

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
WATER BUREAU

In the matter of:

ACO-GW07-002

Date Entered: 6-18-2008

Wastewater Management, LLC  
3133 Highland Drive  
Hudsonville, Michigan 49426

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**ADMINISTRATIVE CONSENT ORDER**

This document results from allegations by the Department of Environmental Quality (DEQ), Water Bureau (WB). The DEQ alleges Wastewater Management, LLC, which owns and operates a wastewater treatment plant (WWTP) located in Oakland Township, Oakland County, Michigan 48363, with Groundwater Discharge Permit No. GW1810097 issued to Toll MI IV Limited Partnership (Toll), is in violation of Part 41, Sewerage Systems, of the Natural Resources and Environmental Protection Act, 1994 PA 451, (Part 41), as amended (NREPA), MCL 324.4101 et seq. Wastewater Management, LLC is a person, as defined by Section 301 of the NREPA, and is registered with the Michigan Department of Labor and Economic Growth (DLEG) as able to conduct business in the State of Michigan under Identification Number B7181E. Toll is a person, as defined by Section 301 of the NREPA, and is registered with the DLEG as able to conduct business in the State of Michigan under Identification Number L15812. Wastewater Management, LLC and the DEQ agree to resolve the DEQ-alleged violations set forth in the Findings section of this Administrative Consent Order (Consent Order) by entry of this Consent Order.

**I. STIPULATIONS**

Wastewater Management, LLC and the DEQ stipulate as follows:

- 1.1 The NREPA MCL 324.101 et seq., is an act that controls pollution to protect the environment and natural resources in the state.
- 1.2 Pollution Control, Part 31, Water Resources Protection, of the NREPA (Part 31), MCL 324.3101 et seq., and the rules promulgated pursuant thereto, provides for the protection, conservation, and the control of pollution of the water resources of the state

- 1.3 Part 41, and rules promulgated pursuant thereto, provide for the proper planning, construction and operation of sewerage facilities to prevent unlawful pollution of the water resources of the state.
- 1.4 Section 4105(1) of Part 41 states in part: "before constructing a sewerage system, filtration or other purification plant, or treatment works or any alteration, addition, or improvement to the system or plant, the mayor of each city, the president of each village, and the responsible official of all other governmental agencies, associations, private corporations, and partnerships or individuals shall submit the plans and specifications to the department and secure from the department a permit for construction. A contractor, builder, governmental agency, corporation, association, partnership, or individual shall not engage in or commence the construction of a sewerage system, filtration, or other purification plant, or treatment works or an alteration, addition, or improvement until a valid permit for the construction is secured from the department."
- 1.5 1979 AC R 299.2942, as amended, promulgated pursuant to Part 41, (Rule 42) requires that "the director shall approve any deviations from approved plans or specifications affecting capacity, flow, or operation of units before construction of the changes. Plans and specifications so revised should be submitted, well in advance of any construction work which will be affected by the changes, to permit sufficient time for review and approval."
- 1.6 The DEQ is authorized by Section 4111 of Part 41 to bring an appropriate action as may be necessary to carry out this part and to enforce any and all laws, rules and regulations related to this part. The director of the DEQ or his designee has authority to enter this Consent Order with Wastewater Management, LLC in accordance with Section 301(b) of the NREPA, MCL 324.301(b).
- 1.7 Wastewater Management, LLC consents to the issuance and entry of this Consent Order and stipulates that the entry of this Consent Order constitutes a final order of the DEQ and is enforceable as such under Section 4111 of Part 41. Wastewater Management, LLC agrees not to contest the issuance of this Consent Order, and that the resolution of

this matter by the entry of this Consent Order is appropriate and acceptable. It is also agreed that this Consent Order shall become effective on the date it is signed by the chief of the WB, delegate of the director, pursuant to Section 301(b) of the NREPA.

- 1.8 Wastewater Management, LLC and the DEQ agree that the signing of this Consent Order is for settlement purposes only and does not constitute an admission by Wastewater Management, LLC that the law has been violated.
- 1.9 The Signatory to this Consent Order on behalf of Wastewater Management, LLC agrees and attests that he is fully authorized to execute this Consent Order on behalf of Wastewater Management, LLC and is fully authorized to execute this Consent Order, which requires that Wastewater Management, LLC will comply with all requirements under this Consent Order as set forth herein.
- 1.10 Wastewater Management, LLC shall achieve compliance with the aforementioned regulations in accordance with the requirements contained in Section III, Compliance Program, of this Consent Order.

## II. FINDINGS

- 2.1 On August 17, 2005, Toll was issued an authorization to discharge treated sanitary sewage to the groundwaters of the state in accordance with the provisions of Groundwater Discharge Permit No. GW1810097 issued under Part 31, at the Wynstone Site Condominium development located in Oakland Township, Oakland County Michigan. A copy of the Groundwater Discharge Permit No. GW1810097 is attached to this Consent Order as Exhibit A.
- 2.2 Toll recorded an easement on the property on which the Wynstone project is located and entered into a "Wastewater Service Agreement" dated August 8, 2005, with Wastewater Management, LLC, granting Wastewater Management, LLC rights to construct, own and operate the WWTP on Toll's property to serve the Wynstone Site Condominium

development. A copy of the Wastewater Service Agreement is attached to this Consent Order as Exhibit B.

- 2.3 On May 20, 2005, Wastewater Management, LLC entered into a "Design/Build Agreement" with Strategic Construction Solutions, Inc. (SCS) to build the WWTP. A copy of the Design/Build Agreement is attached to this Consent Order as Exhibit C.
- 2.4 Wastewater Management, LLC acting as agent for Toll, under subrule (2) of 1979 AC R 299.2933, promulgated pursuant to Part 41, (Rule 33), applied for and, on October 5, 2005, was issued the sewerage system construction Permit No. 1002203, in accordance with Part 41, to construct the WWTP. A copy of Permit No. 1002203 is attached to this Consent Order as Exhibit D.
- 2.5 On June 2, 2006, Atwell-Hicks, LLC, with DLEG Identification Number B5775Q, (hereinafter referred to as "Atwell-Hicks"), an affiliate of SCS, performed a "substantial completion review" of the WWTP and the collection system (collectively, "sewerage system") serving the Wynstone Site Condominium development in accordance with the requirements under 1979 AC Rule 299.2942, as amended, promulgated pursuant to Part 41, (Rule 42). A summary of the quality control program, construction observations, and design modifications was contained in a letter dated June 9, 2006, and was submitted to the DEQ as the engineer's certification that the WWTP is ready to commence operation and was constructed in substantial conformance to the design intent and the plans and specifications as prepared by Atwell Hicks and approved by the DEQ by the issuance of Groundwater Discharge Permit No. GW1810097 and Permit No. 1002203. A copy of the June 9, 2006, certification letter written by Atwell-Hicks is attached to this Consent Order as Exhibit E.
- 2.6 The June 9, 2006, certification letter attached to this Consent Order as Exhibit E, stated that the "Effluent Disposal" portion of the sewerage system was constructed with a gravel

and perforated pipe under drain system hydraulically linking all the Rapid Infiltration Beds (RIB), sub surface vents, and Michigan Department of Transportation Class II sand material.

- 2.7 On August 1, 2006, the DEQ sent Toll and Wastewater Management, LLC Notice Letter (NL) NL-002094 detailing the DEQ-alleged Effluent Disposal system construction violations of Part 41, the groundwater discharge permit and the construction permit. The NL states that the Effluent Disposal system was constructed in violation of Part 41; and that Wastewater Management, LLC did not receive approval from the director for the deviation from the approved plans and specifications affecting the capacity, flow, or operation before the construction of the changes occurred, in violation of Rule 42 promulgated pursuant to Part 41. The DEQ believes that this construction in alleged violation of Part 41 resulted in a treatment system that, if operated, will result in an effluent flow from the treatment system that will not be the same effluent flow that was authorized by the Groundwater Discharge Permit No. GW1810097 and Permit No. 1002203. A copy of NL-002094 is attached to this Consent Order as Exhibit F.
- 2.8 The August 1, 2006 NL, attached to this Consent Order as Exhibit F, advised Toll and Wastewater Management, LLC that the DEQ, based on the DEQ's review of the "substantial completion review" of the sewerage system, completed by Atwell-Hicks, concluded that the system was not properly constructed in accordance with Permit No. 1002203; and it ordered Toll and Wastewater Management, LLC by September 1, 2006, to: 1) submit a plan to restore the sewerage system to what was originally permitted under Groundwater Discharge Permit No. GW1810097 and Permit No. 1002203; or 2) submit a modification request to the DEQ for Groundwater Discharge Permit No. GW1810097 along with all necessary documentation to bring the facility into compliance with the Part 22 Rules (1979 AC R 323.2201 et seq.)
- 2.9 In response to NL-002094, Atwell-Hicks drafted a response letter to the DEQ dated August 16, 2006. The response letter stated that Wastewater Management, LLC constructed a sewerage system that would comply with the terms of the issued

Groundwater Discharge Permit No. GW1810097. Atwell-Hicks further expressed the opinion that the permittees did not need to restore the sewerage system and its appurtenances to the sewerage system that was originally permitted, nor did the permittees need to apply for a modified groundwater discharge permit. A copy of Atwell-Hicks' August 16, 2006, letter is attached to this Consent Order as Exhibit G.

2.10 On September 18, 2006, the DEQ sent NL-002291, addressed to Toll, with Wastewater Management, LLC copied on the letter. The NL stated that the response to NL-002094 that was submitted to the DEQ by Atwell-Hicks was unacceptable. The NL re-affirmed the DEQ directives to restore the sewerage system and its appurtenances to what was originally permitted by Groundwater Discharge Permit No. GW1810097 and Permit No. 1002203 or apply for a modified groundwater discharge permit, with a response due by October 16, 2006. A copy of NL-002291 is attached to this Consent Order as Exhibit H.

2.11 On October 11, 2006, Atwell-Hicks submitted a response to NL-002291 to the DEQ. The response indicated that Wastewater Management, LLC proposed to resolve the alleged violations of Part 41 and Permit No. 1002203 through a two-pronged approach including an interim step eliminating the hydraulic connection between the RIB's that the DEQ believes was not authorized and a secondary step including a modification request for the existing Groundwater Discharge Permit No. GW1810097. A copy of the October 11, 2006, correspondence from Atwell-Hicks is attached to this Consent Order as Exhibit I.

2.12 Atwell-Hicks submitted a second proposed solution to resolve the alleged violations of Part 41 on April 13, 2007. The proposed solution was commented on by the DEQ. A copy of the proposed solution is attached to this Consent Order as Exhibit J.

2.13 Boss Engineering, (hereinafter referred to as "Boss"), Wastewater Management, LLC's consultants, submitted a proposed solution to the DEQ on November 29, 2007, in the form of plans and specifications (hereinafter referred to as the "Plans") to resolve the alleged violations of Part 41 which included: removing existing materials in the RIBs and

downgradient to elevation 933.00 and replacement with approved permeable fill. A copy of this proposed solution by Boss is attached to this Consent Order as Exhibit K.

2.14 To date, Wastewater Management, LLC has not discharged any treated sanitary sewage from the WWTP to the groundwaters of the State. Provided, however, that on December 20, 2007, the DEQ issued an Authorization to Discharge Permit No. GW1110411 permitting the discharge of up to 70,000 gallons per day (500,000 gallons per year) of hydrostatic test water to the groundwaters of the State. Wastewater Management, LLC has now completed the authorized discharge of the hydrostatic test water to the groundwaters of the State pursuant to Authorization to Discharge Permit No. GW1110411. A copy of Authorization to Discharge Permit No. GW1110411, is attached to this Consent Order as Exhibit L.

2.15 On February 15, 2008, Boss submitted revisions to the plans and specifications for the Part 41 permit application, as attached to this Consent Order as Exhibit K, which revised the RIB excavation plan. Some of the excavation is planned to be down to 925 feet above sea level, and some is planned to be down to 933 feet above sea level. A copy of the February 15, 2008, revision is attached to this Consent Order as Exhibit M.

### **III. COMPLIANCE PROGRAM**

IT IS THEREFORE AGREED AND ORDERED THAT Wastewater Management, LLC shall take the following actions:

3.1 Wastewater Management, LLC agrees that it will operate the WWTP in accordance with Part 31 and Part 41 and will comply with the terms and conditions set forth in the Plans referenced in paragraph 2.13 of this Consent Order and attached as Exhibits K and M. Wastewater Management, LLC stipulates that the operation of the WWTP will not result in an injury or potential injury to human health or the environment, in accordance with Part 31 and Part 41 and will comply with the terms and conditions of Groundwater Discharge Permit No. GW1810097, subsequent soil borings required by the DEQ, any

subsequent groundwater discharge permits, including Groundwater Discharge Permit No. GW1810097 or its replacement(s), and all other plans and/or requirements agreed upon by Wastewater Management, LLC, Toll, Boss and the DEQ between November 29, 2007, and the issuance of the Part 41 construction Permit No. 1004858, which was applied for by Wastewater Management, LLC on February 21, 2008 (hereinafter collectively referred to as the "Final Solution"). Wastewater Management, LLC, shall not discharge any wastewater from the wastewater treatment facility unless that discharge is in compliance with a valid wastewater discharge permit issued under Part 31 for the Wynstone project.

- 3.2 By no later than 60 days past the issuance of Part 41 construction permit number 1004858, Wastewater Management, LLC shall begin construction on the WWTP. The construction at the WWTP shall result in a treatment system that, when operated, meets the effluent limits and conditions contained within Groundwater Discharge Permit No. GW1810097 or its replacements. Wastewater Management, LLC shall complete the construction of the WWTP in conformance with Part 41 Permit No. 1004858 and the Final Solution by no later than 18 months past issuance of the Part 41 permit.
- 3.3 Not later than 30 days after completion of all construction activities in paragraph 3.1 and paragraph 3.2 of this Consent Order, Wastewater Management, LLC shall submit for review and comment to the Southeast Michigan District Office a substantial completion review certification by a licensed professional engineer, in accordance with Rule 42 promulgated pursuant to Part 41. The certification shall detail how the operation of the sewerage system will comply with Part 31 and Groundwater Discharge Permit No. GW1810097 or its replacements
- 3.4 Wastewater Management, LLC stipulates that it shall not operate the current or reconstructed WWTP to cause a discharge to the waters of the state until Wastewater Management, LLC submits for review and comment to the Southeast Michigan District Office a substantial completion review certification in accordance with paragraph 3.3 of this Consent Order. If the revised certification is not acceptable to the DEQ, the DEQ will

notify Wastewater Management, LLC of the deficiencies in accordance with paragraph 4.3 of this Consent Order. Wastewater Management, LLC agrees that it will not operate the WWTP until any deficiencies, as identified by the DEQ, have been corrected.

- 3.5 Wastewater Management, LLC shall submit all reports, work plans, specifications, schedules, or any other writing required by this section to the Southeast Michigan District Supervisor, WB, DEQ, 27700 Donald Court, Warren, Michigan 48092-2793. The cover letter with each submittal shall identify the specific paragraph and requirement of this Consent Order that the submittal is intended to satisfy.

#### **IV. DEQ APPROVAL OF SUBMITTALS**

- 4.1 For any work plan, proposal, or other document, excluding applications for permits or licenses, that are required by this Consent Order to be submitted to the DEQ by Wastewater Management, LLC, the following process and terms of approval described in Section IV of this Consent Order shall apply.
- 4.2 All work plans, proposals, and other documents required to be submitted by this Consent Order shall include all of the information required by the applicable statute and/or rule, and all of the information required by the applicable paragraph(s) of this Consent Order.
- 4.3 In the event the DEQ disapproves a work plan, proposal, or other document, it will notify Wastewater Management, LLC, in writing, specifying the reasons for such disapproval. Wastewater Management, LLC shall submit, within 45 days of receipt of such disapproval, a revised work plan, proposal, or other document which addresses each of the reasons for the DEQ's disapproval. If the revised work plan, proposal, or other document is still not acceptable to the DEQ, the DEQ will notify Wastewater Management, LLC of this disapproval.
- 4.4 In the event the DEQ approves with specific modifications, a work plan, proposal, or other document, it will notify Wastewater Management, LLC, in writing, specifying the

modification(s) required to be made to such work plan, proposal, or other document prior to its implementation and the specific reasons for such modifications. The DEQ may require Wastewater Management, LLC to submit, prior to implementation and within 45 days of receipt of such approval with specific modifications, a revised work plan, proposal, or other document which addresses each such modification(s). If the revised work plan, proposal, or other document is still not acceptable to the DEQ, the DEQ will notify Wastewater Management, LLC of this disapproval.

- 4.5 Upon DEQ approval, or approval with modifications, of a work plan, proposal, or other document, such work plan, proposal, or other document shall be incorporated by reference into this Consent Order and shall be enforceable in accordance with the provisions of this Consent Order.
- 4.6 Failure by Wastewater Management, LLC to submit a work plan, proposal, or other document that addresses the basis for disapproval under subsection 4.3 of this section, or incorporates all modifications required under subsection 4.4 of this section, within the applicable time periods specified above, constitutes a violation of this Consent Order and shall subject Wastewater Management, LLC to the enforcement provisions of this Consent Order, including the stipulated penalty provisions specified in paragraph 9.3.
- 4.7 Any delays caused by Wastewater Management, LLC's failure to submit a work plan, proposal, or other document that addresses the basis for disapproval under subsection 4.3 of this section, or incorporates all modifications required under subsection 4.4 of this section when due shall in no way affect or alter Wastewater Management, LLC's responsibility to comply with any other deadline(s) specified in this Consent Order.
- 4.8 No informal advice, guidance, suggestions, or comments by the DEQ regarding reports, work plans, plans, specifications, schedules or any other writing submitted by Wastewater Management, LLC will be construed as relieving Wastewater Management, LLC of its obligation to obtain written approval, if and when required by this Consent Order.

## **V. EXTENSIONS**

5.1 Wastewater Management, LLC and the DEQ agree that the DEQ may grant Wastewater Management, LLC a reasonable extension of the specified deadlines set forth in this Consent Order. Any extension shall be preceded by a written request in duplicate to the DEQ, WB, Enforcement Unit Chief, Constitution Hall, 525 West Allegan Street, Lansing, Michigan 48909-7773, and the Southeast Michigan District Supervisor at the address in paragraph 3.5, no later than ten business days prior to the pertinent deadline, and shall include:

- a. Identification of the specific deadline(s) of this Consent Order that will not be met
- b. A detailed description of the circumstances that will prevent Wastewater Management, LLC from meeting the deadline(s).
- c. A description of the measures Wastewater Management, LLC has taken and/or intends to take to meet the required deadline.
- d. The length of the extension requested and the specific date on which the obligation will be met.

The district supervisor, in consultation with the Enforcement Unit Chief, shall respond in writing to such requests. No change or modification to this Consent Order shall be valid unless in writing from the DEQ, and if applicable, signed by both parties.

## **VI. REPORTING**

6.1 Wastewater Management, LLC shall verbally report any violation(s) of the terms and conditions of this Consent Order to the Southeast Michigan District 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 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). Wastewater Management, LLC shall report any anticipated violation(s) of this Consent Order to the above-referenced individual in advance of the relevant deadlines whenever possible.

#### **VII. RETENTION OF RECORDS**

- 7.1 Upon request by an authorized representative of the DEQ, Wastewater Management, LLC 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 31 or its rules. All such documents shall be retained by Wastewater Management, LLC for at least a period of three years from the date of generation of the record unless a longer period of record retention is required by Part 31 or its rules.

#### **VIII. RIGHT OF ENTRY**

- 8.1 Wastewater Management, LLC shall allow any authorized representative or contractor of the DEQ, upon presentation of proper credentials, and adherence to all proper and applicable safety rules, to enter upon the premises of the WWTP 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 the rules promulgated thereunder, or any other applicable statutory provision.

#### **IX. PENALTIES**

- 9.1 Wastewater Management, LLC agrees to pay to the State of Michigan \$10,217.01 as partial compensation for the cost of investigations and enforcement activities arising from

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the alleged violations specified in Section II of this Consent Order. Payment shall be made within 30 days of the effective date of this Consent Order in accordance with paragraph 9.7.

9.2 Wastewater Management, LLC agrees to pay a civil fine of \$2,500 for the alleged violations specified in Section II of this Consent Order. Payment shall be made within 30 days of the effective date of this Consent Order in accordance with paragraph 9.7.

9.3 For each failure to comply with the provisions of Section III and IV of this Consent Order, Wastewater Management, LLC shall pay stipulated penalties of \$250 per violation per day for 1 to 7 days of violation, \$500 per violation per day for 8 to 14 days of violation, and \$1,000 per violation per day for each day of violation thereafter. Failure to perform any of the following requirements shall be considered separate violations of this Consent Order and are subject to stipulated penalties under this paragraph:

- a. Failure to submit work plan, proposal, or other document by the required dates in accordance with Section III.
- b. Failure to implement, complete, or comply with any activity or condition required by Section III, including those contained in any work plan or other document required to be implemented and completed by Section III.
- c. Failure to submit approvable revised work plans, proposals, or other documents addressing a DEQ disapproval or approval with modifications by the required dates in accordance with paragraphs 4.3 or 4.4.

9.4 For each failure to comply with any other provision of this Consent Order not specified in paragraph 9.3, Wastewater Management, LLC shall pay stipulated penalties of \$500 per violation per day for each day of violation. Failure to perform any of the following requirements shall be considered separate violations of this Consent Order and are subject to stipulated penalties under this paragraph:

- a. Failure to verbally report violations of this ACO and submit written reports by the required dates in accordance with paragraph 6.1.
  - b. Failure to retain records on site, or at a location reasonable for review by the DEQ, if requested, in accordance with paragraph 7.1.
  - c. Failure to pay civil fines, costs, or stipulated or interest penalties by the required dates in accordance with this section.
  - d. Any other requirement of this Consent Order.
- 9.5 Stipulated penalties accruing under paragraphs 9.3 or 9.4 shall be paid within 30 days after written demand by the DEQ in accordance with paragraph 9.7.
- 9.6 To ensure timely payment of the above civil fine, costs, and stipulated penalties, Wastewater Management, LLC 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 and unpaid as principal, and calculated from the due date for the payment until the delinquent payment is finally made in full.
- 9.7 Wastewater Management, LLC agrees to pay all funds due pursuant to this agreement by check made payable to the State of Michigan and delivered to the DEQ, Revenue Control Unit, P.O. Box 30657, Lansing, Michigan 48909-8157. To ensure proper credit, all payments made pursuant to this Consent Order must include the Payment Identification No. WTR3072.
- 9.8 Wastewater Management, LLC agrees not to contest the legality of the civil fine or costs paid pursuant to paragraphs 9.1, and 9.2, above. Wastewater Management, LLC further agrees not to contest the legality of any stipulated penalties or interest penalties assessed pursuant to paragraphs 9.3, 9.4, and 9.5, 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.

#### **X. FORCE MAJEURE**

- 10.1 Wastewater Management, LLC 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 Wastewater Management, LLC's obligations under this Consent Order in accordance with this section.
- 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 Wastewater Management, LLC, 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 Wastewater Management, LLC's diligence and that delay the performance of an obligation under this Consent Order, including Wastewater Management, LLC being prohibited by an order from a court of competent jurisdiction from entry onto the real property upon which the WWTP is located. "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 Wastewater Management, LLC's actions or omissions.
- 10.3 Wastewater Management, LLC shall notify the DEQ, by telephone, within 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 calendar days and shall describe, in detail, the anticipated length of delay, the precise cause or causes of delay, the measures taken by Wastewater Management, LLC to prevent or minimize the delay, and the timetable by which those measures shall be implemented. Wastewater Management, LLC shall adopt all reasonable measures to avoid or minimize any such delay.

- 10.4 Failure of Wastewater Management, LLC to comply with the notice requirements and time provisions under paragraph 10.3 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 in writing the notice requirements of paragraph 10.3, above.
- 10.5 If the parties agree that the delay or anticipated delay was beyond the control of Wastewater Management, LLC, this may be so stipulated, and the parties to this Consent Order may agree upon an appropriate modification of this Consent Order. However, the DEQ is the final decision-maker on whether or not the matter at issue constitutes a Force Majeure. The parties to this order understand and agree that the final decision by the DEQ regarding a force majeure claim is not subject to judicial review. The burden of proving that any delay was beyond the reasonable control of Wastewater Management, LLC, and that all the requirements of this Section X have been met by Wastewater Management, LLC, rests with Wastewater Management, LLC.
- 10.6 An extension of one compliance date based upon a particular incident does not necessarily mean that Wastewater Management, LLC 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 it is entitled for any failure on the part of Wastewater Management, LLC to comply with the requirements of the NREPA and its rules.
- 11.2 The DEQ and Wastewater Management, LLC consent to enforcement of this Consent Order in the same manner and by the same procedures for all final orders entered

pursuant to Part 31, MCL 324.3101 et seq.; and enforcement pursuant to Part 17, Michigan Environmental Protection Act, of the NREPA, MCL 324.1701 et seq.

- 11.3 This Consent Order in no way affects Wastewater Management, LLC's responsibility to comply with any other applicable state, federal, or local laws or regulations.
- 11.4 The WB reserves its right to pursue appropriate action, including injunctive relief to enforce the provisions of this Consent Order, and at its discretion, may also seek stipulated fines or statutory fines for any violation of this Consent Order. However, the WB is precluded from seeking both a stipulated fine under this Consent Order and a statutory fine for the same violation.
- 11.5 Nothing in this Consent Order is or shall be considered to affect any liability Wastewater Management, LLC may have for natural resource damages caused by Wastewater Management, LLC's ownership and/or operation of the WWTP. The State of Michigan does not waive any rights to bring an appropriate action to recover such damages to the natural resources.
- 11.6 In the event Wastewater Management, LLC sells or transfers the facility, it shall advise any purchaser or transferee of the existence of this Consent Order in connection with such sale or transfer. Within 30 calendar days, Wastewater Management, LLC shall also notify the WB, Southeast Michigan District Supervisor, in writing, of such sale or transfer, the identity and address of any purchaser or transferee, and confirm the fact that notice of this Consent Order has been given to the purchaser and/or transferee. The purchaser and/or transferee of this Consent Order must agree, in writing, to assume all of the obligations of this Consent Order. A copy of that agreement shall be forwarded to the WB, Southeast Michigan District Supervisor within 30 days of such transferee assuming the obligations of this Consent Order.
- 11.7 The provisions of this Consent Order shall apply to and be binding upon the parties to this action, and their successors and assigns.

11.8 This Consent Order constitutes a civil settlement and satisfaction as to the resolution of the alleged violations specifically addressed herein; however, it does not resolve any criminal action that may result from these same violations.

## **XII. TERMINATION**

12.1 This Consent Order shall remain in full force and effect until terminated by a written Termination Notice (TN) issued by the DEQ. Prior to issuance of a written TN, Wastewater Management, LLC shall submit a request consisting of a written certification that Wastewater Management, LLC has fully complied with the requirements of this Consent Order and has made payment of any fines, including stipulated penalties, required in this Consent Order. Specifically, this certification shall include:

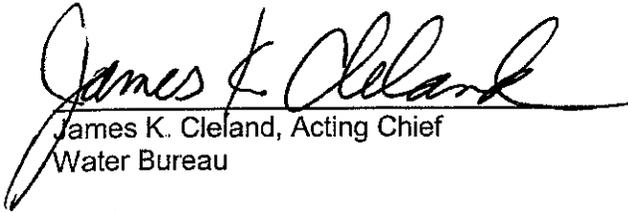
- a. The date of compliance with each provision of the compliance program in Section III, and the date any fines or penalties were paid.
- b. A statement that all required information has been reported to the district supervisor.
- c. Confirmation that all records required to be maintained pursuant to this Consent Order are being maintained by Wastewater Management, LLC at a location reasonable for review by the DEQ, if requested.

The DEQ may also request additional relevant information. The DEQ shall not unreasonably withhold issuance of a TN.

**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.

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

  
James K. Cleland, Acting Chief  
Water Bureau

June 18, 2008  
Date

**WASTEWATER MANAGEMENT, LLC**

  
By: Jordan Burgess

MEMBER  
Title: Member

06/17/08  
Date

APPROVED AS TO FORM:

  
By: Alan F. Hoffmann, Assistant Attorney General  
For: S. Peter Manning, Chief  
Environment, Natural Resources, and Agriculture Division  
Michigan Department of Attorney General

6/18/08  
Date