

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENT, GREAT LAKES, AND ENERGY  
MATERIALS MANAGEMENT DIVISION

In the matter of  
the enforcement action against:

**EQ Detroit, Inc.**  
doing business at **US Ecology - Detroit South**  
1923 Frederick Street  
Detroit, Wayne County, Michigan

MMD Order No. 111-02-115-01-2024

Waste Data System No. 399367

Site ID No. MID 980 991 566

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**CONSENT ORDER**

This enforcement action results from allegations specified in the Violation Notices dated September 29, 2021, April 12, 2023, May 31, 2023, July 10, 2023, and September 12, 2023; and the Enforcement Notice dated August 14, 2023, issued to EQ Detroit, Inc. ("Respondent"), by the Department of Environment, Great Lakes, and Energy ("EGLE"), Materials Management Division ("MMD"). EGLE alleges that the Respondent is in violation of Part 111 ("Part 111"), Hazardous Waste Management, and Part 115 ("Part 115"), Solid Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, Michigan Compiled Laws ("MCL") 324.101 *et seq.* ("NREPA"); the administrative rules promulgated pursuant to Part 111 ("Part 111 Rules") and Part 115 ("Part 115 Rules"); the Hazardous Waste Management Facility Operating License ("Hazardous Waste Operating License"); Solid Waste Construction Permit No. 356 ("Construction Permit. No. 356"); Solid Waste Disposal Area Operating License No. 9618 ("Solid Waste Operating License"); and the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"). The Respondent and EGLE agree to resolve these alleged violations by entry of this consent order ("Order").

STATEMENT OF PURPOSE

In entering into this Order, the mutual objectives of the Respondent and EGLE are to establish a compliance program to ensure the appropriate waste screening, analysis, and legal treatment and disposal of hazardous and non-hazardous waste; implement a hydrogeological monitoring



program, and corrective action, as needed; and repair, update and maintain the waste treatment tank systems and waste container storage areas to achieve and maintain compliance with the requirements for tank systems, including secondary containment and leak detection, and container storage areas, respectively. Through implementation of the compliance program, it is anticipated that the Facility will achieve and maintain compliance with its Hazardous Waste and Solid Waste Operating Licenses, Part 111, Part 115, the Part 111 and Part 115 Rules, and the RCRA. The Respondent has agreed to undertake the actions as set forth below and to diligently pursue other options that will bring the Respondent into compliance with all of the requirements of its Hazardous Waste and Solid Waste Operating Licenses, Part 111, Part 115, the Part 111 and Part 115 Rules, and the RCRA.

#### I. STIPULATIONS

For the purposes of this Order, the Respondent and EGLE stipulate as follows:

- 1.1 Pursuant to its authority under Part 111 and Section 105 of the NREPA, EGLE has promulgated administrative rules necessary to regulate the identification, generation, treatment, storage, disposal, and transportation of hazardous wastes in Michigan. Mich Admin Code, R 299.9101 *et seq.*
- 1.2 Pursuant to its authority under Part 115 and Section 105 of the NREPA, EGLE has promulgated administrative rules necessary to implement Part 115. Mich Admin Code, R 299.4101 *et seq.*
- 1.3 On October 30, 1986, the State of Michigan was granted final authorization by the Administrator of the U.S. Environmental Protection Agency ("U.S. EPA"), pursuant to Section 3006(b) of the RCRA, Title 42 of the *United States Code*, Section 6926(b), to administer a hazardous waste program in Michigan in lieu of the federal program at Title 40 of the *Code of Federal Regulations*, Part 272, Subpart X, 51 *Federal Register* 36804 (October 16, 1986). This authorization is periodically updated.
- 1.4 Pursuant to the NREPA and Executive Order No. 2019-6, the EGLE Director is the state official and EGLE is the state agency charged with the administration and enforcement of Part 111 and Part 115.



- 1.5 The EGLE Director is authorized by NREPA to issue orders to require a person to comply with a permit, license, rule, or requirement of Part 111 and the corresponding requirements under Subtitle C of the RCRA. MCL 324.11151(1). The Director is authorized by Section 11519 of the NREPA to issue orders to require a person to comply with a permit, license, rule, or requirement of Part 115. Accordingly, the EGLE Director has authority to issue and enter this Order with the Respondent.
- 1.6 The Respondent is a Michigan corporation authorized to do business in Michigan. The Respondent is a "person" as defined by Section 301(h) of the NREPA.
- 1.7 The Respondent is a generator of hazardous waste, and the owner and operator of a hazardous waste treatment and storage facility located at 1923 Frederick Street, Detroit, Wayne County, Michigan 48211 ("Facility"). The Respondent's Site Identification Number is MID 980 991 566, and its Waste Data System Number is 399367. A Hazardous Waste Operating License was issued for the Facility on December 12, 2003. The Respondent submitted to EGLE an application for renewal of the Operating License on September 11, 2008 ("Operating License Application"), which is currently under review by the MMD Hazardous Waste Section. The Respondent is subject to the applicable requirements of Part 111, the Part 111 Rules, the RCRA, and the Hazardous Waste Operating License.
- 1.8 The Respondent is the owner and operator of a solid waste processing plant at the Facility. Solid waste construction permit No. 356 was issued for the Facility on January 16, 1998. Solid Waste Operating License No. 9618 was issued to the Respondent on September 11, 2000. The Respondent is subject to the requirements of Part 115, the Part 115 Rules, Construction Permit. No. 356, and the Solid Waste Operating License.
- 1.9 EGLE received from the Respondent a Notice of Other Non-Compliance on April 30, 2020, regarding the improper disposal of a listed hazardous waste (F001 and F007) as required by R 299.9521(1)(a) or 40 CFR 270.30(I)(10). Based on the Respondent's Notice of Noncompliance and supporting correspondence, and an inspection conducted on August 25, 2020, EGLE staff determined that violations of Part 111, the Part 111



Rules, the Hazardous Waste Operating License, and the RCRA occurred; and issued the VN dated September 29, 2021, to the Respondent.

- 1.10 EGLE received notification from the Respondent on December 28, 2022, that a fire occurred in the Chemical Fixation Building within Tank 703 at the Facility. Based on this notification, subsequent reporting provided by the Respondent, and an inspection conducted by EGLE staff on January 5, 2023, EGLE staff determined that violations of Part 111, the Part 111 Rules, the Hazardous Waste Operating License, and the RCRA occurred; and issued the VN dated April 12, 2023, to the Respondent.
- 1.11 EGLE staff conducted a focused compliance inspection of the Facility on April 19, 2023. Observations made by staff during the inspection indicated that several tank systems used for the treatment of hazardous waste were unfit for use due to the on-going presence of liquid, including presumed groundwater, in the interstitial space used for secondary containment and leak detection and/or visible moisture seeping into the interior of the tank system. Therefore, EGLE staff issued the VN dated May 31, 2023 to the Respondent that required, among other things, the Respondent to immediately cease usage of the tank systems and comply with the requirements for tank systems provided in the Part 111 Rules and the RCRA regulations. Additionally, the tank systems are used for the processing of solid waste, and the Part 115 Rules specify that all facility containers shall be leakproof. For a Part 115 licensed solid waste processing plant conducting waste stabilization/solidification operations, this rule applies to in-ground steel tanks used for processing. Therefore, EGLE alleges that one or more of the steel containers was operated in a condition which was not leakproof, in violation of Part 115 and the Part 115 Rules.
- 1.12 EGLE staff visited the Facility on multiple occasions between June 9 and June 22, 2023, to monitor the progress of tank system assessment and repair activities resulting from the VN described in Paragraph 1.11. Observations made by EGLE staff during the site visits indicated that previous modifications had been made to the tank systems (Tanks 701 and 706), yet EGLE had no record of the required notification or Hazardous Waste Operating License modification request. EGLE staff also observed significant erosion and cracking present in the containment system for container storage of the Chemical Fixation Building. The conditions observed by EGLE staff are a violation of the Part 111



Rules, the Hazardous Waste Operating License, and the RCRA regulations; therefore, EGLE staff issued the VN dated July 10, 2023, to the Respondent.

- 1.13 Due to the presence of groundwater observed in and near the tank systems as described in Paragraph 1.11, and further identified during implementation of the Hydrogeological Evaluation Work Plan described in Paragraph 2.23; the groundwater monitoring waivers incorporated in the Hazardous Waste Operating License and Solid Waste Operating License will be revoked upon EGLE's approval of the Respondent's hydrogeological monitoring plan ("HMP") described in Paragraph 2.25.
- 1.14 Since the Respondent ceased operation of the tank systems on June 9, 2023, EGLE and the Respondent have met frequently to discuss the necessary repairs, corrections, work plans, and documentation needed to return to operation.
- 1.15 The Respondent stipulates that the issuance and entry of this Order is an acceptable way to resolve this matter. This Order shall be considered a final order of EGLE and shall become effective on the date ("effective date") it is signed by the Division Director of the MMD ("Division Director"), or the designee of the Director pursuant to Section 301(b) of the NREPA.
- 1.16 The Respondent agrees to fully and strictly comply with all provisions of Part 111, Part 115, the Part 111 and Part 115 Rules, the Hazardous Waste Operating License, the Solid Waste Operating License, the RCRA, and all other applicable state and federal statutes.
- 1.17 The Respondent and EGLE agree that the signing of this Order is for settlement purposes only and does not constitute an admission by the Respondent of the allegations in the above-referenced VNs and EN, or that the law has been violated.

## II. COMPLIANCE PROGRAM

In order to resolve the violations alleged by EGLE in the above referenced VNs and EN, the Respondent shall achieve and maintain compliance with the requirements specified below in accordance with the specified schedule. All submittals required in this Compliance Program



shall be incorporated and become enforceable under this Order. Where updates to hazardous waste or solid waste inspection or operating procedures are made subsequent to the effective date of this Order through the license renewal or modifications processes, the most current procedure shall prevail. For the purposes of this Compliance Program, the terms "Hazardous Waste Operating License" and "Solid Waste Operating License" mean the most currently issued operating license on and after the effective date of this Order.

#### **Hazardous Waste and Solid Waste Operations**

- 2.1 On February 5, 2024 the Respondent submitted the *EQ Detroit Return to Compliance Plan* ("Return to Compliance Plan"), for EGLE review and approval, for repairs or like-kind replacement of existing tank systems that conform to the existing licensed design specifications and conditions. On March 14, 2024, EGLE provided the Respondent with confirmation that the Return to Compliance Plan may meet the requirements for a minor modification under R 299.9519(5)(xii) and identified several deficiencies with the Return to Compliance Plan ("Review of EQ Detroit Return to Compliance Plan"). The deficiencies identified by EGLE were to be resolved when submitting the final Construction Quality Assurance Report and Professional Engineer Certification ("Tank System Repair and Like-Kind Replacement Engineering and Certification Report" or "Certification Report"). The Respondent was to conduct work in accordance with the Return to Compliance Plan and resolve the deficiencies identified in the Review of Return to Compliance Plan when submitting the Certification Report. On April 25, 2024, the Respondent submitted the Certification Report to EGLE for review and approval, documenting the work completed and included an independent professional engineer's certification stamp and statement indicating the tank system repairs and/or like-kind replacement were conducted in accordance with approved plans and specifications; and the tank systems now comply with the requirements set forth in R 299.9615 and 40 CFR 264, Subpart J. On May 20, 2024, EGLE provided comments on the Certification Report to the Respondent. On June 10, July 5, and July 10, 2024, the Respondent submitted updates to the Certification Report that were responsive to EGLE's comments. On July 12, 2024, EGLE conditionally approved the Respondent's Certification Report.
- 2.2 By no later than thirty (30) days after the effective date of this Order, the Respondent shall submit to EGLE the plans and specifications for the upgrade and replacement of



Tanks 701 through 706 at the Facility in compliance with R 299.9615 and 40 CFR 264, Subpart J ("Tank System Upgrade Plan") for review and approval. The Respondent shall, at a minimum, provide the following information:

- a. A detailed narrative and engineering drawings for replacement of the tank systems (e.g., vaults, primary steel, leak detection, secondary containment) to ensure compliance with the requirements contained in R 299.9615 and 40 CFR 264, Subpart J.
- b. The information required by R 299.9519(10).
- c. Discussion of the design strategy and the design basis, including:
  - i. Objectives;
  - ii. Compliance with all applicable standards, including, but not limited to, 40 CFR 264.193;
  - iii. Description of assumptions made and detailed justification of these assumptions for both design and construction; and,
  - iv. Construction schedules reflecting completion of construction no later than three (3) years following EGLE's approval of a major modification or issuance of a new license, as described in Paragraph 2.5.
- d. Description of contingency plans, including but not limited to unforeseen cracks in the existing concrete vault that are too big to seal or the observation of unknown substances.
- e. Specifications and quality assurance methods for both materials and construction.
- f. Final inspection methodology.
- g. Reporting requirements, including but not limited to, how any unforeseen issues or changes will be reported to EGLE.
- h. Capacity calculations for each tank and secondary containment.
- i. Updated documentation:
  - i. Closure Plan;
  - ii. Financial assurance for closure; and,
  - iii. Inspection Schedule.
- j. Appendices including:
  - i. Calculations needed to demonstrate compliance with R 299.9615 and 40 CFR 264, Subpart J;
  - ii. Results of laboratory or field tests; and,



iii. Safety Data Sheets.

- 2.3 By no later than forty-five (45) days after completion of the work detailed in the plans and specifications provided in Paragraph 2.2 and approved by EGLE, the Respondent shall submit a "Tank System Upgrade Engineering and Certification Report" to EGLE for review and approval, documenting the work completed and including an independent professional engineer's certification stamp and statement indicating the tank system upgrades were conducted in accordance with approved plans and specifications; and the tank systems comply with the requirements set forth in R 299.9615 and 40 CFR 264, Subpart J. All certification statements shall comply with 40 CFR 270.11.
- 2.4 The Respondent shall not return any tank system to use for hazardous waste treatment or solid waste processing following the repair or like-kind replacement described in Return to Compliance Plan until EGLE has reviewed and approved the Tank System Repair and Like-Kind Replacement Engineering and Certification Report. The Respondent will be authorized to resume non-hazardous solid waste processing and hazardous waste treatment operations in Tanks 702, 703, and 704 in accordance with its current licenses and the requirements of this Order seven (7) calendars days after the effective date of this Order.
- 2.5 The Respondent shall not return any tank system to use for hazardous waste treatment following the upgrade and replacement described in the Tank System Upgrade Plan and Tank System Upgrade Engineering and Certification Report until EGLE has completed the process set forth for major modifications to the Hazardous Waste Operating License in R 299.9511 and R 299.9519, or the process set forth for approval of the Operating License Application in R 299.9510, R 299.9511, and R 299.9515, that is currently under review; and provided final approval of the certification to the Respondent.
- 2.6 Enhancements to the Facility's pre-acceptance processes for hazardous waste handling and treatment (as incorporated into the Waste Analysis Plan [WAP]) are required to resolve violations cited in the EN. On May 17, 2024, the Respondent submitted the *EQ Detroit Inc. Enhanced Pre-acceptance Procedures* document ("Enhanced Pre-acceptance Procedures") for EGLE review and approval. The Enhanced Pre-acceptance Procedures includes additional actions the Respondent will take to



determine if a hazardous waste shipment is acceptable for processing at the Facility. The Enhanced Pre-Acceptance Procedures shall not be construed as the only updates required by EGLE for full WAP approval as part of the Hazardous Waste Operating License renewal application but are the updates that are necessary to allow the Respondent to resume hazardous waste treatment operations in the tank systems. On and after the effective date of this Order, the Respondent shall implement the Enhanced Pre-acceptance Procedures and any modifications thereto required by EGLE in accordance with Section III, Approval of Submittals, of this Order.

- 2.7 By no later than thirty (30) days after the effective date of this Order, the Respondent shall submit revised daily inspection forms for liquid accumulation in containment areas and sumps, and the condition of all container storage containment systems. The inspection forms shall include, but not be limited to, descriptions of conditions that are deemed acceptable or unacceptable, and immediate steps that will be taken if unacceptable conditions are observed. Within thirty (30) days of EGLE's approval of the revised inspections forms, the Respondent shall provide staff training to ensure proper implementation of the required inspections. Documentation of training shall be maintained by the Respondent and provided to EGLE upon request.
- 2.8 By no later than thirty (30) days after the effective date of this Order, the Respondent shall submit to EGLE for review and approval, a detailed plan and updated inspection forms for inspection of the tank systems that conforms to 40 CFR 265.195, and includes, but is not limited to, the following:
- a. Daily inspection: a detailed plan and updated inspection form for the daily inspection of the tank systems, including secondary containment and interstitial space areas that are externally accessible, and leak detection system to ensure proper function; methods to identify acceptable and unacceptable conditions, and what immediate steps will be taken if unacceptable conditions are present.
  - b. Annual inspections: a detailed plan and updated inspection form for the emptying of the tank systems to conduct visual and quantitative leak testing on an annual basis; and a detailed plan for corrective action if there are deficiencies noted during any inspection. The Respondent shall provide no less than three (3)



business days of notice to EGLE prior to the annual emptying of any tank system for inspection purposes.

- c. Training: within thirty (30) days of EGLE's approval of the revised inspection plan and forms, the Respondent shall provide staff training to ensure proper implementation of the required inspections. Documentation of training shall be maintained by the Respondent and provided to EGLE upon request.

- 2.9 On November 10, 2023, the Respondent notified EGLE that it had completed repairs to the Hazardous Waste Container Storage Areas in the Chemical Fixation Building so that the containment area complies with the requirements set forth in the Hazardous Waste Operating License, R 299.9614 and 40 CFR 264.175. EGLE reviewed the repairs and found no deficiencies.
- 2.10 After the effective date of this Order, on no less than an annual basis, the Respondent shall clear the Hazardous Waste Container Storage Areas and the Used Oil Processing Secondary Containment System of all containers and conduct a comprehensive inspection of the surfaces ("Comprehensive Surface Inspection"). The inspection may be performed in stages but must allow for visual inspection of each section of the entire surface on no less than an annual basis. The Respondent shall provide no less than three (3) business days of notice to EGLE prior to clearing any portion of the storage areas to allow for the Comprehensive Surface Inspection. If deficiencies are documented during any inspection, the Respondent shall provide a narrative of repairs to be performed and a schedule for repair of all deficiencies to EGLE. The Respondent shall complete the repairs on a schedule which ensures that the deficiency(s) does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, then repairs and a remedy shall be implemented immediately. The Respondent shall provide EGLE a written notice when any repair is completed pursuant to this paragraph.
- 2.11 On and after the effective date of this Order, the Respondent shall comply with the most currently approved WAP and WAP enhancements approved by EGLE.



- 2.12 On and after the effective date of this Order, the Respondent shall inspect and maintain the Hazardous Waste Container Storage Areas in compliance with this Order and the Hazardous Waste Operating License, R. 299.9614, and 40 CFR 264.175.
- 2.13 On and after the effective of this Order, the Respondent shall inspect and maintain the Used Oil Processing Secondary Containment System that is used to store used oil and liquid industrial by-products in compliance with 40 CFR 279.54(c)(2).
- 2.14 On and after the effective date of this Order, the Respondent shall comply with R 299.9519, and shall give notice to the MMD Director as required by the Part 111 Rules prior to any planned physical alterations or additions to the Facility.
- 2.15 On and after the effective date of this Order, the Respondent shall comply with the waste characterization requirements of R 299.9302 and the Hazardous Waste Operating License; and ensure all waste shipped off site is disposed of in compliance with Part 111, the Part 111 Rules, the RCRA, Part 115, and the Part 115 Rules.
- 2.16 On and after the effective date of this Order, the Respondent shall comply with the requirements for LDR set forth in 40 CFR 268 and R 299.9627.
- 2.17 On and after the effective date of this Order, the Respondent shall maintain and operate the facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to the environment, including air, soil, or waters of the State which could threaten human health or welfare or the environment. R 299.9602, R 299.9604, R 299.9606, R 299.9607, and 40 CFR 264.31 and 264.51.
- 2.18 On and after the effective date of this Order, the Respondent shall comply with the General Inspection Requirements of the Hazardous Waste Operating License and 40 CFR 264.15.
- 2.19 On and after the effective date of this Order, the Respondent shall comply with the Condition of Containers provisions of the Hazardous Waste Operating License, 40 CFR



264.171 and R 299.9614(1)(a) and shall transfer hazardous waste from any container that is not in good condition to a container that is in good condition.

- 2.20 On and after the effective date of this Order, the Respondent shall only place containers of hazardous waste in the hazardous waste container storage area specified in the Hazardous Waste Operating License or an alternate configuration approved by the MMD Director. R 299.9521(3)(b).
- 2.21 On and after the effective date of this Order, the Respondent shall keep all containers holding hazardous waste closed during storage except when it is necessary to add or remove waste, and shall not open, handle, or store containers in a manner which may rupture the containers or cause them to leak. R 299.9614 and 40 CFR 264.173.
- 2.22 On and after the effective date of this Order, the Respondent shall label or clearly mark all hazardous waste in the container storage areas with the words "Hazardous Waste," the hazardous waste number, and the date it was accepted for storage so that compliance with the one-year storage limit can be assessed. The labels on each container shall be visible for inspection. R 299.9521(3)(b), R 299.9614, R 299.9627, and 40 CFR §268.50(a)(2)(i).

**Groundwater Investigation, Monitoring, and Corrective Action**

- 2.23 As of July 14, 2023, EGLE approved with conditions the Hydrogeological Evaluation Work Plan ("Hydrogeological Evaluation Work Plan") submitted by the Respondent on June 7, 2023. The Respondent conducted the work in accordance with the schedule specified in the conditionally approved Hydrogeological Evaluation Work Plan.
- 2.24 As of January 5, 2024, EGLE approved with conditions the Expanded Hydrogeological Evaluation Work Plan ("Expanded Hydrogeological Evaluation Work Plan") submitted by the Respondent on November 22, 2023. The Respondent conducted the work specified in the Expanded Hydrogeological Evaluation Work Plan, and subsequently submitted the *Expanded Hydrogeological Evaluation Summary Report* ("Summary Report") on April 1, 2024 for EGLE review and approval. EGLE will review the Summary Report in accordance with Section III, Approval of Submittals, of this Order. An approvable



Summary Report shall contain sufficient detail to demonstrate compliance with the approved with conditions Expanded Hydrogeological Evaluation Work Plan, R 299.9506; and shall include the following information, at a minimum:

- a. A narrative of the groundwater investigation work completed.
- b. Sample analytical results in narrative and tabular form, and laboratory data packages including results and batch quality control data.
- c. Soil boring, well construction, and piezometer logs including surface and top of casing elevations in feet above mean sea level.
- d. Detailed cross sections depicting the subsurface conditions at the Facility, including groundwater flow and identification of the upper most monitorable unit(s) across the Facility, if applicable.
- e. A figure that includes groundwater contours of the Facility and list static water levels.
- f. Recommendations for additional investigation activities, as necessary.
- g. Any deviations from the work plan.
- h. Monitor well field data sheets with well purging and stabilization data.
- i. A detailed evaluation and analysis of the perimeter drainage system adjacent to the tank systems and a report summarizing any operation of the system to date.

2.25 Within sixty (60) days after EGLE's approval of the Expanded Hydrogeological Evaluation Summary Report described in Paragraph 2.24, the Respondent shall submit a Hydrogeological Monitoring Program ("HMP") for the Facility as required by R 299.4504(1)(a) for EGLE review and approval. The Respondent shall provide sufficient detail in the HMP to also comply with the requirements of R 299.9611 and 299.9612; and shall address the following items, at a minimum:

- a. Identify saturated and unsaturated geologic units and fill materials that overlie the uppermost aquifer, materials that comprise the uppermost aquifer, and materials that comprise the confining unit defining the lower boundary of the uppermost aquifer, including all of the following information: thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities, and effective porosities.
- b. A proposed groundwater monitoring well system addressing, with justification, each of the following items:
  - i. Well locations and depths. There shall be a sufficient number of wells and piezometers installed to appropriate depths to represent groundwater



quality in the vicinity of the disposal area including the uppermost aquifer and any geologic units and fill materials that overlie the uppermost aquifer.

- ii. Well design including casing, backfill, sealing, screened depth, and materials of construction. Include requirements for labeling, venting, capping, locking and protecting wells from damage. Well construction logs must be submitted to EGLE.
  - iii. Procedures for measuring and recording the groundwater elevation at each well and determination of groundwater flowrate and direction for each sampling event.
  - iv. A list of constituents or parameters to be sampled and the frequency of sampling.
  - v. Sampling and analysis procedures to be used for each analyte.
  - vi. Procedures and techniques for:
    - Sample collection.
    - Sample preservation and shipment.
    - Analytical methods and method detection limits.
    - Chain of custody control.
    - Laboratory and field quality control and assurance procedures.
    - Preventing cross contamination of wells during installation, purging and sampling.
- c. Methods for establishing the quality of background groundwater, which has not been affected by leakage from the disposal area, for the uppermost aquifer and geologic units and fill materials that overlie the uppermost aquifer. The number of samples collected to establish groundwater quality data shall be consistent with the statistical procedures approved by EGLE for evaluating data.
- d. Selection and justification for statistical procedures for evaluating data. The statistical methods used to evaluate groundwater quality data must:
- i. Be appropriate for the distribution of chemical parameters or hazardous constituents being evaluated.
  - ii. Be conducted separately for each hazardous constituent at each well.
  - iii. Be protective of human health and the environment.
  - iv. Include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data, if necessary.



- v. Be approved by EGLE as an acceptable statistical method.
- e. Identification of statistically significant increases over background for each monitoring parameter at each well.
- f. Requirements for submittal of quarterly reports on groundwater sampling and statistical analysis to EGLE for review within 30 days of the end of each calendar quarter.

- 2.26 On May 1, 2024, the Respondent submitted an Operations and Maintenance Plan ("Operations and Maintenance Plan") for the perimeter drainage system to EGLE for review and approval. EGLE will review the Operations and Maintenance Plan in accordance with Section III, Approval of Submittals, of this Order. An approvable Operations and Maintenance Plan shall include, but not be limited to, the following:
- a. A description of equipment and procedures for operating the system, including: pumping location(s), pump specifications/discharge capacity, pump on/off elevations and method for determining liquid level at pump location, pump forcemain discharge location, requirements for sampling and discharge or offsite disposal of pump effluent, methods for recording pump discharge flowrates and volumes;
  - b. A description of methods to be used to conduct routine maintenance of the system and on what frequency;
  - c. A description of routine inspections and testing that will be performed to ensure proper function and operation of the system, including inspection forms to be used;
  - d. A performance monitoring plan for the effectiveness of the system in dewatering the shallow fill geologic unit present in the vicinity of the Chemical Fixation treatment building; and,
  - e. A description of corrective actions that will be taken if unacceptable system performance is observed or repairs are needed, including replacement equipment to be maintained at the Facility.
- 2.27 If the results of any hydrogeological evaluation or HMP implementation indicate that a release of a contaminant, as defined in Part 111 ("Contaminant"), has occurred from any waste management unit at the Facility, then the Respondent shall implement corrective action in compliance with the Hazardous Waste Operating License, MCL 324.11115a,



and R 299.9629, regardless of when the Contaminant may have been placed. To the extent that a release of a hazardous substance, as defined in MCL 324.20101(x), is not also a Contaminant, and is discovered while performing corrective action, then the Respondent shall take concurrent actions as necessary to address Part 201 remedial obligations for that release. The Respondent shall comply with the financial assurance requirements for corrective action, as specified in the Hazardous Waste Operating License, R 299.9712 and R 299.9713.

### **Odor Control**

- 2.28 EGLE and the Respondent agree that the work described in this paragraph is not incorporated in this Order to resolve specific violations described in the VNs or EN. MMD Order No. 115-06-2020 ("Part 115 Order") requires the Respondent to make updates to the Facility's Odor Control Plan ("Odor Control Plan") when odors from the Facility are not reasonably controlled. The source of odors originating from the Facility may be a function of solid waste treatment or hazardous waste treatment operations. Within one hundred and eighty (180) calendar days after the resumption of solid or hazardous waste treatment operations, the Respondent agrees to submit to EGLE a completed Feasibility Study for Engineering Controls ("Feasibility Study") for implementation of additional emission control technology at the Chemical Fixation building for the purpose of controlling odors. The 180 days shall begin from the first day of solid waste treatment operations or hazardous waste treatment operations, whichever occurs first. The Feasibility Study shall be performed by a qualified third party with experience and expertise in conducting odor studies and implementing odor control technologies. The Feasibility Study shall include the following details, at a minimum:
- a. A description of one or more odor control technologies that may be implemented;
  - b. Ranking of each of the technologies for long term effectiveness, ease of implementation and maintenance, and cost;
  - c. Initial draft recommendation of the preferred technology(ies), if any, and recommended course of action and next steps.

The Respondent shall schedule a date and time to meet with EGLE to discuss the Feasibility Study within sixty (60) days after submittal.



### Quarterly Reports

- 2.29 On and after the effective date of this Order, the Respondent shall submit a Quarterly Summary Report to EGLE by the 15<sup>th</sup> of the month following the end of each calendar quarter (e.g., January 15, April 15, July 15, and October 15). The Respondent shall provide quarterly progress reports to EGLE detailing work performed to date as required by this Order, data collected including laboratory reports, analysis of the results, problems encountered, and updates to schedules that were included with submittals required by Section II, Compliance Program, of this Order. If other provisions of the Order require a specific submission schedule or report, the Respondent may provide an abbreviated status summary update in the Quarterly Summary Report to avoid duplicative reporting. The Respondent and EGLE may agree to less frequent progress reporting pursuant to the provisions of Section IV of this Consent Order.

### III. APPROVAL OF SUBMITTALS

- 3.1 For any work plan, proposal, schedule, report, or other document and the attachments thereto (collectively, "Submittal"), excluding an application for a permit or license, that is required by this Order to be submitted to EGLE by the Respondent, and subsequently approved by EGLE, the following process and terms of approval shall apply.
- 3.2 To be approved by EGLE, any Submittal required by this Order shall be complete and technically adequate such that the Submittal meets any applicable statutory and regulatory requirements and the specific terms of this Order.
- 3.3 EGLE may approve, disapprove, or approve in part, any Submittal required by this Order that requires approval by EGLE. Any Submittal required by this Order shall be, upon approval or approval with specific modifications, incorporated into this Order and enforceable in accordance with the terms of this Order.
- 3.4 If any Submittal needs to be modified before EGLE will approve it, EGLE will notify Respondent, in writing, and specify the modifications required to be made to such Submittal and the specific reasons for such modifications prior to approval. Respondent



will have thirty (30) calendar days to send a modified Submittal for EGLE's review.

- 3.5 In the event EGLE disapproves a Submittal, EGLE 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 that adequately addresses the reasons for such disapproval unless EGLE'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 stipulated penalties as set forth in Section VIII, Fine, Costs, Penalties, and Oversight Costs of this Order. The accrual of stipulated penalties shall commence on the date Respondent is notified by EGLE that the revised Submittal is not approvable and that EGLE intends to begin accruing stipulated penalties. Stipulated penalties will accrue from that date until the date EGLE receives an approvable revised Submittal from the Respondent.
- 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) required by this Order.
- 3.8 No informal advice, guidance, suggestions, or comments by EGLE regarding any Submittal or any other writing submitted by the Respondent shall be construed as relieving the Respondent of the obligation to obtain written approval from EGLE, if and when required by this Order.

#### IV. MODIFICATIONS AND EXTENSIONS

- 4.1 At the request of the Respondent, any Submittal approved or approved with specific modifications, with the exclusion of the specified deadlines set forth in Section II, Compliance Program, of this Order, may be modified by the MMD Hazardous Waste Section Manager or the MMD District Supervisor ("District Supervisor"). The specified deadlines set forth in Section II of this Order may only be extended by the Division



Director following the process set forth in Paragraphs 4.2 through 4.5 of this Order, below.

- 4.2 The Respondent and EGLE agree that the Division Director may, but in no circumstances is obligated to, grant the Respondent an extension of the specified deadlines set forth in this Order. Any extension of a deadline shall be preceded by a timely written request, received by EGLE no later than ten (10) business days prior to the pertinent deadline, which shall include:
- a. An identification of the specified deadline(s) of this Order that will not be met.
  - b. A detailed description of what will prevent the Respondent from meeting the deadline(s).
  - c. A description of the measures the Respondent has taken and/or intends to take to meet the required deadline(s).
  - d. The length of the extension requested and the specific date(s) on which the obligation(s) will be met.
- 4.3 The Respondent and EGLE agree that the Respondent may submit a request for modification if one or more requirements of this Order are completed, should be modified, or should no longer be in force. The Respondent shall provide any request for modification to EGLE in writing and shall include a description of the specific requirements that are completed, require modification, or should no longer be in force.
- 4.4 The Division Director shall respond promptly to such requests and shall not unreasonably withhold approval for such requests.
- 4.5 Any extension of the specified deadlines or other modifications and amendments of this Order shall require a formal written amendment of this Order. A modification or an amendment of this Order shall be signed by authorized signatories for the Respondent and EGLE ("Parties"); shall become effective on the date signed by the Division Director;



and upon becoming effective, shall be incorporated into this Order and enforceable in accordance with the terms of this Order.

## V. REPORTING

- 5.1 The Respondent shall electronically submit all items required in Section II, Compliance Program, that are subject to Part 111, the Part 111 Rules, the Hazardous Waste Operating License, and the RCRA, to the following, unless specifically directed otherwise within this Order.

- a. Section Manager, Hazardous Waste Section, MMD, EGLE,  
[TysonK@Michigan.gov](mailto:TysonK@Michigan.gov); and
- b. District Supervisor, Warren District Office, MMD, EGLE,  
[CarnegieM@Michigan.gov](mailto:CarnegieM@Michigan.gov)

The Respondent shall electronically submit all items required in Section II, Compliance Program, that are subject to Part 115, the Part 115 Rules, and the Solid Waste Operating License to Assistant District Supervisor, Warren District Office, MMD, EGLE, [MorrowG@Michigan.gov](mailto:MorrowG@Michigan.gov). If hard copies are required for any submittal, the Respondent shall submit the items, as described above, to Section Manager, Hazardous Waste Section, MMD, EGLE P.O. Box 30241, Lansing, Michigan 48909-7741; or District Supervisor/ Assistant District Supervisor, MMD, EGLE, Warren District Office, 27700 Donald Court, Warren, Michigan 48092-2793. The cover letter with each submittal shall identify the specific paragraph(s) and requirement(s) 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.

- 5.2 The Respondent shall verbally report any violation(s) of the terms and conditions of this Order to the Hazardous Waste Section Manager and 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 ten (10) 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.

#### VI. RETENTION OF RECORDS

- 6.1 Upon request by an authorized representative of EGLE, the Respondent shall make available to EGLE all records, plans, logs, and other documents required to be maintained under this Order or pursuant to Part 111, Part 115, and the Part 111 and Part 115 Rules. All such documents shall be retained at the Facility identified in Section I, Stipulations, of this Order or an alternate location approved in writing by EGLE 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 111, Part 115, and the Part 111 and Part 115 Rules.

#### VII. RIGHT OF ENTRY

- 7.1 The Respondent shall allow any authorized representative or contractor of EGLE, 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 Order. This paragraph in no way limits the authority of EGLE to conduct tests and inspections pursuant to the NREPA and its rules or any other applicable statutory provision. Nothing herein shall be construed as a waiver of any of Respondent's rights under NREPA or constitutions of the State of Michigan or the United States.

#### VIII. FINE, COSTS, PENALTIES, AND OVERSIGHT COSTS

##### Fine, Costs and Penalties

- 8.1 Within thirty (30) days of the effective date of this Order, the Respondent shall pay the sum of **\$34,225** to the State of Michigan in partial settlement of EGLE's claim for a civil fine arising from the violations alleged in the above-referenced VNs and EN.



- 8.2 Within thirty (30) days of the Effective Date of this Order, the Respondent shall pay the sum of **\$24,307** to the State of Michigan in partial compensation of EGLE's claim for the costs of surveillance and enforcement arising from the violations alleged in this Order.
- 8.3 By no later than ninety (90) days after the effective date of this Order, the Respondent shall establish an escrow account ("Escrow Account") to the benefit of EGLE and in accordance with an escrow agreement in a form approved by EGLE ("Escrow Agreement"). The Escrow Account shall be funded for the full monetary value of **\$927,423**. The Respondent shall be responsible for all costs, fees and expenses associated with establishing and maintaining the Escrow Account.
- 8.4 The Respondent may choose to submit to EGLE one or more proposed Supplemental Environmental Project (SEP) to offset the monetary penalty held in the Escrow Account. The Respondent shall submit to EGLE all proposed SEP plan(s), including implementation schedules, within three hundred and sixty-five (365) days of the effective date of this Order. The Respondent shall submit all proposed SEP plans to EGLE in accordance with the submittal procedures described in Section III, Approval of Submittals, of this Order. All approved SEP plans, including implementation schedules and proposed SEP expenditures, shall become enforceable under this Order. The Respondent may disperse corresponding monetary funds maintained in the Escrow Account to fund all EGLE-approved SEPs, and in accordance with the Escrow Agreement. The Respondent shall provide a narrative and summary of expenditures to date for implementation of all EGLE-approved SEPs in the quarterly progress reports required by Paragraph 2.29.
- 8.5 The Respondent shall cause the corresponding funds in the Escrow Account to be released and paid as a monetary penalty, if the Respondent chooses not to submit any SEP plan(s) to EGLE, or if EGLE declines to approve a SEP plan(s) to offset a portion or all of the monetary value of the Escrow Account. The Respondent shall cause the corresponding funds to be released and paid in accordance with the procedures described in Paragraph 8.8. The Respondent shall release the corresponding funds from the Escrow Account by no later than thirty (30) days after informing EGLE, in writing, that a SEP plan(s) will not be submitted; or EGLE informs the Respondent, in



writing, that a SEP plan(s) is denied or does not fully offset the monetary value of the Escrow Account.

8.6 Each failure to comply with the provisions of Section II, Compliance Program, of this Order, shall subject the Respondent to stipulated penalties, which EGLE may seek by sending a written demand for stipulated penalties.

a. The following stipulated penalties shall accrue per day of violation of each of the requirements identified in Paragraphs 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 2.24, 2.25, 2.26, 2.27, and 2.29:

<u>Penalty Per Day of Violation</u>	<u>Period of Noncompliance</u>
\$1,000	Days 1 through 7
\$1,500	Days 8 through 14
\$2,000	Day 14 and beyond

b. The following stipulated penalties shall accrue per day of violation of each of the requirements identified in Paragraphs 2.10, 2.11, 2.12, 2.13, 2.14, 2.15, 2.16, 2.18, 2.19, 2.20, 2.21 and 2.22:

<u>Penalty Per Day of Violation</u>	<u>Period of Noncompliance</u>
\$5,000	Days 1 through 7
\$7,000	Days 8 through 14
\$10,000	Day 14 and beyond

c. The following stipulated penalties shall accrue per day of violation of each of the requirements identified in Paragraph 2.17:

<u>Penalty Per Day of Violation</u>	<u>Period of Noncompliance</u>
\$25,000	Each day of violation

d. A stipulated penalty of \$500 per violation per day shall accrue for each violation of any approved SEP plan(s), including the implementation schedule. If the Respondent fails to expend the entire amount of the required expenditures for any approved SEP plan but has completed them, then the Respondent shall pay a stipulated penalty equal to the difference between the required expenditures and any eligible project dollar amounts expended to implement the projects. Alternatively, the Respondent may submit to EGLE for review and approval



pursuant to Section III, Approval of Submittals, a proposal to spend the difference on an additional SEP or a revision(s) to an approved SEP.

- e. For each failure to comply with any other provision of this Order not specified in Paragraphs 8.6a through 8.6d, the Respondent shall pay stipulated penalties of \$500 per violation per day for each day of violation. The Respondent will not be subject to the stipulated penalty provisions of this paragraph for a violation, act, or omission that has been assessed one or more stipulated penalties under Paragraphs 8.6a through 8.6d.

Stipulated penalties shall be paid within thirty (30) calendar days after receiving a written demand made by EGLE.

- 8.7 To ensure timely payment of any monetary amounts due under this Order, the Respondent shall pay an interest penalty upon demand 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(8) of the Revised Judicature Act, 1961 PA 236, as amended, MCL 600.6013(8), using the full increment of amount due as principal, and calculated from the date the payment was due until the date the delinquent payment and any interest penalty is finally made in full.
- 8.8 The Respondent shall make all monetary payments required under this Section by check made payable to the "State of Michigan" and mailed to the following address:

Michigan Department of Environment, Great Lakes, and Energy  
Accounting Services Division, Cashier's Office  
P.O. Box 30657  
Lansing, Michigan 48909-8157

or hand delivered to the Accounting Services Division, 1<sup>st</sup> Floor, Van Wagoner Building, 425 West Ottawa Street, Lansing, Michigan 48933. To ensure proper credit, all payments made pursuant to this Order shall include the Payment Identification Number "**RMD60023**" on the front of the check.



Alternatively, the Respondent may make all payments required under this Section electronically using the ACH Network.

- 8.9 The Respondent agrees not to contest the legality of the civil fine or the costs of surveillance and enforcement assessed pursuant to this Section. The Respondent agrees not to contest the legality of any stipulated penalties or interest penalties assessed pursuant to this Section but reserves the right to dispute the factual basis upon which a demand for any stipulated penalties or interest penalties is made by EGLE.
- 8.10 Liability for, or payment of, stipulated penalties or interest penalties pursuant to this Order shall not preclude the State of Michigan from seeking injunctive relief or other relief for the Respondent's failure to comply with the requirements of this Order and/or any license(s) or permit(s) required to comply with this Order. EGLE may, at its sole discretion and in appropriate circumstances, waive the requirement to pay stipulated penalties or interest penalties under this Section.

#### **Oversight Costs**

- 8.11 The Respondent shall reimburse EGLE for Oversight Costs lawfully incurred while performing any corrective action or remedial action oversight of activities conducted by the Respondent pursuant to Paragraph 2.27 of this Order. As soon as possible after each anniversary of the effective date of this Consent Order, EGLE will provide the Respondent with a written demand for Oversight Costs incurred by EGLE. Any such demand shall state with reasonable specificity the nature of the Oversight Costs incurred. The Respondent may review EGLE's underlying Oversight Costs documentation, which specifically details the basis for each Oversight Cost. The Respondent shall reimburse EGLE for such Oversight Costs within thirty (30) days of receipt of a written demand from EGLE or receipt of underlying documentation, whichever occurs later, unless the Respondent challenges the demand for Oversight Costs pursuant to the dispute resolution procedures set forth in Section IX, Dispute Resolution. Any Oversight Costs paid by the Respondent shall not be deemed to be stipulated penalties or monetary penalties under this Consent Order. The Respondent shall pay the Oversight Costs -and any interest accrued due to late payment of these amounts - by check made payable to the "State of Michigan – Environmental Pollution



Prevention Fund." Payment must be mailed to the Department of Environment, Great Lakes and Energy Revenue Control Unit, P.O. Box 30657, Lansing, Michigan 48909-8157, or hand delivered to EGLE, Revenue Control Unit, 1st Floor, Van Wagoner Building, 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 **RMD5009**. All payments shall reference the Facility, the Respondent's name and address, and this Consent Order number. A copy of the transmittal letter and the check shall be provided simultaneously to the Hazardous Waste Section, Department of Environment, Great Lakes, and Energy, Materials Management Division, P.O. Box 30241, Lansing, Michigan 48909-7741. Oversight Costs recovered pursuant to this Section shall be deposited into the Environmental Pollution Prevention Fund in accordance with the provisions of MCL 324.11130.

#### IX. DISPUTE RESOLUTION

- 9.1 Unless otherwise provided in this Order, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Order and shall apply to all provisions of this Order. However, the procedures set forth in this Section shall not apply to actions by the State of Michigan to enforce obligations of the Respondent that have not been disputed in accordance with this Section. Engagement of a dispute resolution between the Parties shall not be cause for the Respondent to delay the performance of any compliance requirements or response activity.
- 9.2 Any dispute that arises under this Order shall in the first instance be the subject of informal negotiations between the MMD and Respondent. The period of negotiations shall not exceed twenty (20) business days from the date of written notice by any Party that a dispute has arisen, unless the time period for negotiations is modified by a written agreement between the Parties. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of dispute. If an agreement cannot be reached on any issue(s) within the twenty (20) business day period, EGLE shall provide a written statement of its decision to the Respondent, and in the absence of initiation of formal dispute resolution by the Respondent under Paragraph 9.3, EGLE's position, as outlined in its written statement of decision, shall be binding on the Parties.



- 9.3 If the Respondent and EGLE cannot informally resolve a dispute under Paragraph 9.2, the Respondent may initiate formal dispute resolution by requesting a review of the disputed issue(s) by the Division Director. This written request must be filed with the Division Director within fifteen (15) business days of the Respondent's receipt of EGLE's statement of decision that is issued at the conclusion of the informal dispute resolution procedure set forth in Paragraph 9.2. The Respondent's request shall state the issue(s) in dispute; the relevant facts upon which the dispute is based; any factual data, analysis, or opinion supporting its position; and all supporting documentation upon which the Respondent bases its position. Within fifteen (15) business days of the Division Director's receipt of the Respondent's request for a review of disputed issue(s), the Division Director will provide EGLE's Statement of Decision, in writing, to the Respondent, which will include a statement of his/her understanding of the issue(s) in dispute; the relevant facts upon which the dispute is based; any factual data, analysis, or opinion supporting her/his position; and all supporting documentation relied upon by the Division Director's review of the disputed issues. The time period for the Division Director's review of the disputed issues may be extended by written agreement of the Parties. EGLE's Statement of Decision shall be binding on the Parties.
- 9.4 An administrative record of the dispute shall be maintained by EGLE. The administrative record shall include all of the information provided by the Respondent pursuant to Paragraph 9.3, as well as any other documents relied upon by EGLE in making its final decision pursuant to Paragraph 9.3. Where appropriate, EGLE shall allow submission of supplemental statements of position by the Parties to the dispute.
- 9.5 In proceeding on any dispute, the Respondent shall have the burden of demonstrating on the administrative record that the position of EGLE is arbitrary and capricious or otherwise not in accordance with law. In proceedings on any dispute initiated by the Respondent, the Respondent shall bear the burden of persuasion on factual issues to support its position by a preponderance of the evidence.
- 9.6 Notwithstanding the invocation of dispute resolution proceedings, stipulated penalties shall accrue from the first day of any failure or refusal to comply with any term or condition of this Order, but payment shall be stayed pending resolution of the dispute.



Stipulated penalties shall be paid within thirty (30) days after the resolution of the dispute. The Respondent shall pay that portion of a demand for payment of stipulated penalties that is not subject to dispute resolution procedures in accordance with and in the manner provided in Section VIII, Fine, Costs, Penalties, and Oversight Costs of this Order.

#### X. FORCE MAJEURE

- 10.1 The Respondent shall perform the requirements of this 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 the Respondent's obligations under this Order in accordance with this Section.
- 10.2 For the purpose of this Order, "Force Majeure" means an occurrence or nonoccurrence arising from causes not reasonably foreseeable, beyond the control of, and without the fault of the Respondent, such as: an Act of God, untimely review of permit applications or submissions by EGLE or other applicable authority, and acts or omissions of third parties that could not have been avoided or overcome by the Respondent's diligence and that delay the performance of an obligation under this 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 Respondent's actions or omissions.
- 10.3 The Respondent shall notify EGLE, by telephone, within forty-eight (48) hours of discovering any event that causes a delay in its compliance with any provision of this Order. Verbal notice shall be followed by written notice within ten (10) calendar days and shall describe, in detail, the anticipated length of delay, the precise cause or causes of delay, the measures taken by the Respondent to prevent or minimize the delay, and the timetable by which those measures shall be implemented. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay.
- 10.4 Failure of the Respondent to comply with the notice requirements of Paragraph 10.3, above, shall render this Section void and of no force and effect as to the particular



incident involved. EGLE may, at its sole discretion and in appropriate circumstances, waive the notice requirements of Paragraph 10.3.

- 10.5 If the Parties to this Order agree that the delay or anticipated delay was beyond the control of the Respondent, this may be so stipulated and the Parties to this Order may agree upon an appropriate modification of this Order. If the Parties to this Order are unable to reach such agreement, the dispute shall be resolved in accordance with Section IX, Dispute Resolution, of this Order. The burden of proving that any delay was beyond the reasonable control of the Respondent, and that all the requirements of this Section have been met by the Respondent, is on the Respondent.
- 10.6 An extension of any given compliance date based upon a particular incident does not necessarily mean that the Respondent 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 expressly addressed and resolved by this Order, EGLE reserves the right to pursue any other remedies to which it is entitled for any failure to comply with the requirements of any state or federal law, including the NREPA and its rules.
- 11.2 After the effective date of this Order, if EGLE or Michigan Department of Attorney General ("MDAG") initiates any administrative or judicial proceeding for injunctive relief, recovery of response activity costs, or other appropriate relief relating to the Facility, the Respondent agrees not to assert and shall not maintain any defenses or claims that are based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, or claim splitting, or that are based upon a defense that contends any claims raised by EGLE or the MDAG in such a proceeding were or should have been brought in this Order.
- 11.3 Execution of the schedule contained in this Order shall not be construed to waive, estop, or otherwise diminish EGLE's right to seek or impose civil liability upon, and seek



appropriate relief from, the Respondent for degradation of waters of the State of Michigan and the designated uses thereof arising out of the failure of the Respondent to achieve a proper cleanup pursuant to this Order.

- 11.4 This Order does not constitute a warranty or representation of any kind by EGLE that the response activities performed in accordance with this Order or EGLE approved work plans will result in the achievement of the remedial criteria established by law, or that the response activities will ensure protection of public health, safety, welfare, or the environment.
- 11.5 This Order in no way affects the Respondent's responsibility to comply with any other applicable local, state, or federal laws or regulations including, without limitation, any corrective action or similar requirements applicable to the Facility pursuant to the NREPA and its rules.
- 11.6 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 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 EGLE and the Respondent agree that the terms and conditions of this Order will be enforceable in circuit court. EGLE and the Respondent further agree that the appropriate venue for the enforcement of this Order shall be the Circuit Court for the County of Wayne or the Circuit Court for the County of Ingham, State of Michigan.
- 11.8 If any provision or authority of this Order or the application of this Order to any party or circumstances is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Order shall remain in force and shall not be affected thereby.
- 11.9 The provisions of this Order shall apply to and be binding on the Respondent, EGLE, and their successors and assigns. The Respondent shall give notice of this Order to any prospective successor in interest prior to transfer of ownership of the Facility property, or any portion thereof, and shall promptly notify EGLE of such proposed sale or transfer.



## XII. TERMINATION

- 12.1 This Order shall remain in full force and effect for a minimum of three (3) calendar years following the effective date, and until expressly terminated by a written Notice of Termination issued by the Division Director. After three (3) calendar years and achieving full compliance with this Order, the Respondent may request that the Division Director issue a written Notice of Termination. Such a request shall consist of a written certification that the Respondent has fully complied with all of the requirements of this Order, including payment of any amounts due to the State of Michigan under this Order. Specifically, this certification shall include:
- a. The date of compliance with each provision of the compliance program in Section II, Compliance Program, of this Order and the date(s) any amounts due under Section VIII, Fine, Costs, Penalties, and Oversight Costs of this Order were paid;
  - b. If any SEPs were approved, the date of completion for all SEPs approved under this Order and a statement that the SEPs have been implemented in accordance with the approved plans;
  - c. A statement that all required information has been reported to the District Supervisor; and
  - d. Confirmation that all records required to be maintained pursuant to Section VI, Retention of Records, of this Order are being maintained at the Facility, or at an EGLE approved alternate location.
- The Division Director may request additional relevant information in order to make a determination of the Respondent's full compliance with this Order.
- 12.2 The Division Director shall issue a written Notice of Termination unless EGLE 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 Director, or has failed to comply with, or complete, all of the requirements of this Order.

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XIII. 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.

EQ Detroit, Inc.

By: STF

Name: Scott F. Binder

Title: Area President

Date: 7/12/24

DEPARTMENT OF ENVIRONMENT,  
GREAT LAKES, AND ENERGY

Phillip D. Roos  
Director

By: Elizabeth M. Browne

Elizabeth M. Browne  
Division Director  
Materials Management Division

Date: July 15, 2024

APPROVED AS TO FORM:

Department of Attorney General

Danielle Allison-Yokom

Danielle Allison-Yokom (P70950)  
Assistant Attorney General  
Environment, Natural Resources, and  
Agriculture Division  
Department of Attorney General  
P.O. Box 30755  
Lansing, Michigan 48909

Date: July 15, 2024