

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

INTEROFFICE COMMUNICATION

OPERATIONAL MEMO 115-21
REVISION 1

March 16, 1999

TO: All Waste Management Division Supervisors

FROM: Jim Sygo, Chief, Waste Management Division

SUBJECT: Guidance and Procedures: "Fast Track" Enforcement for Violations of Part 115, Solid Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA)

The purpose of this operational memo is to further the Waste Management Division's (WMD) ongoing efforts to improve the efficiency and effectiveness of the Solid Waste Program enforcement activities. This operational memo establishes guidance and procedures for WMD field and program unit staff's use of a simplified "fast track" administrative consent order (FTO) to expeditiously resolve cases where the number or types of violations of Part 115, Solid Waste Management, of the NREPA are not serious enough to warrant referral to the WMD Enforcement Section but, nonetheless, require a formal response. These procedures are not intended to replace the existing escalated enforcement process but, rather, are to complement it and should improve the WMD's ability to bring about a timely and complete return to compliance.

Consistency will be critical to the successful use of these procedures, and close communications among WMD staff and staff of other affected Divisions will be required. Though these procedures rely heavily on the District or Program Unit Supervisors and their staff for implementation, Enforcement Section staff will be available throughout the process to provide any support, advice, and/or assistance needed.

Evaluation and Determination of Enforcement Response to Violation(s)

The WMD District and Solid Waste Program Section staff, in conjunction with their normal job responsibilities, shall continue to be responsible for the discovery of violations and for the initial enforcement response. In general, violations will be discovered through site inspections, file reviews, financial record reviews, permit and license application reviews, closure plan reviews, and other inspections or reviews. The initial enforcement response shall be consistent with the "Field Components: Compliance and Enforcement Process" flow chart (Attachment 1).

Violations that are not appropriately resolved in a timely manner (i.e., no later than after the second Letter of Warning) shall be evaluated for potential enforcement action. The

provisions of Part 148, Environmental Audit Privilege and Immunity, of the NREPA and other pertinent policies should be considered in this evaluation. WMD District/Program Unit staff shall consult with Enforcement Section staff to determine if pursuit of an FTO is appropriate, or if the case should be referred to the Enforcement Section for escalated enforcement. All referrals shall be in accordance with Operational Memo 115-9 (641-9), Revision 2, dated June 2, 1997, and any subsequent revision.

In the interest of providing a reasonably wide opportunity for the use of the FTO, the following case criteria were developed to generally describe the circumstances where this approach would not be appropriate. Of course, a determination that a case may be a good candidate for fast track enforcement does not constitute a binding determination by the Department of Environmental Quality (DEQ) that none of these criteria were applicable. **Cases meeting any of the following criteria will typically NOT be good candidates for a fast track enforcement response:**

- When immediate response is required to mitigate an imminent and substantial threat to human health or the environment (e.g., emergency response to significant releases, landfill fires, etc.).
- When the facility is the subject of another escalated enforcement effort by the WMD or other division.
- When multi-media violations are identified as the result of a multi-media inspection or where non-compliance with Part 115 of the NREPA leads to significant multi-media violations.
- Cases under investigation by the Office of Criminal Investigations (OCI), except where the WMD's use of a fast track enforcement response has been discussed with and approved by both the OCI and the Enforcement Section.
- When the relief sought can be imposed pursuant to an existing administrative consent order or judicial decree or order.
- Cases where litigation has occurred or is likely to occur, or where the facility is under a prior WMD administrative or judicial order that has not been terminated.
- When major relief involving extended compliance schedules and/or substantial WMD technical oversight is required (e.g., complex soil or hydrogeological surveys, remedial actions, design/construction activities requiring engineering reviews, etc.).
- Long-term violations that continue to occur despite repeated notification of violations.
- Chronic violations (e.g., an ongoing pattern of varying violations demonstrating disregard for the regulatory program).
- When owners/operators threaten DEQ staff or the public.

- Where there are major closure problems or corrective actions required without an existing order.
- Any facility previously the subject of an FTO for the same violations or subjected to two previous orders for different violations.
- When the facility has not been previously advised of the violations in a written Letter of Warning.

With these negative criteria in mind, there are, nonetheless, many circumstances which generally would be appropriate for an FTO approach. Examples of these would include:

- Readily correctable operational violations, including:
 - Noise
 - Blowing Papers
 - Dust
 - Problems with on-site roads
 - Inadequate access controls
 - Improper management of recyclable materials
 - Inadequate daily or interim cover (including alternate daily cover problems)
 - Erosion
- Leachate management problems which are quickly and readily correctable.
- Violations of the approved Hydrogeological Monitoring Plans, such as failure to sample all required wells or parameters, inadequate (failure to meet prescribed analytical detection limits or sample holding times) or late quarterly monitoring reports, etc.
- Improper engineering certifications where the nature of the inaccurate certification does not impact the facility's permit or license so as to require the interruption of facility operations (e.g., issuance of a cease and desist order).
- Failure to submit timely application for renewal of an operating license (in cases where the facility is otherwise in compliance).

- Facilities operating without a valid operating license due to changes in corporate status that result in a change in the "person."
- Operating Record violations.
- Failure to provide timely annual waste volume reports.
- Failure to timely pay annual solid waste program administrative fees.
- Failure to update financial assurance mechanisms in response to either facility changes or annual inflation adjustments.

Procedures

Upon identification of a potential case meeting the criteria for a fast track enforcement action, the following procedure will be followed:

1. District/Program Unit staff that performed the inspection, review, or other investigation that revealed the non-compliance will informally consult with their colleagues, including Solid Waste Program Section staff specialists, to discuss the facts of the case and obtain concurrence regarding the specific violations, correctives required, and the appropriateness of a fast track enforcement action. A case is appropriate for an FTO only when at least one Letter of Warning has been previously issued to the owner/operator advising of the violation(s).
2. The District or Program Unit Supervisor or designated staff will contact other WMD Districts/Sections or other DEQ divisions potentially affected by a WMD enforcement response (e.g., Air Quality, Environmental Response, Land and Water Management, Surface Water Quality Divisions, OCI, etc.) to inform them of WMD's potential enforcement action and identify inter-divisional issues that may need to be coordinated. If inter-divisional issues are identified, then use of the FTO process is not appropriate and the matter should be referred to the Enforcement Section pursuant to Operational Memo 115-9 (641-9) Revision 2, dated June 2, 1997, and any subsequent revision.
3. The District or Program Unit Supervisor will contact the Enforcement Section Chief via telephone to discuss the case and seek concurrence regarding the potential use of an FTO. Prior to this discussion, the District or Program Unit Supervisor shall provide the Enforcement Section Chief with the facts of the case via a detailed electronic mail message and shall forward a copy of the Letter(s) of Warning by facsimile. The Enforcement Section Chief may request that the Solid Waste Enforcement Unit Chief and other staff participate in the discussion of the case.
4. Upon such concurrence, Enforcement Section staff assigned will obtain a project number for the case and track its progress. Enforcement Section staff will notify the District or Program Unit Supervisor of the project number. District/Program Unit staff will utilize that project number on their timesheets so

- that WMD costs can be tracked for possible future recovery. District/Program Unit staff will prepare an initial draft of the consent order and transmittal letter using the model documents (Attachment 2: "115fto1.doc" and Attachment 3: "115ltr1.doc"), and provide the draft documents, and all pertinent factual information and supporting documents to the District or Program Unit Supervisor.
5. District/Program Unit staff are responsible for coordinating issues affecting the issuance of pending solid waste disposal area permits and licenses with the Solid Waste Program Section.
 6. The District or Program Unit Supervisor will review the draft consent order and transmittal letter, and the factual information for accuracy, completeness, and consistency with the model. The District or Program Unit Supervisor will transmit (using Attachment 4: "115mem1.doc") the draft documents, and all pertinent factual information and supporting documents to the Enforcement Section for review and approval. District/Program Unit staff should maintain an electronic copy of the draft consent order and transmittal letter in the WMD network subdirectory (WMD Subdirectory) accessible to Enforcement Section staff (Public.wm\$ on 'Envs0110'_shared_write\All Staff\Enforcement Section\). An electronic copy of other draft documents submitted to Enforcement Section staff should also be maintained in the WMD Subdirectory. Enforcement Section staff will review and provide comment on the draft consent order and transmittal letter, calculate an appropriate penalty, and obtain a Payment I.D. number in no more than ten business days from receipt of the documents. If Department of Attorney General (DAG) staff review is called for, Enforcement Section staff will coordinate that review as quickly as possible and advise the District or Program Unit that additional review time may be required. Based on the Enforcement Section's review, the Enforcement Section Chief may determine that an FTO is no longer appropriate. The Enforcement Section Chief shall seek concurrence of the District or Program Unit Supervisor and recommend further action(s), as necessary.
 7. District/Program Unit staff will make any necessary changes to the draft consent order and transmittal letter in the WMD Subdirectory, ensure that the documents meet the "DEQ Correspondence Guidelines" (Guidelines), and advise Enforcement Section staff of such by electronic mail message. The proposed consent order is then sent by Enforcement Section staff to the respondent via Certified Mail/Return Receipt Requested using the transmittal letter signed by the Division Chief. In most cases, the proposed consent order should be sent to the individual generally responsible for the day-to-day management of the facility. District/Program Unit staff will prepare a brief write-up on the violations and proposed consent order and send a copy to the Enforcement Section Chief to include in the monthly activity report to the Division Chief.
 8. District/Program Unit staff will negotiate the consent order with the respondent. Assistance and/or advice will be provided by Enforcement Section staff, as necessary. In doing so, staff may make reasonable compromises in the

schedules of compliance and the nature of the relief sought (so long as the agreement does not violate Part 115 of the NREPA or its rules and a complete return to compliance is documented). In general, the requirements of the compliance program should be completed within 30 days or less. The amount of civil penalties sought may be negotiated to some minor degree. Other than the schedules, relief provisions, and penalty amount, the consent order language is considered to be "boilerplate" and will not be subject to change except in extremely rare circumstances and then only upon review and approval by DAG staff. Provisions regarding the performance of Supplemental Environmental Projects in partial satisfaction of civil penalties will not be included in these consent orders. As a general rule, the period for negotiations will not exceed 90 days from issuance of the proposed consent order. This time limit must be clearly communicated, in writing, at the time the initial draft consent order is mailed to the respondent (paragraph 7 above). Failure to resolve the matter in that period of time should generally result in a referral for escalated enforcement and may expose the respondent to additional civil penalties. District/Program Unit staff are responsible for tracking case progress and notifying the District or Program Unit Supervisor and Enforcement Section Chief if settlement will not be achieved in the 90-day time frame.

9. Upon reaching tentative agreement with the respondent, District/Program Unit staff will make any necessary changes consistent with the tentative agreement and the Guidelines and send (using Attachment 5: "115mem2.doc") the proposed final consent order to the Enforcement Section Chief for review and approval. An electronic copy of the proposed final consent order should be put in the WMD Subdirectory. Enforcement Section staff will review the proposed final consent order in no more than five business days of receipt. If the Enforcement Section or the DAG review identifies any problems with the proposed settlement, Enforcement Section staff will assist District/Program Unit staff in resolving them. If DAG staff review is called for, Enforcement Section staff will coordinate the review as quickly as possible and advise the District/Program Unit staff that additional review time may be required.
10. Upon approval of the proposed settlement, District/Program Unit staff will prepare two originals of the approved consent order and send them to the respondent for signature (using Attachment 6: "115ltr2.doc"), and instruct the respondent to return both signed originals to Enforcement Section staff. An electronic copy of the final approved consent order as transmitted to the respondent should be placed in the WMD Subdirectory.
11. Upon receipt of both signed originals, Enforcement Section staff will obtain the signatures of the Assistant Attorney General and the Division Chief, return one executed original to the District/Program Unit staff, and make a photocopy for the Enforcement Section files.
12. Enforcement Section staff will send the other executed original to the respondent using the model letter (Attachment 7: "115ltr3.doc"), noting the effective date of the consent order. District/Program Unit staff will prepare a

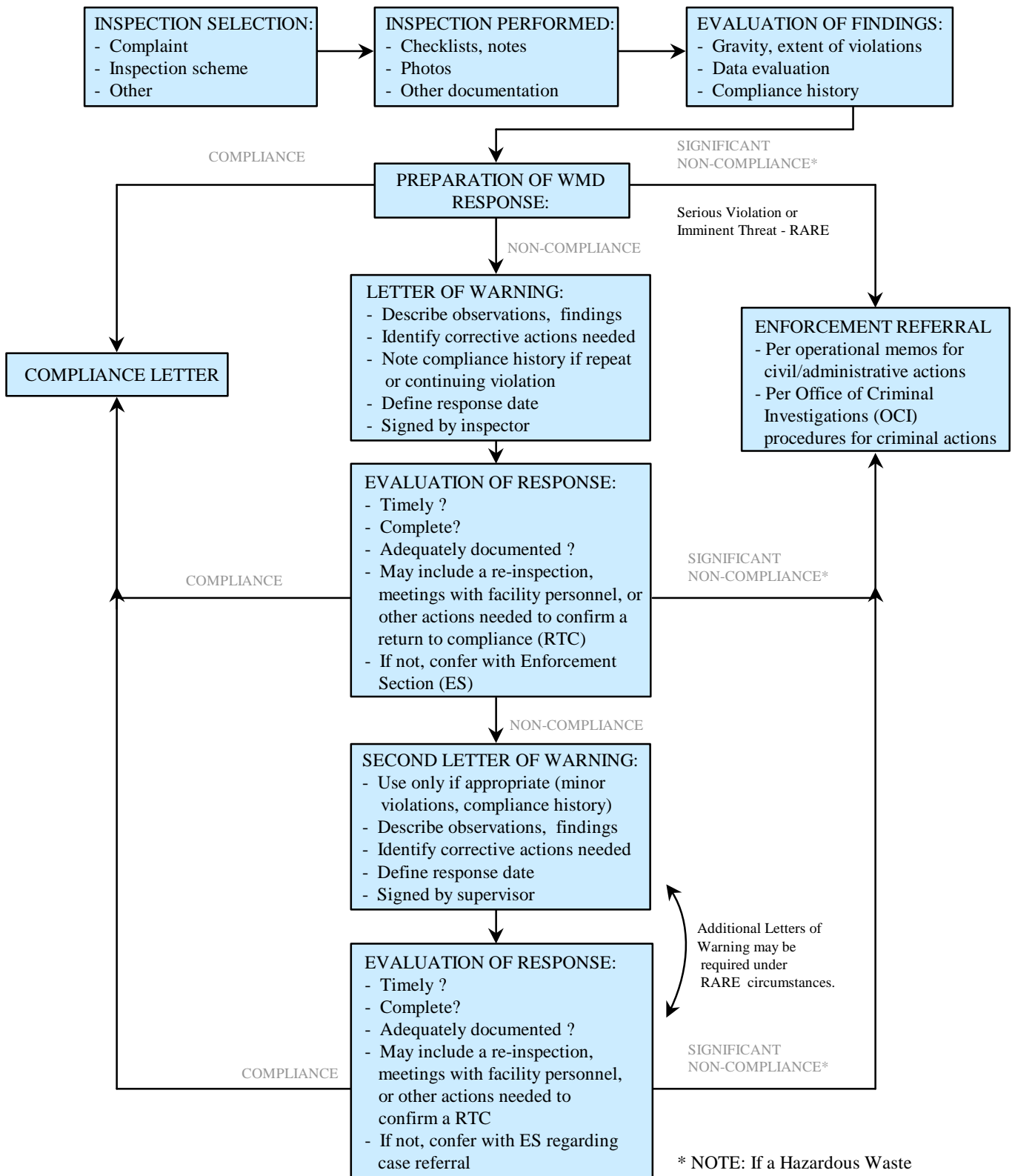
- compliance tracking outline using the established format (Attachment B to WMD Operational Memo 115-9 (revised June 2, 1997) and any subsequent revision), and prepare a brief write-up on the settlement and send a copy to the Enforcement Section Chief to be included in the monthly activity report to the Division Chief. District/Program Unit staff will continue to monitor compliance with the consent order. Enforcement Section staff will track payment of required penalties and inform District/Program Unit staff of such payments.
13. Upon receipt of a request from the respondent for termination of the consent order, District/Program Unit staff will review the consent order and the respondent's compliance status, performing inspections to verify compliance, as necessary. Upon determining that termination of the consent order is appropriate, District/Program Unit staff will prepare a draft Notice of Termination (NOT) using the model document (Attachment 8: "115term1.doc") and send the draft NOT to Enforcement Section for review and processing.
 14. The Enforcement Section will review the draft termination and, if appropriate, finalize the NOT and obtain the Division Chief's signature. The Enforcement Section will return the original NOT to District/Program Unit staff and retain a copy for the Enforcement Section files.
 15. District/Program Unit staff will return the original NOT to the respondent using the model transmittal letter (Attachment 9: "115ltr4.doc"), retain a copy for their files, and send a copy to the Enforcement Section. District/Program Unit staff will prepare a brief write-up on the termination and send a copy to the Enforcement Section Chief to be included in the monthly activity report to the Division Chief.

As currently drafted, these procedures contemplate numerous checks and interactions involving the Enforcement Section. Although initially necessary to assure statewide consistency, some of these steps may be modified or eliminated in the future once sufficient experience in the development and use of these consent orders is gained.

These procedures are available for immediate use by the WMD. WMD staff should begin to use these procedures, where appropriate, with assistance from the Enforcement Section, as necessary.

Any questions regarding these procedures should be directed to John Craig, Chief, Solid Waste Enforcement Unit, at 517-373-7923.

Attachments



* NOTE: If a Hazardous Waste Program case, determinations of significant non-compliance (SNC) require notification of ES, EPA, and data entry via RCRIS.

General Instructions for All Model Documents

1. These model documents have been reviewed for conformance with the DEQ Correspondence Guidelines (“Guidelines”) . Additional language added to the model documents will require further review for conformance with the Guidelines at the time of final proofing prior to being sent to the Respondent.
2. Information to be inserted and specific instructions are denoted by a **BOLD, SMALL CAPS** font and are set forth within **BOLD** braces (e.g., “{” and “}”). Optional and/or alternative text is set forth in the regular font within **BOLD** braces.
3. Remove all **BOLD, SMALL CAPS** text, **BOLD** braces, and unused optional and/or alternative text within **BOLD** braces when final proofing.
4. Check and correct all section and paragraph cross-references throughout the FTO if any sections or paragraphs are removed or added.
5. Remove any headers that denote the documents as “**DRAFT**” or identify the “Attachment” number and file name of the documents when final proofing. Check that page breaks fall in the appropriate places throughout the documents following removal of the header and make adjustments as necessary.

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
WASTE MANAGEMENT DIVISION

In the matter of the
administrative proceedings against
{OWNER/OPERATOR FULL LEGAL NAME}
doing business at
{FACILITY NAME}
{STREET ADDRESS}

WMD Order No. FTO-115-{}-{}

{City of _____}{OR IF LOCATED OUTSIDE THE CITY LIMITS}
{located in Section { }, T{ }, R{ }, { } Township,}
{ } County, Michigan

_____ /

CONSENT ORDER

This proceeding results from allegations specified in the {Letter of Warning ("LOW")} issued on { }, 19{ } **{ALTERNATIVE LANGUAGE TO BE USED IF MORE THAN ONE LOW WAS ISSUED AS FOLLOWS. REVISE REFERENCES TO THE "LOW" TO "LOWS" THROUGHOUT THIS ORDER, IF NECESSARY}**{Letters of Warning ("LOWS") issued on _____, 19__ and _____, 19__} by the staff of the Department of Environmental Quality ("DEQ"). The DEQ alleges that **{OWNER/OPERATOR FULL LEGAL NAME}** (the "Respondent"), doing business at the **{FACILITY NAME}**, **{STREET ADDRESS}** in {the City of _____}{OR}{ _____ Township}, { _____ } County, Michigan, is in violation of Part 115, Solid Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.101 *et seq.*; MSA 13A.11501 *et seq.* ("NREPA"), and the administrative rules promulgated under Part 115. The Respondent and the DEQ agree to resolve the alleged violations set forth in the {LOW} by entry of this consent order ("Order").

I. STIPULATIONS

The Respondent and the DEQ stipulate as follows:

- 1.1 Pursuant to its authority under Section 105 and Part 115 of the NREPA, the DEQ has promulgated administrative rules necessary to implement Part 115. These rules are set forth in the *Michigan Administrative Code* (“MAC”), R 299.4101 *et seq.* (“Part 115 Rules”).
- 1.2 Pursuant to the NREPA and Executive Order No. 1995-18, the Director of the DEQ (“Director”) is the state official and the DEQ is the state agency charged with the administration and enforcement of Part 115 of the NREPA. This Order is authorized under Section 11519(2) of Part 115.
- 1.3 The Respondent is a “person” as defined by Section 301(g) of the NREPA. {The Respondent is a **{STATE OF INCORPORATION}** corporation authorized to do business in Michigan {and is a subsidiary of **{PARENT CORPORATION}**.}{OR}{The Respondent is a Michigan corporation {and is a subsidiary of **{PARENT CORPORATION}**.}{OR}{The Respondent is a governmental entity in the State of Michigan.}
- 1.4 The Respondent owns and/or operates a solid waste disposal area which is a **{SELECT DISPOSAL AREA TYPE THAT APPLIES: Type II sanitary landfill, Type III sanitary landfill, solid waste transfer facility, solid waste processing plant}** (“Disposal Area”) located {at **{STREET ADDRESS}**, **{City}**, Michigan.}{OR}{in Section {____}, T{____}, R{____}, {____} Township, {____} County, Michigan.}
- 1.5 The Disposal Area occupies approximately {____} acres of land. The Disposal Area consists of **{DESCRIPTION OF THE PHYSICAL ORGANIZATION OF THE LANDFILL, I.E., PHASES, CELLS, ETC., AND THEIR CHARACTERISTICS, I.E., LINED, DOUBLE LINED, ETC.}**. Solid Waste Disposal Area License No. {____} was issued for the Disposal Area on {____}, 19{__}. Attachment 1 sets forth the approximate boundaries of these areas of the Disposal Area.
- 1.6 The Respondent stipulates that the issuance and entry of this Order is proper and acceptable. This Order shall be considered a final order of the DEQ and shall become effective on the date it is signed by the Chief of the Waste Management Division (“Division Chief”), designee of the Director, pursuant to Section 301(b) of the NREPA.

- 1.7 The Respondent agrees to fully and strictly comply with all provisions of Part 115 of the NREPA, the administrative rules promulgated pursuant to Part 115, and all other applicable state and federal statutes.
- 1.8 The Respondent and the DEQ agree that the signing of this Order is for settlement purposes only and does not constitute an admission by the Respondent of the allegations contained in the LOW or that the law has been violated.

II. COMPLIANCE PROGRAM

In order to resolve the violations alleged in the LOW, the Respondent shall achieve and maintain compliance with the requirements specified below in accordance with the following schedule:

- 2.1 **{INSERT APPROPRIATE COMPLIANCE PROGRAM REQUIREMENTS HERE. SUBSECTIONS HEADINGS SHOULD BE USED (E.G., “A.”, “B.”, ETC.) WITH HEADING TITLES CORRESPONDING TO THE MAJOR COMPLIANCE REQUIREMENTS REQUIRED TO ADDRESS THE VIOLATIONS ALLEGED . THERE ARE TWO GENERAL TYPES OF REQUIREMENTS. THE FIRST TYPE IS WHERE THE RESPONDENT MUST SIMPLY DOCUMENT THAT COMPLIANCE HAS BEEN ACHIEVED BY A DATE CERTAIN SPECIFIED IN THE CONSENT ORDER. THIS TYPE OF REQUIREMENT IS OFTEN USED IN FAST TRACK CONSENT ORDERS.}**

{THE OTHER TYPE OF REQUIREMENT IS WHERE THE RESPONDENT IS REQUIRED TO SUBMIT A WORK PLAN AND A SCHEDULE FOR THE PERFORMANCE OF SPECIFIED ACTIVITIES TO THE DEQ FOR REVIEW AND APPROVAL AND IMPLEMENT THE WORK PLAN IN ACCORDANCE WITH THE SECHDULE FOLLOWING DEQ APPROVAL.}

{THE DETERMINATION OF WHICH TYPE OF REQUIREMENT TO USE WILL GENERALLY BE BASED ON FACTORS SUCH AS: 1) THE NATURE AND COMPLEXITY OF THE VIOLATION(S), 2) THE NATURE AND COMPLEXITY OF THE ACTION(S) NECESSARY TO ATTAIN COMPLIANCE, AND

3) THE DEGREE OF DEQ TECHNICAL OVERSIGHT REQUIRED (E.G., REVIEW AND APPROVAL OF WORK PLANS, REPORTS, ETC.)

{USE THE FOLLOWING SECTION ONLY IF THE COMPLIANCE PROGRAM CONTAINS OBLIGATIONS TO SUBMIT WORK PLANS, SCHEDULES, REPORTS, OR OTHER DOCUMENTS FOR DEQ REVIEW AND APPROVAL.}

III. APPROVAL OF SUBMITTALS

- 3.1 For any plan, schedule, report, or other document (collectively, "Submittal"), excluding an application for a permit or license, that is required by this Order to be submitted to the DEQ by the Respondent, the following process and terms of approval shall apply.
- 3.2 To be approved by the DEQ, any Submittal required by this 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 Order.
- 3.3 The DEQ may approve, disapprove, or approve with specific modifications, any Submittal required by this Order. Any Submittal, and the attachments thereto, required by this Order shall be, upon approval or approval with modifications by the DEQ, incorporated into this Order and shall be enforceable in accordance with the terms of this Order. Any approved plans, schedules, reports, or other documents, and the attachments thereto, incorporated by reference into this Order are enforceable in accordance with the terms of this Order.
- 3.4 In the event the DEQ approves a Submittal with specific modifications, the DEQ shall notify the Respondent, in writing, of the specific modifications required to be made to such Submittal and the specific reasons for such modifications. The DEQ may require the Respondent to submit within thirty (30) calendar days of receipt of such approval with specific modifications, a revised Submittal which adequately addresses such modifications.

- 3.5 In the event the DEQ disapproves a Submittal, the DEQ shall notify the Respondent, in writing, of the specific reasons for such disapproval. The Respondent shall submit, within thirty (30) calendar days of receipt of such disapproval, a revised Submittal which adequately addresses the reasons for such disapproval unless the DEQ's notification specifies a longer time period.
- 3.6 Failure by the Respondent to submit an approvable revised Submittal within the applicable time period specified in this Section shall subject the Respondent to the enforcement provisions of this Order including, but not limited to, the imposition of additional civil penalties.
- 3.7 Any delays caused by the Respondent's failure to submit an approvable Submittal when due shall in no way affect or alter the Respondent's responsibility to comply with any other deadline(s) specified in this Order.

IV. REPORTING

- 4.1 The Respondent shall submit all items required in Section II, Compliance Program, to the District Supervisor, Waste Management Division, Department of Environmental Quality, **{MAILING ADDRESS OF DISTRICT OFFICE}**, unless specifically directed otherwise within this Order. The cover letter with each submittal shall identify the specific paragraph and requirement of this Order that the submittal is intended to satisfy. If the address of the District Supervisor changes, the Respondent will be notified and shall make all subsequent submittals to any new address of which they are notified.
- 4.2 The Respondent shall verbally report any violation(s) of the terms and conditions of this Order to the 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 (5) business days following detection of such violation(s). The written report shall include a detailed description of the violation(s), the precise cause or causes of the violation(s), a detailed description of any action(s) taken or proposed to correct the violation(s), and a schedule for the implementation of any proposed corrective action(s). The Respondent shall report any anticipated violation(s) of this

Order to the District Supervisor in advance of the relevant deadlines, whenever possible.

V. RETENTION OF RECORDS

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

VI. RIGHT OF ENTRY

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

VII. FINES, COSTS, AND PENALTIES

- 7.1 Within thirty (30) days of the effective date of this Order, the Respondent shall pay the sum of \$ to the State of Michigan in settlement of the DEQ's claim for a civil fine arising from the violations alleged in the LOW.

{ALTHOUGH USED IN OTHER ENFORCEMENT SITUATIONS, A TIME PAYMENT ARRANGEMENT IS GENERALLY NOT AVAILABLE TO LICENSED, OPERATING PART 115 FACILITIES BECAUSE THEY ARE UNABLE TO DEMONSTRATE THAT LEGITIMATE FINANCIAL CIRCUMSTANCES PREVENT PAYMENT OF THE CIVIL FINE IN A SINGLE INSTALLMENT. IF NECESSARY, CONTACT THE ENFORCEMENT SECTION FOR FURTHER INFORMATION.}

- 7.2 To ensure timely payment of the above civil fine, the Respondent shall pay an interest penalty to the State of Michigan each time the Respondent fails to make a complete or timely payment. This interest penalty shall be based on the rate set forth at Section 6013(6) of the Revised Judicature Act, 1961 PA 236, as amended, MCL 600.6013(6), using the full increment of amount due as principal, and calculated from the due date for the payment until the delinquent payment is finally made in full.
- 7.3 The Respondent shall make all payments required under this Section by check made payable to the "State of Michigan" and mailed to the Department of Environmental Quality, Revenue Control Unit, P.O. Box 30657, Lansing, Michigan 48909-8157, or hand delivered to the Department of Environmental Quality, Revenue Control Unit, 300 South Washington Square, Suite 457, Lansing, Michigan 48933. To ensure proper credit, all payments made pursuant to this Order must reference the "Payment Identification Number WMD _____" on the front of the check and/or in the cover letter with the payment. **{THE PAYMENT IDENTIFICATION NUMBER WILL BE INSERTED BY THE DEQ WHEN THIS DOCUMENT IS PREPARED AS A FINAL DOCUMENT FOR THE AUTHORIZED SIGNATURE OF THE RESPONDENT.}**
- 7.4 The Respondent agrees not to contest the legality of the civil fine assessed pursuant to this Section. The Respondent further agrees not to contest the legality of any interest penalties assessed pursuant to this Section.

VIII. GENERAL PROVISIONS

- 8.1 With respect to any violations not specifically addressed and resolved by this Order, the DEQ reserves the right to pursue any other remedies to which it is entitled for any failure on the part of the Respondent to comply with the requirements of the NREPA and its rules.
- 8.2 This Order in no way affects the Respondent's responsibility to comply with any other applicable state, federal, or local laws or regulations including, without limitation, any corrective action or similar requirements applicable to the Disposal Area pursuant to the NREPA and its rules.

- 8.3 Nothing in this Order is or shall be considered to affect any liability the Respondent may have for natural resources damages caused by the Respondent's ownership and/or operation of the Disposal Area. The State of Michigan does not waive any rights to bring an appropriate action to recover such damages to the natural resources.
- 8.4 The DEQ and the Respondent agree that the terms and conditions of this Order will be enforceable in circuit court. The DEQ and the Respondent further agree that the appropriate venue for the enforcement of this Order shall be the Circuit Court for the County of **{COUNTY WHERE DISPOSAL AREA IS LOCATED}** or the County of Ingham, State of Michigan, which courts shall also be appropriate for dispute resolution.
- 8.5 The provisions of this Order shall apply to and be binding on the DEQ and the Respondent to this action; their officers, agents, servants, employees, successors, and assigns; and on those persons in active concert or participation with them who receive actual notice of this Order prior to its termination. The Respondent shall give notice of this Order to any prospective successor in interest prior to transfer of ownership of the Disposal Area property or any portion thereof and shall notify the DEQ of such proposed sale or transfer.

IX. TERMINATION

- 9.1 This Order shall remain in full force and effect until expressly terminated by a written Notice of Termination issued by the Division Chief. The Respondent may request that the Division Chief issue a written Notice of Termination at any time after achieving full compliance with this Order. Such a request shall consist of a written certification that the Respondent has fully complied with all of the requirements of this Order and has made payment of any fine and penalties required under this Order. Specifically, this certification shall include:
- a. The date of compliance with each provision of the compliance program in Section II of this Order and the date(s) any fines and penalties were paid;

- b. a statement that all required information has been reported to the District Supervisor; and
- c. confirmation that all records required to be maintained pursuant to this Order are being maintained at the Disposal Area.

At the time of a request for termination, the Division Chief may request additional relevant information in order to make a determination of the Respondent's full compliance with this Order.

- 9.2 The Division Chief shall issue a written Notice of Termination unless the DEQ determines that the Respondent has not submitted the certification required under this Section, has failed to submit the additional information specifically requested by the Division Chief, or has failed to comply with, or complete, all of the requirements of this Order.

X. SIGNATORIES

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

{OWNER/OPERATOR FULL LEGAL NAME}

DEPARTMENT OF ENVIRONMENTAL
QUALITY

By: _____

Russell J. Harding
Director

Name: _____

Title: _____

By: _____
Jim Sygo, Chief
Waste Management Division

Date: _____

Date: _____

APPROVED AS TO FORM:

Jennifer M. Granholm
Attorney General

Robert P. Reichel
Assistant Attorney General
Natural Resources Division
5th Floor, Knapps Centre
Lansing, Michigan 48933

Date: _____

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

{OWNER/OPERATOR REPRESENTATIVE}
{OWNER/OPERATOR NAME}
{MAILING ADDRESS}

Dear {_____}:

SUBJECT: Letter of Warning, Proposed Consent Order
{OWNER/OPERATOR NAME}, {FACILITY NAME}, {LOCATION}

Enclosed please find {a copy of the Letter of Warning}{copies of the Letters of Warning}{OR SPECIFY THE OTHER DOCUMENT(S) THAT INITIALLY NOTIFIED THE OWNER/OPERATOR OF THE ITEMS OF NONCOMPLIANCE ADDRESSED BY THE CONSENT ORDER} issued by staff of the Waste Management Division, {DISTRICT/UNIT NAME}, on {DATE(S)}, and a proposed Consent Order that specifies the requirements necessary to return {OWNER/OPERATOR NAME, AN ACRONYM OR SHORT FORM OF THE OWNER/OPERATOR NAME MAY BE SET FORTH IN PARENTHESES FOLLOWING THE OWNER/OPERATOR NAME AND USED FOR THE OWNER/OPERATOR NAME HEREINAFTER} to compliance. The {SPECIFY THE TYPE OF DOCUMENT(S) REFERENCED ABOVE} state{s} the specific requirements of Part 115, Solid Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.11501 - 324.11550, and the rules promulgated under the statute, which the Department of Environmental Quality (DEQ) alleges have been violated by {OWNER/OPERATOR NAME} at the above-referenced facility.

In light of the nature of the violations, the DEQ proposes entry of the enclosed Consent Order as an appropriate and expeditious means of resolving {this issue}{these issues}. Failure to resolve this matter by entry of the Consent Order within 90 days of receipt of this letter may result in escalation of this matter for additional enforcement. If this Consent Order is acceptable to {OWNER/OPERATOR NAME}, please sign and return both original documents to Ms. JoAnn Merrick, Chief, Enforcement Section, Waste Management Division, Department of Environmental Quality, P.O. Box 30241, Lansing, Michigan 48909, by no later than ten days after receipt of this letter. Upon receipt of the signed documents, I will sign the documents for the DEQ and return one fully executed original document to you for your records. The Consent Order becomes effective on the date that I sign it and the civil penalty must be paid by no later than 30 days after that date.

Alternatively, you are offered an opportunity to confer with the staff of the DEQ regarding the {SPECIFY THE TYPE OF DOCUMENT(S) REFERENCED ABOVE} and proposed Consent Order on

{DATE (NOT LATER THAT 15 - 20 DAYS AFTER THE DATE THE OWNER/OPERATOR IS EXPECTED TO RECEIVE THIS LETTER)} at {TIME} in {CONFERENCE ROOM __, BUILDING NAME, STREET ADDRESS, CITY}.

You may also submit a written response to the **{SPECIFY THE TYPE OF DOCUMENT(S) REFERENCED ABOVE}** and proposed Consent Order at any time prior to, during, or in lieu of, the scheduled conference. The written response should state whether representatives of **{OWNER/OPERATOR NAME}** are planning to attend the conference or if the submittal is being made in lieu of the conference. If a written response to this letter is not received from **{OWNER/OPERATOR NAME}** by the date of the conference, or if **{OWNER/OPERATOR NAME}** does not attend the conference, the DEQ will initiate further enforcement actions.

The contact person for this matter is **{DISTRICT/UNIT SUPERVISOR}, {DISTRICT/UNIT NAME}**, Waste Management Division. Please contact **{him}{her}** at **{__-__-__}**, if you have any questions.

Sincerely,

Jim Sygo, Chief
Waste Management Division
517-373-9523

Enclosures

cc: Mr. Frank Ruswick, DEQ
Ms. JoAnn Merrick, DEQ
cc/enc: **{OWNER/OPERATOR REPRESENTATIVE TO WHOM CORRESPONDENCE IS ROUTINELY DIRECTED IF DIFFERENT THAN ADDRESSEE}**
Mr. John Craig, DEQ
{DISTRICT/UNIT SUPERVISOR}
{DISTRICT/UNIT STAFF}
{OTHER WMD OR DEQ STAFF}
{FILE}

TO: JoAnn Merrick, Chief
Enforcement Section
Waste Management Division

FROM: {DISTRICT/UNIT SUPERVISOR}
{DISTRICT/UNIT NAME}
Waste Management Division

SUBJECT: Transmittal of Draft Consent Order for Review
{OWNER/OPERATOR NAME}, {FACILITY NAME}, {LOCATION}

The above-referenced respondent has been selected for a fast-track order enforcement action. Please calculate a civil penalty, review the enclosed draft Consent Order and transmittal letter proposed to be issued to {OWNER/OPERATOR NAME} to resolve violations of Part 115, Solid Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, and provide your comments or approval within ten business days of receipt of this memo. Pertinent factual information and supporting documents related to the violations identified in the Letter{s} of Warning are enclosed for use in calculating the penalty.

If any issues require further review by Department of Attorney General staff, please have Enforcement Section staff coordinate that review and advise me of such.

If you have any questions regarding this case, please contact me at {__-__-__}.

Enclosures

cc: Frank Ruswick
{DISTRICT/UNIT STAFF}
{FILE}

TO: JoAnn Merrick, Chief, Enforcement Section
Waste Management Division

FROM: **{DISTRICT/UNIT SUPERVISOR}, {DISTRICT/UNIT NAME}**
Waste Management Division

SUBJECT: Transmittal of Proposed Final Consent Order for Review
{OWNER/OPERATOR NAME}, {FACILITY NAME}, {LOCATION}

{DISTRICT/UNIT NAME} staff have completed negotiations of a fast-track Consent Order with **{OWNER/OPERATOR NAME, AN ACRONYM OR SHORT FORM OF THE OWNER/OPERATOR NAME MAY BE SET FORTH IN PARENTHESES FOLLOWING THE OWNER/OPERATOR NAME AND USED FOR THE OWNER/OPERATOR NAME HEREINAFTER}**. Please review the proposed final Consent Order enclosed and provide your comments or approval within five business days of receipt of this memo. If any issues require further review by Department of Attorney General staff, please have Enforcement Section staff coordinate that review and advise me of such.

Upon receipt of your approval, **{DISTRICT/UNIT NAME}** staff will transmit the final Consent Order to **{OWNER/OPERATOR NAME}** for their signature. If you have any questions regarding this case, please contact me at {__-__-__}.

Enclosure

cc: **{DISTRICT/UNIT STAFF}**
{FILE}

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

{OWNER/OPERATOR REPRESENTATIVE}
{OWNER/OPERATOR NAME}
{MAILING ADDRESS}

Dear {_____}:

SUBJECT: Consent Order, {OWNER/OPERATOR NAME},
{FACILITY NAME}, {LOCATION}

Enclosed please find two unsigned originals of the Consent Order for the resolution of the matter{s} documented on correspondence dated {DATE(s)}, pursuant to Part 115, Solid Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended. The Consent Order has been revised as agreed to by you on {DATE}. Please sign both original documents and return them to Ms. JoAnn Merrick, Chief, Enforcement Section, Waste Management Division, Department of Environmental Quality (DEQ), John A. Hannah Building, P.O. Box 30241, Lansing, Michigan 48909, and she will secure the DEQ's authorized signature and return a fully executed original document to you.

If you have any questions, please contact {DISTRICT/UNIT STAFF}, at {___-___-___}, or me.

Sincerely,

{DISTRICT/UNIT SUPERVISOR}
{DISTRICT/UNIT NAME}
Waste Management Division
{___-___-___}

Enclosures

cc: Ms. JoAnn Merrick, DEQ
Mr. John Craig, DEQ
{DISTRICT/UNIT STAFF}
{OTHER WMD/DEQ STAFF}
{FILE}

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

{OWNER/OPERATOR REPRESENTATIVE}
{OWNER/OPERATOR NAME}
{MAILING ADDRESS}

Dear {_____}:

SUBJECT: Consent Order, {OWNER/OPERATOR NAME},
{FACILITY NAME}, {LOCATION}

Enclosed please find a fully executed original of the Consent Order between {OWNER/OPERATOR NAME} and the Department of Environmental Quality (DEQ). The Consent Order became effective on {DATE}, the date it was signed by the Chief of the Waste Management Division. Please note that the civil penalty required by Paragraph { } of the Consent Order is due by {DATE}.

Sincerely,

JoAnn Merrick, Chief
Enforcement Section
Waste Management Division
517-373-7938

Enclosure

cc: Mr. Frank Ruswick, DEQ
cc/enc: {DISTRICT/UNIT SUPERVISOR}
Mr. John Craig, DEQ
Ms. Evah Cole, DEQ
{OTHER WMD/DEQ STAFF}
{FILE}

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
WASTE MANAGEMENT DIVISION

In the matter of the
administrative proceedings against
{OWNER/OPERATOR FULL LEGAL NAME}
doing business at
{FACILITY NAME}
{STREET ADDRESS}
{City of _____}**{OR IF LOCATED OUTSIDE THE CITY LIMITS}**
{located in Section {____}, T{____}, R{____}, {_____} Township,}
{_____} County, Michigan

WMD Order No. FT0-115-{}-{} /

NOTICE OF TERMINATION

This Notice of Termination (Notice) is issued pursuant to a request for termination submitted on {DATE}, by {OWNER/OPERATOR REPRESENTATIVE} on behalf of {OWNER/OPERATOR FULL LEGAL NAME, AN ACRONYM OR SHORT FORM OF THE OWNER/OPERATOR NAME MAY BE SET FORTH IN PARENTHESES FOLLOWING THE OWNER/OPERATOR NAME AND USED FOR THE OWNER/OPERATOR NAME HEREINAFTER}, pursuant to Section {__} of the Consent Order, WMD Order No. FT0-115-{}-{} (Order), entered on {DATE}. The request contained supporting information as required by Section {__} of the Order. Review of this request and the supporting information indicates that {OWNER/OPERATOR NAME} has achieved compliance with the terms and conditions of the Order.

Therefore, effective the date of issuance of this Notice noted below, the Order is hereby terminated. Termination of the Order does not release {OWNER/OPERATOR NAME} of liability for any violations of law not specifically resolved by the Order. {OWNER/OPERATOR NAME} is hereby given notice that the Department of Environmental Quality may pursue civil and/or criminal prosecution, including the assessment of monetary fines, penalties, or costs, and/or other appropriate relief, for any such violation of Part 115, Solid Waste Management, of the

Natural Resources and Environmental Protection Act, 1994 PA 451, as amended,
MCL 324.11501 - 324.11550, or other applicable law, as provided therein.

By: _____
Jim Sygo, Chief
Waste Management Division

Date: _____

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

{OWNER/OPERATOR REPRESENTATIVE}
{OWNER/OPERATOR NAME}
{MAILING ADDRESS}

Dear {_____}:

SUBJECT: Termination of Consent Order, WMD Order No. FT0-115-{}-{}
{OWNER/OPERATOR NAME }, **{FACILITY NAME}**, **{LOCATION}**

Enclosed please find a Notice of Termination of the Consent Order, WMD Order No. FT0-115-{}-{}, between **{OWNER/OPERATOR NAME}** and the Department of Environmental Quality (DEQ). This termination became effective on **{DATE}**.

Thank you for your cooperation in resolving this matter.

Sincerely,

{DISTRICT/UNIT SUPERVISOR}
{DISTRICT/UNIT NAME}
Waste Management Division
{____-____-____}

Enclosure

cc: Ms. JoAnn Merrick, DEQ
Mr. John Craig, DEQ
{DISTRICT/UNIT STAFF}
{FILE}