lt. Governor

### IN THE MATTER OF

**CLAYTON BOROUGH WATER YARD** : **ADMINISTRATIVE CONSENT ORDER**  
**39 EAST CHESTNUT STREET,** :  
**CLAYTON BOROUGH,** :  
**GLOUCESTER COUNTY** :  
**PROGRAM INTEREST NO. 023604** :

AND

### CLAYTON BOROUGH

This Administrative Consent Order is issued pursuant to the authority vested in the Department of Environmental Protection of the State of New Jersey ("Department") by N.J.S.A. 13:1D-1 through 19, the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.11z ("Spill Act"), the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 to -35, ("UST Act"), and duly delegated to the Assistant Director of the Enforcement and Information Support Element, pursuant to N.J.S.A. 13:1B-4.

### FINDINGS

1. The Clayton Borough Water Yard site is located at 39 East Chestnut Street, Clayton Borough, Gloucester County and is also known as Block 1210, Lot 11, on the tax maps of Clayton Borough, Gloucester County, New Jersey, which the Department refers to as Site Remediation Program Interest Number 023604 ("Site"). The Site and all other areas to which any hazardous substance discharged on the Site has migrated, shall hereinafter be referred to as the "Contaminated Site."
2. Clayton Borough is a municipality. Its principal address is 125 North Delsea Drive, Clayton, New Jersey, 08312.
3. Clayton Borough is the current owner of the Site and, therefore is a person in any way responsible for any hazardous substance discharged at the Site pursuant to the Spill Act, and a person responsible for conducting remediation pursuant to the Site Remediation Reform Act, N.J.S.A. 58:10C-2.

Clayton Borough is the discharger of hazardous substances at the Site and, therefore is a person in any way responsible for any hazardous substance discharged at the Site pursuant to the Spill Act, and a person responsible for conducting remediation pursuant to the Site Remediation Reform Act, N.J.S.A. 58:10C-2.

Clayton Borough is the owner and operator of regulated underground storage tanks at the time of the discharge, and a person responsible for conducting the remediation pursuant to the Site Remediation Reform Act, N.J.S.A. 58:10C-2.

4. Due to the discovery of a discharge at the Site prior to May 8, 1999, for which the Department assigned case number 93-08-24-08-38, and the lack of a complete remedial investigation of the entire Site by May 7, 2016, the Site Remediation Reform Act requires the Department to undertake direct oversight of the remediation of the Site pursuant to the requirements in N.J.S.A. 58:10C-27c. See also N.J.A.C. 7:26C-14.2(b).
5. On September 26, 2018, the Department was notified of lead contamination in soil for which it assigned case number 18-09-26-1248-08.
6. On January 3, 2019, Clayton Borough submitted to the Department a proposed public participation plan and on March 8, 2019 Clayton Borough submitted to the Department a revised public participation plan pursuant to N.J.A.C. 7:26C-14.2(b)2iii.
7. On December 19, 2018, Clayton Borough submitted to the Department an initial detailed cost review pursuant to N.J.A.C. 7:26C-14.2(b)2i.
8. Based on Clayton Borough's demonstrated compliance referenced in paragraphs 6 and 7 above, the Department finds that pursuant to N.J.A.C. 7:26C-14.4, it is in the public interest and protective of public health and safety and the environment to adjust certain direct oversight provisions as specifically outlined below, provided Clayton Borough remains in full compliance with this Administrative Consent Order.
9. The Department has agreed to adjust the requirement to establish a direct oversight remediation trust fund pursuant to N.J.A.C. 7:26C-14.2(b)2ii, and will instead accept the 2019 Borough of Clayton Municipal Budget which appropriates \$75,000.00 for environmental engineering at the Site. These funds are committed for the 2019 estimated remediation cost of \$47,365.00 for the continuation of the investigation and remediation of the areas of concern at the Site. The remaining funds are for contingency costs, for any unforeseen items which may be encountered in 2019.
10. Without any admission of fact, fault, or liability, Clayton Borough agrees to remediate, pursuant to this Administrative Consent Order, all hazardous substances, hazardous wastes, and pollutants discharged at the Site.

**NOW, THEREFORE, IT IS ORDERED AND AGREED AS FOLLOWS:**

**Remediation**

11. Clayton Borough shall remediate the Contaminated Site, including all discharges at the Site discovered during the remediation as the Department directs, pursuant to N.J.A.C. 7:26C-14.2(b)1, and according to this Administrative Consent Order, the Brownfield and Contaminated Site Remediation Act, N.J.S.A.58:10B-1 to -31, the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.
12. Clayton Borough shall maintain a licensed site remediation professional for the remediation of the Contaminated Site, pursuant to N.J.A.C. 7:26C-14.2(b)1.
13. Clayton Borough shall ensure that each licensed site remediation professional involved in the remediation of the Contaminated Site makes all submissions concerning the remediation required by the Department simultaneously to the Department and to Clayton Borough, pursuant to N.J.A.C. 7:26C-14.2(b)7.
14. On March 8, 2019 the Department approved the public participation plan. Clayton Borough shall implement the public participation plan according to the Department's approved schedule, pursuant to N.J.A.C. 7:26C-14.2(b)8.
15. By December 31, 2019, with no extensions, Clayton Borough shall submit to the Department a remedial investigation report, pursuant to N.J.A.C. 7:26E-4.9, based upon a remedial investigation of the Contaminated Site conducted pursuant to N.J.A.C. 7:26E-4.
16. If Clayton Borough has submitted the remedial investigation report in compliance with Paragraph 15, Clayton Borough may comply with the following direct oversight adjustments otherwise specified at N.J.A.C. 7:26C-14.2(b):
  - a. Proceed with the remediation without prior Department approval;
  - b. Pay annual remediation fees pursuant to N.J.A.C. 7:26C-4.3(a), in lieu of the direct oversight costs;
  - c. Clayton Borough does not have to submit a feasibility study to the Department;
  - d. Clayton Borough does not have to submit a receptor evaluation pursuant to N.J.A.C. 7:26C-14.2(b)2iv;
  - e. Clayton Borough does not have to submit a direct oversight remediation summary report; and

- f. Clayton Borough may select the protective remedial actions for the Contaminated Site pursuant to N.J.A.C. 7:26C and N.J.A.C. 7:26E.
17. However, if the Department determines, in its sole discretion, that Clayton Borough has failed to submit the remedial investigation report pursuant Paragraph 15, or comply with any provision of this Administrative Consent Order, or the Department has determined that the remedial investigation is not complete then the Department will provide written notice of its determination to Clayton Borough.
18. Upon Clayton Borough's receipt of the written notice from the Department described in paragraph 17, Clayton Borough shall proceed with the remediation as the Department directs, pursuant to N.J.A.C. 7:26C-14.2(b)1, and the following:
  - a. Within 30 days after receipt of the Department's written notice described in paragraph 17 Clayton Borough shall establish and maintain, a remediation trust fund pursuant to N.J.A.C. 7:26C-14.2(b)2ii, in the full amount of the most recent LSRP-certified cost of remediation or as the Department otherwise directs;
  - b. Within 60 days after receipt of the Department's written notice described in paragraph 17, Clayton Borough shall submit to the Department a feasibility study of potential alternatives for each area of concern at the Site, as the Department directs and pursuant to N.J.A.C. 7:26C-14.2(b)3 and U.S. Environmental Protection Agency, "The Feasibility Study: Detailed Analysis of Remedial Action Alternatives," (March 1990) OSWER 9355.3-01FS4, NTIS: PB90-272675INX; and
  - c. Within 60 days after receipt of the Department's written notice described in paragraph 17, Clayton Borough shall submit to the Department a receptor evaluation, pursuant to N.J.A.C.-14.2(b)iv;
  - d. Within 60 days after receipt of the Department's written notice described in paragraph 17, Clayton Borough shall submit to the Department a direct oversight remediation summary report, pursuant to N.J.A.C. 7:26C-14.2(b)2v; and
  - e. Clayton Borough shall as the Department directs implement each remedial action at the Contaminated Site, pursuant to N.J.A.C. 7:26C-14.2(b)4.
19. By May 7, 2023, Clayton Borough shall complete the implementation of all remedial actions and obtain all applicable remedial action permits for the Contaminated Site selected pursuant to either paragraph 16.f. or paragraph 18.e., as applicable.
20. By May 7, 2023, Clayton Borough shall submit to the Department a final remedial action report pursuant to N.J.A.C. 7:26E-5.8 and a Response Action Outcome, pursuant to N.J.A.C. 7:26C-6.2, based upon the implementation of remedial actions at the Contaminated Site in accordance with N.J.A.C. 7:26C and N.J.A.C. 7:26E, selected pursuant to either paragraph 16.f. or paragraph 18.e., as applicable.

**Annual Remediation Fees and Oversight Costs**

21. Clayton Borough shall pay, by the due date printed on any invoice, annual remediation and/or oversight costs, pursuant to N.J.A.C. 7:26C-4.9. Payment shall be made by mail to the address listed on the invoice.

**Remediation Funding Source When in Full Compliance**

22. Clayton Borough shall submit annually to the Department, by July 10<sup>th</sup> of each year, a LSRP-certified detailed remediation cost review along with the Remediation Cost Review and RFS/FA form, pursuant to N.J.A.C. 7:26C-14.2(b)2i and N.J.A.C. 7:26C-5.10.
23. Clayton Borough shall submit annually to the Department, by July 10<sup>th</sup> of each year, a copy of a Municipal Resolution, Capital Ordinance, and/or bond that documents allocation of funds committed annually in the amount of the remediation costs to remain in full compliance with this Administrative Consent Order.

**Other Enforcement**

24. If Clayton Borough does not comply with any part of this Administrative Consent Order the Department may take any action it is authorized to take, including without limitation, issuing an administrative order, assessing a civil administrative penalty, filing of a summary action in the Superior Court of New Jersey pursuant to R. 4:67 and R. 4:70 to enforce this Administrative Consent Order as a final order, enforcing this Administrative Consent Order as an order issued by the Department pursuant to the Spill Act, and issuing a Spill Act directive, conducting the remediation itself and recovering three times the Department's costs, and taking any other action.
25. The Department's removal of any direct oversight adjustments in this Administrative Consent Order shall not limit the Department from taking any other action for Clayton Borough's violation or non-compliance with any provision of this Administrative Consent Order.

**General Provisions**

26. Clayton Borough shall make all submissions required by this Administrative Consent Order to the Department at the address listed in N.J.A.C. 7:26C-1.6(a), except as otherwise indicated in this Administrative Consent Order.
27. In addition to the Department's statutory and regulatory rights to enter and inspect the Site, Clayton Borough agrees to allow the Department and its authorized representatives access to the Site at all times for the purpose of monitoring Clayton



Borough's compliance with this Administrative Consent Order and for the Department to perform any remediation necessary to protect the public health and safety and the environment.

28. Clayton Borough agrees to stop conducting all or part of the remediation of the Site under this Administrative Consent Order upon receipt of written notice from the Department that the Department has decided to complete all or part of the remediation itself in order to protect public health and safety and the environment.
29. The Department reserves and this Administrative Consent Order is without prejudice to, all rights against Clayton Borough concerning all other matters.
30. Nothing in this Administrative Consent Order shall be construed as precluding the Department from taking any action it deems necessary or appropriate to protect the public health and safety and the environment, and to enforce the environmental laws of the State of New Jersey.
31. Nothing in this Administrative Consent Order shall restrict the ability of the Department to raise or make the above findings in any other proceeding.
32. Nothing in this Administrative Consent Order shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Administrative Consent Order.
33. Clayton Borough retain all rights they may have against any other responsible parties for the remediation of the Contaminated Site.
34. Clayton Borough consents to entry of this Administrative Consent Order and waives its right to request an administrative hearing concerning the terms of this Administrative Consent Order pursuant to N.J.A.C. 7:26C-9.10.
35. Clayton Borough agrees not to contest (a) the authority or jurisdiction of the Department to enter into this Administrative Consent Order, and (b) the terms or conditions hereof, except that Clayton Borough does not waive its right to contest the interpretation or application of such terms and conditions in an action or proceeding brought by the Department to enforce this Administrative Consent Order.
36. This Administrative Consent Order shall be binding on Clayton Borough and any successor, subsidiary, assign, trustee in bankruptcy, or receiver appointed pursuant to a proceeding in law or equity of Clayton Borough.
37. Each undersigned representative of Clayton Borough and the Department certifies that he or she is authorized to enter into this Administrative Consent Order, and to execute and legally bind each party to this Administrative Consent Order.

38. This Administrative Consent Order may be signed and dated in any number of counterparts, each of which shall be an original, and such counterparts shall together be one and the same Administrative Consent Order.
39. The Effective Date of this Administrative Consent Order shall be the date that both Clayton Borough and the Department have executed this Administrative Consent Order.


**NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION**

DATE: \_\_\_\_\_

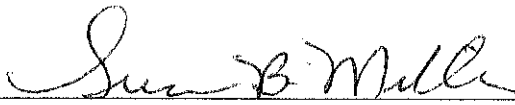
By: \_\_\_\_\_  
Kevin F. Kratina, Assistant Director  
Enforcement & Information Support Element

**BOROUGH OF CLAYTON**

DATE: \_\_\_\_\_

By:  \_\_\_\_\_  
Thomas Bianco,  
Mayor

DATE: \_\_\_\_\_

By:  \_\_\_\_\_  
Susan Miller,  
Borough Administrator