



WESTERNPORT
WATER

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WESTERNPORT WATER

Trading name for
WESTERNPORT REGION WATER CORPORATION
ABN 63 759 1067 55

Major Trade Waste Agreement

”Trade Waste Customer”

with

Westernport Water

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AGREEMENT TO DISCHARGE TRADE WASTE TO WESTERNPORT WATER'S SEWER

THIS AGREEMENT is made the day of

BETWEEN

WESTERNPORT WATER of 2 Boys Home Road Newhaven, in the State of Victoria (hereinafter referred to as "the Corporation"), ABN 63 759 106755

and

Trade Waste Customer, in the said State being the occupier of the property known as Address of Trade Waste Discharge, Victoria (hereinafter referred to as "the Occupier"), ABN Number

To establish the terms and conditions under which trade waste flows from the above mentioned property may be discharged to the Corporation's sewer.

The Occupier agrees to pay the Corporation Fees and Charges set down in *Annexure 1 Major Trade Waste Discharge Fees*.

The Corporation agrees to accept Major Trade Waste flows into the sewer under its control.

Executed by an Authorised Representative of each party.

EXECUTED on behalf of **WESTERNPORT REGION WATER CORPORATION** by its duly authorised officer.)
)
) Name (printed): Merryl Todd
) General Manager Employee & Customer Relations
)

EXECUTED on behalf of **Trade Waste Customer** by its duly authorised officer.)
)
) Name (printed): Name of Authorised Person
)
) Position
)

1. Interpretation

1.1 Definitions

The following definitions apply in this Agreement

“**Act**” means the *Water Act 1989* (Vic).

“**Agreement**” means this agreement and includes the Schedules and any annexures or documents incorporated by reference.

“**Authorised Officer**” means Merryl Todd or any other employee the Corporation nominates at the time.

“**Corporation**” means Westernport Water.

“**Customer Interface**” means the customer side of the shut-off valve flange but excludes the flow meter.

“**GST**” means any tax imposed under any GST Law and includes GST within the meaning of the GST Act.

“**Interest rate**” means the rate from time to time prescribed under the Penalty Interest Rates Act 1983.

“**Major Trade Waste**” means waste over 1,000 kL per year discharged and/or exceeding specified water quality parameters

“**Notice**” means any communication relevant to the legal agreements in this document i.e. letter of termination, general correspondence.

“**Occupier**” means the person who occupies or is in control of the land whether or not that person owns the land.

“**Tax Invoice**” has the same meaning as in the GST Act.

“**Sewer**” means a sewer belonging to, or under the control of the Corporation.

1.2 Schedules and Annexures form part of this Agreement.

1.3 If a party to this Agreement consists of more than one person those persons shall be jointly and severally bound under this Agreement.

2. Maximum Discharge Rate

The Occupier must manage the rate of discharge of trade wastes to ensure that it does not at any time exceed 40 litres per second or 2.1 megalitres per day.

3. Pre-Treatment

The Occupier must subject all trade wastes to such pre-treatment as may be necessary to ensure that the wastes conform to the requirements of this Agreement prior to discharge into the Corporation’s sewer.

4. Cleaning and Maintenance

The Occupier must, at its own expense, clean and maintain all apparatus, machinery and appliances used for pre-treatment of trade wastes, up to the Customer Interface, to ensure that it operates efficiently.

5. Quality of Discharge

Trade wastes must not be discharged to the Corporation's sewer unless complying with the following general properties and the approved acceptance criteria:

5.1 Temperature

The temperature must not exceed 40 degrees Celsius.

5.2 Solids

(a) Gross solids must not be discharged unless first passed through a bar screen with maximum 10mm openings.

(b) The Occupier must not discharge any fibrous material reasonably likely to cause obstructions in the sewer, nor discharge any abrasive material reasonably likely to cause damage to the Corporation's sewerage pumping mechanisms.

5.3 Odour

The Occupier must not discharge trade wastes such as reasonably likely to cause odour problems within the Corporation's sewerage system or treatment facility.

6. Discharges Excluded from this Agreement

6.1 The following trade wastes must not be discharged by the Occupier to the Corporation's sewer:

(a) Roof, rain, surface, flood, seepage or sub-soil water.

(b) Flammable or explosive substances including organic solvents and mineral oil.

(c) Medical and Infectious wastes eg pathological, infectious or cytotoxic waste material, hypodermic needles, syringes, instruments, utensils, swabs, dressings, bandages, paper and plastic items of a disposable nature.

(d) Non-biodegradable detergents.

(e) Organochlorins, weedicides, fungicides, pesticides, herbicides and/or wastes arising from the preparation of these substances.

(f) Natural or synthetic resins, plastic monomers, synthetic adhesives and rubber plastic emulsions.

(g) Radioactive substances.

(h) Oils and Greases.

(i) Organic Liquids.

(j) Genetically Engineered Organisms.

(k) Surfactants.

(l) Corrosive or toxic substances.

(m) Where the discharge or release of which to any element of the environment is restricted or prohibited by any legislation applying in Victoria.

- (n) In quantities or of a quality that in the reasonable opinion of the Corporation would, or is likely to, endanger human life, compromise the safety of a person or of the works, or significantly adversely affect the operation of a sewage treatment plant or any part of the environment.

7. Measurement of Quality

The Corporation will undertake random sampling to ensure compliance with the Agreement and with the provisions of the *Water Act 1989*.

A sampling point is to be installed and maintained by the Occupier to the reasonable satisfaction of the Corporation and testing costs are as per Annexure 1.

8. Sampling Points

The following points (adjusted for each case) marked on the Site Plan annexed to this Agreement are sampling points for the purpose of this Agreement.

Sampling Point
"Sampling Point" 1
"Sampling Point" 2
"Sampling Point" 3

9. Service of Notices

A Notice:

- (a) Must be in writing and signed by a person duly authorised by the sender;
- (b) Must be delivered to the intended recipient by hand or by prepaid post, to the address specified in the Agreement or the address last notified by the intended recipient to the sender;
- (c) Will be taken to be duly given or made in the case of delivery in person, when delivered; or in the case of delivery by post, two Business Days after the date of posting.

10. Term

This Agreement commences on/...../..... and, subject to earlier termination under clause 25, continues until Date with further extensions of five year periods subject to agreement by both parties.

11. Scope of Agreement

The scope of this Agreement is limited to trade wastes generated at:

- (a) Within the boundary of land specified in the Site Plan as per Annexure 2.
- (b) Facilities connected with the operation of the business.

The Corporation reserves the right to review the terms of this Agreement if the Occupier changes any operation or the quality of quantity are varied significantly.

12. Breach of Agreement

12.1 Failure to Comply with Terms and Conditions

If the Occupier has failed to comply with any condition of this Agreement, the Corporation may serve upon the Occupier a Compliance Notice stating:

- (a) Particulars of the Occupier's failure to comply with any provisions of the Agreement, and,
- (b) Nominating a reasonable date by which the Occupier must take such action as is reasonably necessary to comply with the Agreement.

12.2 Termination of Agreement for Non-compliance

If a Compliance Notice has been properly serviced in accordance with clause 12.1 this Agreement terminates on the date specified in the Compliance Notice unless the Occupier has rectified any breach notified by the Corporation, by the date specified in the Compliance Notice, to the reasonable satisfaction of the Corporation or has given notice that the Occupier requires the dispute resolution procedure in clause 27 to apply in respect of the notice or the circumstances referred to in the notice.

13. Notice of Dangerous Events

The Occupier must notify the Corporation as soon as the Occupier becomes aware of any event relating to trade waste which:

- (a) Does or may give rise to a breach of this Agreement
- (b) Is reasonably likely to endanger human life, compromise the safety of a person or the works of Westernport Water, or significantly adversely affect the operation of a sewerage treatment plant or any part of the environment.

14. Indemnity

The Occupier indemnifies the Corporation against any damage, loss or penalty, cost or expense incurred by Westernport Water as a direct result of the Occupier failing to comply with any provision of this Agreement, except to the extent that the damage, loss, penalty, cost or expense is caused by an act or omission of the Corporation. The Corporation will act reasonably to mitigate any damage, loss, penalty, cost or expense.

15. Changes to be Notified

The Occupier must give a minimum of 30 days written notice to the Corporation of its intention to make any material change in any process of trade or manufacture which may in any way affect the quality, quantity, or rate of the trade waste discharge from any such process of trade or manufacture.

- (a) Material change in quality is defined as any ongoing breach of the parameters defined in clause 5
- (b) Material change in quantity is defined as flows in excess of 5ML per annum
- (c) Material change in pump rate (if pumping is used) is defined as any increase in the pump capacity above 30 litres per second.
- (d) Notification under clause 15 above does not preclude the issue of a Compliance Notice pursuant to clause 12.

16. Change of Occupancy

- (a) The Occupier must notify the Corporation in writing not less than 30 days prior to any proposed change of occupancy.
- (b) This Agreement is not transferable.
- (c) No trade waste may be discharged into the Corporation's sewer unless permitted by a current Trade Waste Agreement.

17. Entry to Land

An Authorised Officer may, in accordance with Section 133 of the *Water Act 1989*:

- (a) At any reasonable time and after giving the appropriate notice enter land to which an Agreement relates.
- (b) Inspect the land and any buildings or treatment apparatus thereon.
- (c) Take measurements and samples of trade waste on or discharging from the land for any purpose relating to the *Water Act 1989*, or this Agreement.

18. Occupier Liable for Damage

- (a) Notwithstanding the permission or approval of the Corporation or its Authorised Officer, the Occupier remains solely liable for all damage, loss, or injury, arising directly from the discharge of trade waste by the Occupier except to the extent that the damage, loss, or injury is caused by an act or omission of the Corporation.
- (b) The Occupier must do all things necessary to remedy, repair and make good all damage to any sewer of the Corporation to the extent contributed by the Occupier's negligence or breach of this Agreement. Where necessary the Corporation may perform such repairs itself at the expense of the Occupier. In any such case the Authorised Officer shall certify the reasonable cost and expense thereof and such certification shall be final and conclusive as to the amount, which must forthwith be paid to the Corporation on demand.
- (c) The Corporation may each year request proof of currency of suitable Public Liability insurance cover instituted by the Occupier with a minimum cover of \$10,000,000.00.

19. Measurement of Quantity

For the purposes of this Agreement, the volume of trade wastes admitted into the Corporation's sewer during any period shall be that determined by installation of a suitable meter to measure the quantity discharged.

If, in the reasonable opinion of the Authorised Officer, any metering device installed for the purposes of this Agreement is for any period apparently registering incorrectly, the Authorised Officer may estimate the quantity of trade wastes discharged during such period by any means reasonably available.

Any dispute as to the estimate is to be determined in accordance with clause 27.

20. Variation of Acceptable Discharge Parameters

The Corporation may from time to time impose, as a result of a regulatory change or imposition, additional, varied, or restricted parameters applicable to discharges accepted to its sewer and impose additional fees related to any changes.

In the event that the Corporation intends to vary the applicable parameters it must give the Occupier 90 days notice of its intention to apply new standards. If the Occupier claims that it cannot reasonably comply with varied parameters, it may discuss the Corporation's proposal with it, or utilise the dispute resolution procedures available pursuant to clause 27 of this agreement.

If the Occupier has not invoked the provisions of clause 27 within the 90 day period, the additional or varied parameters apply immediately and the Occupier must ensure that its discharge conforms to the new parameters and meet any additional charges applicable.

21. Variation of Discharge

The Occupier may apply to the Corporation if at any time it finds that the rate or rates of discharge permissible by this Agreement proves insufficient for its requirements, and the Corporation will, acting reasonably, consider the request and advise the Occupier whether the request is acceptable and what variations will be required to the Agreement.

If the Corporation rejects the Occupier's request, or if the Corporation's proposal is unacceptable to the Occupier, the Occupier may refer the matter to dispute resolution in accordance with clause 27.

22. Exclusion during Repairs

- (a) The Corporation may, in an emergency or when otherwise reasonably considered necessary by the Authorised Officer, exclude all trade wastes from the property from its sewers during the repair, examination or maintenance of the sewers, without liability for payment of any compensation to the Occupier.
- (b) Where reasonably possible, the Corporation will notify the Occupier in advance of its intention to repair, examine or maintain the sewers. The Corporation will endeavour to avoid carrying out such work during periods when the Occupier is conducting major events.
- (c) The Occupier must not resume discharging trade waste into the sewer until the Corporation notifies the Occupier that it may resume discharging. Until this notification has been made, the Occupier may tanker waste to the Cowes

Waste Water Treatment Plant attracting the fee detailed in Annexure 1 of this Agreement.

23. Payment

- (a) Payments will be levied by the Corporation to the Occupier four times per annum.
- (b) Payments must be made by the Occupier within 28 days of the date of issue of a Tax Invoice.
- (c) In the event that any amount payable pursuant to this Agreement remains unpaid in excess of 28 days from the date of the Tax Invoice, the Occupier must pay interest on such amount calculated from the date of the Tax Invoice until the date of actual payment at the rate for the time being fixed by the Penalty Interest Rates Act 1983.
- (d) The Corporation may close, cut off, or restrict any means by or through which the discharge is effected for so long as such any sum remains unpaid in excess of 28 days from the date of the Tax Invoice unless the Occupier has disputed the Occupier's liability for the sum in question.

24. Other Charges

Nothing in this Agreement limits the right of the Corporation to require the Occupier to pay any other charges which may be imposed by the Corporation at law, including but without limiting, pursuant to the Water Act 1989.

25. Termination of Agreement

- (a) The Occupier may terminate this Agreement by providing 30 days written notice to the Corporation.
- (b) The Corporation may terminate this Agreement after 30 days written notice to the Occupier should the Occupier cease to occupy the land from which trade waste is being discharged in accordance with this Agreement.
- (c) The Corporation may terminate this Agreement after 30 days written notice to the Occupier should the Occupier persistently fail to comply with any provision of this Agreement.
- (d) Before any termination under the preceding sub-clause, the dispute resolution process provided in Clause 27 shall take place if requested by either party.
- (e) This Agreement may also be terminated by the Corporation upon the Occupier's failure to comply with a Compliance Notice given under clause 12.1.

26. Disconnection on Termination or Expiry of Agreement

- (a) Upon termination of this Agreement, the Occupier must at his own expense and to the reasonable satisfaction of the Authorised Officer, disconnect all means of discharge of trade waste into the sewers of the Corporation.
- (b) In default of the Occupier so doing within seven days from the date of termination or expiry of the Agreement, or within such further period as the Corporation may allow, the Corporation by agents or workmen may enter the property, and at the reasonable cost and expense of the Occupier disconnect

such means and put an end to the further discharge of trade waste to its sewers.

27. Dispute Resolution and Arbitration

- (a) If any dispute, question or difference, arises between the parties as to the meaning, operation or effect of any of the provisions of this Agreement or as to the rights or liabilities of any party, the parties shall negotiate in good faith with one another in an attempt to reach agreement.
- (b) If agreement cannot be reached, the matter shall be referred to a resolution panel consisting of:
 - (i) the Chief Executive Officer/Managing Director of the Occupier
 - (ii) the Managing Director of the Corporation
- (c) The resolution panel must meet to consider the dispute within 21 days of the matter being referred to it.
- (d) Any decision of the panel must be unanimous.
- (e) If the panel cannot agree within 30 days, the dispute, question or difference shall be referred to an Arbitrator to be appointed by the Institute of Arbitrators Australia at the request of either party. The Arbitrator may conduct such inquiry as he deems appropriate pursuant to the Commercial Arbitration Act (Victoria), and his decision or award shall be conclusive and binding on the parties. The Arbitrator shall have power to award costs. Counsel and/or solicitors may represent either party.

28. **Annexure 1 – Major Trade Waste Discharge Fees**

The charges below apply for the period 1 July 2009 to 30 June 2010 and reflect the standard charges at the date of signing this Agreement. Future amendments to charges will commence effective 1 July each year and will be indexed by CPI (March quarter results). The Discharge Fees will be subject to review for any extension of the Term.

(1) Annual Access Charge

Per Annum

As agreed

(2) Volumetric

Volume per kilolitre (kL)

As agreed

This rate also applies when the Corporation's system is unavailable.

(3) Tankered Waste

Volume per kilolitre (kL)

Standard Fess and Charges

This rate applies when the Occupier' system is unavailable..

In a case to which this section 28(3) applies, labour costs reasonably and properly incurred by the Corporation receiving tankered waste at Cowes Waste Water Treatment Plant will also be charged.

(4) Sampling Costs

Analysis and freight costs reasonably and properly incurred by the Corporation

Actual Cost

29. Annexure 2 – Site Plan

Provide by Occupier