

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

In the matter of:

ACO-000169

Date Entered: 5/5/2015

Mackenzie Crushing, LLC  
3290 Torrey Road  
Flint, Michigan 48507

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**ADMINISTRATIVE CONSENT ORDER**

This document results from allegations by the Department of Environmental Quality (DEQ), Water Resources Division (WRD). The DEQ alleges Mackenzie Crushing, LLC (Mackenzie Crushing), located at 3290 Torrey Road, Flint, Michigan, (Facility) is in violation of Part 31, Water Resources Protection, MCL 324.3101 *et seq.*, and Part 301, Inland Lakes and Streams, MCL 324.30101 *et seq.*, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA). In addition, the DEQ alleges Mackenzie Crushing has failed to comply with the following administrative rules promulgated pursuant to Part 31 of the NREPA: Part 4, Water Quality Standards; Part 21, Wastewater Discharge Permits; Part 22, Groundwater Quality. Mackenzie Crushing is a person, as defined by Section 301 of the NREPA, and is registered with the Michigan Department of Licensing and Regulatory Affairs (LARA) as able to conduct business in the State of Michigan under identification number B32257. Mackenzie Crushing and the DEQ agree to resolve the violations set forth herein through entry of this Administrative Consent Order (Consent Order).

**I. STIPULATIONS**

Mackenzie Crushing 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 Part 31, Water Resources Protection, of the NREPA (Part 31), MCL 324.3101 *et seq.*, and the rules promulgated pursuant thereto, provide for the protection, conservation, and the control of pollution of the water resources of the state.

- 1.3 Part 301, Inland Lakes and Streams, of the NREPA (Part 301), MCL 324.30101 *et seq.*, governs the protection of inland lakes and streams.

Section 301(i) of the NREPA, MCL 324.301(i), defines an inland lake or stream to include a river, stream, or creek which may or may not be serving as a drain as defined by the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630, or any other body of water that has definite banks, a bed, and visible evidence of a continued flow or continued occurrence of water.

Section 324.30102(1) states in part: "Except as provided in this part, a person without a permit from the department shall not do any of the following: (a) Dredge or fill bottomland. . . . (d) Create, enlarge, or diminish an inland lake or stream."

- 1.4 The DEQ is authorized by Section 3112(4) of Part 31, MCL 324.3112(4), to enter orders requiring persons to abate pollution, and 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 Mackenzie Crushing 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. Mackenzie Crushing 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 WRD, delegate of the director, pursuant to Section 301(b) of the NREPA.
- 1.6 Mackenzie Crushing and the DEQ agree that the signing of this Consent Order is for settlement purposes only and does not constitute an admission by Mackenzie Crushing that the law has been violated.
- 1.7 The Signatory to this Consent Order on behalf of the Mackenzie Crushing agrees and attests that he is fully authorized to assure that Mackenzie Crushing will comply with all requirements under this Consent Order.

- 1.8 Mackenzie Crushing 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 June 28, 2012, WRD staff inspected the Facility and observed wastewater discharging to the Call Drain, a stream as defined in Part 301. The wastewater included storm water runoff from piles of crushed concrete and asphalt millings and process wastewater from water used to clean crushing equipment and control dust.
- 2.2 On September 5, 2012, WRD staff performed another inspection at the Facility. During the inspection, WRD staff noted a stone berm Mackenzie Crushing staff constructed at the Facility in order to contain wastewater. WRD staff observed wastewater filtering through the stone berm and discharging to the Call Drain. In addition, WRD staff took a sample of the wastewater discharge and found contaminant levels that have the potential to violate water quality standards.
- 2.3 On September 12, 2012, Mackenzie Crushing staff notified WRD staff that a concrete wall had been constructed in an attempt to eliminate the discharge of wastewater to surface waters of the state.
- 2.4 On October 8, 2012, WRD staff sent Violation Notice (VN) No. VN-005365 to MacKenzie Crushing for the violations observed and for the results of the water sample taken during the June 28, 2012, and September 5, 2012, inspections of the Facility. The VN identified and detailed the following violations:
- Mackenzie Crushing discharges storm water associated with industrial activities to the Call Drain without a National Pollutant Discharge Elimination System (NPDES) permit from the DEQ authorizing the discharge. This is a violation of Part 31 and the administrative rules promulgated pursuant to Part 31, being Part 21, Wastewater Discharge Permits, 1999 MAC, R 323.2101, *et seq.*, as amended, (Part 21

Administrative Rules).

- Mackenzie Crushing discharges process wastewater from its crushing operations to the Call Drain at two locations without an NPDES permit from the DEQ authorizing the discharge. This is a violation of Part 31 and the Part 21 Administrative Rules.
- Mackenzie Crushing discharges wastewater to the ground without a groundwater discharge permit from the DEQ authorizing the discharge. This is a violation of Part 31 and Part 22 Administrative Rules.
- During the inspections, WRD staff noted that large stockpiles of crushed concrete and asphalt millings are stored on-site, directly adjacent to the Call Drain. WRD staff also noted that the storage piles had, in some locations, spilled down the banks of the Call Drain, resulting in unlawful deposits of fill material on the bottomlands of the Call Drain. This is a violation of Part 31 and Part 301.
- WRD staff also noted settleable solids and deposits in the Call Drain resulting from Mackenzie Crushing's industrial activities, which included accumulation and coating of white concrete fines on substrates in the drain downstream of the identified discharges, and chunks of broken concrete, crushed concrete materials, and crushed asphalt materials on the banks and bed of the Call Drain. Additionally, DEQ staff noted that crushed concrete and asphalt millings have been deposited in the Call Drain, which have diminished its capacity. This is a violation of Part 301 and of the Administrative Rules promulgated pursuant to Part 31, being Part 4, Water Quality Standards, 1994 AACS 323.1041, *et seq.*, as amended, (Part 4 Administrative Rules).

2.5 On November 20, 2012, WRD staff inspected the Facility and hand delivered VN No. VN-005365 because the VN mailed on October 8, 2012, was returned to the WRD marked unclaimed. During this inspection, WRD staff noted that two containment pits had been constructed at the Facility to contain the process wastewater generated during crushing operations. One pit, which was previously noted to discharge to the Call Drain, had a concrete berm, which at this time appeared to be effectively containing the wastewater, thus preventing a discharge to the Call Drain. The second pit, which DEQ staff had also noted discharged to the Call Drain during past inspections of the Facility, had an earthen berm. Neither pit was lined with concrete, and DEQ staff noted that there was potential for a discharge to the groundwater, which is a violation of Part 31 and the

Part 22 Administrative Rules. WRD staff also noted that the stockpiles of crushed concrete and asphalt millings, noted in paragraph 2.4, remained along the southern bank of the Call Drain.

- 2.6 On December 11, 2012, the WRD received a response from Mackenzie Crushing regarding VN No. VN-005365. The letter stated that Mackenzie Crushing staff had begun to undertake efforts to comply with the requests made in the VN.
- 2.7 On December 17, 2012, WRD staff conducted a compliance inspection to observe site conditions. During the inspection, it was noted that the berms constructed to hold the wastewater appeared to be effective in preventing the discharge of the wastewater to surface waters of the state. Also, during the inspection, it was observed that the stockpiles of crushed concrete and asphalt millings had been reduced and moved back from the drain; however, there was still a substantial amount of material left in the bed and banks of the drain and potential for contaminated storm water runoff from the site discharging to surface waters of the state
- 2.8 On May 10, 2013, WRD staff conducted a compliance inspection. The stockpiles of crushed concrete and asphalt millings were in similar condition as observed on December 17, 2012. A storage area for maintenance supplies and fluids was also observed. Open containers, pails, and drums containing waste oils were observed exposed to storm water. Oil was observed staining the ground and sides of the containers. Good housekeeping and proper storage procedures was lacking in this storage area.
- 2.9 On July 31, 2014, WRD staff conducted a compliance inspection. On-site conditions, noted by WRD staff, revealed ongoing violations that were identified in VN No. VN-005365.
- 2.10 On September 2, 2014, WRD issued Mackenzie Crushing a Second Violation Notice (SVN) No. SVN-000490 detailing the ongoing and new violations observed during the July 31, 2014, inspection.

### III. COMPLIANCE PROGRAM

IT IS THEREFORE AGREED AND ORDERED THAT Mackenzie Crushing shall take the following actions to prevent further violations of Part 31 and Part 301:

- 3.1 **Not later than 30 days** after the effective date of this Consent Order, Mackenzie Crushing shall submit to the WRD Lansing District Supervisor the Facility's Storm Water Pollution Prevention Plans (SWPPP) for review and approval. The SWPPP shall meet the requirements of NPDES Permit No. MIS510000.
- 3.2 **Not later than 30 days** after receiving comments from the WRD on the SWPPP referenced in paragraph 3.1, above, Mackenzie Crushing shall incorporate the WRD's comments into the proposed SWPPP and submit the revised SWPPP to the WRD Lansing District Supervisor for review and approval.
- 3.3 **Not later than 30 days** after the effective date of this Consent Order, Mackenzie Crushing shall employ a DEQ-certified storm water operator who provides supervision over the Facility's storm water treatment and control measures detailed in the SWPPP.
- 3.4 **Not later than 30 days** after the WRD Lansing District Supervisor grants final approval of Mackenzie Crushing's SWPPP, Mackenzie Crushing shall submit a Notice of Intent (NOI) for coverage under the NPDES Storm Water Permit No. MIS510000. The NOI shall be submitted to the DEQ, WRD, Permits Section, P.O. Box 30458, Lansing, Michigan 48909-7958. If the WRD requires additional information or action by Mackenzie Crushing at any point during the permitting process to correct deficiencies in the NOI, the WRD will notify Mackenzie Crushing in writing of those deficiencies.
- 3.5 **Not later than 30 days** after receipt of the written notice from the WRD identifying deficiencies in the NOI, Mackenzie Crushing shall cure all deficiencies identified in the written notice.

- 3.6 **Not later than 30 days** after receiving a permit fee invoice from the WRD, Mackenzie Crushing shall pay the 2012, 2013, 2014 and 2015 annual discharge permit fee totaling \$1,040.00, made payable to the State of Michigan in accordance with Section 3118 of Part 31 of the NREPA, MCL 324.3118, and subsection 9.5 of this Consent Order.
- 3.7 Upon issuance of the Certificate of Coverage under NPDES General Permit No. MIS510000 by the DEQ, Mackenzie Crushing shall pay the annual permit fee of \$260.00 associated with discharging storm water to the surface waters of the state for each billing periods thereafter in accordance with Section 3118 of Part 31 of the NREPA. The invoice will be mailed to Mackenzie Crushing, or an agent authorized on its behalf, each year.
- 3.8 **Not later than 60 days** after the effective date of this Consent Order, Mackenzie Crushing shall either:
- a. Submit to the DEQ, WRD, Permits Section an administratively complete application for an individual NPDES permit for its process wastewater discharges to surface waters of the state; or
  - b. Submit to the DEQ, WRD Lansing District Supervisor a written certification that it has eliminated the discharge of process wastewater to surface waters of the state in accordance with Part 31. The submission shall include documentation of how Mackenzie Crushing contained process wastewater and eliminated the discharge of process wastewater to surface waters of the state.
- 3.9 **Not later than 60 days** after the effective date of this Consent Order, Mackenzie Crushing shall either:
- a. Submit to the DEQ, WRD, Permits Section an administratively complete application for a groundwater discharge permit for its process wastewater discharges to the groundwater; or
  - b. Submit to the DEQ, WRD, Lansing District Supervisor a written certification that it has eliminated the discharge of process wastewater to the groundwater in

accordance with the Part 22 Administrative Rules. The submission shall include documentation of how Mackenzie Crushing eliminated the discharge of process wastewater to the groundwater.

- 3.10 If the WRD requires additional information from or action by Mackenzie Crushing at any point during the permitting process identified in paragraphs 3.8 and 3.9 of this Consent Order to cure deficiencies in the applicable application, the WRD will notify Mackenzie Crushing in writing of the deficiencies. Mackenzie Crushing shall cure any deficiencies within 30 days after being notified by the WRD, unless another date is specified in the notification.
- 3.11 **Not later than 60 days** after the effective date of this Consent Order, Mackenzie Crushing shall submit to the DEQ, WRD Lansing District Supervisor for review and approval a remediation plan for areas of Call Drain that have been impacted by Mackenzie Crushing's industrial activities. At a minimum, the plan shall include removal of industrial materials and wastes that have deposited within the stream channel and floodplain and floodway of the Call Drain and a schedule for implementing the plan. In addition, the plan shall ensure that appropriate approvals and permits related to the restoration activities will be obtained. Upon WRD approval, the remediation plan is incorporated by reference into this Consent Order. Failure to adhere to the approved remediation plan subjects Mackenzie Crushing to stipulated penalties referenced in section IX of this Consent Order.
- 3.12 Mackenzie Crushing shall submit all reports, work plans, specifications, schedules, or any other writing required by this section to the DEQ, WRD, Lansing District Supervisor, 525 West Allegan Street, P.O. Box 30242, Lansing, Michigan 48909-7742. 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 Mackenzie Crushing, the following process and terms of approval 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 Mackenzie Crushing, in writing, specifying the reasons for such disapproval. Mackenzie Crushing shall submit, within 30 days of receipt of such disapproval, a revised work plan, proposal, or other document which adequately addresses 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 Mackenzie Crushing of this disapproval.
- 4.4 In the event the DEQ approves with specific modifications, a work plan, proposal, or other document, it will notify Mackenzie Crushing, in writing, specifying the modifications 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 Mackenzie Crushing to submit, prior to implementation and within 30 days of receipt of such approval with specific modifications, a revised work plan, proposal, or other document which adequately addresses such modifications. If the revised work plan, proposal, or other document is still not acceptable to the DEQ, the DEQ will notify Mackenzie Crushing 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 Mackenzie Crushing to submit an approvable work plan, proposal, or other document, within the applicable time periods specified above, constitutes a violation of

this Consent Order and shall subject Mackenzie Crushing to the enforcement provisions of this Consent Order, including the stipulated penalty provisions specified in paragraph 9.3.

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

#### **V. EXTENSIONS**

- 5.1 Mackenzie Crushing and the DEQ agree that the DEQ may grant Mackenzie Crushing 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, Constitution Hall, 525 West Allegan Street, P.O. Box 30458, Lansing, Michigan 48909-7773, and the DEQ, WRD Lansing District Supervisor at the address in paragraph 3.12, above, 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 Mackenzie Crushing from meeting the deadline(s).
  - c. A description of the measures Mackenzie Crushing 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 Mackenzie Crushing shall verbally report any violation(s) of the terms and conditions of this Consent Order to the Lansing 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). Mackenzie Crushing 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, Mackenzie Crushing 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 Mackenzie Crushing 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 Mackenzie Crushing 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 Mackenzie Crushing agrees to pay to the State of Michigan **\$3,000** as partial compensation for the cost of investigations and enforcement activities arising from the violations specified in Section II of this Consent Order. Payment shall be made in two payments of **\$1500** each in accordance with paragraph 9.6. The payments are due on July 1, 2015 and December 1, 2015.
- 9.2 Mackenzie Crushing agrees to pay a civil fine of **\$4,000** for the violations specified in Section II of this Consent Order. Payment shall be made in two payments of **\$2000** in accordance with paragraph 9.6. The payments are due July 1, 2015 and December 1, 2015.
- 9.3 For each failure to comply with a provision of Section III or IV of this Consent Order, Mackenzie Crushing shall pay stipulated penalties of **\$200** per violation per day for 1 to 7 days of violation, **\$300** per violation per day for 8 to 14 days of violation, and **\$500** per violation per day for each day of violation thereafter.
- 9.4 For each failure to comply with a provision of Section VI, VII, or VIII of this Consent Order, or any other requirement of this Consent Order, Mackenzie Crushing shall pay stipulated penalties of **\$200** per violation per day for each day of violation.
- 9.5 To ensure timely payment of the above civil fine, costs, and stipulated penalties, Mackenzie Crushing 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(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.
- 9.6 Mackenzie Crushing shall pay all costs and stipulated penalties within 30 days after receipt of an invoice from the DEQ. Mackenzie Crushing agrees to pay all funds due pursuant to this agreement 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 No. WRD40079**.

- 9.7 Mackenzie Crushing agrees not to contest the legality of the costs or civil fine pursuant to paragraphs 9.1 and 9.2, above. Mackenzie Crushing 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 Mackenzie Crushing 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 Mackenzie Crushing'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 Mackenzie Crushing, 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 Mackenzie Crushing'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 Mackenzie Crushing's actions or omissions.
- 10.3 Mackenzie Crushing 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 Mackenzie Crushing to prevent or minimize the delay, and the timetable by which those measures shall be implemented. Mackenzie Crushing shall adopt all reasonable measures to avoid or minimize any such delay.

- 10.4 Failure of Mackenzie Crushing 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 Mackenzie Crushing, 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 Consent 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 Mackenzie Crushing, and that all the requirements of this Section X have been met by Mackenzie Crushing, rests with Mackenzie Crushing.
- 10.6 An extension of one compliance date based upon a particular incident does not necessarily mean that Mackenzie Crushing 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 Mackenzie Crushing to comply with the requirements of the NREPA and its rules.

- 11.2 The DEQ and Mackenzie Crushing 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 Mackenzie Crushing's responsibility to comply with any other applicable state, federal, or local laws or regulations.
- 11.4 The WRD 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 WRD 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 Mackenzie Crushing may have for natural resource damages caused by Mackenzie Crushing'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.
- 11.6 In the event Mackenzie Crushing 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, Mackenzie Crushing shall also notify the WRD Lansing 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 Lansing District Supervisor within 30 days of 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 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, Mackenzie Crushing shall submit a request consisting of a written certification that Mackenzie Crushing 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 at the Facility.

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

Signatories

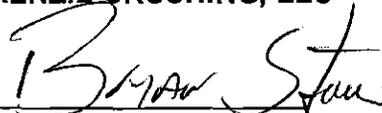
The undersigned CERTIFY they are fully authorized by the party they represent to enter into this Consent Order to comply by consent and to EXECUTE and LEGALLY BIND that party to it.

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

  
\_\_\_\_\_  
William Creal, Chief  
Water Resources Division

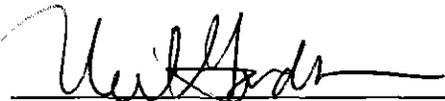
May 5, 2015  
Date

**MACKENZIE CRUSHING, LLC**

  
\_\_\_\_\_  
By: Bryan Stewart  
Title:

4-21-2015  
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

4/27/15  
Date