

**STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER RESOURCES DIVISION**

In the matter of:

ACO-000193

Date Entered: 7-27-16

Lakewood Wastewater Authority
839 Fourth Avenue
Lake Odessa, Michigan 48849

ADMINISTRATIVE CONSENT ORDER

This document results from allegations by the Department of Environmental Quality (DEQ), Water Resources Division (WRD). The DEQ alleges the Lakewood Wastewater Authority (LWA), with offices located at 839 Fourth Avenue, Lake Odessa, Ionia County, dedicated to operation of a sewerage system (Facility), is in violation of Part 31, Water Resources Protection, and Part 41, Sewerage Systems, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.3101 *et seq.* and MCL 324.4101 *et seq.*, respectively, the associated administrative rules, and permits issued by the DEQ in accordance with the NREPA. The LWA is a person, as defined by Section 301 of the NREPA, MCL 324.301. The LWA and the DEQ agree to resolve the alleged violations set forth herein through entry of this Administrative Consent Order (Consent Order).

I. STIPULATIONS

The LWA and the DEQ stipulate as follows:

- 1.1 The NREPA is an act that controls pollution to protect the environment and natural resources in the state.
- 1.2 Part 31, Water Resources Protection, of the NREPA (Part 31) and the rules promulgated pursuant thereto provide for the protection, conservation, and control of pollution of the water resources of the state.
- 1.3 Part 41, Sewerage Systems, of the NREPA (Part 41) and the rules promulgated pursuant thereto provide for the proper planning, construction, and operation of wastewater facilities to prevent unlawful pollution of the water resources of the state.

- 1.4 The DEQ is authorized by Section 3112(4) of Part 31, MCL 324.3112(4), and Section 4111 of Part 41 of the NREPA, MCL 324.4111, to enter orders requiring persons to abate pollution or otherwise cease or correct activities in violation of a specific part. The director of the DEQ may delegate this authority to a designee under Section 301(b) of the NREPA, MCL 324.301(b).
- 1.5 The LWA 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 3112(4) of Part 31 and Section 4111 of Part 41. The LWA agrees not to contest the issuance of this Consent Order and further agrees that the resolution of this matter by the entry of this Consent Order is acceptable. It is also agreed that this Consent Order shall become effective on the date it is signed by the chief of the WRD, delegate of the director, pursuant to Section 301(b) of the NREPA.
- 1.6 The LWA and the DEQ agree that the signing of this Consent Order is for settlement purposes only and does not constitute an admission by the LWA that the law has been violated.
- 1.7 The signatory to this Consent Order certifies that he is fully authorized by the LWA to enter into the terms and conditions of this Consent Order and to execute and legally bind the LWA to this document. The LWA hereby agrees to comply with the requirements of this Consent Order to resolve the alleged violations stated in Section II of this Consent Order and agrees to achieve compliance with Parts 31 and 41 of the NREPA by fulfilling the terms of Section III of this Consent Order.
- 1.8 For the purposes of this Consent Order, the parties agree that "day" shall mean calendar day unless modified as "business day." Business day shall mean Monday through Friday of each week, excluding state of Michigan holidays.

II. FINDINGS

- 2.1 The LWA consists of a board of members with jurisdiction over the municipal sewer collection system serving a limited area of Berlin Township (pursuant to a franchise agreement), Odessa Township, Village of Woodland, Village of Lake Odessa, and

Woodland Township, Michigan, and the LWA Wastewater Treatment Plant (WWTP) located at 13751 Harwood Road, Lake Odessa, Michigan. Discharges of wastewater treated at the WWTP are authorized by National Pollutant Discharge Elimination System (NPDES) permit MI0042978, most recently reissued by the DEQ on February 14, 2013, with a minor modification on March 31, 2014, in accordance with Part 31 and associated administrative rules (the NPDES Permit). The NPDES Permit was issued in advance of WWTP improvements which will allow the LWA to transition from its historic, seasonal discharge to a continuous discharge. Effluent limitations and other conditions within the NPDES Permit were developed by the DEQ to assure protection of water quality in the Little Thornapple River, which receives treated discharges via the LWA's Outfall 001.

- 2.2 Since 2005, the DEQ has advised the LWA of alleged violations of the NPDES Permit and the authorizing statute, being Part 31, through inspections and informal discussions and eventually, the issuance of a series of formal Violation Notices. Alleged violations generally involve: exceedances of numeric effluent limitations; collection system deficiencies; discharges of untreated and/or partially treated wastewater; WWTP operations and maintenance; and monitoring and recordkeeping.
- 2.3 The following Violation Notices and other correspondence informing the LWA of alleged violations were issued by the DEQ to the LWA:
 - a. January 16, 2008 (NL-003158)
 - b. September 30, 2010 (VN-004719)
 - c. February 16, 2011 (VN-004802)
 - d. June 14, 2011 (SVN-000384)
 - e. January 19, 2012 (Compliance Communication)
 - f. May 9, 2013 (SVN-000450)
 - g. August 5, 2013 (Enforcement Notice)
 - h. August 9, 2013 (Compliance Communication)
 - i. November 25, 2013 (VN-005729)
 - j. February 26, 2014 (VN-005764)
 - k. February 27, 2014 (SVN-000478)
 - l. May 20, 2014 (VN-005831)
 - m. May 23, 2014 (VN-005833)
 - n. May 28, 2014 (VN-005839)

- 2.4 DEQ alleges exceedances of numeric effluent limitations set forth within the NPDES Permit have occurred in large part due to insufficient hydraulic, treatment, and storage capacities at the WWTP.
- 2.5 Between April 2009 and April 2014, the LWA reported thirty five exceedances of the 30-day average, 7-day average, daily maximum or monthly maximum effluent limits in the LWA's NPDES Permit which included total phosphorus, carbonaceous biochemical oxygen demand (CBOD₅), ammonia nitrogen, total mercury, whole effluent toxicity, total suspended solids (TSS) and fecal coliform. The LWA was advised of these alleged violations, which were self-reported by the LWA on monthly Discharge Monitoring Reports, in various Violation Notices (NL-003158; VN-004802; SVN-000384; VN-005764; and VN-005839).
- 2.6 VN-005764 and VN-005839, issued by the DEQ on February 26, 2014 and May 28, 2014, respectively, specifically noted that the LWA's Significant Industrial Users (SIUs) appear to cause or contribute to the pass-through of pollutants to waters of the state and interfere with the WWTP operations. The DEQ has reviewed 2014 data for influent concentration and loading of BOD₅ and has determined that on ten (10) days within a twelve (12) month period, BOD₅ exceeded both the current and future (Phase I) Basis of Design for the new WWTP. The DEQ required LWA to:
- a. Begin monitoring the concentrations and loadings of wastewater discharges from its three (3) known SIUs prior to mixing with any other waste stream in the LWA collection system and influent concentrations and loadings to the WWTP, and
 - b. Develop a Michigan Industrial Pretreatment Program (MIPP), to be approved by the DEQ.
- 2.7 Additional exceedances of effluent limitations contained within the LWA's NPDES Permit occurred during May 2014. Ammonia nitrogen loading limitations were exceeded once during the month as both a 7-day and 30-day average. The ammonia (as nitrogen) daily maximum concentration limitation was also exceeded on five occasions during the month. Finally, the 30-day average limitation for carbonaceous biochemical oxygen demand was exceeded.

2.8 The LWA's aged and failing sewer collection system has been the source of sanitary sewer overflows, often discharging quantities of untreated or partially treated wastewater to waters of the state. The LWA reported SSOs of untreated or partially treated sewage from the LWA's treatment system or collection system, including failing pump stations, occurring on or around the following dates: September 14, 2008; December 27, 2008; May 13, 2010; April 28, 2011; May 29, 2011; July 28 and 29, 2011; August 3, 2011; August 7, 2011; May 4, 2012; April 10, 2013*; April 11-12, 2013; April 17-22, 2013; April 16-May 6, 2013; May 7-20, 2013; May 21-30, 2013; April 6 and April 7, 2014; May 15, 2014; June 23, 2014; August 4, 2014; August 19, 2014; September 8, 2014; April 2, 2015; June 14, 2015; and June 23, 2015.

*The LWA did not timely report this SSO event to the DEQ, local health department, and a local newspaper, which is a requirement of Part 31 and the NPDES Permit.

2.9 The DEQ notified the LWA of inflow and infiltration problems, along with failing pumping stations, in violation notices (VN-004802; SVN-000384; and SVN-000450). In response, the LWA commenced a number of collection system improvement projects requiring DEQ approval through issuance of Part 41 sewerage systems construction permits (Part 41 permits). Between April and July 2013, the DEQ issued the LWA the following Part 41 permits necessary for LWA to begin repairs and upgrades on the collection system: Permit No. 1007184, issued April 12, 2013; Permit No. 1007321, issued July 5, 2013; Permit No. 1007269, issued July 8, 2013; and Permit No. 1007270, issued July 8, 2013.

2.10 The LWA did not construct certain permitted sewerage system improvements in accordance with issued Part 41 permits, as cited within VN-005729 and SVN-000478. Further, separate construction occurred prior to issuance of a required Part 41 permit. The LWA was advised of this alleged violation in VN-005833.

2.11 In addition to collection system deficiencies, the DEQ has frequently advised the LWA of concerns, including alleged violations, arising from failing WWTP control structures and insufficient hydraulic, treatment and storage capacities (VN-004719; SVN-000384; SVN-000450; and SVN-000478).

- 2.12 SVN-000384, issued by the DEQ on June 14, 2011, memorialized information provided to DEQ staff, which revealed that during some wet weather conditions, the LWA redirected influent flow into primary lagoons and later blended the partially treated wastewater with fully treated wastewater prior to discharging it to Little Thornapple River, rather than directing all influent flow to the mechanical treatment system, as required. The bypass of any portion of the treatment system is a violation of the LWA's NPDES Permit and Part 31.

- 2.13 Beginning March 25, 2013, the DEQ and the Ionia County Health Department received numerous complaints about odors emanating from the WWTP. These odors were the result of operational problems and excessive sludge in the sludge aeration cell. The LWA addressed those odors by removing the sludge and installing aerators in the sludge aeration cell.

- 2.14 On July 18, 2013, DEQ staff conducted a compliance evaluation inspection of the LWA's WWTP and observed alleged operational violations of Part 31 and the LWA's NPDES Permit as detailed in the Compliance Communication from the DEQ to the LWA dated August 9, 2013.

- 2.15 During 2013, the LWA commenced a significant upgrade of its WWTP system to correct deficiencies and meet NPDES Permit requirements for a continuous, rather than seasonal, discharge. A Part 41 permit was issued by the DEQ for WWTP system upgrades (Part 41 Permit No. 1007269, issued July 8, 2013). An Interim Operations Plan was developed by the LWA in an effort to manage wastewater treatment during construction (as required by the DEQ in SVN-000478). The Interim Operations Plan was approved by the DEQ on October 20, 2014.

- 2.16 WWTP construction activities necessitated DEQ authorization under the construction storm water program of the NPDES. Such authorization was provided as a Notice of Coverage, which expired on December 3, 2014, while construction activities continued. The LWA did not have a Notice of Coverage for the construction project, which is an alleged violation of Part 31. Upon notification from the DEQ, the LWA renewed its coverage.

- 2.17 The DEQ has advised the LWA of concerns with monitoring and recordkeeping requirements, including laboratory protocols in various violation notices and other correspondence (NL-003158; VN-004719; VN-004802; January 19, 2012, Compliance Communication; August 9, 2013, Compliance Communication; and VN-005764). As of March 2014, the LWA has contracted with Prein & Newhof to perform laboratory services for compliance monitoring.
- 2.18 On March 31, 2013, the LWA's Mercury Pollutant Minimization Plan (PMP) Annual Report was due to the DEQ. After receiving notice from the DEQ, the LWA submitted it two (2) months after the deadline, on May 24, 2013, which was an alleged violation of its NPDES Permit.
- 2.19 Allegations involving the LWA implementation of the Mercury PMP were further noted in VN-005729, along with additional alleged violations including:
- a. The LWA did not implement all of the elements of its approved Mercury PMP as required by its NPDES Permit.
 - b. The LWA did not monitor for mercury during the first and second quarters of 2013 as required by its NPDES Permit.
 - c. The LWA had not been monitoring potential sources of mercury, which is required by the LWA's Mercury PMP and its NPDES Permit.
 - d. The LWA collected a total mercury sample in July 2013 from one of the lagoon cells but it was reported on the discharge monitoring report as a final effluent sample in September 2013. Incorrect data reporting violates the NPDES Permit.

The LWA submitted its 2013 Mercury PMP Annual Report by March 31, 2014 in compliance with the reporting deadline. The 2013 Mercury PMP Annual Report indicated that deficiencies with the LWA's Mercury PMP program still existed at that time. The 2014 Mercury PMP Annual Report submitted by the LWA on March 12, 2015 indicates that the LWA is in compliance with the PMP requirements.

- 2.20 The LWA is required to submit Monthly Operating Reports detailing WWTP performance. After being initially notified of missing Monthly Operating Reports, the LWA began submitting the reports through 2011, and then did not provide reports for

2012 through March 2014, until prompted by the DEQ. The LWA has since submitted the missing Monthly Operating Reports and has been in compliance since March, 2014.

- 2.21 On December 31, 2014, Fishbeck, Thompson, Carr & Huber, Inc. (FTCH) submitted a Wastewater Treatment System Capacity Engineering Evaluation for the LWA (Engineering Evaluation) to the DEQ. Based on the LWA's review and discussion of the Engineering Evaluation with DEQ, the LWA determined that additional construction would be necessary to address the short-term and long-term needs of the LWA's service area and to ensure compliance with the LWA's NPDES Permit. The LWA has contracted with FTCH to assist in the development of "Phase II" of the LWA's WWTP improvements.
- 2.22 On or around April 11, 2015, the LWA and the DEQ received complaints about odors emanating from the WWTP. The DEQ-approved Interim Operations Plan allowed for the partial treatment of incoming wastewater in the sludge aeration cell and the temporary on-site storage of partially treated wastewater during construction of the WWTP improvements. However, the partial treatment and storage of wastewater extended beyond the intended time period of the approved Interim Operations Plan. The LWA took immediate action to abate the odors and the odor issue was resolved in about two weeks.
- 2.23 On July 15, 2015, the LWA submitted the results of a user survey which identifies all nondomestic users of the waste collection system. The survey is intended to designate those nondomestic users which meet the definition of a SIU (see Part II. A. Definitions of the NPDES Permit). For nondomestic users the following information was required and provided:
 - a. the user's name and mailing address which included both the local facility address and the main office address, if different;
 - b. the principal enterprise(s) of the user; the product(s) produced and raw material(s) processed; the facility's production rate(s); and the Standard Industrial Classification (SIC) code(s); the quantity of process wastewater discharged daily and an indication of whether the discharge is intermittent or continuous;
 - c. a description of any pretreatment provided prior to discharge to the waste

collection system; and

- d. a description of the wastewater characteristics in terms of pollutant parameters and concentrations.

2.24 On July 24, 2015, the LWA certified the completion of Pump Station 4 repairs to the broken valve and removal of the bypass piping connection that was installed without a Part 41 permit, as detailed in VN-005833, issued May 14, 2014.

2.25 On July 28, 2015, the LWA provided the DEQ with its plan for addressing the high groundwater issues that exist at Pump Station 16.

2.26 On July 28, 2015 and December 11, 2015, the LWA certified the completion of unfinished gravity sewer replacements and lining repairs detailed in Part 41 Permit Number 1007270, except for the sewer replacement identified for Lincoln Street in the Village of Lake Odessa which is to be completed consistent with Paragraph 3.18 of this Consent Order.

2.27 On July 30, 2015, the LWA submitted an application for a new Part 41 permit to complete the replacement of the gravity sewer on M-43.

2.28 On July 31, 2015, the LWA submitted a Part 41 permit application for the replacement of Pump Station 6.

2.29 On July 31, 2015, the LWA submitted to the DEQ for review and approval, a plan to ensure that Pump Station 2, Pump Station 3 and Pump Station 8 are fully operational and accessible during a 25-year flood and protected from physical damage by a 100-year flood, in accordance with the Recommended Standards for Wastewater Facilities, 2014 Edition (10 States Standards). On August 27, 2015, the DEQ required revisions to the plan. The revised plan was approved by the DEQ on October 23, 2015.

2.30 The LWA submitted revised Monthly Operating Report plans on August 24, 2015, September 8, 2015, November 24, 2015, and December 16, 2015, to the DEQ for review and approval. The revised Monthly Operating Report plans included the new Phase I treatment processes at the WWTP, including the disinfection system, dissolved air

flotation system, tertiary treatment clarifier, and the equalization lagoon cell that will be used to receive untreated wastewater from Twin City Foods during periods of high flow. The DEQ approved the revised Monthly Operating Report plan on December 23, 2015.

- 2.31 On September 15, 2015, the LWA submitted, for DEQ review and comment, documents intended to provide the legal authority necessary for the implementation and enforcement of a MIPP throughout the service area. Sufficient legal authority may be contained in a statute, ordinance, regulations, or agreements in which the LWA is authorized to enact, enter into, or implement, and which are authorized by state law. The legal authority shall enable the LWA to carry out the activities as specified in applicable provisions of Part 31 and the Part 23 administrative rules promulgated pursuant to Part 31, Mich Admin Code, R 323.2301 *et seq.* (Part 23 Rules). The DEQ provided comments on this submittal to the LWA in a letter dated November 3, 2015.
- 2.32 On September 16, 2015, the LWA submitted, for DEQ review and comment, a Procedures Manual, intended to achieve the minimum requirements identified below, to assure adequate capacity to implement a MIPP:
- a. Procedures which describe, in sufficient detail, program commitments that will ensure compliance with the requirements of the Part 23 Rules throughout the service area. At a minimum, the procedures shall enable the LWA to conduct the activities specified in Rule 2306(c), Mich Admin Code, R 323.3306(c).
 - b. An example of the permit (IPP Permit) that will be used by the LWA to apply applicable pretreatment standards and requirements to nondomestic users throughout the service area. At a minimum, the IPP Permit shall contain the conditions specified in Rule 2306(a) (iii).
 - c. An enforcement response plan as required by Rule 2306(g), which describes, in sufficient detail, program commitments which will enable the enforcement of the MIPP throughout the service area.
 - d. A description of the resources to maintain, at a minimum, the following:

- i. an adequate revenue structure for effective implementation of the MIPP;
 - ii. adequate staffing levels for effective implementation of the MIPP; and
 - iii. necessary equipment for effective implementation of the MIPP.
 - e. A procedure for maintaining a list of nondomestic users that meet the criteria of a SIU as defined in Rule 2302(cc), Mich Admin Code, R 323.2302(cc).
 - f. A procedure for developing and maintaining, for a minimum of three (3) years, all records and information necessary to determine nondomestic user compliance with the Part 23 Rules and the approved MIPP.
 - g. A procedure for completing the IPP Annual Report, due before April 1 of each year, required by Rule 2310(8), Mich Admin Code, R 323.2310(8), which details the status of program implementation and enforcement activities.
 - h. The DEQ provided comments on this submittal in a letter to the LWA dated November 3, 2015.
- 2.33 On October 15, 2015, the LWA submitted an evaluation supporting the development of technically-based local limits for oil and grease and compatible pollutants for DEQ review and comment. Local limits were based on data representative of Phase I design conditions as demonstrated in a maximum allowable headworks loading analysis. The DEQ provided comments on this submittal to the LWA in a letter dated November 3, 2015.
- 2.34 The LWA submitted an evaluation of toxic pollutants and associated proposed local limits to the DEQ for review and comment on October 26, 2015. The DEQ provided comments to this submittal by electronic mail correspondence dated January 22, 2016. An evaluation on local limits for pH was provided to the DEQ for review and comment on November 9, 2015. On April 6, 2016, the DEQ responded and stated that the proposed pH limits were approvable. The toxic and pH local limits will be reviewed by the DEQ for final approval upon the LWA's submission of the complete IPP.

- 2.35 On November 11, 2015, the LWA certified the completion of the replacement of gravity sewer in M-43 in the Village of Woodland, authorized under Part 41 permits numbered 1008563 and 1008690.
- 2.36 On March 31, 2016, the LWA submitted to the DEQ for approval, an Asset Management Plan which contained a schedule for development, and implementation of the Asset Management Program. See Attachment A for the specific requirements of the Asset Management Program and the associated Asset Management Plan. The requirements in Attachment A are incorporated into and enforceable by the terms of this Consent Order.
- 2.37 On May 10, 2016, construction of the new Pump Station 6 was completed.
- 2.38 On June 10, 2016, LWA assembled a complete set of Record Documents that reflect changes from permitted design drawings during Phase I construction. Record Documents included drawings, specifications, addenda, change orders, work change directives, field orders, written interpretations or clarifications, and annotations to any of the foregoing.

III. COMPLIANCE PROGRAM

IT IS THEREFORE AGREED AND ORDERED that the LWA shall take the following actions to prevent violations of Part 31 and Part 41:

SIUs AND OPERATIONAL MONITORING

- 3.1 The LWA shall continue to monitor the wastewater from its SIU facilities at 1315 Sherman Street, Lake Odessa, Michigan (currently operating as Twin City Foods, Inc.); 478 West Portland Road, Berlin Township, Michigan (currently operating as Herbruck's Poultry Ranch, Inc. which receives wastewater from three (3) other Herbruck's facilities prior to discharging it to the LWA WWTP); and 3100 Bonanza Road, Lake Odessa, Michigan (currently operating as Cargill Kitchen Solutions, Inc.) by

meeting the following requirements:

- a. Wastewater discharged from the three (3) SIU facilities shall be monitored seven (7) days per week.
- b. Wastewater discharged from the three (3) SIU facilities shall be monitored for, at a minimum, pH, concentrations and loadings of ammonia nitrogen, BOD₅, total phosphorus, Total Kjeldahl Nitrogen (TKN), and TSS.
- c. All samples shall be obtained from the final SIU wastewater discharge prior to mixing with any other waste stream in the LWA's public sewer system. In the event the LWA becomes aware that an SIU is discharging wastewater not represented by an existing, final SIU sampling point, then the LWA shall notify the DEQ and the SIU of its findings, in writing, and further require the SIU to take whatever actions are necessary to provide a representative sampling location(s) for the SIU wastewater discharge to the LWA sewer system. The LWA shall require that the SIU develop a corrective action plan for implementation by the SIU and shall share any such plans with the DEQ.
- d. All SIU samples shall be collected using a flow-proportioned 24-hour composite sampler, except pH monitoring shall be a grab sample.

- 3.2 The LWA shall monitor the influent concentrations and loadings of ammonia nitrogen, BOD₅, pH, total phosphorus, TSS and TKN of the wastewater accepted at the LWA's WWTP seven (7) days per week. LWA may discontinue monitoring for volatile suspended solids.
- 3.3 All SIU and WWTP influent sample analyses shall be conducted using U.S. Environmental Protection Agency (U.S. EPA) approved test methods in accordance with Part 136 of Title 40 of the Code of Federal Regulations.
- 3.4 All SIU and WWTP influent monitoring results shall be reported on the LWA's Monthly Operating Reports each month and submitted to the address detailed in paragraph 3.22 below, by the 20th day of the following month. Not earlier than 24 months after the effective date of this Consent Order, LWA may request to discontinue providing these Monthly Operating Reports each month to the DEQ and a response to such request will not be unreasonably denied or delayed.

MICHIGAN INDUSTRIAL PRETREATMENT PROGRAM (MIPP)

- 3.5 On June 3, 2016, LWA provided a LWA Wastewater Treatment Plant Operations and Maintenance Plan Amendment (the "Amendment") to the DEQ for review and approval. When approved, the Amendment will allow the LWA Wastewater Treatment plant to be rerated with respect to TKN.
- 3.6 **Within 30 days after the DEQ approves the Amendment**, the LWA shall submit to the DEQ for approval all documents required for the implementation of a MIPP which complies with the Part 23 Rules (Complete MIPP). The Complete MIPP shall include any updates to documents previously reviewed by the DEQ and discussed within Paragraphs 2.31 through 2.34, above. In addition to the resubmittal of previously submitted documents identified above, the Complete MIPP submittal shall also include:
- a. Interjurisdictional agreement(s) (or comparable document(s)) between the LWA and other governmental entities outside the scope of the LWA's legal authority identifying which entity is responsible for the implementation and enforcement of the MIPP within their respective jurisdictions and the legal authority which provides the basis for the implementation and enforcement of the MIPP within their respective jurisdictions.
 - b. An attorney certification that the MIPP conforms with state and federal law requirements.
 - c. The LWA's request to implement the MIPP.
- 3.7 The LWA shall implement the approved MIPP within 90 days after the LWA receives a letter from the DEQ approving the Complete MIPP.

WWTP IMPROVEMENTS—PHASE I

3.8 [OMITTED]

3.9 **Not later than August 19, 2016**, the LWA shall submit, for DEQ approval, an

Operations and Maintenance Manual for the WWTP including the Phase I Improvements. The LWA shall implement the provisions within the Operations and Maintenance Manual not later than 14 days after the DEQ provides final approval.

WWTP IMPROVEMENTS—PHASE II

- 3.10 **Not later than October 14, 2016**, the LWA shall submit to the DEQ for review and approval a Basis of Design for Phase II improvements, in accordance with Rule 35 of the Part 41 Rules, Mich Admin Code, R 299.2935, that shall include the projected 20-year community growth needs and one or more of the following:
- a. If LWA requires on-site pre-treatment at one or more of the SIUs, the LWA shall submit a pretreatment plan to the DEQ which identifies which SIUs will provide pretreatment and what type of pretreatment will be provided; and/or
 - b. If LWA does not require on-site pre-treatment at one or more of the SIUs, the LWA shall submit a plan to the DEQ for review and approval which details the improvements that will be required at the WWTP as part of the Phase II improvements.
- 3.11 **Within 180 days after the DEQ's approval of the Basis of Design for Phase II improvements**, LWA shall submit a Part 41 permit application (including plans and specifications) to the DEQ for the required Phase II improvements.
- 3.12 **Not later than August 19, 2019**, the LWA shall complete all construction projects related to the Phase II WWTP improvements.
- 3.13 **Within 60 days after the LWA completes the Phase II improvements**, the LWA shall submit to the DEQ a complete set of Record Drawings depicting the improvements to the WWTP.
- 3.14 **Not later than 60 days after the LWA completes the Phase II improvements**, the LWA shall submit to the DEQ for review and approval a revised Operations and Maintenance Manual that incorporates the Phase II improvements. The LWA shall

implement the provisions within the Operations and Maintenance Manual not later than 14 days after the DEQ provides final approval.

- 3.15 **Not later than 60 days after the LWA completes the Phase II improvements**, LWA shall submit a revised Monthly Operating Report plan that includes the new or modified Phase II treatment processes at the WWTP. The revised Monthly Operating Report plan shall include, at a minimum, the monitoring specified in Paragraphs 3.1 and 3.2.
- 3.16 The LWA intends to discontinue use of the overland flow terraces and close them in accordance with applicable laws and rules. No later than thirty (30) days after the date of completion of Phase II improvements, the LWA shall provide a Closure Plan (Plan) for the overland flow terraces to the DEQ for review and approval. The LWA shall implement the Plan and shall notify the DEQ not later than thirty (30) days after the date of Plan approval that implementation of the Plan has commenced. Such notice of implementation satisfies the requirements of this Consent Order with respect to the overland flow terraces.

COLLECTION SYSTEM IMPROVEMENTS

- 3.17 The LWA shall implement the plan, as approved by the DEQ and discussed within Paragraph 2.29 of this Consent Order, to ensure that Pump Stations 2, 3 and 8 are fully operational and accessible during a 25-year flood and protected from physical damage by a 100-year flood, in accordance with the Recommended Standards for Wastewater Facilities, 2014 Edition (10 States Standards). The LWA shall achieve the implementation schedule set forth within the approved plan, with a final completion date of July 31, 2017.
- 3.18 **Not later than December 31, 2017**, the LWA shall complete the replacement of approximately 217 feet of 8-inch sanitary sewer with 12-inch sanitary sewer in the Lincoln Street alley between manholes 1-40 and 1-43 because of improper pipe size transitions and structural deficiencies.

ASSET MANAGEMENT PLAN

- 3.19 **Not later than 30 days** after the DEQ provides written comments on the Asset Management Plan that the LWA submitted to the DEQ on March 31, 2016, the LWA shall provide a revised Asset Management Plan to the DEQ. DEQ will review the revised Asset Management Plan in a timely manner and follow the process in Section IV of this Consent Order for DEQ approval of submittals.
- 3.20 **Not later than 30 days** after the DEQ approves the Asset Management Plan referenced in paragraph 3.19 above, the LWA shall begin implementation of the Asset Management Plan. Such notice of implementation satisfies the requirements of this Consent Order with respect to the Asset Management Plan.

GENERAL REQUIREMENTS

- 3.21 **Not later than 30 days** after completion of the requirements in paragraphs 3.8; 3.12; 3.17 or 3.18 of this Consent Order, the LWA shall notify the WRD Grand Rapids District Supervisor, in writing, of said completion.
- 3.22 The LWA shall submit all reports and documents required by this Consent Order to the WRD Grand Rapids District Supervisor, DEQ, 350 Ottawa Avenue NW, Unit 10, Grand Rapids, Michigan 49503-2316. 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 report or other document, excluding applications for permits or licenses, that are required by this Consent Order to be submitted to the DEQ by the LWA, the following process and terms of approval shall apply.
- 4.2 All reports 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 report or other document, it will notify the LWA, in writing, specifying the reasons for such disapproval. Unless an extension is approved by the DEQ, the LWA shall submit, within 30 days of receipt of such disapproval, a revised report or other document which adequately addresses the reasons for the DEQ's disapproval. If the revised report or other document is still not acceptable to the DEQ, the DEQ will notify the LWA of this disapproval. In the event of disapproval, the LWA may also request a meeting with the DEQ or otherwise proceed in accordance with Paragraph 11.5 of this Consent Order.
- 4.4 In the event the DEQ approves with specific modifications a report or other document, it will notify the LWA, in writing, specifying the modifications required to be made to such report or other document prior to its implementation and the specific reasons for such modifications. Unless an extension is approved by the DEQ, the DEQ may require the LWA to submit, prior to implementation and within 30 days of receipt of such approval with specific modifications, a revised report or other document which adequately addresses such modifications. If the revised report or other document is still not acceptable to the DEQ, the DEQ will notify the LWA of this disapproval. The LWA may also request a meeting with the DEQ to discuss the modifications or otherwise proceed in accordance with Paragraph 11.5 of this Consent Order.
- 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. None of the ongoing obligations of the documents referenced in Paragraphs 3.9, 3.14, 3.16 and 3.20 shall prevent the termination of this Consent Order.
- 4.6 Failure by the LWA to submit a report or other document as required within the applicable time periods set forth in this Consent Order or otherwise mutually agreed to by the DEQ and the LWA, constitutes a violation of this Consent Order and shall subject the LWA to the enforcement provisions of this Consent Order, including the stipulated penalty provisions specified in Section IX.

- 4.7 Any delays caused by the LWA's failure to submit an approvable report or other document pursuant to this Consent Order when due shall in no way affect or alter the LWA'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 the LWA will be construed as relieving the LWA of its obligation to obtain written approval, if and when required by this Consent Order.

V. EXTENSIONS

- 5.1 The LWA and the DEQ agree that the DEQ may grant the LWA 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, WRD, Enforcement Unit Chief, P.O. Box 30458, Lansing, Michigan 48909-7958, and the WRD Grand Rapids District Supervisor at the address in paragraph 3.22, no later than ten (10) business days prior to the pertinent deadline, and shall include:
- a. Identification of the specific deadline(s) of this Consent Order that LWA determined will not be met.
 - b. A detailed description of the circumstances that will prevent the LWA from meeting the deadline(s).
 - c. A description of the measures the LWA 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 WRD Grand Rapids District Supervisor or a designee, in consultation with the Enforcement Unit Chief, shall timely 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 The LWA shall verbally report any violation(s) of the terms and conditions of Section III of this Consent Order to the WRD Grand Rapids District Supervisor by no later than the close of the next business day after the LWA becomes aware of any such violation(s) and shall follow such notification with a written report within five (5) days from becoming aware 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). The LWA shall report any anticipated violation(s) of this Consent Order to the WRD Grand Rapids District Supervisor in advance of the relevant deadlines whenever possible.

VII. RETENTION OF RECORDS

- 7.1 Upon request by an authorized representative of the DEQ, the LWA shall make available to the DEQ all records, plans, logs, and documents required to be maintained under this Consent Order or pursuant to the NREPA or its rules. All such documents shall be retained by the LWA for a period of five (5) years from the date of generation of the record unless a longer period of record retention is required by the NREPA or its rules.

VIII. RIGHT OF ENTRY

- 8.1 The LWA shall allow any authorized representative or contractor of the DEQ, upon presentation of proper credentials, to enter upon the premises of the 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 the rules promulgated thereunder, or any other applicable statutory provision.

IX. PENALTIES

- 9.1 In settlement of the alleged violations specified in Section II of this Consent Order, the LWA agrees to pay to the State of Michigan the sum of \$125,000.00 in accordance with the schedule set forth below and paragraph 9.5:

- Within 30 days of effective date of this Consent Order, pay \$45,000 (Payment One);
 - No later than July 31, 2017, pay \$40,000 (Payment Two);
 - No later than December 31, 2017, pay \$40,000 (Payment Three).
- 9.2 For the duration of this Consent Order, future violations of numeric effluent limitations set forth within Part I. A, subsections 1 and 2, of the NPDES Permit shall be subject to a stipulated penalty of **\$750.00** for each violation identified by the LWA on its Discharge Monitoring Reports or as documented by the DEQ. Payments shall be made in accordance with paragraph 9.5.
- 9.3 For each failure to comply with a specific deadline contained in Section III of this Consent Order involving a submittal which requires DEQ approval, the LWA shall pay a stipulated penalty of **\$2,000.00** if deficiencies resulting in the DEQ's disapproval are not resolved within 30 business days as provided in Paragraph 4.3 of this Consent Order. If, upon resubmittal, the LWA has not fully corrected the identified deficiencies, then stipulated penalties shall accrue in accordance with paragraph 9.4 of this Consent Order commencing upon the date of the second resubmittal. Payments shall be made in accordance with paragraph 9.5.
- 9.4 Except as provided for in paragraphs 9.2 and 9.3, for each failure to comply with any other provision of this Consent Order, the LWA shall pay stipulated penalties of **\$100.00** per violation per day for 1 to 7 days of violation, **\$200.00** per violation per day for 8 to 14 days of violation, and **\$300.00** per violation per day for each day of violation thereafter. Payments shall be made in accordance with paragraph 9.5.
- 9.5 The LWA shall pay all stipulated penalties within 30 calendar days after receipt of an invoice from the DEQ. The LWA agrees to pay all funds due pursuant to this Consent Order by check made payable to the State of Michigan and delivered to the Accounting Services Division, Cashier's Office for DEQ, P.O. Box 30657, Lansing, Michigan 48909-8157, or hand delivered to the Accounting Services Division, Cashier's Office for DEQ, 425 West Ottawa Street, Lansing, Michigan 48933. To ensure proper credit, all payments made pursuant to this Consent Order must include the

Payment Identification Number WRD60016.

- 9.6 The LWA agrees not to contest the legality of the sum paid pursuant to paragraph 9.1, above. The LWA further agrees not to contest the legality of any stipulated penalties assessed pursuant to paragraphs 9.2, 9.3, or 9.4, above, but reserves the right to dispute the factual basis upon which a demand by the DEQ for stipulated penalties is made.
- 9.7 The DEQ reserves its rights to seek interest on any unpaid sums due pursuant to the terms of the Consent Order. Subject to the other provisions of this Section IX, the DEQ may waive, in its unreviewable discretion, any portion of stipulated penalties and interest that has accrued pursuant to this Consent Order. This interest penalty shall be based on the rate set forth at MCL 600.6013(8), 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.

X. FORCE MAJEURE

- 10.1 The LWA 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 performance attributable to a "Force Majeure" shall not be deemed a violation of the LWA'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 the LWA, 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 the LWA'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 the LWA's actions or omissions.

- 10.3 The LWA shall notify the DEQ, by telephone, within 48 hours of discovering any event that may cause a delay in its compliance with any provision of this Consent Order. Verbal notice shall be followed by written notice within five (5) days and shall describe, in detail, the anticipated length of delay, the precise cause or causes of delay, the measures taken by the LWA to prevent or minimize the delay, and the timetable by which those measures shall be implemented. The LWA shall adopt all reasonable measures to avoid or minimize any such delay. Nothing in this Paragraph obviates the need to report violations as required by Paragraph 6.1 of this Consent Order.
- 10.4 Failure of the LWA 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 the LWA, 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 administrative decision-maker on whether or not the matter at issue constitutes a Force Majeure. The burden of proving that any delay was beyond the reasonable control of the LWA, and that all the requirements of this Section X have been met by the LWA, rests with the LWA.
- 10.6 An extension of one compliance date based upon a particular incident does not necessarily mean that the LWA 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 alleged violations not specifically addressed and resolved by this Consent Order, the DEQ reserves the right to pursue any remedies to which it is entitled for any failure on the part of the LWA to comply with the requirements of the NREPA and its rules.

- 11.2 The DEQ and the LWA consent to enforcement of this Consent Order in the same manner and by the same procedures for all final orders entered pursuant to Parts 31 and 41 of the NREPA.
- 11.3 This Consent Order in no way affects the LWA's responsibility to comply with any other applicable state, federal, or local laws or regulations.
- 11.4 The DEQ 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 alleged violation of this Consent Order. However, the DEQ is precluded from seeking both a stipulated fine under this Consent Order and a statutory fine for the same alleged violation.
- 11.5 The parties agree to diligently and in good faith pursue informal negotiations to resolve any disputes arising out of this Consent Order prior to resorting to judicial enforcement. The timeframe for informal resolution of disputed issues shall not exceed twenty-one (21) days from the date either party provides written notice of a disputed issue, but this time frame may be extended upon agreement of the parties.
- 11.6 Nothing in this Consent Order is or shall be considered to affect any liability the LWA may have for natural resource damages caused by the LWA's ownership and/or operation of the facility. The State of Michigan does not waive any rights to bring an appropriate action to recover such damages to the natural resources.
- 11.7 In the event the LWA 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, the LWA shall also notify the WRD Grand Rapids 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 WRD Grand Rapids District Supervisor within 30 calendar days of assuming the obligations of this Consent Order.

- 11.8 The provisions of this Consent Order shall apply to and be binding upon the parties to this action, and their successors and assigns.
- 11.9 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 alleged violations.
- 11.10 The effective date of this Consent Order is the date it is signed by the WRD Chief.

XII. TERMINATION

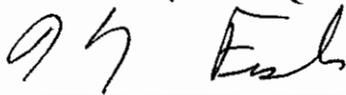
- 12.1 This Consent Order shall remain in full force and effect until terminated by a written Termination Notice (TN) issued by the DEQ. Prior to issuance of a written TN, the LWA shall submit a request consisting of a written certification that the LWA has fully complied with the submittal and reporting requirements set forth in Section III of this Consent Order, is complying with the MIPP and the Asset Management plan, and has made payment of any fines, including stipulated penalties, required by this Consent Order. A suggested form for providing the required written certification is appended as Attachment B. Specifically, an acceptable 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 notification to the WRD Grand Rapids District Supervisor pursuant to this Consent Order had been provided.
 - c. A statement that that all records required to be maintained pursuant to this Consent Order are being maintained at the facility.

The DEQ may also request additional relevant information. The DEQ shall timely respond to the request and 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.

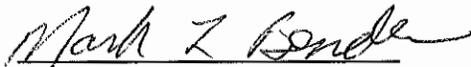
DEPARTMENT OF ENVIRONMENTAL QUALITY



Kimberly Fish, Acting Chief
Water Resources Division

7/27/16
Date

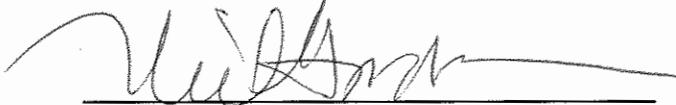
LAKWOOD WASTEWATER AUTHORITY



By: Mark Bender
Title: Chair, Lakewood Wastewater Authority

7/25/16
Date

APPROVED AS TO FORM:



By: Neil D. Gordon, Assistant Attorney General
For: S. Peter Manning, Chief
Environment, Natural Resources, and Agriculture Division
Michigan Department of Attorney General

7/26/2016
Date