WARREN TOWNSHIP SEWERAGE AUTHORITY

RESOLUTION NO. 11 - 83

RESOLUTION AUTHORIZING THE EXECUTION OF THE STIPULATION OF SETTLEMENT WITH THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION REGARDING THE PERMIT LIMITS FOR ZINC, COPPER, AND WHOLE EFFLUENT TOXICITY, AND STREAM FLOW VALUES IN THE DEAD RIVER, IN THE NJPDES PERMITS FOR THE AUTHORITY’S STAGE IV AND STAGE V SEWAGE TREATMENT PLANTS

WHEREAS, on June 30, 2004 the New Jersey Department of Environmental Protection (the “Department”) reissued New Jersey Pollutant Discharge Elimination System Permit No. NJ0022497 for the Authority’s Stage IV Sewage Treatment Plant (the “Stage IV Permit”), which had an effective date of August 1, 2004 and expiration date of July 31, 2009; and

WHEREAS, as part of the re-issued Stage IV Permit, the Department included a Water Quality Based Effluent Limit (“WQBEL”) for copper of 29.08 µg/l, effective July 1, 2009, as well as chronic whole effluent toxicity (“WET”) limits; and

WHEREAS, on December 17, 2007 the Department reissued New Jersey Pollutant Discharge Elimination System Permit No. NJ0050369 for the Authority’s Stage V Sewage Treatment Plant (the “Stage V Permit”), which had an effective date of February 1, 2008, and has an expiration date of January 31, 2013; and

WHEREAS, as part of the re-issued Stage V Permit, the Department included WQBELs for copper and zinc, effective January 1, 2013, as well as WET limits and ammonia limits; and

WHEREAS, the Department used values for stream design low flow values in the Dead River when developing and issuing the Stage IV Permit and Stage V Permit which were obtained and/or calculated from information provided to the Department by the United States Geological Survey (“USGS”) based upon historical stream flow measurements, some of which predated the presence of the Authority’s and other dischargers’ sewage treatment plants with effluent discharges into the Dead River; and

WHEREAS, the Authority at all times objected to the proposed stream design low flow values as being too low and not indicative of present stream design low flow values which included, inter alia, effluent from upstream dischargers; and

WHEREAS, the Authority requested an adjudicatory hearing on the Stage IV Permit on or about August 4, 2004, and the Department granted the request on August 16,
WHEREAS, in the adjudicatory hearing request for the Stage IV Permit, the
Authority requested modification of the Water Quality Based Effluent Limits
("WQBELs") for copper and the associated mass limit, and the limits for ammonia and
chronic WET, based upon stream design low flow values that more accurately reflected
current conditions in the Dead River, and requested modification of the chronic WET
limit based on the fact that that limit was imposed due to a single bioassay test that
deviated from all other bioassay tests administered over the previous five years; and

WHEREAS, the Authority requested an adjudicatory hearing on the Stage V
Permit on or about January 15, 2008, the Department granted the request on April 2,
2009, and referred the matter to the Office of Administrative Law for determination as a
contested case; and

WHEREAS, in the adjudicatory hearing request for the Stage V Permit, the
Authority requested modification of the WQBELs for copper of 23.0 μg/L, for zinc of
199.0 μg/L, and the associated mass limits, as well as the WQBELs for whole effluent
toxicity and ammonia, based upon stream design low flow values that more accurately
reflected current conditions in the Dead River; and

WHEREAS, on or about January 9, 2006 and in subsequent communications, the
Authority provided additional, more current information regarding the characteristics of
the receiving waters and of the effluent from the plants in support of its requests to
modify the challenged effluent limits in the permits, including more recent data on stream
design low flow values obtained from USGS and effluent flows from upstream
dischargers; and

WHEREAS, the Department advised the Authority in communications prior to
February 2011 that certain stream design low flow data provided by USGS with
adjustments for effluent flows from upstream dischargers could not be used for
recalculating appropriate effluent limits, and that before any modification of the limits
would be considered, the Department would require the gathering and submission of
additional information, specifically stream background copper concentration; and

WHEREAS, the Authority's engineer developed a Work/Quality Assurance
Project Plan ("Work/QAPP") for a Water Effect Ratio ("WER") Study for copper at the
Stage IV Plant, which was submitted to the Department for review on July 12, 2007,
subsequently revised on September 14, 2007, and approved by the Department on
October 5, 2007; and

WHEREAS, in correspondence dated January 21, 2008, a Work/QAPP to
conduct a water quality study to develop site-specific background concentrations and
translator values for copper at the Stage IV Plant was submitted by the Authority’s
engineer to the Department for review and approval in response to the Department’s request for data regarding background concentrations for copper and zinc; and

**WHEREAS**, the Authority requested that the Department extend the date by which additional information and data could be submitted under the Stage IV Permit from January 1, 2008 to January 1, 2009 so as to allow the Authority to collect, sample, analyze and submit such additional information; and

**WHEREAS**, in response to that request, the Department issued a final Permit Renewal Modification for the Stage IV Permit, dated September 17, 2007, which extended the deadline for the Authority to provide such additional, more current information from January 1, 2008 to January 1, 2009; and

**WHEREAS**, at the Authority’s request, the Department granted a stay of existing limits on copper in the Stage IV Permit pending the outcome of the present litigation, said stay dated June 19, 2009; and

**WHEREAS**, the Department obtained updated stream design low flow values in the Dead River from USGS in February 2011; and

**WHEREAS**, the Authority advised in a letter dated February 28, 2011, that these new values were acceptable to the Authority, and the Department agreed to utilize these updated stream design low flow values for the Stage IV Permit and Stage V Permit; and

**WHEREAS**, for the Stage IV Plant, the Department a conducted a WQBEL analysis for copper and chronic WET using the new stream design low flow values, which revealed for WET that there was no cause but a reasonable potential to exceed the wasteload allocation and that there was cause to exceed the wasteload allocation for copper; and

**WHEREAS**, for the Stage IV Plant, the existing and final effective summer limits for ammonia have been carried forward from the previous permit which was issued on June 30, 2004 with an effective date of August 1, 2004, and the Authority has been in compliance with those limits; and

**WHEREAS**, for Stage V, the Department conducted a WQBEL analysis for Chronic WET, Copper and Zinc using the new stream design low flow values which revealed that, for WET, there was no cause and no reasonable potential to exceed the wasteload allocation and that, for copper and zinc, there was no cause to exceed the wasteload allocation; and

**WHEREAS**, for Stage V, the existing and final effective winter and summer limits for ammonia included in the challenged permit have been carried forward from the previous permit which was issued on June 16, 1997 with an effective date of August 1, 1997 and the Authority has been in compliance with those limits; and
WHEREAS, based upon the new stream design low flow values and the WQBEL analysis, the Authority’s representatives and the Department have negotiated a Stipulation of Settlement for the Stage IV and Stage V Permits; and

WHEREAS, for the Stage IV Permit, the Authority and Department’s proposed settlement contemplates that the Authority will comply with the limits in the Stage IV Permit pending modification of same, except the copper, chronic WET, and winter ammonia limits; the new stream design low flow values will be adopted by the Department; the Department will stay the copper, chronic WET, and winter ammonia limits pending modification of the Stage IV Permit; the Authority will conduct a water effect ratio (“WER”) study and a background and translator study for copper; the Department will propose a permit action that re-evaluates the need for and calculation of copper, chronic WET and winter ammonia WQBELs in the Stage IV Permit subject to the new stream design low flow values, the study results, and applicable law; and the Authority would agree to specified monthly monitoring requirements for copper, chronic WET, and winter ammonia pending the establishment of final WQBELs; and

WHEREAS, for the Stage V Permit, the Authority and Department’s proposed settlement contemplates that the Authority will comply with the limits in the Stage V Permit pending modification of same, except the copper, zinc, and chronic WET limits; the new stream design low flow values will be adopted by the Department; the Department will stay the copper, zinc, and chronic WET limits pending modification of the Stage V Permit; the Department will propose a permit action removing the copper, zinc, and chronic WET limits and replacing them with quarterly monitoring and reporting requirements, and imposing a monitoring and reporting requirement for acute WET; and that the ammonia limit cannot be changed without an analysis pursuant to the antibacksliding and antidegredation regulations and a showing that the requirements can be satisfied, but that the Authority may submit information regarding same in the future; and

WHEREAS, the Stipulation of Settlement contemplates dismissal with prejudice of the adjudicatory hearing requests for the Stage IV Permit and Stage V Permit; and

WHEREAS, the Authority’s attorney and engineers have recommended entering into the proposed stipulation of settlement, and the Authority has determined that it is in the best interest of the Authority to enter into the Stipulation of Settlement.

NOW, THEREFORE, BE IT RESOLVED by the members of the Warren Township Sewerage Authority, County of Somerset, State of New Jersey, that the Chairman is authorized and directed to execute the Stipulation of Settlement, and that the Authority’s consultants and contract operator are directed to take all actions required to implement the Stipulation of Settlement.

Moved by Mr. Truglio
Seconded By Mrs. Garafola

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Roll Call Vote

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<td>Mr. Florey</td>
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<td>Mr. Truglio</td>
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<td>Ms. Garafola</td>
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<td>Mr. Vetter (Alternate)</td>
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CERTIFICATION

I, Deborah Catapano, Secretary of the Warren Township Sewerage Authority in the County of Somerset, New Jersey, do hereby certify that the above resolution is a true and correct copy of a resolution adopted at a meeting of the Warren Township Sewerage Authority on August 17, 2011.

Deborah Catapano, Authority Secretary