

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
WASTE AND HAZARDOUS MATERIALS DIVISION

In the matter of administrative proceedings
against Wayne Disposal, Inc., a corporation
organized under the laws of the State of Michigan
and doing business at 49350 North I-94 Service
Drive, Township of Van Buren, County of Wayne,
State of Michigan

WHMD Order No. 115-04-08

Site ID No. MID 048 090 633

CONSENT ORDER

This proceeding results from allegations specified in Letters of Warning ("LOWs") issued on July 16, 2001, September 28, 2001, December 10, 2001, March 11, 2002, August 2, 2002, and June 15, 2004, by the staff of the Department of Environmental Quality ("DEQ"), Waste and Hazardous Materials Division ("WHMD"). The DEQ alleges that Wayne Disposal, Inc. ("WDI"), a State of Michigan corporation, doing business at 49350 North I-94 Service Drive, Van Buren Township, Wayne County, Michigan (the "WDI Facility"), is in violation Part 115. Solid Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, Michigan Compiled Laws ("MCL") 324.101 *et seq.* ("NREPA"); the administrative rules promulgated under Part 115 ("Part 115 Rules"); and WHMD Order No. 64-06-89 ("1989 Consent Order") as a result of WDI's waste management activities involving Master Cell ("MC") IX. Notwithstanding Paragraph 1.18, WDI denies the DEQ allegations associated with MC IX contained in the referenced LOWs. WDI and the DEQ agree to resolve the alleged violations set forth in the July 16, 2001, September 28, 2001, December 10, 2001, March 11, 2002, August 2, 2002, and June 15, 2004, LOWs associated with MC IX by entry of this Consent Order. This Consent Order fully resolves the violations alleged in the referenced LOWs associated with MC IX.

I. STIPULATIONS

WDI and the DEQ stipulate as follows:

- 1.1 WDI is a "person" as defined by Section 301(g) of the NREPA.
- 1.2 WDI owns and operates a Type II solid waste disposal area ("Solid Waste Landfill") at the WDI Facility. The Solid Waste Landfill occupies approximately 395 acres of land and includes MCs I, IV, IX, X, and XI.
- 1.3 WDI also owns and operates a hazardous waste disposal area ("Hazardous Waste Landfill") at the WDI Facility that includes MCs V, VI, VI-E, and VII. The Solid Waste Landfill is subject to the corrective action requirements of the Hazardous Waste Landfill license.
- 1.4 The DEQ and WDI executed Consent Judgment, File No. 89-CV72472DT, on August 17, 1989 ("Consent Judgment"); the 1989 Consent Order on August 14, 1989; and WHMD Order No. 115-09-99 ("1999 Consent Order") on December 19, 1999, to resolve certain alleged violations pertaining to WDI's waste management activities related to the Solid Waste Landfill at the WDI Facility.
- 1.5 The Consent Judgment and the 1989 Consent Order resolved certain alleged violations of the Hazardous Waste Management Act, 1979 PA 64, as amended, MCL 299.501 *et seq.* ("HWMA"), and the administrative rules promulgated thereunder related to MC IX.
- 1.6 The HWMA was repealed on the effective date of the NREPA and was concurrently codified as Part 111, Hazardous Waste Management, of the NREPA, MCL 324.101, *et seq.* The rules promulgated pursuant to the HWMA are presently set forth under the 2004 Annual Administrative Code Supplement ("AACS") R 299.9101 *et seq.*
- 1.7 The Consent Judgment and 1989 Consent Order resolved violations associated with the alleged unauthorized disposal of hazardous waste in MC IX, a nonhazardous, solid waste disposal cell authorized pursuant to the Solid Waste Management Act, 1978 PA 641, as amended, MCL 299.401 *et seq.* ("SWMA"), and the administrative rules promulgated thereunder.

- 1.8 The SWMA was also repealed on the effective date of the NREPA and was concurrently codified as Part 115 of the NREPA. The rules promulgated pursuant to the SWMA are presently set forth under the 1998-2000 AACS, R 299.4101 *et seq.*, as amended by 2005 *Michigan Register* 19, R 299.4101 *et seq.*
- 1.9 The Consent Judgment requires that WDI install a final cover system that meets the requirements of the HWMA, now Part 111, in accordance with the WDI March 1989 Closure Plan for MC IX ("Closure Plan"). The Consent Judgment also incorporates the 1989 Consent Order and March 1989 Post Closure Plan for MC IX ("1989 Post Closure Plan") requiring WDI to perform routine maintenance to maintain the final cover system as installed and otherwise comply with the SWMA, now Part 115.
- 1.10 The 1999 Consent Order was executed to, among other things, resolve alleged violations pertaining to WDI's overfilling of the Solid Waste Landfill without a Part 115 permit or license. The 1999 Consent Order, among other things, defines the final contours authorized for the Solid Waste Landfill and specifies postclosure management obligations applicable to the Solid Waste Landfill. Pursuant to the 1999 Consent Order, WDI agreed to manage the Solid Waste Landfill, including MC IX, in accordance with R 299.4449 and the Wayne Disposal Site #2 Landfill, MCs I, IV, IX, X, and XI Post Closure Plan (1999 Post Closure Plan) during the postclosure period.
- 1.11 On July 12, 2001, DEQ, Southeastern Michigan District Office, staff conducted an inspection of the Solid Waste Landfill. On August 21, 2001, DEQ Lansing staff conducted a final cover inspection of MC IX. The DEQ inspections resulted in WHMD issuance of LOWs dated July 16, 2001, September 28, 2001, December 10, 2001, March 11, 2002, August 2, 2002, and June 15, 2004, that allege ongoing violations associated with MC IX.
- 1.12 The Consent Judgment and 1999 Consent Order were terminated on April 12, 1994, and January 3, 2000, respectively, following DEQ verification of completion of the requirements provided under the referenced documents.

- 1.13 From October 2001 through December 2001, WDI excavated soil in the area of the North Sedimentation Basin, placed it atop the MC IX final cover system, and restored the final cover slope to the three percent slope required under the Closure Plan as documented in WDI correspondence dated October 16, 2000, and October 31, 2001.
- 1.14 On August 22, 2002, WDI notified the DEQ that the manhole for leachate removal from MC IX Sump-D ("Sump IX-D") collapsed.
- 1.15 In November 2002, pursuant to DEQ-requested and approved work plans, WDI began assessing the condition of MC IX and submitting preliminary reports regarding the results of the assessment. The assessment included investigating the configuration of the geomembrane, investigating the piezometric head within the final cover system, observing the geomembrane at test pits and near gas wells, testing cover soils, evaluating the temperature and gas composition of the waste, and evaluating the condition of MC IX Sumps A, B, and C.
- 1.16 In September 2004, pursuant to DEQ-approved work plans, WDI installed two temporary dewatering wells to periodically remove water trapped in two depressed areas on the MC IX final cover system identified during the MC IX assessment.
- 1.17 On January 24, 2005, pursuant to DEQ-approved work plans, WDI submitted a report titled *Summary Report on Overall Cover Condition for Wayne Disposal MC IX* (hereinafter "Current Condition Report" or "CCR") that summarizes the investigations performed and provides the final design specifications for the temporary dewatering wells. Based on the visual observation of the geomembrane, the strain calculations performed for the geomembrane, the results of the Hydrologic Evaluation of Landfill Performance model analysis, and the continuous piezometric water elevations measurements, WDI concluded that there had been no breach in the MC IX geomembrane and that MC IX, Sump-A ("Sump IX-A"), had significantly deteriorated.
- 1.18 For purposes of verifying the completion of postclosure care solely for MC IX under R 299.4449(3), WDI will not contest a finding by the DEQ under R 299.4449(4) that postclosure care of the MC IX final cover system is not in accordance with the NREPA,

the Part 115 Rules, or any approved postclosure plan applicable to MC IX, including the postclosure plans enforceable under Paragraph 4.5, during any period in which the final cover system subsurface drainage layer between the clay layer and geomembrane layer does not provide continuous, natural gravity drainage of water to a collection and removal system due to the differential settlement of the final cover system.

- 1.19 Pursuant to the NREPA and Executive Order No. 1995-18, the Director of the DEQ ("Director") is the state official and the DEQ is the state agency charged with the administration and enforcement of Part 115. This Consent Order is authorized under Section 11519(2) of Part 115
- 1.20 WDI stipulates that the issuance and entry of this Consent Order is proper and acceptable. This Consent Order shall be considered a final order of the DEQ and shall become effective on the date it is signed by the Chief of the WHMD ("Division Chief"), designee of the Director, pursuant to Section 301(b) of the NREPA.
- 1.21 WDI and the DEQ agree that this Consent Order terminates and supersedes the 1989 Consent Order. Any ongoing obligations from the 1989 Consent Order are now specified under Section IV of this Consent Order.
- 1.22 WDI and the DEQ agree that the construction activities performed in accordance with the November 19, 2008, MC IX Work Plan specified under Paragraph 4.2 and approved by the DEQ in accordance with this Consent Order modify the 1989 Closure Plan, are incorporated as part of the final approved Closure Plan pursuant to R 299.4448, and are enforceable under R 299.4448 of Part 115.
- 1.23 WDI acknowledges its obligation to fully and strictly comply with all provisions of Part 115, the Part 115 Rules, and all other applicable state and federal statutes.
- 1.24 WDI and the DEQ agree that the signing of this Consent Order is for settlement purposes only and does not constitute an admission by WDI of the allegations contained in the July 16, 2001, September 29, 2001, December 10, 2001, March 11, 2002, August 2, 2002, and June 15, 2004, LOWs.

II. DEQ APPROVAL OF SUBMITTALS

- 2.1 WDI shall ensure that any work plan, proposal, or other document ("Work Plan") required to be submitted by this Consent Order will be complete and technically adequate such that the Work Plan meets any applicable statutory and regulatory requirements and the specific terms of this Consent Order when initially submitted. For any Work Plan that is required to be submitted by WDI to the DEQ by this Consent Order, the following process and terms of approval shall apply. The DEQ may approve, disapprove, or approve with specified modifications, any required Work Plan. Upon DEQ approval, or approval with modifications, of a Work Plan, such Work Plan shall be incorporated by reference into this Consent Order and shall be enforceable in accordance with the provisions of this Consent Order. In the event that the DEQ approves a Work Plan with modifications, the DEQ will state each specific modification and the basis for each modification, in writing. In the event that the DEQ disapproves a Work Plan, the DEQ will notify WDI of the specific reasons for the disapproval, in writing. Within thirty (30) business days of receipt of the DEQ's disapproval letter, WDI shall amend and submit a revised Work Plan that addresses the reasons for the DEQ's disapproval unless the notice of disapproval specifies a longer period. Failure by WDI to submit an approvable Work Plan within the thirty (30) business day schedule shall subject WDI to the stipulated penalty provisions of this Consent Order commencing on the date the approvable revised Work Plan was due and accumulating until an approvable Work Plan is submitted. Any delays caused by WDI's failure to submit an approvable Work Plan shall in no way affect WDI's responsibility to comply with any deadlines specified in this Consent Order.
- 2.2 No informal advice, guidance, suggestions, or comments by the DEQ regarding reports, Work Plans, plans, specifications, schedules, or any other writing submitted by WDI will be construed as relieving WDI of its obligation to obtain written approval, if and when required by this Consent Order.

III. MODIFICATIONS AND EXTENSIONS

3.1 WDI and the DEQ agree that the Division Chief may grant WDI an extension of the specified deadlines set forth in this Consent Order. Any extension shall be preceded by a timely written request, received by the DEQ no later than five (5) business days prior to the pertinent deadline, which shall include:

- 3.1.1 identification of the specific deadline(s) of this Consent Order that will not be met;
- 3.1.2 a detailed description of what will prevent WDI from meeting the deadline(s);
- 3.1.3 a description of the measures WDI has taken and/or intends to take to meet the required deadline(s); and
- 3.1.4 the length of the extension requested and the specific date on which the obligation will be met.

The Division Chief will respond promptly to such requests and will not unreasonably withhold approval for such requests.

3.2 Any extension of the specified deadlines or other modifications and amendments of this Consent Order shall require a formal written amendment of this Consent Order, shall be signed by WDI and the DEQ ("Parties"), shall have as their effective date the date on which they are signed by the Division Chief, and shall be incorporated into and become an enforceable part of this Consent Order.

IV. COMPLIANCE PROGRAM

4.1 WDI shall achieve compliance as identified below and in accordance with the specified schedules:

- 4.2 On May 9, 2005, WDI submitted a workplan titled Master Cell IX Work Plan that was revised on June 6, 2005, and again pursuant to a request dated September 21, 2005, and approved by the DEQ on September 29, 2005. On May 16, 2006, December 20, 2006, July 2, 2007, March 4, 2008, August 1, 2008, and November 19, 2008, WDI submitted additional revisions to the Master Cell IX Work Plan. The November 19, 2008, Master Cell IX Work Plan (hereinafter the "2008 MC IX Work Plan") was reviewed and approved by the DEQ on November 24, 2008. On and after the effective date of this Consent Order, WDI shall implement the actions specified in the 2008 MC IX Work Plan in accordance with the details and schedules provided therein. The 2008 MC IX Work Plan is attached as Exhibit 1, incorporated by reference, and enforceable under this Consent Order. Any modification of the 2008 MC IX Work Plan or any Work Plan submitted pursuant to the 2008 MC IX Work Plan shall be submitted and reviewed in accordance with Section II of this Consent Order.
- 4.3 If revised settlement criteria are required to evaluate settlement stability as specified under Section 3.3.5 of the 2008 MC IX Work Plan, the DEQ and WDI are unable to agree upon the revised settlement criteria proposed by WDI, and WDI has not commenced construction in accordance with an approved Gravity Drainage Work Plan, WDI shall, within ninety (90) days of WDI receipt of DEQ written notification of "Final Disapproval" of the WDI proposed, revised settlement criteria, submit to the DEQ for review and approval, in accordance with Section II of this Consent Order, a Gravity Drainage Work Plan that includes, at a minimum, the elements specified under Section 3.6 of the 2008 MC IX Work Plan.
- 4.4 Postclosure care for MC IX shall be performed to restore and maintain the integrity and effectiveness of the final cover system in accordance with the approved performance specifications and design plans of the Closure Plan defined under Paragraph 1.9 and the Closure Plan modifications made pursuant to this Consent Order under the 2008 MC IX Work Plan and R 299.4449.
- 4.5 On and after the effective date of this Consent Order, WDI shall comply with all of the requirements specified in the 1989 Post Closure Plan and the 1999 Post Closure Plan, with the exception of the requirement to immediately initiate action to restore the

effectiveness and integrity of the drainage layer to remove water infiltrating the final cover system via natural, gravity drainage, which is specifically revised as proscribed in the 2008 MC IX Work Plan. The 1989 Post Closure Plan and the 1999 Post Closure Plan are attached as Exhibits 2 and 3, respectively, incorporated by reference, and enforceable under the terms of this Consent Order in addition to R 299.4449. Where equipment has been replaced with alternate equipment under the 2008 MC IX Work Plan, the obligation under the postclosure plan applies to the replacement equipment approved under the 2008 MC IX Work Plan.

- 4.6 On and after DEQ approval of the final construction report and certification submitted pursuant to Section 3.6 of the 2008 MC IX Work Plan and Paragraph 4.9 of this Consent Order, WDI shall comply with all of the MC IX Post Closure Plan requirements to maintain the integrity and effectiveness of the final cover system for MC IX to provide continuous, gravity drainage of water to a collection and removal system in accordance with the approved performance specification and design plans of the Closure Plan defined under Paragraph 1.9 and any Closure Plan modifications made pursuant to this Consent Order under the 2008 MC IX Work Plan or a work plan submitted and approved thereunder.
- 4.7 On and after submittal of the final report specified under Sections 2.3 and 2.4 of the 2008 MC IX Work Plan, WDI shall remove leachate from extraction well D (D-EW) as frequently as necessary to ensure that the leachate depth in piezometer D (D-PZ) shall not exceed 650.3 feet above mean sea level ("AMSL") except after a significant storm event, whereupon the leachate depth on the liner shall not be more than 650.3 feet AMSL in piezometer D for more than seven (7) days as required under R 299.9432.
- 4.8 On and after the date WDI has met the requirement of Paragraph 4.6 of this Consent Order, WDI shall maintain compliance with R 299.4449.
- 4.9 Any work plan, proposal, or other document pertaining to construction and required to be submitted by WDI pursuant to the 2008 MC IX Work Plan shall meet the requirements of R 299.4921.

- 4.10 WDI shall maintain financial assurances by mechanisms consistent with Part 115 for the performance of postclosure monitoring requirements in the amount of \$205,000, in excess of the amount that is currently required or may be required by Part 115 for the entire postclosure period or for any extensions of that time period for corrective action measures.

V. REPORTING

- 5.1 WDI shall submit all items required in Section IV to the WHMD, Hazardous Waste Technical Support Unit Supervisor, in triplicate. The cover letter with each submittal shall identify the specific paragraph and requirement of this Consent Order that the submittal is intended to satisfy.
- 5.2 WDI shall verbally report any violation(s) of the terms and conditions of this Consent Order to the WHMD, Hazardous Waste Technical Support Unit Supervisor, by no later than the close of the next business day following detection of such violation(s) and shall follow such notification with a written report within five (5) business days following detection of such violation(s). The written report shall include a detailed description of the violation(s), as well as a description of any actions proposed or taken to correct the violation(s). WDI shall report any anticipated violation(s) of this Consent Order to the above-referenced individual in advance of the relevant deadlines, whenever possible.

VI. RETENTION OF RECORDS

- 6.1 Upon request by an authorized representative of the DEQ, WDI shall make available to the DEQ all records, plans, logs, and other documents required to be maintained under this Consent Order or pursuant to Part 115 or the Part 115 Rules. All such documents shall be retained at the WDI Facility for at least a period of three (3) years from the date of generation of the record unless a longer period of record retention is required by Part 115 or the Part 115 Rules.

VII. RIGHT OF ENTRY

- 7.1 WDI shall allow any authorized representative or contractor of the DEQ, upon presentation of proper credentials, to enter upon the premises of the WDI Facility at all reasonable times for the purpose of monitoring compliance with the provisions of this Consent Order. This paragraph in no way limits the authority of the DEQ to conduct tests and inspections pursuant to the NREPA and its rules or any other applicable statutory provision.

VIII. FINES, COSTS, AND PENALTIES

- 8.1 Within thirty (30) days of the effective date of this Consent Order, WDI shall pay the sum of \$76,200 to the State of Michigan in settlement of the DEQ's claim for civil fines arising from the violations associated with MC IX alleged in the LOWs referenced herein.
- 8.2 Within thirty (30) days of the effective date of this Consent Order, WDI shall pay to the State of Michigan the sum of \$62,418 in settlement of claims for the costs of surveillance and enforcement arising from the violations associated with MC IX alleged in the LOWs referenced herein. WDI and the DEQ agree that the DEQ tracked the costs of surveillance and enforcement incurred by the DEQ related to MC IX and Master Cell VI ("MC VI") in one account under Project/Phase Number 470698/00. WDI and the DEQ agree that the DEQ costs of surveillance and enforcement for MC VI through September 20, 2008, are \$62,417 and are to be collected separately in any order executed addressing MC VI.
- 8.3 For each failure to comply with the provisions of Sections II and IV of this Consent Order, WDI shall pay stipulated penalties of \$500 per violation per day for one (1) to seven (7) days of violation, \$1,000 per violation per day for eight (8) to fourteen (14) days of violation, and \$1,500 per violation per day for each day of violation thereafter. For each failure to comply with any other provisions of this Consent Order, WDI shall pay stipulated penalties of \$500 per violation per day for each day of violation.

Stipulated penalties shall be paid within thirty (30) days after written demand made by the DEQ.

- 8.4 To ensure timely payment of the above civil fine, stipulated penalties, and costs, WDI shall pay an interest penalty to the General Fund of the State of Michigan each time it fails to make a complete or timely payment. This interest penalty shall be based on the rate set forth at MCL 600.6013(6), using the full increment of amount due as principal, and calculated from the due date for the payment until the delinquent payment is finally made in full.
- 8.5 WDI shall pay the above civil fine, stipulated penalties, costs, and interest penalties by certified or cashier's check made payable to the "State of Michigan" and mailed to the DEQ, Revenue Control Unit, P.O. Box 30657, Lansing, Michigan 48909-8157, or hand delivered to the DEQ, Revenue Control Unit, 525 West Allegan Street, Fifth Floor, South Tower, Lansing, Michigan 48933. To ensure proper credit, all payments made pursuant to this paragraph must include Payment Identification Number WHM 3016.
- 8.6 WDI agrees not to contest the legality of the civil fine or costs for surveillance and enforcement paid pursuant to Paragraphs 8.1 and 8.2, above. WDI further agrees not to contest the legality of any stipulated penalties or interest penalties assessed pursuant to Paragraphs 8.3 and 8.4, above, but reserves the right to dispute the factual basis upon which a demand by the DEQ for stipulated penalties or interest penalties is made.

IX. DISPUTE RESOLUTION

- 9.1 Unless otherwise provided in this Consent Order, the dispute resolution procedures of this Section IX shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Order and shall apply to all provisions of this Consent Order. However, the procedures set forth in this Section IX shall not apply to actions by the State to enforce obligations of WDI that have not been disputed in accordance with this Section IX. Engagement of a dispute resolution between the Parties shall not be cause for WDI to delay the performance of any compliance requirements or response activity.

- 9.2 Any dispute that arises under this Consent Order shall in the first instance be the subject of informal negotiations between the Parties. The period of negotiations shall not exceed twenty (20) days from the date of written notice by any Party that a dispute has arisen, unless the time period for negotiations is modified by written agreement between the Parties. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of dispute. If agreement cannot be reached on any issue within this twenty- (20-) day period, the DEQ shall provide a written statement of its decision to WDI and, in the absence of initiation of formal dispute resolution by WDI under Paragraph 9.3, the DEQ position, as outlined in its written statement of decision, shall be binding on the Parties.
- 9.3 If WDI and the DEQ cannot informally resolve a dispute under Paragraph 9.2, WDI may initiate formal dispute resolution by requesting a review of the disputed issues by the Division Chief. This written request must be filed with the Division Chief within fifteen (15) days of WDI's receipt of the DEQ's statement of decision that is issued at the conclusion of the informal dispute resolution procedure set forth in Paragraph 9.2. WDI's request shall state the issues in dispute; the relevant facts upon which the dispute is based; any factual data, analysis, or opinion supporting its position; and all supporting documentation upon which WDI bases its position. Within fourteen (14) days of the Division Chief's receipt of WDI's request for a review of disputed issues, the Division Chief will provide a written statement of decision to WDI, which will include a statement of his/her understanding of the issues in dispute; the relevant facts upon which the dispute is based; any factual data, analysis, or opinion supporting her/his position; and all supporting documentation relied upon by the Division Chief's review of the disputed issues. The Division Chief's review of the disputed issues may be extended by written agreement of the Parties.
- 9.4 The written statement of the Division Chief issued under Paragraph 9.3 shall be binding on the Parties unless, within fifteen (15) days after receipt of the DEQ's written statement of decision, WDI files a petition for judicial review in a court of competent jurisdiction that shall set forth a description of the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the

dispute must be resolved to ensure orderly implementation of this Consent Order. Nothing in this Consent Order affects the limitations on the timing of judicial review of the DEQ decision regarding the selection, extent, or adequacy of any response activity as provided for in Part 201, Environmental Remediation, of the NREPA.

- 9.5 An administrative record of the dispute shall be maintained by the DEQ. The administrative record shall include all of the information provided by WDI pursuant to Paragraph 9.3, as well as any other documents relied upon by the DEQ in making its final decision pursuant to Paragraph 9.3. Where appropriate, the DEQ shall allow submission of supplemental statements of position by the Parties to the dispute.
- 9.6 In proceeding on any dispute, WDI shall have the burden of demonstrating on the administrative record that the position of the DEQ is arbitrary and capricious or otherwise not in accordance with law. In proceedings on any dispute initiated by WDI, WDI shall bear the burden of persuasion on factual issues.
- 9.7 Notwithstanding the invocation of dispute resolution proceedings, stipulated penalties shall accrue from the first day of any failure or refusal to comply with any term or condition of this Consent Order, but payment shall be stayed pending resolution of the dispute. Stipulated penalties shall be paid within thirty (30) days after the resolution of the dispute. WDI shall pay that portion of a demand for payment of stipulated penalties that is not subject to dispute resolution procedures in accordance with and in the manner provided in Section VIII, Fines, Costs, and Penalties.

X. FORCE MAJEURE

- 10.1 WDI shall perform the requirements of this Consent Order within the time limits established herein unless performance is prevented or delayed by events that constitute a "Force Majeure." Any delay in the performance attributable to a "Force Majeure" shall not be deemed a violation of WDI's obligations under this Consent Order in accordance with this Section X.

- 10.2 For the purpose of this Consent Order, "Force Majeure" means an occurrence or nonoccurrence arising from causes not foreseeable, beyond the control of, and without the fault of WDI, such as: an Act of God, untimely review of permit applications or submissions by the DEQ or other applicable authority, and acts or omissions of third parties that could not have been avoided or overcome by WDI's diligence and that delay the performance of an obligation under this Consent Order. "Force Majeure" does not include, among other things, unanticipated or increased costs, changed financial circumstances, or failure to obtain a permit or license as a result of WDI's actions or omissions.
- 10.3 WDI shall notify the DEQ, by telephone, within forty-eight (48) hours of discovering any event that causes a delay in its compliance with any provision of this Consent Order. Verbal notice shall be followed by written notice within ten (10) calendar days and shall describe, in detail, the anticipated length of delay, the precise cause or causes of delay, the measures taken by WDI to prevent or minimize the delay, and the timetable by which those measures shall be implemented. WDI shall adopt all reasonable measures to avoid or minimize any such delay.
- 10.4 Failure of WDI to comply with the notice requirements of Paragraph 10.3, above, shall render this Section X void and of no force and effect as to the particular incident involved. The DEQ may, at its sole discretion and in appropriate circumstances, waive the notice requirements of Paragraph 10.3.
- 10.5 If the Parties agree that the delay or anticipated delay was beyond the control of WDI, this may be so stipulated and the parties to this Consent Order may agree upon an appropriate modification of this Consent Order. If the Parties to this Consent Order are unable to reach such agreement, the dispute shall be resolved in accordance with Section IX, Dispute Resolution, of this Consent Order. The burden of proving that any delay was beyond the reasonable control of WDI, and that all the requirements of this Section X have been met by WDI, is on WDI.
- 10.6 An extension of one compliance date based upon a particular incident does not necessarily mean that WDI qualifies for an extension of a subsequent compliance date

without providing proof regarding each incremental step or other requirement for which an extension is sought.

XI. GENERAL PROVISIONS

- 11.1 With respect to any violations not specifically addressed and resolved by this Consent Order, the DEQ reserves the right to pursue any other remedies to which they are entitled for any failure on the part of WDI to comply with the requirements of the NREPA and its rules.
- 11.2 Notwithstanding any other provision of this Consent Order, an enforcement action may be brought by the DEQ pursuant to Part 115 or other statutory authority where the generation, storage, transportation, treatment, or disposal of solid waste at the WDI facility may present an imminent and substantial hazard to the health of persons or to the natural resources or is endangering or causing damage to public health or the environment.
- 11.3 The DEQ and WDI consent to enforcement of this Consent Order in the same manner and by the same procedures for all final orders entered pursuant to Part 115.
- 11.4 This Consent Order in no way affects WDI's responsibility to comply with any other applicable local, state, or federal laws or regulations including, without limitation, any corrective action or similar requirements applicable to the WDI Facility pursuant to the NREPA, the federal Resource Conservation and Recovery Act of 1976, as amended, and their rules.
- 11.5 Nothing in this Consent Order is or shall be considered to affect any liability WDI may have for natural resource damages caused by WDI's ownership and/or operation of the WDI Facility. The State of Michigan does not waive any rights to bring an appropriate action to recover such damages to the natural resources.
- 11.6 The provisions of this Consent Order shall apply to and be binding upon WDI, the DEQ, and their successors and assigns. WDI shall give notice of this Consent Order to any

prospective successor in interest prior to transfer of ownership and shall notify the DEQ of such proposed sale or transfer.

XII. TERMINATION

12.1 This Consent Order shall remain in full force and effect for at least five (5) years and until expressly terminated by a written Notice of Termination issued by the Division Chief. WDI may request that the Division Chief issue a written Notice of Termination at any time after achieving compliance with this Consent Order. Such a request shall consist of a written certification that WDI has fully complied with all of the requirements of this Consent Order and made payment of any fines and penalties required in this Consent Order. Specifically, this certification shall include:

12.1.1 the date of compliance with each provision of the Compliance Program in Section IV and the date any fines or penalties were paid;

12.1.2 a statement that all required information has been reported to the District Supervisor;

12.1.3 confirmation that all records required to be maintained pursuant to this Consent Order are being maintained at the facility; and

12.1.4 additional relevant information may also be requested by the Division Chief.

SIGNATORIES

The undersigned CERTIFY they are fully authorized by the party they represent to enter into this Consent Order to comply by consent and to EXECUTE and LEGALLY BIND that party to it.

Wayne Disposal, Inc.

Department of Environmental Quality

Steven E. Chester
Director

By:



~~Scott J. Maris~~ *KENNETH W. WUNDERLICH*
Vice President, Regulatory Affairs
CHIEF FINANCIAL OFFICER

By:



George W. Bruchmann, Chief
Waste and Hazardous Materials
Division

Date:

12/4/08

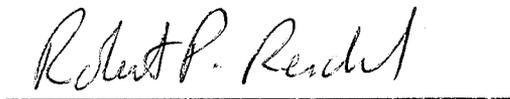
Date:

12-9-08

Approved as to Form:

Michael A. Cox
Attorney General

By:



Robert P. Reichel (P31878)
Assistant Attorney General
Environment, Natural Resources
and Agriculture Division
Department of Attorney General
P.O. Box 30755
Lansing, Michigan 48909

Date:

12/8/08